

RESTATED MASTER DECLARATION

**of
Covenants, Conditions, & Restrictions
for**

DOWNING PARK

A Mixed Property Planned Community Development

Comprised of

Ten (10) Villas, Six (6) Townhomes, and a Six (6) Unit Condominium

Drafted: January 30th, 2013

This Instrument Prepared By: Attorney Curtis S. Potter

Mail after Recording To:
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9 Park Place West, Suite 101, Brevard, NC 28712

THIS RESTATED MASTER DECLARATION, (the “RMD” or “Declaration”) for Downing Park (the “Development”) is hereby made and entered into as of the day and year first set forth hereinabove, by and between the undersigned Owners, the Downing Park Homeowners’ Association, Inc., (the “HOA”), and the Downing Park Condominium Unit Owners’ Association (the “COA”), for the purposes described hereinbelow:

WITNESSETH:

WHEREAS, In 2006 Glade Land Fund, LLC (the “Declarant”) initially submitted the Development as a single Planned Community to the terms, provisions, and authority of the North Carolina Planned Community Act (the “NCPCA”), together with certain other covenants, conditions, and restrictions purporting to affect the Development Property as more particularly described within an instrument entitled “Declaration of Covenants and Restrictions for Downing Park” (the “First Declaration”) recorded in the Transylvania County Registry at Book 342, Page 500 thereof; and

WHEREAS, that First Declaration made little or no specific reference to, nor adequate provision for, the construction within the Development of a Condominium, nor for its addition to the Development; and

WHEREAS, the Declarant thereafter did in fact construct a Condominium within the Development consisting of certain designated Condominium Property together with certain designated Condominium Units built thereupon, and purported to subject the same to the Development as a part thereof; and

WHEREAS, adding the Condominium to the Development created a Mixed Property Planned Community Development, the Condominium portion only of which is subject by operation of law to the North Carolina Condominium Act (the “NCCA”) in addition to remaining subject to other applicable laws (including the NCPCA) otherwise affecting the entire Development to the extent not inconsistent with the NCCA; and

WHEREAS, in 2007 the Declarant amended and restated the First Declaration by executing and recording in the Transylvania County Registry at Book 411, Page 138, an instrument entitled “Amended and Restated Declaration of Condominium, Covenants and Restrictions for Downing Park,” (the “Second Declaration”) purporting therein to subject the Condominium portion of the Development to the additional terms, provisions, and authority of the NCCA, and restating the terms of the First Declaration to provide for the co-existence and management of the Development including the Condominium portion existing therein; and

WHEREAS, that Second Amendment is inadequate in certain respects to fully and adequately comply with certain conflicting terms and provisions of the NCPCA and the NCCA as they respectively apply to the various different forms of property existing simultaneously within the Development; and

WHEREAS, the period for Declarant Control has expired pursuant to the previously recorded First and Second Declarations, or otherwise has expired by operation of law; and

WHEREAS, the undersigned desire to amend and restate the provisions of the Second Declaration so that:

All the covenants, conditions, and restrictions affecting the entire Development and the respectively different forms of property simultaneously existing therein (including the Villas, Townhomes, and the Condominium) shall be set forth and contained within this single RMD and the Instruments specifically incorporated herein, for ease and convenience of reference thereto, and for the mutual benefit of all of the Owners of any interest in the Development; and

The terms hereof shall more adequately comply with the applicable provisions of law including the NCPCA and the NCCA as they each respectively apply to the different forms of property simultaneously existing within the Development; and

The terms hereof shall more fully establish and describe the nature of the relationship between, and the unique management structure for, the COA and the HOA, thereby providing for the smooth, economic, and legally compliant management and administration of the entire Development Property by the HOA as one single Planned Community pursuant to the NCPCA, while the HOA simultaneously serves in the capacity of the COA’s Master Association to fulfill the COA’s duties and exercise its powers to separately manage and administer the Condominium portion of the Development pursuant to the NCCA and the Restated Condominium Declaration (the “RCD”) attached hereto and incorporated herein by reference as Exhibit “RMD-D”.

NOW, THEREFORE, pursuant to G.S. 47F-2-117 of the NCPCA (Amendment of declaration), and Section 11.1 of the Second Declaration (Amendment), and for and in exchange of the mutual covenants and promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned for themselves and for their occupants, mortgagees, heirs, executors, administrators, successors, and assigns, hereby make and agree to be bound by the covenants, conditions, and restrictions set forth within this RMD including any and all Instruments or Exhibits incorporated herein by reference, as all may be validly amended or adopted from time to time hereafter.

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ARTICLE I

DEFINITIONS

Section 1.01 Intent & Application of Definitions:

Each term defined in this Article, and as used within this RMD or any other Instruments (as defined hereinbelow) whether capitalized or not, shall be deemed to have the definition set forth immediately thereafter, unless a contrary definition for such term is otherwise clearly established by: (i) any applicable law including but not limited to the NCPA (or NCCA in the context of condominium property or governance), (ii) an express statement within any Instrument that such term as used therein shall have a contrary definition (including but not limited to those terms separately defined within the RCD*); or (iii) the context in which any such term is used where the intent for such term to contain a contrary definition is clear and unambiguous.

(Any terms defined hereinbelow, the definitions of which are followed by an asterisk () indicates the existence of a separate definition for such term whenever it is used in the RCD or in the exclusive context of describing condominium property, condominium ownership, or condominium governance.)

Section 1.02 Terms Defined:

“Acts” means either the NCPA, the NCCA, or both as the context may require.

“Allocated Interest” means the Common Expense Liability and votes in the HOA allocated to each Lot.*

“Articles” means the HOA's Articles of Incorporation as validly amended from time to time.

“Association” means the HOA.*

“Board” or “Board of Directors” means the executive board of the HOA.*

“Bylaws” means the HOA's bylaws as validly amended from time to time.*

“COA” means the DOWNING PARK Condominium Unit Owners’ Association, a North Carolina unincorporated association formed pursuant to G.S. 47C-3-101 to separately manage and administer the Condominium's affairs in accordance with the NCCA and the RCD.

“Common Elements” means all Development Property owned or leased by the HOA in its own name on behalf of its members, less and excepting all privately owned Lots and the Condominium Property.*

“Common Expenses” means expenditures made by, or financial liabilities of, the HOA, together with any allocations to reserves.*

“Common Expense Liability” means the liability for Common Expenses of the Development allocated to each Lot as provided by this RMD, the NCPA, or otherwise by law.*

“Condominium” means the DOWNING PARK Condominiums consisting of the Condominium Property, and existing as a separately administered but contiguous part of the larger Planned Community Development of DOWNING PARK, portions of which Condominium Property are designated for separate ownership (Units) the remainder being designated for common ownership solely by the owners of those portions (Unit Owners).

“Condominium Property” means all of that real property more particularly described within Exhibit “RMD-B” attached hereto and incorporated herein by reference, together with the Units constructed thereon, and all rights, easements, and obligations appurtenant thereto, as more particularly described within the RCD, and being the same real property described within Exhibit “RCD-A” attached thereto and incorporated therein by reference.

“Condominium Unit” or “Unit” means a physical portion of the Condominium designated by its Unit Boundaries for the separate ownership or occupancy thereof by a Unit Owner.

“Condominium Unit Boundaries” or “Unit Boundaries” means the boundaries for each Unit, both as to its vertical and horizontal planes, as established and shown by the Plats and Plans, or to the extent not inconsistent therewith means those boundaries established by operation of law pursuant to G.S. 47C-2-102 of the NCCA.

“Condominium Unit Owner” or “Unit Owner” means the Person(s) owning a Unit, but does not include a Person having an interest in a Unit solely as security for an obligation. For purposes of construing this RMD and the NCPA, as they apply to the Condominium existing within the Planned Community Development as a part thereof, Unit Owners shall also be considered Lot owners hereunder by virtue of owning a Unit.

“Declarant” means Glade Land Fund, LLC, a NC LLC, formerly known as Chestnut Land Fund, LLC, a NC LLC.

“Declaration” means this RMD.*

“Development” means the entire Mixed Property Development of DOWNING PARK consisting of the Development Property, and existing as one Planned Community within which the Condominium exists as a separately administered but contiguous part thereof.

“Development Property” means all of that real property more particularly described within Exhibit “RMD-A” attached hereto and incorporated herein by reference, together with all rights, easements, and obligations appurtenant thereto.

“Director” means a member of the HOA Board of Directors.

“First Mortgagee” means the holder of a first in priority mortgage on any Lot.

“HOA” means the DOWNING PARK Homeowners’ Association, Inc., a North Carolina nonprofit corporation, formed and serving pursuant to G.S. 47F-3-101 as the lot owners’ association to manage and administer the entire Mixed Property Development of DOWNING PARK as a single Planned Community in accordance with the

NCPCA and the RMD; and also serving in addition thereto pursuant to G.S. 47C-2-120 (Master Associations) as the COA's Master Association to separately manage and administer the Condominium in the capacity of its unit owners' association as defined in G.S. 47C-1-101 in accordance with the NCCA, the RCD, and to the extent not inconsistent therewith, this RMD.

"Instruments" means without limitation all of the following: This RMD; the Articles, the Bylaws, the Rules and Regulations, the Plats and Plans, any exhibits (including but not limited to the RCD) or other documents attached to or incorporated within any of the foregoing as all the same are validly adopted or amended from time to time. All of the Instruments are and shall be incorporated herein by reference.*

"Lease" means any oral or written lease, use, tenancy, sublease, rental, or other occupancy agreement for any Lot.*

"Limited Common Elements" means those portions of the Common Elements allocated by this RMD or the NCPCA, for the exclusive use thereof by one or more but fewer than all of the Lots.*

"Lot" means a physical portion of the Development designated for separate ownership or occupancy by its Lot Owner(s). Each separate Villa is a separate Lot. Each separate Townhome is a separate Lot. Each separate Condominium Unit shall be deemed as and treated for purposes of this RMD and the NCPCA as a separate Lot.

"Lot Owner" means any Person(s) owning an interest in any Lot, but does not include any Person(s) having an interest in any Lot solely as security for an obligation.

"Majority" means greater than fifty percent (50%) in any context, unless a different percentage is expressly required by any applicable Instrument or by law.

"Mixed Property" means the mixed manner in which various different legal forms of property simultaneously exist within and as a part of the Development of DOWNING PARK.

"NCCA" means the North Carolina Condominium Act as codified in Chapter 47C of the North Carolina General Statutes, as amended from time to time.

"NCPCA" means the North Carolina Planned Community Act as codified in Chapter 47F of the North Carolina General Statutes, as amended from time to time.

"Occupant" means any Person(s), including, without limitation, any guest, customer, invitee, tenant, lessee or licensee of any Owner, occupying, using or otherwise visiting a Lot.*

"Officer" means an officer of the HOA.*

"Owner" means a "Lot Owner".*

"Person" means without limitation a natural person, corporation, trust, estate, partnership, association, joint venture, government, or any other legally recognized entity.

"Planned Community" pursuant to the NCPCA means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of the NCPCA, neither a cooperative nor a Condominium is a Planned Community, but real estate comprising a Condominium or cooperative may be part of a Planned Community. (See: G.S. 47F-1-103.23).

"Plats and Plans" mean those Plats and/or Plans of the Development and/or Condominium validly prepared and recorded by the Declarant or the HOA pursuant to the Acts or other state law in the Transylvania County Registry, including but not limited to those already recorded in Plat File 11, Slide 391, and Plat File 12, Slides 101 - 106 .

"RCD" means the Restated Condominium Declaration for DOWNING PARK Condominiums attached to and incorporated within this RMD as Exhibit "RMD-D" hereto together with the Instruments separately defined therein.

"RMD" means this Restated Master Declaration of Covenants, Conditions, and Restrictions for DOWNING PARK a Mixed Property Planned Community Development Comprised of Villas, Townhomes, and a Condominium, together with the Instruments defined herein, as all the same may be validly amended from time to time.

"Rules and Regulations" or "RRs" means the rules and regulations of the Development validly adopted, promulgated, or amended by the HOA from time to time.*

"Townhome" means a physical portion of the Development designed for separate ownership or occupancy by a Townhome Owner as a separate Lot within the Planned Community Development.

"Unit" means a "Condominium Unit"

"Unit Boundaries" means "Condominium Unit Boundaries"

"Unit Owner" means "Condominium Unit Owner"

"Villa" means a physical portion of the Development designed for separate ownership or occupancy by a Villa Owner as a separate Lot within the Planned Community Development.

ARTICLE II

SUBMISSION OF DEVELOPMENT

Notwithstanding any statements to the contrary contained within any deeds or instruments of conveyance purporting otherwise, the entire Development, the Lots, and every interest of any Person(s) whatsoever owned or otherwise existing therein are intended to be, and shall be: owned, held, transferred, sold, conveyed, disposed of, acquired, inherited, assigned, used, leased, occupied, mortgaged, encumbered, and/or deeded into trust, subject to the terms, conditions, and provisions of the NCPCA and this RMD as the same may be amended from time to time hereafter

In addition to the foregoing, the Condominium portion of the Development only shall also be subject to the NCCA and those additional terms, conditions, and provisions of the RCD attached hereto and incorporated herein by reference as Exhibit "RMD-D".

ARTICLE III

DESCRIPTION OF DEVELOPMENT

Section 3.01 Name and Location:

The Development governed by this RMD is named: "DOWNING PARK", and is located within the City of Brevard, Transylvania County, North Carolina.

Section 3.02 Description of Development:

- (a) The Development exists as a single Planned Community and is classified as a Mixed Property Development containing three distinctly different forms of property simultaneously existing therein.
- (b) The Development consists of all the Development Property as more particularly described within Exhibit "RMD-A" attached hereto and incorporated herein by reference, together with all rights, easements, and obligations appurtenant thereto, including without limitation those set forth within the NCPCA and this RMD.
- (c) Portions of the Development are designated by the Plats and Plans for the separate ownership thereof as individual Lots.
- (d) The Condominium Property is deemed by operation of law to be exclusively owned by all the Condominium Unit Owners as more particularly described within the RCD and the NCCA.

Section 3.03 Lots, Allocated Interests, & Owner Rights:

- (a) The Development contains a total of Twenty Two (22) Lots comprised of three kinds of privately owned property designated for separate ownership thereof and being more specifically: Six (6) Townhomes, Ten (10) Villas, and Six (6) Condominium Units.
- (b) The Townhome Lots and Villa Lots are more fully described and depicted by the Plats and Plans thereof including but not limited to the "Final Plat of Downing Park" recorded in Plat File 11, Slide 391, in the Transylvania County Registry. Each individual Lot is separately identified therein by its numeric or alphanumeric character being 1-10 for the Villas, and T1-T6 for the Townhomes.
- (c) The Condominium Units (which in addition to being separate Units as described within the NCCA and RCD are also deemed for purposes of this RMD and the NCPCA to be considered as separate Lots within the Development) are more fully described within the RCD.
- (d) Each Lot consists of the area within its respective vertical and/or horizontal boundaries together with the dwellings located thereon, and in addition thereto, subject to any additional rights or limitations imposed by the NCPCA and this RMD, each Lot also consists of the following rights, interest, and obligations:
 - (i) A non-exclusive right of each Owner to use and enjoy the Common Elements, subject to RRs.
 - (ii) The "Allocated Interest" of each Lot as defined herein, being allocated between and among the Lots as originally established by the Declarant in proportion to the approximate percentage of the fair market value each Lot, including all existing or potential improvements thereto, bears in relation to the aggregate fair market value of all Lots in the Development, including all existing or potential improvements thereto, as the same is more particularly described within Exhibit "RMD-C" attached hereto and incorporated herein by reference.
 - (iii) The automatic and mandatory membership in the HOA of every Owner of any fee interest in any Lot (including for purposes hereof, each Unit), which membership shall continue indefinitely without cessation during the period of any such ownership.

- (e) Each Lot shall constitute for all purposes a separate parcel of real property, which may be owned in fee simple and which subject to the provisions of the Acts and this RMD may be conveyed and encumbered like any other property. The rights, interests, and obligations appurtenant to each Lot shall not be separated from any Lot to which it appertains, and shall be deemed to be conveyed or encumbered with such Lot even though such interest is not expressly mentioned or described in any purported conveyance thereof or by any other instrument.

Section 3.04 Common Elements:

The Common Elements consist of all portions of the Development other than the Condominium Property and the specifically designated Lots, provided however certain portions of the Common Elements may be further classified as Limited Common Elements as described hereinbelow.

Section 3.05 Limited Common Elements:

Limited Common Elements are those portions of the Common Elements which are reserved by this RMD or by operation of law for the exclusive use thereof by one or more, but fewer than all of the Lots. Limited Common Elements are not separate and apart from the Common Elements in general, but are limited only with respect to the exclusive use thereof by the Lot(s) to which they are reserved. The following shall be Limited Common Elements:

- (a) Any driveway, parking area, walkway, entrance, foyer, lobby, hallway, steps, elevator, stairway, or means of access to the door of any Lot, together with any enclosure therefore, which is appurtenant to, or otherwise designed to serve one or more, but not all of the Lots shall be a Limited Common Element appurtenant to the Lots(s) so served.

