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THE THOMS ESTATE

2013 Amended and Revised

DECLARATION OF THE COMMUNITY COVENANTS

The Community: *The Thoms Estate*

Declarant: *The Gated Communities of Asheville LLC, a North Carolina limited liability company*

The Association: *The Thoms Estate Homeowner's Association, Inc.*

Prepared by and return to:

Gated Communities of Asheville, LLC
PO Box 18359
Asheville, NC 28814

INTRODUCTION TO THE THOMS ESTATE COMMUNITY

What is a "Planned Community"?

In a planned community, each purchaser has exclusive ownership to a lot, consisting of land and a residential dwelling. As a consequence of lot ownership, each purchaser automatically becomes a member of a property owners association. The association owns and manages the common areas, which are areas within the Thoms Estate set aside principally for the mutual use and enjoyment of all residents. As a member of the association, each lot owner has very specific rights and obligations with respect to the use and maintenance of the common areas. Common areas in a planned community may include, for example, roads, utility easements, recreational areas, and platted open spaces. There are many types of planned communities including traditional single family home developments, condominium developments, mixed use developments and cluster developments. The Thoms Estate is a single family home development.

DECLARATION OF THE COMMUNITY COVENANTS

In consideration of the property described on Exhibit A (the "**Property**") and for the advantage which The Gated Communities of Asheville, LLC, a North Carolina limited liability company, its successors and assigns ("**Declarant**") and future owners of lots or properties in the "Community" as defined below will receive from the sale and ownership of restricted land, Declarant, for itself and its successors and assigns, does hereby covenant and agree with all other persons, firms, entities or corporations now owning or hereafter acquiring any portion of The Thoms Estate, for full value received, and the "Owner," as hereinafter defined, covenants and agrees upon acceptance of a deed or deeds of conveyance to any of the Property is hereby subjected to the following covenants and restrictions as to the use and occupancy thereof, running with the land by whomsoever owned. Declarant, for itself and future Owners of the Property, hereby declares that all of the Property and any additional property as may be added by subsequent amendment hereto shall constitute the community of The Thoms Estate (the "**Community**"), and, in accordance with the terms and conditions hereof, is subjected to this Declaration of the Community Covenants for The Thoms Estate (this "**Declaration**") and any amendments thereto as well as the provisions of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes (the "**Act**").

All of the Property in the Community shall be enjoyed, held, transferred, sold, conveyed, leased, occupied, and used subject to the easements, restrictions, covenants, charges, liens, and conditions described herein, which are for the purpose of protecting the quality, values and desirability of the Community. This Declaration shall govern the development and use of the Property and shall be binding upon Declarant and the Owners of any portion of the Property, their respective heirs, successors, successors-in-title, assigns, and any other person or entity that has any legal, equitable, or beneficial interest in the Property, and will inure to the benefit of each Owner thereof. This Declaration shall also bind The Thoms Estate Homeowner's Association, Inc. (the "**Association**") as defined herein, and its successors and assigns. The omission of any right or reservation in this Declaration will not limit any other right or reservation by Declarant which is expressly stated in or implied from any other provisions in this Declaration.

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ARTICLE 1: OVERVIEW OF THE THOMS ESTATE COMMUNITY

Chapter 1: Development Plan for the Community

Chapter 2: Governance Plan for the Community

Chapter 3: Amenities Plan for the Community

Chapter 4: Transition Plan for Control of the Community

CHAPTER 1 DEVELOPMENT PLAN FOR THE COMMUNITY

A. The Development Plan

The first phase of the Property initially contains thirty (30) Lots¹, on approximately twenty-five (25) acres, as shown on the Site Plan², upon each of which one Dwelling³ may be constructed. Subject to Declarant's right of expansion as set forth below in Subsection C of this Article, Declarant projects that the Community will consist of an estimated one hundred thirty-two (132) Lots upon an estimated eighty-two (82) acres. The Property will also include "Common Area," as defined herein, including recreational facilities as may be developed, and such roads, sidewalks, utility systems, drainage or storm water systems, and other improvements serving the Property as are, from time to time, denominated as such in this Declaration or by Declarant on a Site Plan or in any deed, lease, use agreement, Supplemental Declaration or memorandum thereof filed in the Buncombe County, North Carolina, Register of Deeds Office (the "Registry"), and which are installed and existing.

All Lots and Dwellings within the Community will be and are restricted exclusively to Single-Family Residential Use⁴ and will be subject to the standards and restrictions set forth in this Declaration. Without the consent of any Person⁵, Declarant will have the right, during the Declarant Control Period, to make improvements and changes to all Common Area and to all such properties owned by Declarant, including, without limitation, (a) installation and maintenance of any improvements, (b) changes in location of the boundaries of any such properties owned by Declarant, and (c) installation and maintenance of any water, sewer, and/or other utility systems and facilities.

An "Owner" within the Community shall constitute one or more persons, including Declarant, its respective heirs, executors, legal representatives, successors and assigns, who or which own fee simple title to any Lot or Dwelling excluding, however, those persons having such an interest under a mortgage.⁶ In the event that any installment land sales contract covering any Lot or Dwelling is recorded, the Owner thereof will be deemed to be the purchaser under the Installment Sales Contract⁷ and not the fee simple title holder.

B. Designations of Properties Comprising the Community

The Community consists of parcels of property, referred to as Lots, which are intended for the exclusive use of the Owner and other Occupants⁸ of such parcel, as well as property that is intended for common use.

The property that is intended for common use shall be referred to as the Common Area and shall constitute any and all real or personal property now or hereafter deeded or leased to, or which is the subject of a use or easement agreement with, the Association, and wherein the property therein described is specifically

¹ "Lot" refers to any unimproved portion of the Property upon which a Dwelling will be constructed as such Lot is shown on the Site Plan. A parcel of land will be deemed unimproved and thus be considered to be a Lot rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete and reasonably permit habitation thereof. Upon such completion, such parcel and the Improvements thereon will collectively be considered to be a Dwelling for purposes of this Declaration.

² "Site Plan" refers to that certain subdivision plat or plats further described in Exhibit "A", and all re-subdivisions, modifications, revisions and additions thereto. Further, "Site Plan" will mean and refer to any subdivision plat recorded for any and added hereto pursuant to the provisions of this Declaration.