ARTICLE IV ADMINISTRATION OF DEVELOPMENT

Section 4.01 Name & Form of Lot Owners' Association:

The Development shall be managed and administered by the DOWNING PARK Homeowners' Association, Inc., (the "HOA") a North Carolina Nonprofit Corporation, simultaneously serving in dual management and administrative capacities over both the Development and the Condominium in accordance with the Acts, this RMD, the RCD, and the applicable Instruments.

Section 4.02 Incorporation of HOA Instruments by Reference:

The terms, conditions, and provisions of the Articles, Bylaws, and Rules and Regulations, of the HOA as the same may be validly adopted and/or amended from time to time are hereby incorporated into this RMD as if fully set forth herein and shall be binding upon all Lot Owners.

Section 4.03 HOA Membership:

Each Lot Owner (including for purposes of this RMD, each Unit Owner) shall automatically be a member of the HOA. Ownership of a fee interest in a Lot shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. Pursuant to G.S. 47F-3-101 of the NCPA, only Lot Owners (including for purposes of this RMD, the Unit Owners) may be members of the HOA.

Section 4.04 Administration of Development by HOA:

The HOA shall manage and administer the affairs of the Development as a single Planned Community pursuant to, and in accordance with, the NCPA, this RMD, and the Instruments, by serving in the actual capacity of its lot owners' association as defined in G.S. 47F-3-101 of the NCPA.

Section 4.05 Separate Administration of Condominium by HOA:

The HOA in addition to the foregoing shall also separately manage and administer the affairs of the Condominium pursuant to and in accordance with the NCPA, this RMD, the RCD, and the Instruments thereof by serving as a Master Association pursuant to G.S. 47C-2-120 (Master Associations) in the actual capacity of the Condominium's unit owner's association as defined in G.S. 47C-3-101. In so doing, the COA membership shall at all times be entitled to exclusively elect at least one (1) voting Board member to the Board of the HOA, but in no event less than Twenty percent (20%) of the total voting Board membership at any given time.

Section 4.06 Duties and Powers of the HOA:

- (a) Development Administration: Unless otherwise expressly provided herein, whenever acting in the capacity of the Development's lot owners' association, the HOA shall have and be deemed to possess all of the following non-exclusive duties and powers with respect thereto:
 - (i) All those duties and powers of a lot owners' association set forth within the NCPA, including but not limited to those powers specifically enumerated in G.S. 47F-3-102 (Powers of owners' association) the terms and provisions of which are incorporated into this RMD by reference and paraphrased for convenience purposes only as follows:

Unless the articles of incorporation or this RMD expressly provides to the contrary, the association may:

- (1) Adopt and amend bylaws and rules and regulations;*
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;*
- (3) Hire and discharge managing agents and other employees, agents, and independent contractors;*
- (4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;*
- (5) Make contracts and incur liabilities;*
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;*
- (7) Cause additional improvements to be made as a part of the common elements;*
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47F-3-112;*
- (9) Grant easements, leases, licenses, and concessions through or over the common elements;*
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;*
- (11) Impose reasonable charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;*
- (12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;*
- (13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;*
- (14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;*
- (15) Assign its right to future income, including the right to receive common expense assessments;*
- (16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and*
- (17) Exercise any other powers necessary and proper for the governance and operation of the association.*

- (ii) All those additional duties and powers of the HOA acting as the lot owners' association over the entire Development as a Planned Community which are granted thereto by the terms of this RMD, the Instruments, or by other applicable law including without limitation those duties & powers set out in the North Carolina Nonprofit Corporation Act (G.S. 55A *et. seq.*).

- (b) Condominium Administration: Whenever acting as the COA's Master Association in the capacity of the Condominium's unit owners' association the HOA shall have and be deemed to possess all of those non-exclusive duties and powers with respect to the Condominium which are otherwise granted to the COA pursuant to the NCCA and the RCD to exercise the same on behalf thereof in the best interests and welfare of the Condominium Unit Owners, as more particularly described within the RCD.

Section 4.07 HOA Action through Board and/or Officers:

Unless otherwise expressly stated within this RMD or the Instruments, or unless otherwise expressly required by law including without limitation the North Carolina Nonprofit Corporation Act, or the NCPCA with respect to the HOA's actions taken pursuant to its Development administration capacity, or the NCCA with respect to the HOA's actions taken pursuant to its Condominium administration capacity; the powers provided herein or otherwise granted to the HOA serving in either such capacity, may be exercised on behalf thereof by the HOA's Board, or otherwise by the HOA's authorized Officers, agents, or employees, and all without any further consent or action being required with respect thereto on the part of the members of either the HOA for Development administration or the COA for Condominium administration.

Section 4.08 Indemnification of Board and Officers:

Subject to, and in accordance with the provisions and/or limitations set forth within the Instruments, if any, and to the maximum extent otherwise allowed by law, each Director and each HOA Officer, shall be entitled to indemnification by the HOA in connection with any threatened, pending, or completed action, suit, or proceeding, with respect to which such person was or is a party by reason of the fact that such person is or was an HOA Director or Officer.

Section 4.09 Rules and Regulations of the HOA:

Without limiting the generality of this Article, the HOA Board of Directors shall have the power and authority to make, amend, and revoke reasonable Rules and Regulations (“RRs”) concerning the use of the Development including without limitation, the use of the Lots and/or the Common Elements thereof, as the same may be adopted or amended from time to time, and the RR’s shall be binding upon each Lot Owner or Occupant (including for purposes hereof each Unit Owner or Occupant).

Section 4.10 Professional Management of the HOA:

The Board may employ a professional management Person to manage the operation and affairs of the Development and/or the Condominium on its behalf. Any management Person so employed shall be employed only pursuant to a written agreement executed on behalf of the HOA by a Majority of the Board. All such management agreements shall be terminable by the HOA with cause upon thirty (30) days prior written notice and without a termination fee, and upon ninety (90) days prior written notice without a termination fee without cause, and the term thereof may not exceed one (1) year. The management Person shall be the agent of the Board and the HOA. To the extent permitted by law, the Board shall be authorized to delegate to such management Person any duties and powers of the HOA and of its Board and/or Officers as the Board shall determine necessary or desirable.

Section 4.11 Enforcement of Director’s Duties:

In the event that the Board shall fail to perform any duty or duties which under the terms and provisions of applicable law including without limitation the Acts, this RMD or the Instruments, are required to be performed by it, any Owner or First Mortgagee who is aggrieved by such failure, shall have the right to proceed in equity to compel the Board to perform such duty or duties. In no event however, shall any Director have any liability to any Owner or First Mortgagee for any failure by it, or by the Board, to perform any such duty or duties, except to any extent such liability is specifically provided for in the North Carolina Nonprofit Corporation Act with respect to the Board actions taken in regard to any of its management capacities provided for herein.

Section 4.12 HOA Property:

All funds received, and title to any property acquired by the HOA on behalf of the Development as a single Planned Community, and any proceeds thereof, after deducting the costs incurred by the HOA in receiving or acquiring the same, shall be held for the mutual benefit of the Lot Owners (including the Unit Owners) of the Development as herein provided, and for the purposes herein stated. The shares of the Owners in the funds and assets of the HOA cannot be individually assigned, hypothecated or transferred in any manner except as an appurtenance to a Lot.

Section 4.13 Records of the HOA:

The HOA shall keep and maintain records in accordance with G.S. 47F-3-118 of the NCPA and G.S. 55A-16 of the North Carolina Nonprofit Corporation Act. The HOA shall also keep and maintain separate records at all times with respect to any and all meetings held, actions taken, or funds handled in its capacity as the COA’s Master Association in accordance with G.S. 47C-3-118 of the NCCA and G.S. 55A-16 of the North Carolina Nonprofit Corporation Act.

ARTICLE V MAINTENANCE & ASSESSMENTS

Section 5.01 Statutory Maintenance Responsibility of HOA:

Unless otherwise expressly provided herein, the HOA shall have all of the statutory maintenance responsibilities and duties of a lot owners’ association which are provided for within the NCPA (including but not limited to those specifically enumerated within G.S. 47F-3-107 thereof entitled “Upkeep of planned community, responsibility and assessments for damages”), the terms and provisions of which are incorporated into this RMD by reference paraphrased for convenience purposes only as follows:

- (a) Except as otherwise provided in this RMD, G.S. 47F-3-113(h) or subsection (b) of this section, the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in G.S. 47F-3-115(c)(1). Except as otherwise provided in this RMD, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon. Each lot owner shall afford to the association and when necessary to another lot owner access through the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement activity.***
- (b) If a lot owner is legally responsible for damage inflicted on any common element, the association may direct such lot owner to repair such damage, or the association may itself cause the repairs to be made and recover damages from the responsible lot owner.***
- (c) If damage is inflicted on any lot by an agent of the association in the scope of the agent's activities as such agent, the association is liable to repair such damage or to reimburse the lot owner for the cost of repairing such damages. The association shall also be liable for any losses to the lot owner.***

- (d) *When the claim under subsection (b) or (c) of this section is less than or equal to the jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the executive board to determine if a lot owner is responsible for damages to any common element or the association is responsible for damages to any lot. If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability for each damage incident against each lot owner charged or against the association not in excess of the jurisdictional amount established for small claims by G.S. 7A-210. When the claim under subsection (b) or (c) of this section exceeds the jurisdictional amount established for small claims by G.S. 7A-210, liability of any lot owner charged or the association shall be determined as otherwise provided by law. Liabilities of lot owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under G.S. 47F-3-116. Liabilities of the association determined by adjudicatory hearing or as otherwise provided by law may be offset by the lot owner against sums owing to the association and if so offset, shall reduce the amount of any lien of the association against the lot at issue.*
- (e) *The association shall not be liable for maintenance, repair, and all other expenses in connection with any real estate which has not been incorporated into the planned community.*

Section 5.02 Development Landscaping Maintenance:

The HOA shall maintain the lawn and landscaping within the Development installed by Declarant (or otherwise installed by an Owner with the approval of the HOA).

Section 5.03 Street & Parking Area Maintenance:

The street(s) within the Development are public streets, the right of way and design thereof having been approved and accepted for maintenance by the NC Dept. of Transportation and/or City of Brevard. The HOA shall be responsible for maintaining any drives or parking areas located within the Common Elements, and the costs thereof shall be allocated as more particularly described within Article XI below. Each Villa Owner shall be solely responsible for maintaining any and all drives or parking areas located within their respective Villa.

Section 5.04 Townhome Maintenance & Insurance Responsibility:

Except as otherwise expressly stated herein, each Townhome Owner shall at their sole expense, maintain, repair and replace any and all portions of their individually owned Townhome, including without limitation the interior, siding, roof, gutters, downspouts, paint, glass, decks, patios, and all other exterior and structural portions thereof.

- (a) **Party Walls. Roofs. Foundations and Foundation:** Each wall, roof, foundation and foundation wall which is built as a part of the original construction of the Townhomes and placed on or traverse to the dividing line between them, and all reconstruction or extensions of such structures shall constitute a party wall, roof, foundation and foundation wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and lateral support in below-ground construction and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) **Sharing of Repair:** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, or benefit therefrom, in proportion to such use and benefit. If repair is necessitated by the occurrence of a casualty for which the HOA had insurance, then such costs as are set forth herein shall be the responsibility of the Board.
- (c) Each Townhome Owner covenants and agrees with the other Owners and the HOA that they will obtain at their sole expense and carry in place at all times, property insurance on their respective Townhomes equal to not less than One Hundred percent (100%) of the replacement value, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, and shall provide a certificate of proof thereof to the HOA at all times and in any form which the HOA may reasonably deem necessary to ensure that the Townhomes remain adequately insured against potential loss or casualty which form may include without limitation, a requirement that the HOA be notified at least Thirty (30) days prior to any pending lapse or material change in such policy. In the event any Townhome Owner shall fail to obtain or maintain such insurance, the HOA shall obtain such insurance for the Townhome Owner, their Mortgagees, and the HOA, all as loss payees and as their interest may appear, or otherwise in any manner deemed reasonably necessary within the sole discretion of the Board to adequately provide for the continual insurance of all Townhomes against loss or casualty. In any such event, the costs thereof shall be specifically allocated and assessed exclusively to any such Townhome.
- (d) Each Townhome Owner covenants and agrees with the other Owners and the HOA: (i) to build, repair or restore such Townhome in the event of damage thereof and to apply the full amount, to the extent necessary, of any and all insurance proceeds to the restoration or repair of such Townhome; and (ii) to assist the HOA in keeping the Lot in good repair as required by this RMD or the Instruments, and in the event of any failure thereof, the HOA may exercise its right to self help in resolving such failure in the same manner as described in Section 5.05 hereinbelow for Villas.
- (e) **Destruction by Fire or other Casualty:** If a party wall, roof, foundation or foundation wall is destroyed or damaged by fire or other casualty, then consistent with the provisions hereof, any Owner who has used the structure may restore it, and if the other Owners thereafter make use of the structure, they shall

contribute to the cost of restoration thereof in proportion to such use; without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

- (f) Easement for Construction: The Owner of any Lot may construct, reconstruct or extend a party wall, roof, foundation or foundation wall in any direction (subject to and within the limitations of architectural control and other limitations of this RMD) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.
- (g) Right of Contribution Runs with Land: The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (h) Certification by Adjoining Property Owner that No Contribution is Due: If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property Owner is owed any money under any right of contribution as provided for hereunder, request the adjoining property Owner or property Owners to certify that no money is then due under any right of contribution. It shall be the duty of each adjoining property Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining property Owner claims an amount of money due under a right of contribution the certification shall contain a recital of the amount so claimed.
- (i) Arbitration: In the event of any dispute arising concerning a party wall or other external improvements covered by this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Section 5.05 Villa Owner Maintenance Responsibility:

Each Villa Owner shall at their sole expense, maintain, repair and replace any and all portions of their Villa, including the dwelling unit, driveway, and parking areas located thereon, except those portions, if any, as have been subject to use by the HOA for the benefit of exercising one or more of the easements contained herein to the extent of such use only.

In no event shall the HOA have any responsibility for maintaining any portion of any Villa except as specifically provided herein, provided however, that in the event any Villa Owner shall fail to maintain any portion of his Villa so as to render the same in substantial disrepair, the HOA shall have the right, after reasonable notice and an opportunity to be heard in the same manner as a hearing conducted pursuant to G.S. 47F-3-107.1 to any such Villa Owner, to go upon such Villa Owner's property and maintain the same. In any such event, the HOA shall assess the costs associated therewith as a special assessment exclusively against such Villa Owner.

Section 5.06 Condominium Maintenance & Responsibility:

The HOA, acting as the Master Association of the COA, shall have all of the same powers, duties, and responsibilities for the maintenance of the Condominium which the COA itself is deemed to have pursuant to the NCCA and the terms and provisions of the RCD, subject however to the requirement that any maintenance, repairs, replacements, or other expenditures by the HOA on the Condominium pursuant thereto or otherwise for the sole benefit of the Condominium or the Unit Owners therein, shall be assessed solely against such Unit Owners in accordance with the RCD. In no event shall any non condominium property owner be assessed for any maintenance, repair, or replacement to any portion of the Condominium, it being the express intent hereof to place the entire burden therefore solely upon the Condominium Unit Owners in the manner set forth within the NCCA and the RCD.

ARTICLE VI ASSESSMENTS & LIENS

Section 6.01 Assessments:

Each Lot is and shall be subject to Regular and Special assessments existing before, on, and after the effective date of this RMD. Each Lot Owner covenants and agrees to pay to the HOA all applicable assessments for Common Expenses, capital improvements, or any other lawful purposes authorized by this RMD or the NCPCA.

Unless otherwise expressly provided herein, the HOA shall make assessments for Common Expenses pursuant to G.S. 47F-3-115 of the NCPCA, paraphrased below as follows:

- (a) The HOA shall make an assessment for Common Expenses at least annually.***
- (b) Except for assessments under subsections (c), (d), and (e) of this section, all common expenses shall be assessed against all the lots in accordance with the allocations set forth in this RMD. Any past-due common expense assessment or installment thereof bears interest at the rate established by the HOA not exceeding eighteen percent (18%) per year.***
- (c) To the extent required by the Declaration:***

- (1) *Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the lots to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;*
 - (2) *Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefitted; and*
 - (3) *The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.*
- (d) *Assessments to pay a judgment against the association may be made only against the lots in the planned community at the time the judgment was entered, in proportion to their common expense liabilities.*
- (e) *If any common expense is caused by the negligence or misconduct of any lot owner or occupant, the association may assess that expense exclusively against that lot owner or occupant's lot.*
- (f) *If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.*

Section 6.02 Assessment for Common Expenses:

The amount of all Common Expenses not specially assessed against one or more but less than all of the Lots pursuant to the provisions of this RMD, less the amount of all undistributed and otherwise unreserved HOA funds, shall be assessed against the Lots in accordance with the Allocated Interest of each such Lot as shown within Exhibit "RMD-C" attached hereto and incorporated herein by reference. The general annual assessment shall be established by the Board in the manner set forth in this section. At least thirty (30) days prior to the annual meeting of the HOA, the HOA shall prepare and submit in writing to the Lot Owners an estimated budget of the Common Expenses for the next succeeding fiscal year to be paid by Assessments collected from the Lot Owners, together with the amount of the annual Assessment payable by each Lot Owner during such fiscal year. If the estimated budget proves inadequate for any reason at any time during the year, then upon the affirmative vote of Lot Owners having at least sixty seven percent (67%) of the total allocated HOA votes, the Board may levy at any time a further Assessment against the Lot Owners and notify the Lot Owners accordingly. If for any reason an annual budget is not approved by the Board, a payment in the amount required by the last prior Assessment shall be due upon each Assessment due date until changed by a new Assessment. Each Lot Owner shall be obligated to pay such Assessments to the HOA in the manner and pursuant to any payment schedule specifically established by the Board of Directors as modified from time to time. Notwithstanding G.S. 47F-3-114 (Surplus Funds) in any year in which there is an excess of Assessments and other income over expenditures, the Board, by resolution, and without the necessity of a vote of the Lot Owners, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's Assessments, or allocate the same to one or more reserve accounts of the HOA. Common Expenses of the HOA to be paid through general annual Assessments shall include, but shall not necessarily be limited to, the following:

- (a) HOA Management/Administration fees/expenses, including without limitation, legal/accounting fees.
- (b) Utility charges for utilities serving the Common Elements, and charges for other common services provided to all Lot Owners including any utilities provided to the Lots not separately metered.
- (c) The cost of any master or blanket policies of insurance purchased for the benefit of all Lot Owners and/or the HOA, as required by the NCPA or this RMD, and such other insurance coverage as the Board determines to be in the interest of the HOA and/or the Lot Owners.
- (d) The expense of maintaining, operating and/or repairing the Common Elements.
- (e) Such other expenses as may be determined from time to time by the Board to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against each Lot.
- (f) The expense for establishing and maintaining an adequate reserve fund or funds for the periodic maintenance, repair and replacement of those Common Elements (including Limited Common Elements the responsibility for which is not otherwise specifically assessed herein) which the HOA may be obligated to maintain, and of reserves to cover operating contingencies or deficiencies arising from unpaid Assessments or liens, emergency expenditures, and other matters, as may be authorized from time to time by the Board.
- (g) Any and all other Common Expenses as are permitted by the NCPA or state law.

Section 6.03 Special Assessments & Special Allocations of Assessments:

- (a) Capital Improvements. In addition to any other assessments authorized herein, the HOA may charge each Lot, in any fiscal year of the HOA, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement upon and to any part of the Common Elements of the Development, including fixtures and personal property related thereto; provided that any such Special Assessment must be approved by the affirmative vote of at least Sixty Seven percent (67%) of all HOA votes allocated among Lots at the time of such vote.

- (b) Misconduct of Owner/Occupant. The HOA may charge any Lot(s) a special assessment for any Common Expenses incurred as a result of misconduct by any Owners or Occupants thereof.
- (c) Special Assessments for Damages & Fines. If a Lot Owner is legally responsible for damage inflicted on any Common Element, the HOA may direct such Lot Owner to repair such damage, or may itself cause such repairs to be made and recover damages from the responsible Lot Owner, all as provided within G.S. 47F-3-107.
- (d) Discretionary Allocation of Certain Common Expenses. Any Common Expenses occasioned by the conduct of less than all of the Lot Owners or their Occupants may be specially assessed by the Board against the Lot(s) thereof. Any Common Expenses benefitting less than all of the Lots, may be assessed by the Board against the Lot(s) benefitted in accordance with the benefit received. Any such assessment(s) if levied shall be made equitably by the Board within its sole and reasonable judgment and specify the amount and due date of such assessment. In no event shall the HOA or any Board Member have any liability for any judgment or decision made reasonably in good faith under this paragraph.
- (e) Special Allocation of Assessments for Limited Common Elements. Unless otherwise expressly provided herein, Common Expenses associated with the maintenance, repair, or replacement of any Limited Common Element shall be assessed exclusively against the Lot(s) to which such Limited Common Element is assigned. Subject to the Board's right to specifically allocate any such assessment in accordance with its discretionary allocation authority provided hereinabove, such assessments, by default, shall be divided equally among multiple Lots assigned to any such Limited Common Element.
- (f) Special Allocation of Assessments for Condominium Expenses: Notwithstanding anything herein to the contrary, any and all Common Expenses of any kind whatsoever provided to or incurred for the exclusive benefit of the Condominium, including without limitation for the management, maintenance, repair, operation, or insurance thereof, shall be specifically allocated to and assessed exclusively against the Unit Owners thereof in accordance with the NCCA and the RCD. It is the express intent of this provision to prevent any Townhome or Villa Owners from being assessed for any portion of such expenses incurred for the sole benefit of the Condominium or its Unit Owners.
- (g) Special Allocation of Assessment for Townhome Expenses: Notwithstanding anything herein to the contrary, any and all Common Expenses of any kind whatsoever provided to or incurred for the exclusive benefit of one or more Townhomes, including without limitation for the maintenance, repair, operation, or insurance thereof, shall be specifically allocated to and assessed exclusively against those particular Townhome Owners receiving the benefits thereof in proportion with their Allocated Interest in the Common Expenses. It is the express intent of this provision to prevent any Unit or Villa Owner from being assessed for any portion of such expenses incurred for the sole benefit of one or more Townhomes, and further to prevent the Townhome Owners within any particular building not otherwise benefitted by any such expenses from being assessed for any portion thereof.

Section 6.04 Payment and Collection of Assessments:

- (a) Liens. Each of the applicable assessments described above, or otherwise authorized by law including without limitation the NCPA or this RMD, together with interest thereon and the costs of collection thereof, including reasonable attorneys' fees, and together with late fees and interest, if any, shall be a continuing lien upon each Lot and the personal obligation of such Lot's Owner(s) and shall run with and burden the land notwithstanding any conveyance thereof unless otherwise expressly stated herein.
- (b) Payment Schedule. Assessments whether regular, special, or otherwise shall be paid in such manner and on such dates as the Board may establish, which may include installments, early payment discounts, reasonable late fees (see limitation below), and special requirements for Lot Owners with a history of late payment.
- (c) Non Exemption/Abatement. No Lot Owner may exempt himself from liability for assessments by non-use of Common Elements, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Lot Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the HOA to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the HOA.
- (d) Interest. Any assessment against any Lot which remains unpaid for a period of thirty (30) days after its regular due date, or otherwise after delivery of a request for payment thereof shall be deemed past due, and interest shall accrue on any such unpaid amount from the date that it was otherwise due at the rate to be established by the Association not exceeding eighteen percent (18.00%) per annum.
- (e) Late Fees. In addition to the foregoing a reasonable charge for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid shall be assessable and due for every applicable late payment period including the date upon which the assessment initially became past due and continuing until such time as all past due assessments together with any applicable interest and late charges are paid in full.

- (f) Application of Payments. All payments on account shall be applied first to any of the aforesaid costs of collection, then to late charges, then to interest owed, and finally to the principal amount of any past due Assessment.
- (g) Certificates of Assessments. The HOA shall, within ten (10) business days of any such demand, and for a reasonable charge, furnish a certificate signed by an officer of the HOA stating whether all assessments against a specified Lot have been paid. A properly executed certificate of the HOA as to the status of assessments against a Lot shall be binding upon the HOA as of the date of its issuance.
- (h) Enforcement. The HOA shall have the power to take whatever action is necessary, at law or in equity, to collect any past due assessments, together with interest, late fees and costs of collection, including reasonable attorneys' fees. When an assessment becomes thirty (30) days past due, the lien created hereunder may be filed by the HOA against the delinquent Lot Owner in the office of the Clerk of Superior Court of Transylvania County in accordance with G.S. 47F-3-116 of the NCPA, and thereafter may be enforced against any such Lot Owner in accordance with the terms thereof including but not limited to the ability of the HOA to foreclose against the Lot on which the lien is placed in like manner as a mortgage on real estate. The lien provided for in this provision or otherwise acquired pursuant to the NCPA shall be in favor of the HOA and shall be for the benefit of all its Owners. The HOA, acting through the Board, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. In addition thereto, each such assessment, together with interest, late fees, and costs of collection, including reasonable attorneys' fees shall also be deemed the personal obligation and liability of the Owner(s) of any Lot to which the same are appurtenant, who shall remain liable to the HOA for the payment thereof notwithstanding the conveyance of any such Lot or the continuing lien thereupon in favor of the HOA until otherwise paid in full, and may be enforced by the HOA by filing a legal action for the collection thereof in the same manner as a debt owed thereto in addition to any other remedies authorized herein or otherwise by law.
- (i) Protection of First Mortgagees. Notwithstanding anything contained in this RMD or the Act which may be construed to the contrary, in the event any First Mortgagee that is an Institutional Mortgagee shall acquire title to any Lot by virtue of any deed in lieu of foreclosure of a First Mortgage, or by foreclosure itself, such First Mortgagee shall not be liable for, nor shall such Lot be subject to a lien for any Assessments chargeable to such Lot on account of any period prior to the time such First Mortgagee shall so acquire title to such Lot; provided however, that Common Expenses collectible thereafter from all Lot Owners, including such First Mortgagee, shall be paid thereby as set forth in this RMD.
- (j) Suspension of Voting Privilege. In addition to the foregoing, the Board may suspend the vote of any Owner, as well as the right of such Owner to use the Common Elements, during the period in which any Assessment or portion thereof remains unpaid after notice and an opportunity to be heard is provided pursuant to G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services) the terms and provisions of which are incorporated into this RMD as if fully set out herein.

ARTICLE VII EASEMENTS

In addition to any easements validly created and shown by the Plats and Plans or other previously recorded legal instruments, the easements described in this Article are hereby made, granted, reserved, and established, subject to and in accordance with the following terms and conditions for the benefit of the HOA, unless otherwise stated herein:

Section 7.01 Easement of Enjoyment in Common Elements:

Every Owner and Occupant shall have a right and easement to use and enjoy the Common Elements located throughout the Development (including an irrevocable right to access, ingress, and egress to and from his Lot over those portions of the Common Elements specifically designated and intended for such purposes), and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions and limitations:

- (a) The right of the HOA to control the use and enjoyment of the Common Elements as provided by the terms of this RMD, which shall include, but not be limited to, the right of the HOA to limit the use and enjoyment thereof to the Owners and their respective Occupants, as well as to provide for the exclusive use of specific portions thereof at certain designated times by certain Owners or Occupants.
- (b) The right of the HOA, after notice and an opportunity to be heard is given in accordance with G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services) the terms and provisions of which are incorporated into this RMD as if fully set out herein, to suspend the rights of an Owner or their Occupants to use or enjoy any Common Elements of the Development for any period of time during which an Assessment against his Lot remains unpaid, or for a reasonable time for the infraction by any Owner or their Occupants of any provision of this RMD or the Instruments including but not limited to the Rules and Regulations, provided that in no event shall the easement for an irrevocable right of access to any such Owner's Lot as provided for hereinabove be denied.

Section 7.02 Utility Easements:

- (a) To the extent that any utility line, pipe, wire, or conduit serving any Lot(s), the Common Elements, or the HOA, shall lie wholly or partially within the boundaries of another Lot or the Common Elements, the same shall be burdened with an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the Lots(s) or Common Elements served by the same, and the HOA.
- (b) There is hereby further reserved unto the HOA, its successors and assigns, and unto any public or quasi-public utility providing utility services to any portion of the Development, a non exclusive privilege and easement, under and through a strip or tract of land five feet (5') in width measured from, and existing immediately adjacent to the outside property lines of all multiple family dwelling structures existing within the Development containing Condominium Units and/or Townhomes, for the purpose of installing, maintaining and repairing lines, pipes, conduit, equipment or facilities, or for the purpose of providing one or more utility services to one or more portions of the Development.

Section 7.03 Encroachments:

- (a) General Encroachments: If any portion of the Common Elements encroaches upon any Lot, or if any Lot encroaches upon the Common Elements or upon any other Lot as a result of the construction, reconstruction, repair, renovation or restoration of any portion of the Development by the Declarant, an easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. Such encroachments may include but shall not be limited to overhanging eaves, gutters, downspouts, or walls.
- (b) Overhangs & Zero Lot Lines: There is also reserved unto the Owner of each Unit or Townhome an easement over and across a strip or tract of land five (5') feet in width and immediately adjacent to the Unit or Townhome line of any Unit or Townhome in which a dwelling is immediately abutting (zero lot line) for the purpose of allowing overhangs to encroach, and for the purpose of drainage, maintenance, and repair of any such dwellings, together with the right of ingress, egress and regress thereover.

Section 7.04 Maintenance and Repair of Common Elements:

There shall be an easement in favor of the HOA and the Owners through, under and across the Lots, the Condominium Property, and the Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement of the Common Elements or other portions of the Development for which the HOA is responsible for the upkeep and maintenance thereof. The HOA and each such Owner may assign to any public or quasi-public utility some or all of the rights granted herein. Use of this easement shall be only upon prior notice during normal business hours, except that access may be had at any time in case of emergency.

Section 7.05 Rights of Association:

- (a) There shall be a general easement in favor of the HOA, its Directors, Officers, contractors, agents, and employees (including, but not limited to, any manager employed by the HOA) to enter upon the Development, or any portion thereof and to enter or take access through the Lots, the Condominium Property, or the Common Elements as may be reasonably necessary for the installation, maintenance, repair and replacement thereof; for making emergency repairs and for other work for the maintenance and operation of the Development and for the performance of their respective duties. Each owner shall afford to other Owners and to the HOA, their respective contractors, agents, representatives, and employees, such access through such Lot as may be reasonably necessary to enable the same to perform such work and to exercise and discharge their respective powers and responsibilities. Except in the event of emergencies however, such easements are to be exercised only during normal business hours and upon advance notice to, and with the permission of the Owner or Occupant of a Lot directly affected thereby, such permission not to be unreasonably withheld.
- (b) The HOA shall have the power to grant and accept permits, licenses and easements on, over, across and through the Common Elements for the installation, maintenance or operation of any improvements thereto or utilities or utility lines serving the Development. An easement is hereby established for the benefit of the County of Transylvania, City of Brevard, and any agency or utility performing or providing any of the following services over, across and through all Common Elements for the setting, removal, and reading of water and electricity meters, and the maintenance and replacement of water, electricity, sewer, cable, natural gas and drainage facilities. In addition thereto, an easement is hereby established over all of the Development for the benefit of the County of Transylvania, City of Brevard, and all other agencies and personnel performing any of the following duties and services: for the fighting of fire, mail delivery, private parcel delivery, collection of garbage, ambulance services, and police protection.

ARTICLE VIII

INSURANCE & CASUALTY

Section 8.01 Statutory Insurance Obligation and Authority:

The HOA shall obtain and maintain at all times insurance pursuant to G.S. 47F-3-113 of the NCPA, the terms and provisions of which are incorporated herein by reference as if fully set forth below.

Section 8.02 Other Insurance Obligations & Authority:

The HOA shall obtain and maintain at all times in addition to the foregoing and to the extent not inconsistent therewith:

- (a) Property insurance obtained by the HOA pursuant to G.S. 47F-3-113(a)(1) covering not less than one hundred percent (100%) of the replacement costs of the insured property as otherwise described therein, and including extended perils coverage against vandalism, malicious mischief, debris removal, cost of demolition, windstorm, and water damage. Additionally the liability insurance obtained by the HOA pursuant to G.S. 47F-3-113(a)(2) shall cover not less than one million dollars (\$1,000,000.00) for single limit coverage as otherwise described therein;
- (b) Fidelity coverage against dishonest acts on the part of its directors, officers, employees, agents and volunteers responsible for handling funds belonging to, or administered by, the HOA in an amount at least equal to the sum of one fourth (1/4) of the previous fiscal year's annual assessments plus reserves collected for the entire Planned Community, or in such greater amount as the Board may determine; and
- (c) Such other types of insurance either required by applicable governmental authority, law, or authorized by the HOA from time to time.

Section 8.03 Notice:

Pursuant to G.S. 47F-3-113(f) an insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the HOA and, upon written request, to any Lot Owner(s), mortgagee(s), or beneficiary(s) under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the HOA, each Lot Owner, and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

Section 8.04 Special Assessment for Increased Risk:

In the event activities are conducted within a Lot such as to materially increase the premium or cost of insurance obtained pursuant to the provisions hereof, then in that event, the increased amount of such premium shall be assessed against such Lot causing such increase.