³ "Dwelling" refers to any improved property, including, but not limited to an Improved Lot, used as a Single-Family Residence, whether detached or attached, townhouse, or condominium unit.

⁴ "Single-Family Residential Use" shall mean the occupation or use of a single-family residence in conformity with this Declaration, including the definition of "single-family" in Article 2.

⁵ References in the Governing Documents to a "Person" or "Persons" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

⁶ If a Lot has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the "Governing Documents" as further defined herein.

⁷ An "Installment Sales Contract" is an instrument whereby the purchaser is required to make payment for such property for a period extending beyond nine (9) months from the date of the contract and where the purchaser does not receive title to such property until all such payments are made, although the purchaser is given use thereof.

⁸ An "Occupant" shall mean any Person, as defined herein, who has possessory rights in, or control over, certain property or premises; or one who acquires title by occupancy.

denominated to be a part of the Common Area. Said Common Area is more specifically delineated in Chapter 3 of this Article.

C. Additions of Property to the Community

Other property may become a part of the Community and, consequently, subject to this Declaration in the manners set forth below:

1. Additions by Declarant

During the "Declarant Control Period," as defined in Chapter 4 of this Article 1, Declarant shall have the right, without further consent of the Association or any other Owner, to bring within the plan and operation of this Declaration the whole or any portion of any property contiguous or nearly contiguous to the Property in the Community as described on Exhibit A, whether or not owned by Declarant. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions authorized under this Chapter shall be made by recording a "Supplemental Declaration," as defined in Chapter 2 of this Article I, and a Site Plan with respect to the land to be added hereto and which shall extend the operation and effect of this Declaration thereto, and which, upon recording of a Supplemental Declaration, shall constitute a part of the Property of the Community. Notwithstanding any provision of this Declaration to the contrary, Declarant, in its sole discretion, shall designate in the instrument adding properties to The Thoms Estate the permitted uses within such annexed properties, if different in kind and type from those restricted herein (including nonresidential), and any other unique development restrictions affecting the use and enjoyment of said land.

2. Withdrawal of Property by Declarant

Declarant reserves the right to amend this Declaration during the Declarant Control Period for the purpose of removing any unsold portion of the Property from the coverage of this Declaration, provided the withdrawal is not contrary to the overall, uniform scheme of development for the Property. Such amendment will not require the consent of any person or the Association. The right to remove properties from the general plan of development for The Thoms Estate does not apply to Common Areas already conveyed to the Association or otherwise irrevocably dedicated as provided in Chapter 3 of this Article unless such removal is in conformity with N.C. Gen. Stat. §47F-3-1 I2 of the Act.

3. Additions of Other Properties by Members

Upon approval by sixty-seven percent (67%) of the Qualified Voting Members⁹ pursuant to a duly held Referendum¹⁰ or represented, in person or by proxy, at a duly held meeting at which a quorum is present, the owner of any property contiguous or nearly contiguous to the Property who desires to add that property to the plan of this Declaration, and to subject it to the jurisdiction of the Association, may record a Supplemental Declaration with respect to the property to be added, which will extend the operation and effect of this Declaration to such property, thereafter constituting a part of the Property of the Community.

Any such Member approval shall be reflected in consent to such Supplemental Declaration executed by the President of the Association with an attached statement of the vote tallied, certified by the signature of the Secretary of the Association. During the Declarant Control Period, the addition of other properties in accordance with this Chapter shall require written consent of Declarant,

⁹ "Qualified Voting Member" refers to a person entitled to membership in the Association who is not otherwise disqualified from voting as provided in the Bylaws.

¹⁰ "Referendum" refers to the vote of Members by mailed written ballot on certain actions submitted to the Members by the Board of Directors, as more particularly set forth herein and in the Bylaws.

4. Additions by Merger

Upon merger or consolidation of the Association with another association, following approval by eighty percent (80%) of the Qualified Voting Members pursuant to a duly held Referendum or represented, in person or by proxy, at a duly held meeting at which a quorum is present, the Association's property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the existing property, together with the covenants and restrictions established upon any other properties as one plan.

No merger or consolidation will affect any revocation, change, or addition to the covenants established by this Declaration within the Property. Lands that become subject to this Declaration under the provisions of this Chapter may in the future be referred to as a part of the Property in the Community. During the Declarant Control Period, the addition of property by merger in accordance with this Chapter shall require written consent of Declarant, as well as the vote of the Members provided herein.

D. Owners' Interests Subject to the Plan of the Development

Every purchaser of a Lot and/or Dwelling will purchase such property, and every Mortgagee¹¹ and lienholder holding an interest therein will take title, or hold such security interest with respect thereto, subject to the plan of development for The Thoms Estate and this Declaration.

E. General Rights of Owners

Each Lot and Dwelling will, for all purposes, constitute real property which will be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred and encumbered the same as any other real property. Each Owner will be entitled to the exclusive ownership and possession of his or her property, subject to the provisions of this Declaration.

If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facility for the furnishing of utilities or other services or for the provision of support to any Lot or as further defined in Chapter 3 of Article 2 of this Declaration, lie partially within and partially outside of the designated boundaries of the Lot, any portions thereof which serve only such property will be deemed to be a part thereof. Likewise, any portions thereof which serve more than one such Lot or Dwelling or any portion of the Common Area will be deemed to be a part of the Common Area. The ownership of each property subject to this Declaration will include all of the right and interest in and to the Common Area as defined in this Declaration. Such right and interest will pass with each property as an Appurtenance¹² thereto, whether or not separately described, and with the applicable limitations, which will include, but not be limited to, membership in the Association.

Each Owner will automatically become a Member of the Association and will remain a Member thereof until such time as his or her ownership ceases for any reason, at which time his or her membership in the Association will automatically pass to his or her successor-in-title to his or her property.

F. Potential for Neighborhoods within the Community

In the event that Declarant submits additional property or any portion or portions thereof to the terms of this Declaration as "Neighborhood Areas," whether composed of Lots as herein contemplated or some other form of

¹¹ "Mortgagee" refers to one to whom property is mortgaged, commonly referred to as the lender.

¹² An "Appurtenance" is something that belongs or is attached to something else.

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use and/or subdivision, Declarant may establish one or more **Neighborhood Associations**¹³ for the Neighborhood Areas in order to promote their health, safety, and financial and social welfare, as well as to provide for the maintenance of Common Area related thereto, provided that such Owners will also be Members of the Association, and such Neighborhood properties and **Improvements**¹⁴ will be subject to the terms of this Declaration as imposed by the Supplemental Declaration with respect thereto.

Such Neighborhood Areas may be subject to **Neighborhood Declarations**¹⁵ which impose additional covenants, restrictions, rules and regulations with respect thereto, and which may authorize Neighborhood Associations to levy additional **Assessments**.¹⁶

G. Commencement & Completion of Construction; Remedy for Failure to Timely Construct

1. Timely Commencement and Completion of Construction Requirement

Construction of the residential Dwelling shall commence within twelve (12) months from the date the Lot is conveyed to an Owner by Declarant (the "Construction Deadline Date"), unless such period is shortened by Declarant in the contract to purchase the Lot inclusive of any conditions therein, which shortened construction deadline date shall control over the default time frame provision provided herein. For purposes of this Chapter, "Commencement of Construction" shall mean the following:

- a. The commencement of Improvements directly related to the principal Dwelling approved pursuant to the Architectural and Design Guidelines in Article 2 below; and
- b. The completion, at a minimum, of footings and foundation of the approved Dwelling.

2. Declarant's Repurchase Option Remedy for Failure to Timely Commence Construction

In the event that construction has not commenced, as defined above, as of the Construction Deadline Date, the Owner's failure to so commence shall be construed automatically as an offer by such Owner to Declarant to repurchase ("Offer to Purchase"), at Declarant's option, the Lot at the following price: (i) the contract purchase price (excluding all finance and closing charges related to the purchase) paid by such Owner, if the original purchaser, from the Declarant; or (ii) the contract purchase price paid by the original purchaser for value from the Declarant of the Lot (excluding all finance and closing charges related to the purchase) increased by the percentage increase, from the date of the closing of the original purchase from Declarant to the Construction Deadline Date, at three percent (3%), less the costs of removing all Liens and Encumbrances on the Lot and customary seller's closing costs.

In each instance where an Offer to Purchase is triggered by an Owner's failure to timely commence construction as provided above, Declarant shall determine in its sole discretion and on a case-by-case basis whether to exercise its option to repurchase at the purchase price provided above, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose. In the event that Declarant exercises its option to repurchase as provided in this Chapter, the Owner shall tender to Declarant a properly executed and notarized Deed to Declarant within ten (10) days of Declarant's written notice to Owner agreeing to repurchase the Lot, said tender to occur at a place and time specified in such notice. In the event that an Owner has purchased more than one Lot from

¹³"Neighborhood Association" refers to a corporation or an unincorporated association whose shareholders or members are comprised entirely of Owners of Lots, Dwellings, or other properties within a Neighborhood Area.

¹⁴"Improvements" constitute all structures, items, landscaping, site work, fixtures or other things placed upon a Lot.

¹⁵"Neighborhood Declaration" refers to any Instrument or document, and any amendments thereto, which is recorded with respect to any Neighborhood Area and which creates a condominium or horizontal property regime for such Neighborhood Area, creates an Association for such Neighborhood Area, and/or imposes covenants, conditions, easements and restrictions with respect to such Neighborhood Area.

¹⁶"Assessment" refers to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

Declarant in the same transaction for a single purchase price, each Lot shall be considered separately for the purpose of determining whether commencement of construction has occurred (i.e., if construction shall have been commenced on one of the Lots, it shall not be assumed to have commenced on the other Lot(s) owned by such Owner simply because it has been commenced on the one) and/or for the purpose of determining on which Lot or Lots Declarant agrees to exercise its option to repurchase. In the event that an Owner has purchased more than one Lot from Declarant at the same transaction for a single purchase price (which purchase price has not been otherwise allocated between each of the Lots purchased by such Owner) the original purchase price shall be apportioned between the two or more Lots originally purchased by such Owner in the same transaction, based upon the acreage of each of such Lot (for example, in the event that two Lots have been purchased for a total purchase price of \$120,000, and one Lot contains 2 acres and one Lot contains 1 acre, the 2 acre Lot shall be valued at \$80,000, and the 1 acre Lot shall be valued at \$40,000). The option to repurchase provided for in this Chapter shall automatically expire, if not sooner exercised by Declarant, upon the earlier of (i) Commencement of Construction; or (ii) five (5) years from the date of the first conveyance of such Lot from Declarant to an Owner other than Declarant. So long as the Lot remains unimproved, the Repurchase Option provision set forth in this Article 1 remains in effect for the period specified above.

Notwithstanding the above, subject to the Right of First Refusal in Article 2, Chapter 1, subsection L below, if an Owner conveys an unimproved Lot during the five-year time period specified above to anyone other than Declarant, the twelve (12) month Construction Deadline Date shall begin anew and recommence as of the date of said closing. Notwithstanding the above, if the Declarant reacquires any unimproved Lot, the twelve (12) month Construction Deadline Date shall commence as of the re-conveyance of the Lot to another Owner.

Declarant reserves the express right to modify or amend the periods for Commencement and Completion of Construction as Declarant in its sole and absolute discretion may determine. Declarant's refusal to exercise its option to repurchase as provided above shall not be deemed to waive any other rights or remedies that Declarant may possess as provided in this Declaration.

CHAPTER 2 GOVERNANCE PLAN FOR THE COMMUNITY

A. Declarant – The Gated Communities of Asheville, LLC, a North Carolina limited liability company.

Declarant has established the vision for the Community and, through governing documents that are further defined below, has set forth the standards and principles that will guide the Community during the initial period of development and sale and thereafter. In exercising any right or easement granted or reserved to Declarant hereunder, such right or easement shall be deemed to extend to its duly authorized directors, officers, agents, employees and contractors.

Declarant has reserved various rights in the "Governing Documents," as defined below, commonly known as **Special Declarant Rights**,¹⁷ with respect to development and administration of the Community that may be exercised only during the "Declarant Control Period" as defined in Chapter 4 of this Article I.