Section 8.05 Eminent Domain:

In the event that all or part of the Development shall be taken by any authority having the power of eminent domain, the allocation of the award for such condemnation and all related matters, such as the reallocation of liabilities for Assessments and Votes, shall be made in accordance with G.S. 47F-1-107 of the NCPA or other applicable law, and to the extent not inconsistent therewith as follows:

- (a) If any Lot or portion thereof, or the Common Elements of the Planned Community Development or any portion thereof is made the subject matter of a condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any First Mortgage on a Lot, will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this RMD will entitle the Owner or other person to priority over any Mortgagee with respect to the distribution of the proceeds of any award or settlement relating to such Unit.
- (b) In the event all or any part of the Common Elements of the Planned Community Development shall be taken in condemnation or by eminent domain, each Owner hereby grants an irrevocable power of attorney to the HOA to represent such Owner in any and all condemnation proceedings, negotiations, settlements, and agreements with the condemning authority, as they pertain only to such Owner's interest in the Common Elements of the Planned Community Development.
- (c) Notwithstanding the foregoing, and in addition to any rights any unit owner may have as a member of the HOA and Development, eminent domain over any portion of the Condominium shall also be made in accordance with G.S. 47C-1-107 of the NCCA to the extent required by law.

Section 8.06 Condominium Insurance:

The HOA acting as the Master Association for the COA shall obtain any and all Insurance coverage for the Condominium which is required to be obtained and/or carried by the COA pursuant to the NCCA including but not limited to G.S. 47C-3-113 thereof, and the RCD. The costs of such Insurance shall be assessed solely against the Condominium Unit Owners in the manner set forth within the RCD for the same. The HOA may in its discretion obtain any blanket or master policies of insurance to adequately insure under a single policy, more than one of the

obligations it is required to fulfill pursuant to the RMD or the RCD, provided the costs thereof are otherwise appropriately assessed pursuant thereto.

ARTICLE IX

ARCHITECTURAL CONTROL & USE RESTRICTIONS

Section 9.01 Intent:

To assure a community of congenial Owners, and to protect the value of the Development and the Owners' interests therein, the entire Development (including the Villas, Townhomes, and Condominium/Units) shall be and are subject to the Architectural Control & Use Restrictions set forth in this Article and to the extent not in conflict herewith, the HOA Bylaws and/or HOA Rules and Regulations as either are validly amended from time to time.

Section 9.02 Approval Required for Changes:

To preserve the architectural appearance of the Development, no construction, painting or other changes of any nature whatsoever shall be commenced or maintained by any Owner, with respect to the exterior of any dwelling(s) or structure(s) on any Lot (including for purposes hereof any Condominium Units), or any other portion of the Development, including any Common Elements appurtenant thereto, nor shall any exterior addition to or change or alteration thereof be made, unless and until plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by the Board of Directors or by an architectural committee of Owners appointed by the Board of Directors in their sole discretion from time to time.

This provision shall not be construed or intended to limit or restrict routine repainting in the same or substantially the same color as such structure was previously painted, routine landscaping and trimming and normal routine maintenance and repair with the same or similar materials. Any modifications, alteration or additions to the lawn or landscaping of the Lots must be approved in writing by the HOA. An Owner may make improvements and alterations within the dwelling on his Lot, provided that in the case of alterations to a Unit or Townhome, such alterations do not interfere with the structural integrity of the dwelling building or other structure within which such Unit or Townhome is connected or otherwise is a part thereof. No Owner shall impair any easement without first obtaining the written consent of the HOA and their Mortgagees for whose benefit such easement exists.

Section 9.03 Lighting:

The design, type, location, size, intensity, and color of all exterior lights (including both those mounted as part of the original design or otherwise in place at the time of the conveyance of any Lot (including any Condominium Units) to an Owner and those mounted with the consent of the Board of Directors) shall be subject to the written approval of the Board of Directors.

Section 9.04 Residential Use Only Purposes:

All Lots (including any Condominium Units) shall be, and the same hereby are, restricted exclusively to single family residential use, and the occupancy thereof shall be subject to such restrictions as the Board of Directors may establish pursuant to the Rules and Regulations of the HOA. The Board of Directors is given full and complete judgment in its sole discretion, as to whether a proposed use is in violation of the restrictions set forth herein. In no event shall the HOA or any member of the Board have any liability for any judgment or decision made reasonably and in good faith under this paragraph.

Section 9.05 Signs:

Except as may be required by legal proceedings or other local, state, or federal law, no "For Sale" or "For Rent" signs of any kind shall be maintained or permitted on any portion of the Development, including any such signage located in the window of a dwelling unit, without the express written permission of the Board of Directors. Notwithstanding the foregoing, the provisions of this Section shall not apply to any notice or other advertisement posted on any community bulletin board by an Owner or his licensed real estate broker or agent, or to a "For Sale" sign posted by a Mortgagee who becomes the Owner as purchaser at a Foreclosure Sale conducted with respect to a Mortgage, or as a transferee pursuant to any proceeding in lieu thereof, subject to reasonable rules and regulations established by the Board of Directors with respect to such "For Sale" or other signs.

Section 9.06 Pets:

No animals or birds, or any kind of pet, shall be kept or maintained on any portion of the Development, except that, notwithstanding, Owners may keep and maintain no more than two (2) domestic pets with a total combined weight not exceeding ninety (90) pounds. All such animals shall be further subject to such reasonable Rules and Regulations as the HOA may impose.

Section 9.07 Use of Common Elements:

The use and enjoyment of the Common Elements by the Owners and their Occupants shall be subject to such reasonable Rules and Regulations as may be made and amended from time to time in accordance herewith. This Section is for the mutual benefit of all Owners and Occupants and is necessary to the protection thereof.

Section 9.08 Antennas:

No antenna or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or radiation shall be erected, used, or maintained outdoors on any portion of the Development, whether attached to a building or structure or otherwise, without the express written permission of the Board of Directors; provided, however, that the HOA shall have the right to erect, construct and maintain such devices. Notwithstanding the foregoing, any such device which may not be prohibited by the HOA pursuant to the Federal Communications Act, or other similar applicable statutory provision, shall be deemed herewith approved and permitted.

Section 9.09 Motor Vehicles, Trailers, Boats, etc:

Automobiles shall be operated and parked only upon those portions of the Common Elements designated for such purpose on the Plat and Plans or otherwise designated by the Board of Directors. Other motor vehicles, including, without limitation, mobile homes, motor homes, truck campers, trailers of any kind, and boats, shall not be kept, placed, stored, or parked on any portion of the Development, with the exception of motor vehicles temporarily parked on the Development for purposes of repairs to portions of the Development, or deliveries. The provisions of this paragraph shall not be applicable to any such motor vehicle campers, boats, etc. which are parked at all times within a garage and operated or removed from within such garage solely to be moved from the Development for utilization of such motor vehicles, etc. or returned from without such Development to such garage.

Section 9.10 Nuisances:

No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development, except in containers specifically designated for such purpose, nor shall any odors or conditions be permitted, so as to render any portion of the Development unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Development. No nuisance shall be permitted to exist or operate upon any portion of the Development so as to be offensive or detrimental to persons using or occupying other portions of the Development. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on the Development.

Section 9.11 Prohibited Activities:

Noxious or offensive activities shall not be carried on upon any portion of the Development or within any dwelling or other building located thereupon, or in any part of the Common Elements. Each Owner and Occupant shall refrain from any act or use of their Lot or the Common Elements which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the other Owners and Occupants, or which would result in the cancellation of insurance on any portion of the Common Elements, or which would be in violation of any law or governmental code or regulation. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the Development.

Section 9.12 Governmental Regulations:

All governmental building codes, health regulations, zoning restrictions, and the like applicable to the Development shall be observed. In the event of any conflict between any provision of any such governmental code, regulations, or restriction and any provision of this RMD, the more restrictive provision shall apply.

Section 9.13 Exterior Appearance:

To provide a neat, attractive and harmonious appearance throughout the Development, no awnings, shades, screens or other items shall be attached to, hung or used on the exterior of any window or door of any building without the prior written consent of the Board of Directors, or an architectural committee appointed by the Board of Directors. Further, no foil or other reflective material shall be used on any windows, for sunscreens, blinds, shades or for any other similar purpose.

Section 9.14 Sale, Leasing, Timesharing:

The following provisions shall apply to sales or leases of Lots (including any Condominium Unit)

- (a) The right of any Owner to: sell, transfer, convey, mortgage, encumber, or pledge the Lot owned by such Owner shall not be subject to any right of first refusal or any similar restriction in favor of the HOA or Declarant.
- (b) No Owner may lease his Lot, in whole or in part, for transient or hotel purposes. The HOA may establish Rules and Regulations regarding the leasing of the Lots, including without limitation imposing a minimum lease term for any lease, provided no such Rule or Regulation shall reduce the length of any lease term entered into prior thereto. Any Lease shall be subject in all respects to the provisions of this RMD and the Instruments and failure of the Lessee to comply with the terms of such shall be deemed a default under the Lease, and all Leases shall so provide. In the event of non compliance by any tenant or other Occupant of a Lot with the terms of this RMD or the Instruments, the Board of Directors shall have the right to require the Owner or Lessee thereof terminate such lease for such default, or cause the Owner to effect compliance and additionally, to levy a charge or fine against the Owner of such Lot after notice and an opportunity to be heard pursuant to G.S. 47F-3-107.1 the terms and provisions of which are incorporated herein by reference as if fully set out herein, for such non-compliance.

- (c) Time sharing or timeshares as defined in the North Carolina Time Share Act (G.S. 93-A-39 *et. seq.*) is expressly prohibited.
- (d) No owner shall lease, rent or otherwise permit the occupancy of his Lot, in whole or in part, for any use or purpose that would be subject to the North Carolina Vacation Rental Act (G.S. 42A *et. seq.*).

ARTICLE X GENERAL PROVISIONS

Section 10.01 Parties Bound:

All Persons owning or occupying any Lot (including any Villa, Townhome, or Unit), or otherwise having or acquiring any interest in any portion of the Development including the Condominium or any Common Areas shall be bound by the provisions of this RMD.

Section 10.02 Duration:

The provisions of this RMD shall run with and bind the land, shall be binding upon and inure to the benefit of all Owners and Mortgagees, their heirs, executors, legal representatives, occupants, successors, and assigns, and shall be and remain in effect for a period of twenty (20) years, from the date this RMD is recorded, after which time this RMD shall be automatically extended perpetually for successive periods of ten (10) years each, to the extent permitted by North Carolina law.

Section 10.03 Amendment of RMD:

This RMD may be amended by the affirmative vote of Owners having at least sixty-seven percent (67%) of the total allocated HOA votes. Notwithstanding anything to the contrary, so long as the same shall not (a) adversely affect the title to any Lot, or (b) materially alter or change any Owner's right to the use and enjoyment of his Lot or the Common Elements as set forth in this RMD, each Owner and Mortgagee agrees that, if requested to do so by the HOA, such Owner and Mortgagee shall consent to the amendment of this RMD and/or the Instruments, (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental statute, rule, or regulation, including without limitation, the provisions of a judicial determination which shall be in conflict therewith, (ii) if such amendment is required by the governmental statutes, laws, rules or regulations applicable to or promulgated by a governmental lender or purchaser of mortgage loans, or (iii) if such amendment is necessary to obtain permanent financing from a Mortgagee relative to any Lot. Amendments to this RMD or the other Instruments may be proposed by the Board of Directors, or by petition signed by Owners having at least thirty percent (30%) of the total allocated HOA votes. Agreement of the required percentage of Owners to any amendment of the Instruments shall be evidenced by their execution of the amendment. Any such amendment of the Instruments, including this RMD, shall become effective only when recorded or at such later date as may be specified in the amendment itself. The written consent of any Mortgagee required with respect to such amendment shall also be recorded in any such amendment.

Notwithstanding anything herein to the contrary, except for an amendment limited exclusively to removing the Master Association status and authority of the HOA from serving in such role on behalf of the COA, no addition, deletion, or amendment hereto, which adversely and exclusively affects the Condominium portion of the Development only (as opposed to all Lot Owners within the Development) shall be made without the approval of sixty seven percent (67%) of the Condominium Unit Owners. This provision is intended to protect the Condominium Unit Owners from discrimination by non condominium property owners.

Section 10.04 Rights of Mortgagees and Owners:

In addition to the rights of Mortgagees elsewhere provided, each Mortgagee and each Owner shall: (a) be entitled to written notice from the HOA of any default by an Owner in the performance of his obligations under this RMD or the Instruments which is delinquent for a period of more than thirty (30) days specifically including any delinquency in payment of any Assessment; (b) be entitled to receive notice of and to designate a representative to attend and observe all meetings of Owners, but not meetings of the Board of Directors; (c) be entitled to receive written notice of any condemnation loss or any casualty loss which affects a material portion of the Development or any Lot on which a Mortgagee holds a Mortgage; (d) be entitled to receive thirty (30) days prior written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the HOA; (e) be entitled to receive written notice of any proposed action which would require the consent of a specified percentage of the Mortgagees; and (f) be furnished copies of annual financial reports within one hundred twenty (120) days after the end of the HOA's fiscal year; provided, however, that such Owner or Mortgagee shall first file with the HOA a written request (setting forth the name of such Owner or Mortgagee and the designated Lot with respect to which such request is made) that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of the Mortgagee or Owner at an address stated in such notice. Further, each Mortgagee and Owner shall, upon request, be entitled to inspect the books, records and financial statement of the HOA (including the Instruments and other documents) during normal business hours. Any First Mortgagee shall, upon written request, be entitled to an audited financial statement of the HOA for the immediately preceding fiscal year, free of charge to the First Mortgagee so requesting it.

Section 10.05 Rights of Third Parties:

This RMD shall be recorded for the benefit of the HOA, the Owners, and their Mortgagees as herein provided, and by such recording, no adjoining property owner or other person shall have any right, title or interest whatsoever in the Development or in the operation or continuation thereof, or in the enforcement of any of the provisions hereof, and, subject to the rights of such Mortgagees as are herein provided, the HOA and the Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this RMD without the consent, permission or approval of any adjoining property owner or third person.

Section 10.06 Enforcement:

- (a) Compliance: Each Owner and Occupant shall comply strictly with the provisions of this RMD and the Instruments. In the event of a violation or breach, or threatened violation or breach, of any of the same, the HOA or, in a proper case, any aggrieved Owner(s), jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith, or to prevent a threatened violation or breach thereof.
- (b) Self Help After Due Process: In addition to all other remedies, the HOA, or a duly authorized agent thereof, shall have the right to enter upon any portion of the Common Elements where a violation exists and, at the expense of the violating Owner, abate or remove any structure, thing or condition that may be or exist contrary to the intent and meaning hereof or of the Instruments, if after notice and an opportunity to be heard given in accordance with the provisions of G.S. 47F-3-107.1 it shall not have been corrected by such Owner.
- (c) Non Liability for Self Help & Attorneys' Fees: Neither the HOA, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Should the HOA employ legal counsel to enforce any of its rights or remedies of the HOA, all costs incurred in such enforcement if successful, including a reasonable fee for counsel shall be paid by the violating Owner.
- (d) Injunctions Authorized: Inasmuch as the enforcement of the provisions hereof and of the Instruments are essential for the protection of present and future Owners and Occupants, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages alone, and that the HOA or, in any proper case, any aggrieved Owner(s), in addition to all other remedies, may require and shall be entitled to remedy by injunction to restrain or enjoin any such violation or breach, or threatened violation or breach.
- (e) Non Waiver: No delay, failure or omission on the part of the HOA, or any aggrieved Owner(s) in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement.
- (f) Non Accrual of Action: No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the HOA or its Officers or Directors for, or on account of, any failure to bring any action on account of any violation or breach, or threatened violation or breach, of this RMD or of the Instruments, however long continued, or for the imposing of provisions which may be unenforceable.

Section 10.07 Other Provisions:

- (a) Severability: Any and all portion(s) of any provision(s) of this RMD and the Instruments which are prohibited, unenforceable, or otherwise not authorized in any jurisdiction shall, as to such portion(s) and jurisdiction(s) only, be deemed ineffective to the extent of such prohibition or unenforceability only, without invalidating or affecting the continuing validity and enforceability of the remaining portion(s) of any such provision(s).
- (b) Captions: The titles/captions/headings of any and all portions of this RMD and the Instruments are intended for convenience of reference purposes only, and shall not in any event whatsoever be deemed to affect the meaning or interpretation of this RMD or the Instruments.
- (c) Law Controlling: This RMD and the Instruments shall be construed and governed by North Carolina law.
- (d) Usage and Interpretation of Terms: The words or terms used in this RMD or the Instruments which are used in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter, and vice versa; words used in the singular number includes the plural, and the plural the singular; and the word "Person" without limiting the specific definition thereof provided herein, includes a corporation or other entity as well as a natural person.
- (e) Bold Italicized Text: The bold italicized text within this RMD represents relevant portions of the NCPA which have been inserted into this RMD for convenience purposes only (and in some cases slightly modified for easier interpretation), to aid the reader in referring to and understanding certain applicable portions of the NCPA as they pertain to this RMD. No bold italicized text herein shall be relied upon in lieu of obtaining and relying upon the actual and most recent version of the relevant NCPA statute which shall control and prevail notwithstanding any conflict therewith.

- (f) Statutory References: All references herein to any statutory provision(s) shall be construed to include any subsequent amendments thereto or replacements thereof as may be validly enacted from time to time by the North Carolina General Assembly. All such statutes referred to herein shall be incorporated herein by specific reference thereto.