1. Special Declarant Rights

Notwithstanding any other language or provision to the contrary in the Governing Documents, as defined in this Article, Declarant retains for the duration of the Declarant Control Period the following Special Declarant Rights:

- a. to construct and/or complete Improvements indicated on plats and plans filed with this Declaration or any supplemental or amended Declaration;
- b. to add properties to the Community as provided in this Article I;
- c. to designate, withdraw or alter Common Area as provided in this Article I;
- d. to redesignate a previously designated Lot as an easement or right of way for access and/or utilities to property whether or not owned by Declarant and whether or not outside the Community and regardless of the use of the benefiting parcel;
- e. to remove properties from the Community as provided in this Article I;
- f. to maintain sales offices, management offices, signs advertising the Community and models;
- g. to use or grant easements through the Common Area for the purpose of accessing properties or making Improvements in the Community or areas outside the Community, whether or not said areas are added to the Community and regardless of the use of the benefiting parcel;
- h. to use or grant easements, without limitation, that are reserved to Declarant in this Declaration;
- i. to designate (or redesignate) streets within the Community as private and maintained by the Association or Neighborhood Association or for dedicated public use to be maintained by a **Governmental Entity**;¹⁸

¹⁷ "Special Declarant Rights" shall mean the rights reserved for the benefit of Declarant that may be exercised only during Declarant Control Period.

¹⁸ A "Governmental Entity" shall mean any federal, state or local government or agency thereof with jurisdiction over a particular subject matter within the Community.

- j. to make the Community part of a larger planned community or group of planned communities;
- k. to make the Community subject to a master association;
- l. to appoint or remove any one or more Members of the Board of Directors of the Association during the Declarant Control Period as provided in the "Bylaws," as defined in this Article;

Every grantee of any interest in the Community, by acceptance of a deed or other conveyance of such interest, agrees that the above reservation of rights by Declarant are reasonable in light of Declarant's substantial expenditures in the Community, including the creation of infrastructure and amenities, and the reasonable investment return expectations of Declarant.

2. Voting Agreement and Proxy

By acceptance of a deed or other conveyance of a real estate interest subject hereto, each Owner does hereby grant, and, if further required, does agree to vote in a manner to provide, to Declarant all voting rights and other corporate powers specifically reserved to and designated for Declarant under this Declaration.

In connection with this voting agreement, each Owner appoints Declarant as Proxy¹⁹ for such Owner with full power of substitution to vote for the Owner on all such matters on which the Owner may be entitled to vote, and with respect to which there is a reservation or designation of voting rights in Declarant under this Declaration, and with all powers which the Owner would possess if personally present at any meeting of Owners.

Such appointment will be, upon an Owner's acceptance of a deed or other conveyance and without the necessity of further action by Declarant or the Owner, an irrevocable power coupled with an interest. Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Owner is filed in the Registry. This irrevocable proxy will automatically terminate on the date Declarant's voting rights terminate. The provisions of this voting agreement and proxy are in addition to, and not in substitution of, all rights of Declarant herein provided, which will run with the Property.

B. The Association

1. The Thoms Estate Homeowner's Association, Inc.

Declarant has established the Association as the primary entity responsible for managing The Thoms Estate in accordance with the Governing Documents defined below. The purpose of the Association is to maintain, enhance and protect the Common Area and common interests of the Community. Each Member of the Association pays "Assessments," as further defined in Chapter 3 of Article 3, and those Assessments are used to pay the expenses of the Community. Examples of such expenses are maintenance of entrance monuments, landscaping for the common area, amenities such as a pavilion or walking trails, insurance for commonly-owned structures and areas, mailing costs for newsletters or other correspondence, fees for a management company or on-site manager, or any other item delineated in the Governing Documents or agreed to by the Board of Directors. Unless the Governing Documents or the laws of the State of North Carolina provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership of the Association.

2. The Board of Directors of the Association

¹⁹ A "Proxy" is the grant of authority by which a person is so authorized.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Area, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the Bylaws as defined below.

C. Governing Documents

By purchasing into a community association, the homeowner agrees that he or she and his/her guests, tenants and invitees will abide by the community's pre-established rules. The homeowner will live close to his or her neighbors, share common facilities, and voluntarily sacrifice certain freedoms, all for the cause of protecting communal property values and reducing nuisances. Reasonable restrictions, consistently enforced over time, will preserve and enhance the net value of the community and maintain a higher quality of life for residents. Such documents, referred to in this Declaration as the "Governing Documents," include this Declaration and other documents described below, as they may be amended.

Declaration of Covenants (this "Declaration")

These covenants for the Community create obligations that are binding upon the Association, all present and future Owners of property in the Community. These covenants, because they relate to the land, bind successor grantees indefinitely. Unless properly withdrawn by the Declarant as provided in this Declaration, no part of the Property can be conveyed without the controlling impact of the covenants. This Declaration will be recorded²⁰ in the Buncombe County Registry.

A Supplemental Declaration (a "Supplement")

A Supplement may establish additional property to this Declaration, create easements over the property described in the Supplement, impose additional obligations or restrictions on the property described in the Supplement, or designate other areas as described in this Declaration. Any such Supplement will be recorded in the Buncombe County Registry.

Resolutions

The Board may adopt corporate resolutions, authorizing a particular act, transaction, or appointment of the Association and regulate the operation and use of the property owned or controlled by the Association. Such resolutions are not recorded.

The Articles of Incorporation (the Articles)

The Articles of The Thoms Estate Homeowner's Association, Inc., as they may be amended, establish the Association as a non-profit corporation under North Carolina law and set forth the basic terms of the corporation's existence, including the type of members and the purposes and duration of the corporation. The Articles will be filed in the Office of the North Carolina Secretary of State and a copy maintained by the Secretary of the Association.

²⁰ All references in the Governing Documents to a "Recorded" legal instrument, or to a "Recordation" or the "Recording" of a legal instrument, shall refer to an instrument filed or the filing of a legal instrument in the Registry, or such other place designated as the official location for filing documents affecting title to real estate in Buncombe County in order to make them a matter of public record.

The Bylaws of the Association (the "Bylaws")

The Bylaws contain administrative provisions adopted by the Board or the Association membership for its internal governance of affairs such as, for example, voting, elections, and meetings. The initial Bylaws are attached to this Declaration as Exhibit B and will be recorded as such in the Buncombe County Registry.

Future amendments to the Bylaws are not required to be recorded in the County Registry; however, copies of any such amendments shall be kept by the Secretary of the Association.

Architectural and Design Guidelines

Architectural and Design Guidelines may be established and/or amended by the Declarant and/or the Board, to apply to all development and construction activities within the Community, including, for example, structures erected on the Property and the landscaping of the Property. These guidelines will not be recorded.

Initial Rules and Regulations (the "Rules and Regulations")

The Rules and Regulations are adopted by the Association to regulate the use of the Property as well as activities and conduct within the Community. The initial Rules and Regulations are attached to this Declaration, as Exhibit C, to be recorded in the Buncombe County Registry. Copies of any amendments to the Rules and Regulations shall not be recorded but shall be kept by the Secretary of the Association.

1. Declaration

a. Amendments by Declarant

During the Declarant Control Period, Declarant may amend this Declaration by an instrument in writing recorded in the Registry without the approval of any Owner or Mortgagee, subject to the following conditions:

- i. In the event that such amendment has a material adverse effect upon any Owner's vested rights to use or develop his Lot for single-family residential purposes or adversely affects the title to any Lot or Dwelling, such amendment will be valid only upon the written consent thereto by fifty percent (50%) of the Qualified Voting Members affected thereby; and
- ii. In the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment will be valid only upon the written consent thereto of all such Mortgagees so affected.

Any amendment made pursuant to this Chapter will be certified by Declarant as having been duly approved by Declarant and by such Owners and Mortgagees if required, and will be effective only upon it being recorded in the Registry or at such later date as will be specified in the amendment itself. Furthermore, during the Declarant Control Period, this Declaration may be amended solely by Declarant recording an amendment in the Registry if such amendment is necessary, in the reasonable determination of Declarant:

- to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which would be in conflict therewith;

- to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this Declaration;
- to enable such lender or purchaser to make or purchase mortgage loans on any properties subject to this Declaration to enable, if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; or
- to enable any governmental agency or reputable private insurance company to insure mortgages on the Property subject to this Declaration.

Each Owner, by acceptance of a deed or other conveyance of a Lot or Dwelling, agrees to be bound by amendments permitted by this Chapter and further agrees that, if requested by Declarant, such Owner will consent to such amendment.

b. Amendments by the Association

Amendments to this Declaration, other than those otherwise authorized by this Chapter, will be proposed and adopted in the following manner:

i. Notice

Notice of the subject matter of the proposed amendment will be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and will be delivered to each Member of the Association.

ii. Resolution to Amend and Vote to Approve

At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or Members of the Association. Such amendment must be approved by sixty-seven percent (67%) or more of the Qualified Voting Members of the Association, by a duly held Referendum or at a duly held meeting of Members called for the purpose of approving a proposed amendment, which percentage will also constitute the quorum required for any such meeting; provided, however, that:

1. any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee; and
2. during Declarant Control Period, such amendment must be approved by Declarant.

iii. Execution and Delivery of Approved Amendment

The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration pursuant to this Chapter will be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President or Secretary of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement will state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration will become effective only when recorded in the Registry or at such later date as may be specified in the amendment itself.

iv. Required Approval of Declarant

Notwithstanding anything contained in this Chapter to the contrary, no amendment under this Declaration shall be made, nor any vote therefore effective, if the result or effect thereof would have a material adverse effect upon Declarant or any right, limitation, approval or easement of Declarant without the prior written approval of Declarant.

c. Duration

The provisions of this Declaration will run with and bind title to the Property, will be binding upon and inure to the benefit of all Owners and Mortgagees, and will be and remain in effect for a period of thirty (30) years from and after the date this Declaration is recorded in the Registry, provided that rights and easements which are stated herein to have a longer duration will have such longer duration.

Upon the expiration of said thirty (30) year period, this Declaration will be automatically renewed for successive ten (10) year periods. The number of ten (10) year renewal periods will be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there will be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period or the last year of any ten (10) year renewal period, eighty percent (80%) or more of the Qualified Voting Members of the Association, by a duly held Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required, approve the termination of this Declaration at the end of the then current term.

In the event the Association votes to terminate this Declaration, an instrument evidencing such termination will be recorded in the Registry, such instrument to contain a certificate wherein the President or Secretary of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration will run with and bind title to the Property as provided hereby.

2. Rules and Regulations

Subject to the provisions hereof, the Board may establish reasonable Rules and Regulations concerning the use of Lots, Dwellings and the Common Area and facilities located thereon. In particular, but without limitation, the Board may promulgate, from time to time, Rules and Regulations that will govern activities that may, in the judgment of the Board, be environmentally hazardous, such as, for example, the application of fertilizers, pesticides and other chemicals.

The Association will furnish or publish copies of such Rules and Regulations, and amendments thereto, to all Owners prior to the effective date of such Rules and Regulations and amendments thereto. The Association shall have "published" such Rules and Regulations, or amendments thereto, if such documents are delivered to the addresses of each member on file with the Secretary of the Association and/or affixed to a conspicuous area at the community office of the Association. Such Rules and Regulations will be binding upon the Owners and Occupants until and unless any rule or regulation is specifically overruled, cancelled, or modified by the Board or any rule or regulation is disapproved by sixty-seven percent (67%) or more of the Qualified Voting Members of the Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting.

Any action by the Board to adopt, overrule, cancel or modify any rule or regulation, or any vote of Members disapproving any rule or regulation, will not be binding upon the Owners and Occupants until and unless the same is approved in writing by Declarant during the Declarant Control Period.