Section 10.08 Interpretation:

- (a) The provisions hereof shall be liberally interpreted, and if necessary, they shall be so extended or enlarged by implication as to make them fully effective. In all cases, the terms, conditions, and provisions set forth within or provided for in this RMD shall be construed and given that interpretation or construction which, in the opinion of the HOA Board of Directors, will best affect the intent of the general plan of the Planned Community Development.
- (b) The effective date of this RMD shall be the date it is filed of record in the office of the Transylvania County Registry or any later date specified herein after the date of such filing.
- (c) Priority of Instruments: In the event of any conflicts or inconsistencies arising between the Acts, this RMD, the Instruments defined herein, the RCD, or the Instruments defined therein: 1) the NCPA, this RMD, the Articles, the HOA Bylaws, the HOA Rules & Regulations, and finally any other Instruments defined within the RMD shall control and prevail in that order of priority in all matters pertaining to the Development as a Planned Community or otherwise in any matters not solely related to the condominium form of property ownership or separate management thereof with respect to which the NCCA, the RCD, the COA Charter, the COA Bylaws, the COA Rules & Regulations, and finally any other Instruments defined within the RCD shall control and prevail in that descending order of priority with respect to all such condominium related matters.

Section 10.09 List of Exhibits:

- (a) Exhibit "RMD-A": The "Development Property"
- (b) Exhibit "RMD-B": The "Condominium Property"
- (c) Exhibit "RMD-C": The "Allocated Interests"
- (d) Exhibit "RMD-D": The "Restated Condominium Declaration"

IN WITNESS WHEREOF, pursuant to the authority cited hereinabove and as otherwise authorized by law, the undersigned, for the purposes more particularly described hereinabove, including without limitation to amend and fully restate the covenants, conditions, and restrictions affecting Downing Park, and each being of the age of legal majority or otherwise being a duly authorized representative acting of behalf of any legal entity executing this RMD, have read and by setting their hands and legal SEALS hereunto, do hereby adopt and intend to be bound by this RMD, together with the Instruments defined herein, as of the day and year first stated hereinabove.

SEE ATTACHED SIGNATURE PAGES

SIGNATURE PAGE FOR: Villa ____ Townhome ____ Unit: ____
PROPERTY ADDRESS: _____
LIST ALL RECORD PROPERTY OWNERS: _____

IN WITNESS WHEREOF, the foregoing instrument entitled “Restated Master Declaration of Covenants, Conditions, & Restrictions for Downing Park, A Mixed Property Planned Community Development, Comprised of Ten (10) Villas, Six (6) Townhomes, and a Six (6) Unit Condominium Drafted: January 30th, 2013” together with the Instruments defined therein, are incorporated herein by reference and hereby adopted as of such date by the undersigned who certifies they are a legal owner(s) of the Villa/Townhome/Unit designated above, which was acquired by deed recorded in Book ____ , Page ____ of the Transylvania County Registry, or otherwise as explained herein; that each and every record owner of such property is designated hereinabove.

For Multiple Owner Properties Use Duplicates of this Signature Page if Required:

SEAL

PRINT NAME OF OWNER (PERSON OR ENTITY)
BY ITS: _____ TITLE OF PERSON IF SIGNING FOR AN ENTITY

SEAL

PRINT NAME OF OWNER (PERSON OR ENTITY)
BY ITS: _____ TITLE OF PERSON IF SIGNING FOR AN ENTITY

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that _____ and _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and official seal, this the _____ day of _____, 20____. (Official Seal)

Notary Public

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that _____ and _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.
Witness my hand and official seal, this the _____ day of _____, 20____. (Official Seal)

Notary Public

EXHIBIT “RMD-A”

to

RESTATED MASTER DECLARATION

of

Covenants, Conditions, and Restrictions

for

DOWNING PARK

A Mixed Property Planned Community Development

Comprised of Ten (10) Villas, Six (6) Townhomes, and a Six (6) Unit Condominium

Drafted: January 30th, 2013

THE DEVELOPMENT PROPERTY

BEING all of that 3.46 acre parcel of property consisting of a 1.50 acre parcel and a 1.96 acre parcel as shown on a plat prepared by Terry Arthur Baker dated January 8, 2004 and recorded in Plat File 11, Slide 391, Transylvania County Registry.

EXHIBIT "RMD-B"

to

RESTATED MASTER DECLARATION

of

Covenants, Conditions, and Restrictions

for

DOWNING PARK

A Mixed Property Planned Community Development

Comprised of Ten (10) Villas, Six (6) Townhomes, and a Six (6) Unit Condominium

Drafted: January 30th, 2013

THE CONDOMINIUM PROPERTY

BEGINNING at an iron pin set, said iron pin set being the eastern or southeasternmost corner that tract or parcel of land containing 0.52 acres, more or less shown as Common Area on the plat or survey entitled "Final Plat of: Downing Park" prepared by Associated Land Surveyors dated November 16, 2004 and recorded in Plat File 11, Page 391, Transylvania County Registry; AND RUNNING THENCE FROM SAID POINT AND PLACE OF BEGINNING, North 24° 08' 26" West 121.89 feet to an iron pin set, said iron pin being the southwesternmost corner of Lot 10 on the Plat referred to hereinabove; thence along and with the southern boundary of said Lot 10, North 65° 51' 41" East 94.00 feet to an iron pin set, said iron pin set being in the boundary of a cul-de-sac; thence in a counterclockwise direction along and with the arc of a curve having a radius of 35.00 feet, an arc length of 40.19 feet, a tangent of 22.64 feet, a chord angle of 65° 47' 40", chord bearing of South 56° 50' 24" East, a distance of 38.02 feet to a point; thence in a clockwise direction along and with the arc of a curve having a radius of 25.00 feet, an arc length of 13.93 feet, a tangent of 7.15 feet, a chord angle of 31° 56' 03", a chord bearing of South 73° 46' 12" East, a chord distance of 13.75 feet; thence in a counterclockwise direction along and with the arc of a curve having a radius of 112.50 feet, a arc length of 70.11 feet, a tangent of 36.24 feet, a chord angle of 35° 42' 33", a chord bearing of South 75° 39' 26" East, a chord distance of 68.99 feet to a point; thence South 86° 29' 17" East 96.05 feet to a point; thence in a counterclockwise direction along and with the arc of a curve having a radius of 65.00 feet, an arc length of 23.68 feet, a tangent of 11.97 feet, a chord angle of 20° 52' 09" East, a chord bearing of North 76° 03' 13" East, a chord distance of 23.54 feet to an existing iron pin, said existing iron pin being located in the northwestern corner of the property of (now or formerly) Lance as described in Deed Book 352, Page 358; thence along and with the northern or northwestern boundary of the property of (now or formerly) Hollingsworth as described in Deed Book 344, Page 659, South 65° 51' 34" West 469.63 feet to the point and place of BEGINNING and being a tract or parcel of land containing 0.44 acres labeled "Condominium Tract" on the plat referred to hereinabove.

EXHIBIT “RMD-C”
to
RESTATED MASTER DECLARATION
of
Covenants, Conditions, and Restrictions
for
DOWNING PARK

A Mixed Property Planned Community Development
Comprised of Ten (10) Villas, Six (6) Townhomes, and a Six (6) Unit Condominium
Drafted: January 30th, 2013

THE ALLOCATED INTERESTS OF LOTS WITHIN THE DEVELOPMENT

Identifiable Lots as Identified within the Plats and Plans or otherwise described within the Declaration	Total Number of Votes in the HOA Allocated to each Identified Class of Lots or each Lot	Allocated Interest of each Identified Class of Lots or each Lot in the Development Common Elements, and the Development Common Expenses.
CONDOMINIUM UNITS (6)	24.996...	24.996...
A	4.1666...	4.1666...
B	4.1666...	4.1666...
C	4.1666...	4.1666...
D	4.1666...	4.1666...
E	4.1666...	4.1666...
F	4.1666...	4.1666...
TOWNHOMES (6)	27.00	27.00
1	4.5	4.5
2	4.5	4.5
3	4.5	4.5
4	4.5	4.5
5	4.5	4.5
6	4.5	4.5
VILLAS (10)	48	48
1	4.8	4.8
2	4.8	4.8
3	4.8	4.8
4	4.8	4.8
5	4.8	4.8
6	4.8	4.8
7	4.8	4.8
8	4.8	4.8
9	4.8	4.8
10	4.8	4.8
22 TOTAL LOTS	100%	100%

EXHIBIT “RMD-D”
to
RESTATED MASTER DECLARATION
of
DOWNING PARK
A Mixed Property Planned Community Development
Comprised of Ten (10) Villas, Six (6) Townhomes, and a Six (6) Unit Condominium
Drafted: January 30th, 2013

RESTATED
CONDOMINIUM DECLARATION
of
Covenants, Conditions & Restrictions
for
DOWNING PARK CONDOMINIUMS
A separately administered but contiguous part of the larger
Mixed Property Planned Community Development
of
DOWNING PARK
Drafted: January 30th, 2013

This Instrument Prepared By: Attorney Curtis S. Potter
Mail after Recording To:
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THIS RESTATED CONDOMINIUM DECLARATION (the “RCD”) for DOWNING PARK Condominiums (the “Condominium”) which exists within and as part of that larger single Mixed Property Planned Community Development of DOWNING PARK (the “Development”) is hereby made and entered into the day and year first set forth hereinabove, by and between the undersigned Condominium Unit Owners (the “Owners”), the DOWNING PARK Condominium Unit Owners’ Association, (the “COA”), and the DOWNING PARK Homeowners’ Association, Inc., (the “HOA”).

WITNESSETH:

WHEREAS, the recitals set forth within the Restated Master Declaration (the “RMD”) to which this RCD is attached and incorporated therein by reference are hereby incorporated into this RCD by reference thereto as if fully set out in their entirety herein, and are adopted and confirmed by the undersigned as to their content, and

WHEREAS, this RCD is intended to constitute a separate, distinct, and self contained legal instrument for the purpose of amending, restating and establishing those additional covenants, conditions, and restrictions to which the DOWNING PARK Condominiums only shall be subject.

NOW THEREFORE, pursuant to G.S. 47C-2-117 of the North Carolina Condominium Act (the “NCCA”), and in exchange for the mutual covenants and promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned for themselves and for their occupants, mortgagees, heirs, executors, administrators, successors, and assigns, hereby make and agree to be bound by the covenants, conditions, and restrictions set forth within this RCD including any Instruments incorporated herein, as the same may be validly adopted or amended from time to time hereafter.

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ARTICLE I

DEFINITIONS

Section 1.01 Intent & Application of Definitions:

Each term defined in this Article, and as used within this RCD or any other Instruments (as defined hereinbelow) whether capitalized or not, shall be deemed to have the definition set forth immediately thereafter, unless a contrary definition for such term is otherwise clearly established by: any applicable law including but not limited to the NCCA, an express statement within any instrument that a term used therein shall have a contrary definition; or the context in which any such term is used where the intent for such term to contain a contrary definition is clear and unambiguous.

Section 1.02 Terms Separately Defined:

“Allocated Interest” means the undivided interests in the Condominium Common Elements, Condominium Common Expense Liability, and votes in the COA allocated to each Unit.

“Association” means either the COA, or the HOA whenever it acts in the COA’s capacity as its Master Association.

“Board” or “Board of Directors” means either the executive board of the COA, or the executive board of the HOA whenever it acts in the capacity of the COA’s Master Association.

“Bylaws” means the COA's bylaws as validly amended from time to time.

“Charter” means the Charter of the COA, as validly amended from time to time.

“COA” means the DOWNING PARK Condominium Unit Owners’ Association, a North Carolina unincorporated association formed pursuant to G.S. 47C-3-101 to separately manage and administer the Condominium's affairs in accordance with the NCCA and the RCD.

“Common Elements” means all portions of “Condominium Property” except the Units.

“Common Expenses” means expenditures made by, or financial liabilities of the COA, together with any allocations to reserves.

“Common Expense Liability” means the liability for Condominium “Common Expenses” allocated to each Unit as provided by this RCD, the NCCA, or otherwise by law.

“Condominium” means the DOWNING PARK Condominiums consisting of the Condominium Property, and existing as a separately administered but contiguous part of the larger Planned Community Development of DOWNING PARK, portions of which Condominium Property are designated for separate ownership (Units) the remainder being designated for common ownership solely by the owners of those portions (Unit Owners).

“Condominium Property” means all of that real property more particularly described within Exhibit “RMD-B” to the RMD attached thereto and incorporated therein by reference, together with the Units constructed thereupon, and all rights, easements, and obligations appurtenant thereto, as more particularly described within the RCD, and being the same real property described within Exhibit “RCD-A” attached hereto and incorporated herein by reference.

“Condominium Unit” or “Unit” means a physical portion of the Condominium designated by its Unit Boundaries for the separate ownership or occupancy thereof by a Unit Owner.

“Condominium Unit Boundaries” or “Unit Boundaries” means the boundaries for each Unit, both as to its vertical and horizontal planes, as established and shown by the Plats and Plans, or to the extent not inconsistent therewith means those boundaries established by operation of law pursuant to G.S. 47C-2-102 of the NCCA, or otherwise by this RCD.

“Condominium Unit Owner” or “Unit Owner” or “Owner” means the person(s) owning a Condominium Unit, but does not include a person having an interest in a Unit solely as security for an obligation.

“Declarant” means Glade Land Fund, LLC, a North Carolina LLC, formerly known as Chestnut Land Fund, LLC, a North Carolina LLC.

"Declaration" means this RCD.

“Development” means the entire Mixed Property Development of DOWNING PARK consisting of the Development Property, and existing as one Planned Community within which the Condominium exists therein as a separately administered but contiguous part thereof.

“Development Property” means all of that real property more particularly described within Exhibit “RMD-A” to the RMD attached thereto and incorporated therein by reference, together with all rights, easements, and obligations appurtenant thereto.

“Director” means either a member of the COA Board, or a member of the HOA Board whenever it acts in the capacity of the COA’s Master Association.

"First Mortgagee" means the holder of a first in priority mortgage on any Unit.

“HOA” means the DOWNING PARK Homeowners’ Association, Inc., a North Carolina nonprofit corporation, formed and serving pursuant to G.S. 47F-3-101 as the lot owners’ association to manage and administer the entire Mixed Property Development of DOWNING PARK as a single Planned Community in accordance with the NCPCA and the RMD; and also serving in addition thereto pursuant to G.S. 47C-2-120 (Master Associations) as the COA’s Master Association to separately manage and administer the Condominium in the capacity of its unit owners’ association as defined in G.S. 47C-3-101 in accordance with the NCCA, the RCD, and to the extent not inconsistent therewith, the RMD.

“Instruments” means without limitation all of the following: This RCD; the Charter, the Bylaws, the Rules and Regulations, the Plats and Plans, any exhibits or other documents attached to or incorporated within any of the foregoing as all the same are validly adopted or amended from time to time. All of the Instruments are and shall be incorporated herein by reference.

“Lease” means any lease, use, tenancy, sublease, rental contract, or other occupancy agreement for a Unit whether oral or written.

“Limited Common Elements” means those portions of the Condominium “Common Elements” allocated by this RCD or the NCCA for the exclusive use thereof by one or more but less than all the Units.

“Majority” means greater than fifty percent (50%) in any context, unless a different percentage is expressly required by any applicable Instrument or by law.

“Mixed Property” means the mixed manner in which various different legal forms of property simultaneously exist within and as a part of the Development of DOWNING PARK.

“NCCA” means the North Carolina Condominium Act as codified in Chapter 47C of the North Carolina General Statutes, as amended from time to time.

“NCPCA” means the North Carolina Planned Community Act as codified in Chapter 47F of the North Carolina General Statutes, as amended from time to time.

“Occupant” means any Person(s), including, without limitation, any guest, customer, invitee, tenant, lessee or licensee of any Owner, occupying, using or otherwise visiting a Unit.

“Officer” means either an officer of the COA, or an officer of the HOA whenever it acts in the capacity of the COA’s Master Association.

“Owner” means a “Condominium Unit Owner”.

"Person" means without limitation a natural person, corporation, trust, estate, partnership, association, joint venture, government, or any other legally recognized entity.

"Planned Community" pursuant to the NCPCA means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of the NCPCA, neither a cooperative nor a Condominium is a Planned Community, but real estate comprising a Condominium or cooperative may be part of a Planned Community. (G.S. 47F-1-103.23).

“Plats and Plans” mean those Plats and/or Plans of the Development and/or Condominium validly prepared and recorded by the Declarant or the HOA pursuant to the Acts or other state law in the Transylvania County Registry, including but not limited to those already recorded in Plat File 11, Slide 391, and Plat File 12, Slides 101 through 106 thereof.

“RCD” means this Restated Declaration of Condominium, together with the Instruments defined herein, as all the same may be validly amended from time to time.

“RMD” means the Restated Master Declaration of Covenants, Conditions, and Restrictions for DOWNING PARK a Mixed Property Planned Community Development Comprised of Villas, Townhomes, and a Condominium, together with the Instruments defined therein, as all the same may be validly amended from time to time, and to which this RCD is attached and incorporated therein as Exhibit “RMD-D” thereto.

“Rules and Regulations” means the rules and regulations of the Condominium validly adopted, promulgated, or amended by the COA from time to time.

“Unit” means a “Condominium Unit”

“Unit Boundaries” means “Condominium Unit Boundaries”

“Unit Owner” means “Condominium Unit Owner”

ARTICLE II

SUBMISSION OF CONDOMINIUM

The Condominium, the Condominium Units, and every interest of any Person(s) whatsoever owned or otherwise existing therein are intended to be, and shall be: owned, held, transferred, sold, conveyed, disposed of, acquired, inherited, assigned, used, leased, occupied, mortgaged, encumbered, and/or deeded into trust, subject to the terms, conditions, and provisions of the NCCA, this RCD, and the Instruments, as the same may be amended from time to time hereafter notwithstanding any statements to the contrary contained within any instruments purporting otherwise.

The foregoing submissions and obligations are made in addition to any other submissions or obligations otherwise imposed upon each Unit by virtue of its being part of the Planned Community Development of Downing Park and treated for purposes of the NCPA, the RMD, and the Instruments defined therein as a Lot within such Planned Community as more particularly described within the RMD.

ARTICLE III

DESCRIPTION OF CONDOMINIUM

Section 3.01 Name & Location:

The Condominium governed by this RCD is named: “DOWNING PARK Condominiums”, and is located within the larger DOWNING PARK Development in Transylvania County, North Carolina.

Section 3.02 Description of Condominium:

- (a) The Condominium exists as a separately managed but contiguous part of the larger Mixed Property Planned Community Development of DOWNING PARK.
- (b) The Condominium consists of all the Condominium Property as more particularly described within Exhibit “RCD-A” attached hereto and incorporated herein by reference, together with all rights and easements appurtenant thereto, including but not limited to those set forth within the NCCA, this RCD, or the Instruments.
- (c) Portions of the Condominium are designated by Unit Boundaries for the separate ownership thereof as individual Units,
- (d) All portions of the Condominium not specifically designated as Units, are deemed by operation of law to be exclusively & jointly owned in common by all the Unit Owners.
- (e) There are presently Six (6) Condominium Units designated for separate ownership within the Condominium as more particularly described hereinbelow, and no additional Condominium Units shall be constructed within or added to the Condominium unless otherwise authorized by the NCCA.

Section 3.03 Condominium Units, Allocated Interests, & Owner Rights:

- (a) The presently existing Six (6) Condominium Units designated for separate ownership thereof are contained in the one (1), three-story building(s) located on the Condominium Property.
- (b) The building and the Units within are more fully described and depicted by the Plats and Plans thereof including but not limited to those entitled the “DOWNING PARK Condominiums” recorded in Plat File 12, Slides 101 through 106, in the Transylvania County Registry. Each individual Unit is separately identified therein by its alphanumeric character being either A, B, C, D, E, or F, and consists of the area within its respective Unit Boundaries as more particularly described hereinbelow.
- (c) Subject to any additional rights or limitations imposed by the NCCA, this RCD, or the Instruments, each Unit shall have the following appurtenant rights, interests, and obligations:
 - (i) A non exclusive right of each Owner to use and enjoy the Common Elements,
 - (ii) The “Allocated Interest” of each Unit as that term is defined herein, which is allocated between and among the Units as originally established by Declarant in proportion to the approximate percentage of the fair market value each Unit, including all existing or potential improvements thereto, bears in relation to the aggregate fair market value of all Units within the Condominium, including all existing or potential improvements thereto, as the same is more particularly described within Exhibit “RCD-B” attached hereto and incorporated herein by reference.

- (iii) The automatic and mandatory membership in the COA of every Owner of any fee interest in any Unit, which membership shall continue indefinitely without cessation during the period of any such ownership.
- (iv) The additional automatic and mandatory membership in the HOA of every Owner of any fee interest in any Unit (each such Unit being deemed a Lot within the larger Development of DOWNING PARK as more particularly described within the RMD), which membership shall continue indefinitely without cessation during the period of any such ownership.
- (d) Each Unit shall constitute for all purposes a separate parcel of real property, which may be owned in fee simple, and subject to the applicable provisions of the Acts, this RCD, and the RMD, may be conveyed and encumbered like any other real property. The rights, interests, and obligations appurtenant to each Unit shall not be separated from any Unit to which it appertains, and shall be deemed to be conveyed or encumbered with such Unit even though such interest is not expressly mentioned or described in any purported conveyance thereof or by any other instrument.

Section 3.04 Unit Boundaries:

The horizontal and vertical boundaries of each Unit except as otherwise shown upon the Plats and Plans identified hereinabove are defined by operation of law pursuant to G.S. 47C-2-102 of the NCCA, the provisions of which are incorporated into this RCD as if fully set out herein, and shall apply in determining the boundaries of individual Units, and with regard to whether materials, fixtures, or other items are parts thereof, or are otherwise Common Elements or Limited Common Elements as further described herein. To the extent not inconsistent with the foregoing:

- (1) If walls, floors or ceilings are designated as boundaries of a Unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit; and all other portions of such walls, floors, or ceilings are a part of the common elements.*
- (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a limited common element allocated exclusively to that Unit, and any portion thereof serving more than one Unit or any portion of the common elements is a part of the common elements.*
- (3) Subject to the provisions of paragraph (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.*
- (4) Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit but located outside the Unit's boundaries are limited common elements allocated exclusively to that Unit.*

Section 3.05 Common Elements:

All portions of the Condominium Property other than specifically designated Units are Common Elements, provided that some Common Elements may be deemed Limited Common Elements as further described hereinbelow. The Common Elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit(s) to which such interest is allocated is void.

Section 3.06 Limited Common Elements:

Any portions of the Common Elements which are: (i) labeled as a Limited Common Element within the Plats and Plans, (ii) allocated as such by this RCD, or (iii) otherwise defined as such by operation of law (including but not limited to G.S. 47C-2-102(2) or (4) of the NCCA); for the exclusive use of one or more but fewer than all of the Units shall be a Limited Common Element. Limited Common Elements are not separate and apart from the Common Elements in general, but are limited only with respect to the exclusive use thereof by the Unit(s) to which they are assigned. The following shall be Limited Common Elements:

- (a) Any driveway, parking area, walkway, entrance, foyer, lobby, hallway, steps, elevator, stairway, or means of access to the door of any Unit, together with any enclosure therefore, which is appurtenant to or otherwise designed to serve, one or more, but not all of the Units shall be a Limited Common Element appurtenant to the Unit(s) so served.

ARTICLE IV ADMINISTRATION OF CONDOMINIUM

Section 4.01 Name & Form of Unit Owners' Association (the "COA"):

The unincorporated Unit Owner's association formed pursuant to G.S. 47C-3-101 of the NCCA to manage and administer the Condominium shall exist and be known as the "DOWNING PARK Condominium Unit Owners' Association" (the "COA").

Section 4.02 Incorporation of COA Instruments by Reference:

The terms, conditions, and provisions of the COA's Charter, Bylaws, and Rules and Regulations, as validly adopted and/or amended from time to time are incorporated into this RCD as if fully set forth herein and are binding on all Unit Owners.

Section 4.03 Mandatory Membership in COA:

Every Unit Owner shall automatically be a member of the COA. Ownership of a fee interest in a Unit shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. Pursuant to G.S. 47C-3-101 of the NCCA, only Unit Owners may be members of the COA.

Section 4.04 Duties & Powers of COA:

The purpose and duties of the COA shall be to manage and administer the Condominium pursuant to the terms and provisions of the NCCA and this RCD, and to promote and protect the enjoyment and beneficial use and ownership of the Units. The COA shall have all of the powers of a Unit Owners' association provided for by law, including but not limited to those specifically enumerated in G.S. 47C-3-102 of the NCCA, the provisions of which are incorporated into this RCD by reference as if fully set forth herein, and otherwise the powers provided for within this RCD or the Instruments to the extent allowed by law, and to the extent not inconsistent therewith:

- (a) *Unless otherwise expressly provided herein to the contrary, the COA may:*
- (1) Adopt and amend bylaws and rules and regulations;*
 - (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Unit Owners;*
 - (3) Hire and terminate managing agents and other employees, agents, and independent contractors;*
 - (4) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;*
 - (5) Make contracts and incur liabilities;*
 - (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;*
 - (7) Cause additional improvements to be made as a part of the common elements;*
 - (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;*
 - (9) Grant easements, leases, licenses, and concessions through or over the common elements;*
 - (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in subsections 47C-2-102(2) and (4) and for services provided to Unit Owners;*
 - (11) Impose charges for late payment of assessments, not to exceed the greater of twenty dollars (\$ 20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer, and levy reasonable fines not to exceed one hundred dollars (\$ 100.00) (G.S. 47C-3-107.1) for violations of the RCD, bylaws, and rules and regulations of the COA.*
 - (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by G.S. 47C-4-109, or statements of unpaid assessments;*
 - (13) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents;*
 - (14) Assign its right to future income, including the right to receive common expense assessments.*
 - (15) Exercise all other powers that may be exercised in this State by legal entities of the same types as the association; and*
 - (16) Exercise any other powers necessary and proper for the governance and operation of the association.*

Section 4.05 COA Action through Board and/or Officers:

Unless otherwise expressly stated within this RCD or the Instruments, or unless otherwise expressly required by the NCCA, the powers herein or otherwise granted to the COA may be exercised on behalf thereof by its

Board of Directors, or otherwise by its authorized Officers, agents, or employees, and all without any further consent or action being required with respect thereto on the part of the members of the COA.

Section 4.06 Indemnification of Board and Officers:

Subject to, and in accordance with the provisions and/or limitations set forth within the Instruments, if any, and to the extent otherwise allowed by law, each Director and each Officer of the COA, shall be entitled to indemnification by the COA in connection with any threatened, pending, or completed action, suit, or proceeding, with respect to which such person was or is a party by reason of the fact that such person is or was a Director or Officer of the COA.

Section 4.07 Rules and Regulations of the COA:

Without limiting the generality of this Article, the Board of Directors shall have the power and authority to make, amend, and revoke reasonable Rules and Regulations concerning the use of the Condominium including without limitation, the Units and/or Common Elements thereof, and the same shall be binding upon each Unit Owner or Occupant.

Section 4.08 Professional Management of the COA:

The Board of Directors may employ a professional management Person to manage the operation and affairs of the Condominium on its behalf. Any management Person so employed shall be employed only pursuant to a written agreement executed on behalf of the COA by a Majority of the Board of Directors. All such management agreements shall be terminable by the COA with cause upon thirty (30) days prior written notice and without a termination fee, and upon ninety (90) days prior written notice without a termination fee without cause, and the term thereof may not exceed one (1) year. The management Person shall be the agent of the Board of Directors and the COA. To the extent permitted by law, the Board of Directors shall be authorized to delegate to such management Person such of the duties and powers of the COA and/or its Board of Directors and/or its Officers as the Board of Directors shall determine necessary or desirable.

Section 4.09 Enforcement of Director's Duties:

In the event that the Board of Directors shall fail to perform any duties which under the terms and provisions of the NCCA or this RCD (including any Instruments incorporated herein) are required to be performed by it, any Unit Owner or First Mortgagee who is aggrieved by such failure, shall have the right to proceed in equity to compel the Board of Directors to perform such duties. In no event however, shall any Director have any liability to any Unit Owner or First Mortgagee for any failure by it, or the Board of Directors, to perform any such duties, except to any extent such liability is specifically provided for under North Carolina law.

Section 4.10 COA Property:

All funds received, and title to any property acquired by the COA on behalf of the Condominium, and any proceeds thereof, after deducting the costs incurred in receiving or acquiring the same, shall be held for the mutual benefit of the Unit Owners as herein provided, and for the purposes herein stated. The shares of the Unit Owners in the funds and assets of the COA cannot be individually assigned, hypothecated or transferred in any manner except as an appurtenance to a Unit.

Section 4.11 Records of the COA:

The COA shall keep and maintain records in accordance with G.S. 47C-3-118 of the NCCA.

Section 4.12 Delegation of Duties & Powers to Master Association:

- (a) Pursuant to G.S. 47C-2-120 (Master Associations) the powers, duties, obligations, and authority of the COA as set forth within the NCCA and this RCD, including any Instruments incorporated herein, are hereby perpetually vested within, delegated to, and shall be exercised by the HOA acting as a Master Association for and on behalf of the COA provided that the following conditions are met at all times with respect thereto, it being the intent of said conditions to provide for certain safeguards and protections for the Unit Owners against discrimination by other owners of non condominium property existing within the larger Development of DOWNING PARK:
 - (i) The Development's RMD together with any Instruments defined therein including but not limited to the HOA's Articles, Bylaws, and Rules & Regulations shall establish and provide for the exclusive election by the COA membership to the HOA's executive board at all times of at least one (1) voting Board member, but in no event less than twenty percent (20%) of the total voting Board membership at any given time.
 - (ii) Neither the Development's RMD, nor any Instruments defined therein, including but not limited to the HOA's Articles, Bylaws, and/or Rules & Regulations shall purport to impose any discriminatory limitations or restrictions exclusively upon the Condominium or the Units existing therein unless such limitations or restrictions are imposed equally against all forms of Development property including non condominium property existing within the Development, or unless such limitations or restrictions are approved by an affirmative vote of the same percentage of COA members as the percentage of HOA members otherwise required to amend a particular instrument at a duly called meeting of the COA held for such purpose. Nothing herein shall be deemed to limit the ability of the COA to adopt greater restrictions or

limitation upon its members own rights in addition to any restrictions or limitations otherwise imposed or adopted by the HOA.

- (b) In all instances whenever acting for or on behalf of the COA as its Master Association, the HOA shall take such action separately and independently from any other actions taken by the HOA acting in any other capacity including but not limited to its capacity as the larger Development's lot owners' association. Accordingly, the records of any and all such actions taken together with the financial accounts and records of the COA or of the HOA acting as the Master Association thereof shall be kept separate and apart from any other records maintained by the HOA in any other capacity including but not limited to its capacity as the larger Development's lot owners' association.
- (c) Whenever necessary to give full force and effect to the express intent of this RCD to place the HOA acting in such capacity in the same position as the COA itself, the term "COA" as used throughout this RCD or the Instruments incorporated herein and the term "Association" as defined within the NCCA shall be deemed to mean the "HOA" whenever acting in its capacity as the COA's Master Association, and the references herein to the Board of Directors and/or Officers of the COA shall be deemed to mean the Board of Directors or Officers of the "HOA" whenever acting for the HOA in its capacity as the COA's Master Association.

ARTICLE V MAINTENANCE

Section 5.01 Statutory Maintenance Responsibility of COA:

The COA shall have all of the statutory maintenance responsibilities and duties of a Unit Owners' association provided for within the NCCA (including but not limited to those specifically enumerated within G.S. 47C-3-107 thereof entitled "Upkeep, damages, assessment for damages, fines"), the terms and provisions of which are incorporated into this RCD by reference as if fully set forth herein, and to the extent not inconsistent therewith:

- (a) *Except as provided in G.S. 47C-3-113(h), the COA is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the Unit Owners as necessary to recover the costs of such maintenance, repair, or replacement except that the cost of maintenance, repair or replacement of a limited common element shall be assessed as provided in G.S. 47C-3-115(b). Each Unit Owner is responsible for maintenance, repair and replacement of his Unit. Each Unit Owner shall afford to the COA and when necessary to another Unit Owner access through his Unit reasonably necessary for any such maintenance, repair or replacement activity.*
- (b) *If damage, for which a Unit Owner is legally responsible and which is not covered by insurance provided by the COA pursuant to G.S. 47C-3-113 is inflicted on any common element, the COA may direct such Unit Owner to repair such damage or the COA may itself cause the repairs to be made and recover the costs thereof from the responsible Unit Owner.*
- (c) *If damage is inflicted on any Unit by an agent of the COA in the scope of his activities as such agent, the association is liable to repair such damage or to reimburse the Unit Owner for the cost of repairing such damages. The COA shall also be liable for any losses to the Unit Owner.*
- (d) *The bylaws of the COA may in cases when the claim under subsection (b) or (c) is five hundred dollars (\$500.00) or less provide for hearings before an adjudicatory panel to determine if a Unit Owner is responsible for damages to any common element or whether the COA is responsible for damages to any Unit. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess a liability for each damage incident not in excess of five hundred dollars (\$500.00) against each Unit Owner charged or against the COA. Liabilities of Unit Owners so assessed shall be assessments secured by lien under G.S. 47C-3-116. Liabilities of the COA may be offset by the Unit Owner against sums owing the COA and if so offset shall reduce the amount of any lien of the COA against the Unit at issue.*
- (e) *The Declarant alone is liable for maintenance, repair and all other expenses in connection with real estate subject to continuing development rights.*

Section 5.02 Condominium Landscaping Maintenance:

The COA shall maintain the lawn and landscaping within the Condominium installed by the Declarant, or otherwise installed by a Unit Owner with the approval of the COA as a Common Element of the Condominium.