3. Procedures for Enforcement of Governing Documents

Except with respect to the failure to pay Assessments, as further defined in Chapter 3 of Article 3, as allowed by law, the Board will not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other Occupant of the Community for violations of this Declaration, Bylaws, or the Rules and Regulations of the Association, unless and until the following procedure is followed:

a. Demand to Cease and Desist

Written demand to cease and desist from an alleged violation of this Declaration, Bylaws and/or Rules and Regulations will be served by Declarant, or its designee, or the Architectural Review Committee as hereinafter defined, or its designee, upon the Owner and/or person responsible for such violation specifying: (i) the alleged violation; (ii) the action required to abate the violation; (iii) proposed sanctions, including, but not limited to, fines, corrective action, and/or suspension of community services ("Penalties") and (iv) a time period of not less than ten (10) days during which the violation may be abated without further sanction or Penalties if such violation is a continuing one, or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws, or of the Rules and Regulations of the Association may result in the imposition of sanctions after notice and hearing ("Notice of Violation"). If the Owner wishes to appeal or challenge this initial Notice of Violation, the Owner must do so by filing an appeal in writing with the Secretary of the Association or his designee within ten (10) days of receipt of notice.

b. Notice of Hearing

If an appeal is taken or if the violation continues past the period allowed in the demand for abatement without Penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice (in accordance with the provisions of this Declaration) of a hearing to be held by the Board in executive session (the "Hearing"). The Board shall have the right to appoint a separate adjudicatory panel as provided in N.C. Gen. Stat. §47F-3-107.1 and delegate to such panel the authority regarding violations, fines and Penalties as provided herein. The notice will contain:

- i. the nature of the alleged violation;
- ii. the time and place of the Hearing, which time will not be less than ten (10) days from the giving of the notice; an invitation to attend the Hearing and produce any statement, evidence and witnesses on his/her behalf; and
- iii. the proposed Penalties to be imposed, including, but not limited to, fines, corrective action, and/or suspension of community services.

Failure to appeal the initial Notice of Violation as provided in subparagraph (a) within the ten (10) day period shall conclusively determine the Owner's or Member's fault pertaining to the violation and acceptance of the Penalties specified in the notice without the need for any hearing on the matter.

c. Hearing

The Hearing will be held in executive session of the Board pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. In the event that an appeal is timely perfected, prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice together with a statement of the date and matter of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the Hearing and the sanction imposed, if any. It is anticipated that in a community such as The Thoms Estate, where personal interaction is encouraged and invited, that members of the Board or members of the adjudicatory panel referenced above, if applicable, may, in advance of the Hearing specified in this subsection, have contact with witnesses or see information related to the alleged violation in question. So long as the member of the Board or member of the adjudicatory panel, if applicable, does not have a fixed bias arising prior to the Hearing about the outcome of the appeal, then such person may continue to serve on the appeal panel. After considering the argument of the alleged violator, the appeal panel will have seven (7) days from the date of the Hearing in which to issue its decision. Said decision shall be in writing and include the panel's conclusion regarding the alleged violation(s). Should the appeal panel decide the violation(s) is/are valid and enforceable; the notice shall include the Penalties, if any, including the amount of fines being imposed as of the date of the written decision and any other sanctions, including corrective action and/or suspension of services. A fine, not to exceed the limits in N.C. Gen. Stat. §47F-3-107.1, may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by Liens under N.C. Gen. Stat. §47F-3-16.

If satellite or cable is provided to the Members and paid for with use of Association fees, the Association shall have the right to stop service as an element of the Penalties provided above.

Any person, including a builder or subcontractor, working on behalf of an Owner may be an alleged violator for purposes of this Chapter, whose services and access to the Community may be denied upon notice and hearing as provided above.

d. Mediation

Notwithstanding the above, the Association, by and through the Board, may at any point in the above procedure engage a mediator to facilitate a resolution to the dispute with the Member(s) and/or other alleged violator. Costs of the mediation, if any, shall be split evenly between the Association and the Member(s) and/or other alleged violator. Failure to participate in a mediated resolution effort shall permit the Board to immediately request a Notice of Hearing if such notice has not heretofore been mailed or delivered.

4. Penalties for Non-Compliance with the Governing Documents

If any Owner or his or her guests, contractors, tenants or invitees fail to comply with the Governing Documents, then that particular Owner will be subject to the consequences of noncompliance set forth in this Declaration. The Board will have the power to impose all or any combination of the following Penalties:

- a. Fines;
- b. Owner's loss of his or her right to use the Common Area;

- c. Suspension of Owner's right to vote as a Member of the Association;
- d. Prevention or cessation by the Board of noncompliant behavior, actions or performance on the Owner's property by self-help by the Board or requiring action by Owner; and/or
- e. Suspension of community services or the right of access within the Community to violating contractors as stated above.

5. Enforcement of the Governing Documents

All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and Persons claiming under them. The Board, on behalf of the Association, shall have sole discretion in its decision to pursue action to enforce the covenants, standards and rules set forth in the Governing Documents, but the Board shall not be arbitrary or capricious in its decisions.

Enforcement of the covenants and restrictions set forth in the Governing Documents shall inure to the benefit of the Declarant, the Association and/or any Owner, and shall be by any proceeding at law or equity against any Person or Persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or, in addition to the lien enforcement rights set out in the Act, by any appropriate proceeding at law or equity against the land, to enforce any Lien created by the Governing Documents. The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or the Association, if any, to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement. Any Person, including Declarant and/or the Association, entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover reasonable attorney's fees as a part of such action as allowed by the Act.

CHAPTER 3 AMENITIES PLAN FOR THE COMMUNITY

A. Common Area

1. Designation of Common Area

Common area is (i) property set aside for and devoted (subject to Special Declarant Rights) to the use and enjoyment of Association Members and their respective guests and/or invitees; (ii) property which the Association now owns or may own or have an easement interest in the future; and (iii) not including any Lot. The designation of any land and/or Improvement as a Common Area will not mean or imply that the public at large acquires any easement of use and enjoyment therein (except as provided elsewhere in these Covenants).

Common Area may include, for example, the Community's roads, streets, road and street shoulders, walkways, sidewalks, leisure trails, bike paths, gazebos, gates, entry walls and features, street lighting, signage and such maintenance and drainage areas, storm water features, easements, and ponds located within the Community, which are not maintained by a Governmental Entity.

2. Conveyances of Common Area

All parcels of land shown as Common Area on the Site Plan, or which are otherwise identified in writing as Common Area and require a conveyance to vest in the Association ownership and use thereof, will be deeded, or an easement will be granted with respect thereto, by Declarant at any time prior to the expiration of the Declarant Control Period within the sole discretion of Declarant. Upon any such conveyance or grant of easement, if such is required, or as of the date of the completion of any initial Improvements thereon by Declarant, or as of the date such Common Area is functionally ready for use and enjoyment, whichever date is earlier, the Association, subject to the Special Declarant Rights, will immediately become responsible for all maintenance, repair and replacements of said Common Areas, the operation thereof, and such additional construction of Improvements as may be authorized by the Board.