ARTICLE VI ASSESSMENTS & LIENS

Section 6.01 Assessments:

Each Unit is and shall be subject to Regular and Special assessments existing before, on, and after the date of recording of this RCD. Each Unit Owner covenants and agrees to pay to the COA all applicable assessments for Common Expenses, capital improvements, or any other lawful purposes authorized by the NCCA or this RCD. The COA shall make assessments for Common Expenses pursuant to G.S. 47C-3-115 of the NCCA, the terms and provisions of which are incorporated into this RCD as if fully set out herein, and to the extent not inconsistent therewith:

- (a) *The COA shall make an assessment for Common Expenses at least annually.*
- (b) *Except for assessments under subsections (c), (d), and (e) hereof, all common expenses must be assessed against all the Units in accordance with the allocations set forth in this RCD. Any past due common expense assessment or installment thereof bears interest at the rate of eighteen percent (18%) per year unless a lesser rate is otherwise established by the COA.*
- (c) *Only to the extent this RCD specifically requires the following:*
 - (1) *Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the Units to which that limited common element is assigned, equally, or in any other proportion that this RCD provides;*
 - (2) *Any common expense or portion thereof benefiting fewer than all of the Units must be assessed exclusively against the Units benefited; and*
 - (3) *The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.*
- (d) *Assessments to pay a judgment against the association (G.S. 47C-3-117(a)) may be made only against the Units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.*
- (e) *If any common expense is caused by the misconduct of any Unit Owner or Occupant, the association may assess that expense exclusively against his Unit.*
- (f) *If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.*

Section 6.02 Assessments for Common Expenses:

The amount of all Common Expenses not specially assessed against one or more but less than all of the Units pursuant to the provisions of this RCD, less the amount of all undistributed and otherwise unreserved COA funds, shall be assessed against the Units in accordance with the Allocated Interest of each such Unit as shown within Exhibit "RCD-B" attached hereto and incorporated herein by reference. The general annual assessment shall be established by the Board in the manner set forth in this section. At least thirty (30) days prior to the annual meeting of the COA, the COA shall prepare and submit in writing to the Unit Owners an estimated budget of the Common Expenses for the next succeeding fiscal year to be paid by Assessments collected from the Unit Owners, together with the amount of the annual Assessment payable by each Unit Owner during such fiscal year. If the estimated budget proves inadequate for any reason at any time during the year, then upon the affirmative vote of Unit Owners having at least sixty seven percent (67%) of the total allocated COA votes, the Board may levy at any time a further Assessment against the Unit Owners and notify the Unit Owners accordingly. If for any reason an annual budget is not approved by the Board, a payment in the amount required by the last prior Assessment shall be due upon each Assessment due date until changed by a new Assessment. Each Unit Owner shall be obligated to pay such Assessments to the COA in the manner and pursuant to any payment schedule specifically established by the Board of Directors as modified from time to time. Notwithstanding G.S. 47C-3-114 (Surplus Funds) in any year in which there is an excess of Assessments and other income over expenditures, the Board, by resolution, and without the necessity of a vote of the Unit Owners, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's Assessments, or allocate the same to one or more reserve accounts of the COA. Common Expenses of the COA to be paid through general annual Assessments shall include, but shall not necessarily be limited to, the following:

- (a) Management/Administration fees/expenses, including without limitation, legal and/or accounting fees.
- (b) Utility charges for utilities serving the Common Elements, and charges for other common services provided to all Unit Owners including any utilities provided to the Units not separately metered.
- (c) The cost of any master or blanket policies of insurance purchased for the benefit of Unit Owners and/or the COA as required by the NCCA or this RCD and such other insurance coverage as the Board of Directors determines to be in the interest of the COA and the Unit Owners.
- (d) The expense of maintaining, operating and/or repairing the Common Elements.
- (e) Such other expenses as may be determined from time to time by the Board to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against each Unit.

- (f) The expense for establishing and maintaining an adequate reserve fund or funds for the periodic maintenance, repair and replacement of those Common Elements (including Limited Common Elements) which the COA may be obligated to maintain, and of reserves to cover operating contingencies or deficiencies arising from unpaid Assessments or liens, emergency expenditures, and other matters, as may be authorized from time to time by the Board.
- (g) Any and all other Common Expenses as are permitted by the NCCA or state law.

Section 6.03 Special Assessments & Special Allocations of Assessments:

- (a) Capital Improvements. In addition to any other assessments authorized herein, the COA may charge each Unit, in any fiscal year of the COA, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement upon and to any part of the Common Elements of the Condominium, including fixtures and personal property related thereto; provided that any such Special Assessment must be approved by the affirmative vote of at least Sixty Seven percent (67%) of all COA Votes allocated among Units at the time of the vote.
- (b) Misconduct of Owner/Occupant. The COA may charge any Unit(s) a special assessment for the common expense incurred by the COA as a result of misconduct by the Owner(s) or Occupant(s) of such Unit(s).
- ~~(c) Discretionary Allocation of Certain Common Expenses. Any Common Expense occasioned by the conduct of less than all of the Unit Owners or their Occupants may be specially assessed by the Board against the Units the conduct of any Owner or Occupant of which occasioned any such Common Expenses. Any Common Expenses benefitting less than all of the Units, may be assessed by the Board equitably in its discretion among the Units so benefitted. Any such special assessment(s) if levied shall be made by the Board in its reasonable judgment specifying the amount and due date of any such assessment. In no event shall the COA or any member of the Board have any liability for any judgment or decision made reasonably and in good faith under this paragraph.~~
- ~~(d) Assessment of Limited Common Elements. Unless otherwise expressly provided herein, the maintenance, repair, or replacement of any Limited Common Element(s) shall be deemed Common Expenses and no special assessment shall be made to any Unit(s) therefore.~~
- ~~(e)~~(c) Special Assessments, Damages & Fines. The COA may assess individual Units for damage or fines in accordance with the NCCA including but not limited to provision G.S. 47C-3-107 and G.S. 47C-3-107.1 (Procedures for fines and suspension of condominium privileges or services) dealing specifically therewith, the terms of which are incorporated into this instrument by reference as if fully set forth herein.

Section 6.04 Payment and Collection of Assessments:

- (a) Liens. Each of the applicable assessments described above, or otherwise authorized under the NCCA or this RCD, together with interest thereon and the costs of collection thereof, including reasonable attorneys' fees, and together with late fees and interest, if any, shall be a continuing lien upon each Unit and the personal obligation of such Unit's Owner(s) and shall run with and burden the land notwithstanding any conveyance thereof unless otherwise expressly stated herein.
- (b) Payment Schedule. Assessments whether regular, special, or otherwise shall be paid in such manner and on such dates as the Board may establish, which may include installments, early payment discounts, reasonable late fees (see limitation below), and special requirements for Unit Owners with a history of late payment.
- (c) Non Exemption/Abatement. No Unit Owner may exempt himself from liability for assessments by non-use of Common Elements, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Unit Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the COA to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the COA.
- (d) Interest. Any assessment against any Unit which remains unpaid for a period of thirty (30) days after its regular due date, or otherwise after delivery of a request for payment thereof shall be deemed past due, and interest shall accrue on any such unpaid amount from the date that it was otherwise due at the rate to be established by the COA not exceeding eighteen percent (18.00%) per annum.
- (e) Late Fees. In addition to the foregoing a reasonable charge for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid shall be assessable and due for every applicable late payment period including the date upon which the assessment initially became past due and continuing until such time as all past due assessments together with any applicable interest and late charges are paid in full.

- (f) Application of Payments. All payments on account shall be applied first to any of the aforesaid costs of collection, then to late charges, then to interest owed, and finally to the principal amount of any past due Assessment.
- (g) Certificates of Assessments. The COA shall, within 10 business days of any such demand, and for a reasonable charge, furnish a certificate signed by an officer of the COA stating whether all assessments against a specified Unit have been paid. A properly executed certificate of the COA as to the status of assessments against a Unit shall be binding upon the COA as of the date of its issuance.
- (h) Enforcement. The COA shall have the power to take whatever action is necessary, at law or in equity, to collect any past due assessments, together with interest, late fees and costs of collection, including reasonable attorneys' fees. When an assessment becomes thirty (30) days past due, the lien created hereunder may be filed by the COA against the delinquent Unit Owner in the office of the Clerk of Superior Court of Transylvania County in accordance with G.S. 47C-3-116 of the NCCA, and thereafter may be enforced against any such Unit Owner in accordance with the terms thereof including but not limited to the ability of the COA to foreclose against the Unit on which the lien is placed in like manner as a mortgage on real estate. The lien provided for in this provision or otherwise acquired pursuant to the NCCA shall be in favor of the COA and shall be for the benefit of all its Unit Owners. The COA, acting through the Board, shall have the power to bid on the Unit at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. In addition thereto, each such assessment, together with interest, late fees, and costs of collection, including reasonable attorneys' fees shall also be deemed the personal obligation and liability of the Owner(s) of any Unit to which the same is appurtenant, who shall remain liable to the COA for the payment thereof notwithstanding the conveyance of any such Unit or the continuing lien thereupon in favor of the COA until otherwise paid in full, and may be enforced by the COA by filing a legal action for the collection thereof in the same manner as a debt owed thereto in addition to any other remedies authorized herein or otherwise by law.
- (i) Protection of First Mortgagees. Notwithstanding anything contained in this RCD which may be construed to the contrary, in the event any First Mortgagee that is an Institutional Mortgagee shall acquire title to any Unit by virtue of any deed in lieu of foreclosure of a First Mortgage, or by foreclosure itself, such First Mortgagee shall not be liable for, nor shall such Unit be subject to a lien for any Assessments chargeable to such Unit on account of any period prior to the time such First Mortgagee shall so acquire title to such Unit; provided however, that Common Expenses collectible thereafter from all Unit Owners, including such First Mortgagee, shall be paid thereby as set forth in this RCD.
- (j) Suspension of Voting Privilege. In addition to the foregoing, the Board may suspend the vote of any Unit Owner, as well as the right of such Unit Owner to use the Common Elements, during the period in which any Assessment or portion thereof remains unpaid after notice and an opportunity to be heard is provided pursuant to G.S. 47C-3-107.1 (Procedures for fines and suspension of condominium privileges or services) the terms and provision of which are incorporated into this RCD as if fully set out herein.

ARTICLE VII ARCHITECTURAL CONTROL & USE RESTRICTIONS

All Units shall be subject to the following restrictions on use:

Section 7.01 Development Use Restrictions Apply to Condominium:

The Condominium as a part of the larger Planned Community Development, and each Unit Owner or Occupant of a Unit existing therein is, and shall be governed by, and subject to, any and all terms and provisions set forth within the DOWNING PARK RMD or any Instruments incorporated therein by reference which restricts or conditions the use of, or modification to, all forms of property existing within the Development including the Condominium or Units therein. Such terms and provisions shall include but not be limited to those set forth within the "Architectural Control & Use Restrictions" Article of the RMD.

ARTICLE VIII EASEMENTS & DECLARANT RIGHTS

Section 8.01 Easement for Encroachments:

The Condominium and each Unit therein is subject to an easement for encroachment pursuant to G.S. 47C-2-114 of the NCCA, the terms and provisions of which are incorporated herein by reference.

Section 8.02 Development Easements & Declarant Rights:

The Condominium and the Units therein as part of the larger Planned Community Development is and shall be subject to all of the easements and Declarant Rights, if any, reserved or described within and otherwise established by the RMD in the same manner as any individual lot owned therein would be subject.

Section 8.03 No Enlargement without Development Approval:

The COA shall not enlarge or establish any existing easement affecting the Condominium without the written approval thereof by the broader DOWNING PARK Development.

**ARTICLE IX
INSURANCE & EMINENT DOMAIN/CONDEMNATION**

Section 9.01 Statutory Insurance Requirement & Authority:

The COA shall obtain and maintain at all times insurance coverage as provided by G.S. 47C-3-113 of the NCCA, the terms and provisions of which are incorporated herein by reference as if fully set forth below.

Section 9.02 Additional Insurance Requirements:

The COA shall obtain and maintain at all times in addition to the foregoing and to the extent not inconsistent therewith:

- (a) Property insurance pursuant to G.S. 47C-3-113(a)(1) covering not less than one hundred percent (100%) of the replacement costs of the insured property as otherwise described therein, and including extended perils coverage against vandalism, malicious mischief, debris removal, cost of demolition, windstorm, and water damage. Additionally the liability insurance obtained by the COA pursuant to G.S. 47C-3-113(a)(2) shall cover not less than one million dollars (\$1,000,000.00) for single limit coverage as otherwise described therein;
- (b) Fidelity coverage against dishonest acts on the part of its directors, officers, employees, agents and volunteers responsible for handling funds belonging to, or administered by, the COA in an amount at least equal to the sum of **one fourth (1/4)** of the previous fiscal year's annual assessments plus reserves collected for the entire Condominium, or in such greater amount as the Board may determine; and
- (c) Such other types of insurance either required by applicable governmental authority, law, or authorized by the COA from time to time.

Section 9.03 Notice:

Pursuant to G.S. 47C-3-113(g) an insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

Section 9.04 Special Assessment for Increased Risk:

In the event activities are conducted within a Unit such as to materially increase the premium or cost of insurance obtained pursuant to the provisions hereof, then in that event, the increased amount of such premium shall be assessed against such Unit causing such increase.

Section 9.05 Eminent Domain:

In the event that all or part of the Condominium shall be taken by any authority having the power of eminent domain, the allocation of the award for such condemnation and all related matters, such as the reallocation of liabilities for Assessments and Votes, shall be made in accordance with G.S. 47C-1-107 of the NCCA or other applicable law, and to the extent not inconsistent therewith as follows:

- (a) If any Unit or portion thereof, or the Common Elements of the Condominium or any portion thereof is made the subject matter of a condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any First Mortgage on a Unit, will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this RCD will entitle the Owner or other person to priority over any Mortgagee with respect to the distribution of the proceeds of any award or settlement relating to such Unit.
- (b) In the event all or any part of the Common Elements of the Condominium shall be taken in condemnation or by eminent domain, each Owner hereby grants an irrevocable power of attorney to the COA to represent such Owner in any and all condemnation proceedings, negotiations, settlements, and

agreements with the condemning authority, as they pertain only to such Owner's interest in the Common Elements of Condominium.

ARTICLE X GENERAL PROVISIONS

Section 10.01 Parties Bound:

All Persons owning or occupying any Unit, or otherwise acquiring any interest in any portion of the Condominium including any Unit(s) shall be bound by the provisions of this RCD.

Section 10.02 Duration:

The provisions of this RCD shall run with and bind the land, shall be binding upon and inure to the benefit of all Owners and Mortgagees, their heirs, executors, legal representatives, occupants, successors, and assigns, and shall be and remain in effect for a period of twenty (20) years, from the date this RCD is recorded, after which time this RCD shall be automatically extended perpetually for successive periods of ten (10) years each, to the extent permitted by North Carolina law.

Section 10.03 Amendment or Rescission:

Except as provided herein, this RCD may be amended or rescinded only by a written instrument executed by the COA and authorized by the affirmative vote of at sixty seven percent (67%) of all the allocated votes in the COA existing at that time, cast in person or by proxy at a meeting duly held in accordance with the NCCA and the COA Bylaws. Any amendments or other changes hereto must be recorded at the Transylvania County Registry to be effective.

Section 10.04 Rights of Mortgagees & Owners:

In addition to the rights of Mortgagees elsewhere provided, each Mortgagee and each Owner shall: (a) be entitled to written notice from the COA of any default by an Owner in the performance of his obligations under this RCD or the Instruments incorporated herein, which is delinquent for a period of more than thirty (30) days including but not limited to any delinquency in payment of an Assessment; (b) be entitled to receive notice of and to designate a representative to attend and observe all meetings of Owners, but not meetings of the Board of Directors; (c) be entitled to receive written notice of any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which a Mortgagee holds a Mortgage; (d) be entitled to receive thirty (30) days prior written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the COA; (e) be entitled to receive written notice of any proposed action which would require the consent of a specified percentage of the Mortgagees; and (f) be furnished copies of annual financial reports within one hundred twenty (120) days after the end of the COA's fiscal year; provided, however, that such Owner or Mortgagee shall first file with the COA a written request (setting forth the name of such Owner or Mortgagee and the Unit Designation with respect to which such request is made) that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of the Mortgagee or Owner at an address stated in such notice. Further, each Mortgagee and Owner shall, upon request, be entitled to inspect the books, records and financial statement of the COA (including the Instruments and other documents) during normal business hours. Any First Mortgagee shall, upon written request, be entitled to an audited financial statement of the COA for the immediately preceding fiscal year, free of charge to the First Mortgagee so requesting it.