Any Improvements will be deemed completed on the later of either: the date all required certificates or permits of occupancy or use are issued therefor, or the date such Improvements may be used in the manner and for the purposes for which they are constructed. It is the purpose of this provision to provide that the Association will be responsible for all maintenance of Common Area when the specific property in question is functionally ready for use and enjoyment, notwithstanding the fact that Declarant is not obligated to deed or grant an easement for such properties until sometime prior to the expiration of the Declarant Control Period. Any such conveyance by Declarant will be conveyed subject to:

- a. All restrictive covenants filed in the Registry at the time of conveyance;
- b. The right of access of Declarant, its successors and assigns, over and across such property for vehicular, pedestrian and/or utility use;
- c. The right of Declarant, during Declarant Control Period, or the Association, after expiration of Declarant Control Period or as otherwise delegated by the Declarant, and the "Architectural Review Committee," as defined in Chapter 2 of Article 2, to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Area prior to the commencement of such activities or location of any object therein;
- d. All utilities and drainage easements; and

- e. All reserved rights set forth in the provisions of this Declaration.

Notwithstanding anything in the foregoing to the contrary, Declarant will not be required to so convey the Common Area where such conveyance would be prohibited under agreements to which Declarant is a party on the date of establishment of such Common Area, but, in such case, Declarant will be allowed to postpone such conveyance, without a penalty, until such time as said prohibition terminates, is released, or is nullified. PROVIDED FURTHER before the conveyance by Declarant as referenced above, Declarant has the right to remove, withdraw or alter any portion of the property denoted as "Common Area" on a Site Plan or other written instrument (including, but not limited to, any unrecorded plat, survey, drawing, sketch or site plan), including, but not limited to, road right of ways, and subject said area to its exclusive dominion whether for future sale or to build upon, without the need for the consent of any person or Association. The right to remove, withdraw or alter any Common Area prior to conveyance includes the right to enlarge, reduce and/or modify the boundaries of such property. Common Areas do not include those areas denoted as "Future Development" or as "Reserved" or those areas not labeled on a Site Plan.

In consideration of the benefits accruing to the Association and to the Members under this Declaration and in consideration of the covenants and agreements of Declarant hereunder, the Association hereby agrees to accept title to any property, or any interest in property, now or hereafter conveyed to it pursuant to the terms and conditions of this Declaration.

Upon the due recording of a deed, easement, lease or other recorded instrument or memorandum of conveyance to the Association, title or such other interest in property conveyed will vest in and to the Association without the necessity of any further act, deed or approval of any person, including the grantor, lessor and/or the Association.

3. Roads; Street Disclosure Statement

As of the recording of this Declaration, Declarant is in the stages of developing The Thoms Estate. At this stage, Declarant intends that the roadways within the Community shall be privately maintained and not intended to be developed for takeover by the North Carolina Department of Transportation (the "DOT"), the City of Asheville (the "City") or any other Governmental Entity. As private roads, the roadways within The Thoms Estate shall be constructed by Declarant to the minimum standards required by the City of Asheville, which may include variations from the City's standard specifications. The schedule and completion of the construction and the design of said roads shall be within the sole discretion of Declarant. As private roads, the maintenance of same shall be borne, through Member Assessments as provided in Article 3, by either the Association or a Neighborhood Association as directed in writing by Declarant. This disclosure is given in accordance with N.C. Gen. Stat. §136-102.6. Notwithstanding the above, Declarant reserves the right to designate or re-designate any street within the Community as dedicated for public use and offer same for maintenance by a Governmental Entity, including, but not limited to, the City. In that event, Declarant shall certify at the time of acceptance by the applicable Governmental Entity that the right of way and design of the street in question has been approved by said entity and that the street has been or will be constructed to such Governmental Entity's standards. Notwithstanding the above, as a condition of the City's approval of the Community, as part of its zoning code, access to the public on the private roads shall be accommodated to the extent specified in Chapter 4 of Article 2.

B. Common Expenses

The term "Common Expenses" refers to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration for the maintenance, repair, improvement, and management of the Common Area, and for the maintenance, repair, improvement and management of other property, whether owned by the

Association or not and set forth in this Declaration or incorporated herein by a Supplemental Declaration, for which the Association has responsibility.

Common Expenses include, for example, operating reserves and reserves for repair and replacement of capital items within the Common Area as the Board finds necessary and/or appropriate.

CHAPTER 4 TRANSITION PLAN FOR CONTROL OF THE COMMUNITY

A. Declarant Control Period

The Declarant Control Period refers to the time period commencing on the date this Declaration is recorded and ending the earlier of:

- **December 31, 2027; or**
- **Three (3) months** after the conveyance of property by Declarant in the ordinary course of business to persons other than a successor Declarant, said property representing **ninety-five percent (95%)** of the total number of Lots intended for development on all of the Property as set forth in a Supplemental Declaration executed and recorded in the Registry by Declarant on or before **December 31, 2027**, making specific reference to this Declaration; or
- **Three (3) months** following the date Declarant surrenders its authority to appoint directors of the Association by an express amendment to this Declaration executed and recorded by Declarant.

THE FUTURE OWNERS OF LOTS AND/OR DWELLINGS IN THE THOMS ESTATE ACKNOWLEDGE, BY THEIR PURCHASE OF SAID PROPERTY, THE REASONABLENESS OF THE ABOVE TIME PERIODS.

B. Transition Committee; Other Committees

During the Declarant Control Period, Declarant or the Association, with Declarant consent, may establish a **Transition Committee** consisting principally of non-Declarant-related property Owners within The Thorns Estate, which committee may be authorized to do one or more of the following tasks:

- Review and recommend to Declarant and/or the Board budgetary items, such as road or amenity maintenance or reserves;
- Review and recommend to Declarant and/or the Board changes to this Declaration, the Bylaws, the "Architectural and Design Guidelines," as defined in Chapter 2 of Article 2, and/or Rules and Regulations;
- Review and recommend to Declarant and/or the Board anticipated conveyances of property to the Association;
- Review and recommend any potential assignments of Declarant interests to the Association; and/or
- Review and recommend to Declarant and/or the Board any other matter that will create a smooth transition from Declarant-appointed Board members to non-Declarant-elected Board members.