Section 10.05 Enforcement:

- (a) **Compliance:** Each Owner and Occupant shall comply strictly with the provisions of this RCD and the Instruments. In the event of a violation or breach, or threatened violation or breach, of any of the same, the COA or, in a proper case, any aggrieved Owner or Owners, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith, or to prevent a threatened violation or breach thereof.
- (b) **Self Help After Due Process:** In addition to all other remedies, the COA, or a duly authorized agent thereof, shall have the right to enter upon any portion of the Common Elements where a violation exists and, at the expense of the violating Owner, abate or remove any structure, thing or condition that may be or exist contrary to the intent and meaning hereof or of the Instruments, if after notice and an opportunity to be heard given in accordance with the provisions of G.S. 47C-3-107.1 it shall not have been corrected by such Owner.
- (c) **Non Liability for Self Help & Attorneys' Fees:** Neither the COA, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Should the COA employ legal counsel to enforce any of its rights or remedies of the COA, all costs incurred in such enforcement if successful, including a reasonable fee for counsel shall be paid by the violating Owner.
- (d) **Injunctions Authorized:** Inasmuch as the enforcement of the provisions hereof and of the Instruments are essential for the protection of present and future Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages alone, and that the COA or, in any

proper case, any aggrieved Owner or Owners, in addition to all other remedies may require and shall be entitled to remedy by injunction to restrain or enjoin any such any violation or breach, or threatened violation or breach.

- (e) Non Waiver: No delay, failure or omission on the part of the COA, or any aggrieved Owner or Owners in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement.
- (f) Non Accrual of Action: No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the COA or its Officers or Directors for, or on account of, any failure to bring any action on account of any violation or breach, or threatened violation or breach, of this RCD or of the Instruments, however long continued, or for the imposing of provisions which may be unenforceable.

Section 10.06 Other Provisions:

- (a) Severability: Any and all portions of any provisions of this RCD and the Instruments which are prohibited, unenforceable, or otherwise not authorized in any jurisdiction shall, as to such portions and jurisdictions only, be deemed ineffective to the extent of such prohibition or unenforceability only, without invalidating or affecting the continuing validity and enforceability of the remaining portion(s) of any such provision(s).
- (b) Captions: The titles/captions/headings of any and all portions of this RCD and the Instruments are intended for convenience of reference purposes only, and shall not in any event whatsoever be deemed to affect the meaning or interpretation of this RCD or the Instruments.
- (c) Law Controlling: This RCD and the Instruments shall be construed and governed by North Carolina law.
- (d) Usage and Interpretation of Terms: The words or terms used in this RCD or the Instruments which are used in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter, and vice versa; words used in the singular number includes the plural, and the plural the singular; and the word "Person" without limiting the specific definition thereof provided herein, includes a corporation or other entity as well as a natural person.
- (e) Bold Italicized Text: The bold italicized text within this RCD represents relevant portions of the NCCA which have been inserted into this RCD for convenience purposes only (and in some cases slightly modified for easier interpretation) to aid the reader in referring to and understanding certain applicable portions of the NCCA as they pertain to this RCD. No bold italicized text herein should be relied upon in lieu of obtaining and relying upon the actual and most recent version of the applicable NCCA statute which shall control and prevail notwithstanding any conflict therewith.
- (f) Statutory References: All references herein to any statutory provision(s) shall be construed to include any subsequent amendments thereto or replacements thereof as may be validly enacted from time to time by the North Carolina General Assembly. All such statutes referred to herein shall be incorporated herein by specific reference thereto.

Section 10.07 Interpretation:

- (a) The provisions hereof shall be liberally interpreted, and if necessary, they shall be so extended or enlarged by implication as to make them fully effective. In all cases, the terms, conditions, and provisions set forth within or provided for in this RCD shall be construed and given that interpretation or construction which, in the opinion of the COA Board of Directors, will best effect the intent of the general plan of the Condominiums.
- (b) The effective date of this RCD shall be the date it is filed of record in the office of the Transylvania County Registry.
- (c) In the event of any conflicts or inconsistencies arising between the Acts, this RCD, the Instruments defined herein, the RMD, or the Instruments defined therein: 1) the NCPA, the RMD, the HOA Articles, the HOA Bylaws, the HOA Rules & Regulations, and finally any other Instruments defined within the RMD shall control and prevail in that descending order of priority in all matters pertaining to the Development as a Planned Community or otherwise in any matters not solely related to the condominium form of property ownership or separate management thereof with respect to which the NCCA, this RCD, the COA Charter, the COA Bylaws, the COA Rules & Regulations, and finally any other Instruments defined within the RCD shall control and prevail in that descending order of priority with respect to all such condominium related matters.

Section 10.08 List of Exhibits:

- (a) Exhibit “RCD-A”: The “Condominium Property
- (b) Exhibit “RCD-B”: The “Allocated Interests”
- (c) Exhibit “RCD-C”: The “Association Charter of Downing Park Condominiums Unit Owners’ Association”

IN WITNESS WHEREOF, the undersigned, representing at least sixty seven percent (67%) of the total allocated votes within the Condominium in accordance with their allocated shares as stated within the Second Declaration recorded in Book 411, Page 138 of the Transylvania County Registry, and each being of the age of legal majority or otherwise being a duly authorized representative acting on behalf of any legal entity executing this RCD as a unit owner or otherwise, has read, adopted, and caused this RCD together with the Instruments incorporated herein by reference to be executed under SEAL for the purposes stated herein including without limitation to restate the covenants, conditions, and restrictions applicable to Downing Park Condominiums, A separately administered but contiguous part of Downing Park, A Mixed Property Planned Community Development, effective as of the day and year first written above.

SEE ATTACHED SIGNATURE PAGES

SIGNATURE PAGE OF: Unit: _____

ADDRESS: _____

IN WITNESS WHEREOF, The foregoing Restated Condominium Declaration of Covenants, Conditions, & Restrictions for Downing Park Condominiums, A separately administered but contiguous part of the larger Mixed Property Planned Community Development of Downing Park, Drafted: January 30th, 2013 is hereby adopted and executed effective as of such date by:

[PLEASE CLEARLY PRINT THE FULL LEGAL NAME(S) & CURRENT ADDRESS OF ALL OWNERS OF THE ABOVE DESIGNATED UNIT

who certifies they are the legal owner(s) of the Unit designated above which was acquired by them by deed recorded in Book _____, Page _____ of the Transylvania County Registry, and that no other legal owner(s) thereof exist which are not otherwise listed above, and further that each owner so listed is of the age of legal majority or otherwise a legal entity causing this instrument to be executed by a duly authorized agent thereof.

_____ PRINT NAME OF OWNER (PERSON OR ENTITY)

_____ SIGN

BY ITS: _____ TITLE OF PERSON SIGNING FOR AN ENTITY

_____ PRINT NAME OF OWNER (PERSON OR ENTITY)

_____ SIGN

BY ITS: _____ TITLE OF PERSON SIGNING FOR AN ENTITY

_____ PRINT NAME OF OWNER (PERSON OR ENTITY)

_____ SIGN

BY ITS: _____ TITLE OF PERSON SIGNING FOR AN ENTITY

_____ PRINT NAME OF OWNER (PERSON OR ENTITY)

_____ SIGN

BY ITS: _____ TITLE OF PERSON SIGNING FOR AN ENTITY

ATTACH ADDITIONAL SIGNATURE PAGES IF NEEDED

EXHIBIT “RCD-A”
to
RESTATED CONDOMINIUM DECLARATION
of
Covenants, Conditions, and Restrictions
for
DOWNING PARK CONDOMINIUMS
A separately administered but contiguous part of the larger
Mixed Property Planned Community Development
of
DOWNING PARK
Drafted: January 30th, 2013

"THE “CONDOMINIUM PROPERTY”

BEGINNING at an iron pin set, said iron pin set being the eastern or southeasternmost corner that tract or parcel of land containing 0.52 acres, more or less shown as Common Area on the plat or survey entitled “Final Plat of: Downing Park” prepared by Associated Land Surveyors dated November 16, 2004 and recorded in Plat File 11, Page 391, Transylvania County Registry; AND RUNNING THENCE FROM SAID POINT AND PLACE OF BEGINNING, North 24° 08’ 26” West 121.89 feet to an iron pin set, said iron pin being the southwesternmost corner of Lot 10 on the Plat referred to hereinabove; thence along and with the southern boundary of said Lot 10, North 65° 51’ 41” East 94.00 feet to an iron pin set, said iron pin set being in the boundary of a cul-de-sac; thence in a counterclockwise direction along and with the arc of a curve having a radius of 35.00 feet, an arc length of 40.19 feet, a tangent of 22.64 feet, a chord angle of 65° 47’ 40”, chord bearing of South 56° 50’ 24” East, a distance of 38.02 feet to a point; thence in a clockwise direction along and with the arc of a curve having a radius of 25.00 feet, an arc length of 13.93 feet, a tangent of 7.15 feet, a chord angle of 31° 56’ 03”, a chord bearing of South 73° 46’ 12” East, a chord distance of 13.75 feet; thence in a counterclockwise direction along and with the arc of a curve having a radius of 112.50 feet, a arc length of 70.11 feet, a tangent of 36.24 feet, a chord angle of 35° 42’ 33”, a chord bearing of South 75° 39’ 26” East, a chord distance of 68.99 feet to a point; thence South 86° 29’ 17” East 96.05 feet to a point; thence in a counterclockwise direction along and with the arc of a curve having a radius of 65.00 feet, an arc length of 23.68 feet, a tangent of 11.97 feet, a chord angle of 20° 52’ 09” East, a chord bearing of North 76° 03’ 13” East, a chord distance of 23.54 feet to an existing iron pin, said existing iron pin being located in the northwestern corner of the property of (now or formerly) Lance as described in Deed Book 352, Page 358; thence along and with the northern or northwestern boundary of the property of (now or formerly) Hollingsworth as described in Deed Book 344, Page 659, South 65° 51’ 34” West 469.63 feet to the point and place of BEGINNING and being a tract or parcel of land containing 0.44 acres labeled “Condominium Tract” on the plat referred to hereinabove.

**EXHIBIT “RCD-B”
to
RESTATED CONDOMINIUM DECLARATION
of
Covenants, Conditions, and Restrictions
for
DOWNING PARK CONDOMINIUMS
A separately administered but contiguous part of the larger
Mixed Property Planned Community Development
of
DOWNING PARK
Drafted: January 30th, 2013**

The “Allocated Interests” of the Units

Identifiable Unit as Identified within the Plats and Plans	Total Number of Votes in the COA Allocated to each Identified Unit	Allocated Interest of each Identified Unit in the Common Elements, and each such Unit’s share of Common Expenses.
A	1	16.66%
B	1	16.66%
C	1	16.66%
D	1	16.66%
E	1	16.66%
F	1	16.66%
6 TOTAL UNITS	6 TOTAL COA VOTES	100% TOTAL ALLOCATED INTEREST WITHIN THE CONDOMINIUM

EXHIBIT “RCD-C”
to
RESTATED CONDOMINIUM DECLARATION
of
Covenants, Conditions, and Restrictions
for

DOWNING PARK CONDOMINIUMS
A separately administered but contiguous part of the larger
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ASSOCIATION CHARTER
of
DOWNING PARK CONDOMINIUMS
UNIT OWNERS’ ASSOCIATION

An Unincorporated Nonprofit Association
Formed Pursuant to N.C.G.S. § 59B

The North Carolina Uniform Unincorporated Nonprofit Association Act

WITNESSETH:

This Association Charter (the “Charter”) of Downing Park Condominiums Unit Owners’ Association (the “Association” or “COA”) is hereby made and entered into by and between the undersigned condominium unit owners for the purpose of forming and establishing an unincorporated nonprofit unit owners’ association to administer the affairs of the Downing Park Condominiums (the “Condominium”) pursuant to the laws of the State of North Carolina, including but not limited to the North Carolina Condominium Act (the “NCCA”) codified in Chapter 47C of the North Carolina General Statutes, as the same may be amended from time to time.

ARTICLE I. **NAME:** The name of the association shall be the:

“DOWNING PARK CONDOMINIUM OWNERS’ ASSOCIATION”

ARTICLE II. DURATION: The period of duration of the association is: **PERPETUAL**

ARTICLE III. CHARTER BACKGROUND & RELATED INSTRUMENTS:

- A. This Charter is attached as an exhibit to and executed and adopted together with and as part of the execution and adoption of certain additional instruments entitled “Restated Maser Declaration of Covenants, Conditions, & Restrictions for Downing Park” (the “RMD”); and “Restated Condominium Declaration of Covenants, Conditions, & Restrictions for Downing Park Condominiums” (the “RCD”).
- B. Notwithstanding the foregoing, this Charter is intended to be an independent legal instrument and shall be deemed effective upon its adoption by the unit owners of the Condominium.
- C. The terms and provisions of the RMD and RCD, to the extent not inconsistent with this Charter are incorporated herein by reference including without limitation the recital provisions thereof which provide a more detailed explanation about the history of the Condominium and the larger Planned Community Development of which it is one part.

ARTICLE IV. MEMBERSHIP:

- A. Every unit owner shall automatically be deemed a member of the unit owners' association. Ownership of a fee interest in a unit shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such unit ownership. Pursuant to G.S. 47C-3-101 of the NCCA, only unit owners may be members of the unit owners' association.
- B. Each member shall have such designations, rights, powers privileges, and obligations as provided for by law including without limitation the NCCA, and to the extent not inconsistent therewith, any applicable Declaration(s) of Condominium or any related instruments affecting the Condominium, as the same may be validly amended from time to time.

ARTICLE V. PURPOSES: The purposes for which the association is organized are:

- A. To serve in the capacity of a unit owners' association and to manage and administer the affairs of the Condominium as required by including without limitation the NCCA, and to the extent not inconsistent therewith, any applicable Declaration(s) of Condominium or any related instruments affecting the Condominium, as the same may be validly amended from time to time.
- B. To promulgate such rules and regulations and perform such deeds and acts as are deemed necessary to achieve the aforesaid purposes and to promote the health, safety and welfare of the members of this association; and
- C. To transact any lawful activity which a unit owner association acting pursuant to the NCCA, or otherwise which an association organized under the Uniform Unincorporated Nonprofit Association Act codified in Chapter 59B of the North Carolina General Statutes, may now or hereafter have.

ARTICLE VI. POWERS: The non-exclusive powers of the association in furtherance of its purposes set out hereinabove shall be:

- A. To have and to exercise any and all powers, rights and privileges; and to perform all of the duties and obligations which a unit owners' association organized under the NCCA and/or otherwise organized as an Unincorporated Nonprofit Association under the Uniform Unincorporated Nonprofit Association Act may now or hereafter have; and
- B. To have and to exercise any and all additional and lawful powers, rights and privileges, and to perform all of those additional and lawful duties and obligations which are necessary or desirable for carrying out the purposes set forth hereinabove and for protecting the lawful rights and interests of the Condominium membership that are established by or otherwise provided for within any applicable Declaration(s) affecting the Condominiums recorded in the Transylvania County Register of Deeds Office as the same may be validly amended from time to time
- C. The Association is hereby expressly empowered to delegate any or all of its powers to the Downing Park Master Association in the manner prescribed by NCCA 47C-2-120, and to the extent not inconsistent therewith, as otherwise provided for within any Declaration(s) of Condominium or any related instruments affecting the Condominium, as the same may be validly amended from time to time.
 - i. It is the express intent of this provision that the association be empowered and enabled (but not required) to vest its powers within the Downing Park Master Association for the non-exclusive purpose of enabling such Master Association to more efficiently manage and administer the affairs of the entire Planned Community Development, including the Condominiums as one part thereof, as a single governing body in accordance with applicable law and other governing instruments affecting the Condominiums to the extent not inconsistent therewith as the same may be validly amended from time to time.

ARTICLE VII. ASSOCIATION MANAGEMENT:

- A. The membership of the COA, having determined it to be in their best interest, hereby vests within, and delegates unto, the management responsibilities, duties, powers and authority of the COA within the Downing Park Homeowners' Association, Inc., to have and exercise the same on the COA's behalf as its Master Association thereof, and at all times in accordance with applicable law including without limitation the NCCA, and to the extent not inconsistent therewith, with the terms and provisions of the RMD, the RCD, and the Instruments thereof, including without limitation the HOA Bylaws, unless and until such time as this Charter is validly amended to revoke such authority at which time unless otherwise directed by any such amendment, the COA shall be managed in the manner provided for within any COA Bylaws adopted for such purpose, provided that such management shall at all times be in accordance with applicable law, including without limitation the NCCA, and to the extent not inconsistent therewith, in further accordance with the terms and provisions of any Declaration(s) of Condominium or any related instruments affecting the Condominium, as the same may be validly amended from time to time

ARTICLE VIII. NONPROFIT ASSOCIATION & DISSOLUTION:

- A. The COA shall not be operated for profit and no part of the net earnings of the association shall inure to the benefit of any officer, director or individual member(s) of the COA; and the assets thereof shall be distributed in accordance with applicable law in the event of any dissolution of the COA or termination of the Condominium.

ARTICLE IX. AMENDMENT: Amendment of this Charter shall require the affirmative Vote of unit owners having at least sixty seven (67%) of the total votes of the COA as allocated pursuant to the RCD. Any such Amendment shall be effective upon its recordation in the Transylvania County Registry.

IN WITNESS WHEREOF, these Articles have been and shall be deemed adopted by each unit owner otherwise executing the Restated Condominium Declaration to which these Articles are attached as an exhibit thereto and incorporated therein.