During the Declarant Control Period, Declarant reserves the right to assign some of the functions, tasks or duties referenced above or delineated in Article 2 to one or more committees, including, but not limited to, a Neighborhood committee. Said assignment shall be in writing and a copy of which shall be provided to the Secretary of the Association. With the consent of Declarant during the Declarant Control Period, the Board may create additional committees to handle or advise on some of the functions of the Association, which committee structure and authority shall be made a part of the Board's Rules and Regulations.

C. Creation of New Board

Upon the expiration of the Declarant Control Period, election of the Board will pass to the Owners as provided in the Bylaws. Following the election of a new Board of Directors, Declarant will deliver all books, accounts and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has in its possession.

ARTICLE 2: STANDARDS FOR THE THOMS ESTATE COMMUNITY

Chapter 1: Owners' Covenants and Restrictions

Chapter 2: Architecture, Design, Aesthetic and Landscaping Standards

Chapter 3: Maintenance

Chapter 4: Permits

Chapter 5: Easements

CHAPTER 1 OWNERS' COVENANTS AND RESTRICTIONS

A. Building Restrictions

Owners are obligated to adhere to the restrictions imposed in the Governing Documents. If they do not do so, a court can force them to comply.

Except as may be otherwise set forth in this Declaration, in the Site Plan, in any Supplemental Declaration, in any agreement with Declarant, or by specific deed restriction, the following building restrictions will apply with respect to the properties subject to this Declaration:

1. Number of Structures²¹ on Lots

Unless otherwise provided in a Supplemental Declaration, no structure on a Lot will be constructed other than one (1) Single-Family Dwelling and one (1) accessory building, which may include a detached private garage, servant's quarters, or guest house, provided a single structure may incorporate all of said uses and provided such Dwelling or accessory building does not overcrowd the Lot and is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building. A guest suite or like facility may be included as part of the main building or accessory building, but said suite may not be rented or leased except as part of the entire premises including the main Dwelling in accordance with the provisions of this Declaration. Notwithstanding the above, all of the above-mentioned structures shall be subject to the approval of the Architectural Review Committee, as hereinafter defined, and conformity with the Architectural and Design Guidelines, and Rules and Regulations as set forth in Chapter 2 of this Article.

2. Square Footage, Garage and Height Requirements

Unless otherwise provided in a Supplemental Declaration, all residential Dwellings constructed on the lots shall have a minimum of two thousand (2,000) square feet of **Heated Living Space**²² including a minimum of one thousand six hundred and fifty (1,650) square feet of such Heated Living Space required on the first floor alone (excluding all other floors). Each Dwelling shall have as a minimum a 2-car garage (except for Phase 2, the Cottages, which shall have as a minimum a 1-car garage), unless otherwise provided in the Governing Documents, including the ARC Guidelines, and shall not exceed forty feet (40') in height as measured from ground elevation or the City of Asheville zoning allowance on height, whichever is more restrictive. Even though there is no maximum square footage requirement set forth in this Chapter, approval by the Architectural Review Committee as hereinafter defined, may be conditioned upon a determination, made in its sole discretion or pursuant to design criteria, that the Dwelling will not crowd the Lot and not be aesthetically out of character with the Lot's surroundings. An Architectural Review Committee (the "ARC") and design criteria will be established pursuant to Chapter 2 of this Article.

3. Completion of Improvements; Penalty

The exterior of all Dwellings and other structures constructed upon any Lot must be completed within fifteen (15) months after the construction of same shall have commenced (which for purposes of this subsection only shall mean the beginning date of the installation of the structural footings), except where such completion is impossible or would result in great hardship to the Owner or builder thereof due to

²¹ A "Structure" shall mean anything artificially erected or installed on or under a Lot, including, but not limited to, any building, outbuilding, lampposts, driveway lights, fence, wall, swimming pool, tennis court, detached antennae, satellite dishes, mailboxes, fuel tanks, dog lots, or play sets.

²² "Heated Living Space" is defined as being the enclosed and covered areas within the Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyard, greenhouses, atriums, storage areas, attics and basements; and a minimum of one thousand six hundred and fifty (1,650) square feet of such conditioned space shall be required on the first floor alone (excluding all other floors) on any and all Dwellings in the Community.

strikes, fires, national emergencies or natural calamities. No Dwelling under initial construction shall be occupied until construction is completed and all necessary approvals of any governmental authorities have been obtained. If construction commences as defined above and is not timely completed within the 15-month period provided above and is not otherwise excused for the reasons noted above, the Association (with the written consent of the Declarant during the Declarant Control Period) has the right, to the extent allowed by law, to assess against the Owner a late penalty equal to 5/12ths the annual assessments (five months times the then current equivalent of monthly HOA dues (assessments) per 30-day period that said Dwelling exterior is not completed, which penalty may be enforced by the lien enforcement provisions set forth in the Act. Said penalty may be prorated for the period of a noncompliance falling short of a 30-day cycle.

It is the intent of this provision that the penalties so applied will fund the operations of the HOA, build capital reserves for the Community, and be used to beautify Common Areas of the Community.

4. Temporary Structures; Mobile Homes and Modular Homes

No structure of a temporary character shall be placed upon any portion of a Lot at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any Single-Family Residence which are approved in writing by the ARC. Basements or partially complete Single-Family Residences will be considered temporary and may not be inhabited. Mobile homes, trailers, recreational vehicles, and tents may not, at any time, be used as temporary or permanent residences or be permitted to remain on any portion of a Lot after completion of construction thereon as herein above provided. **Modular Dwellings in the Architectural and Design Guidelines, as hereinafter defined, are not permitted within the Community. Panelized construction as defined by the ARC in the Design Guidelines may be permitted subject to ARC written approval.**

5. Building Envelope; Green Space

As shown on a Site Plan or as otherwise provided in writing by Declarant, each Lot shall consist of a building envelope within which all Improvements, including the Dwelling and one (1) accessory building as referenced in subparagraph 1 above, shall be built (the "**Building Envelope**"). On each Lot outside of the Building Envelope, unless modified by Declarant in writing, there shall be additional land that shall be limited to an Owner's passive recreational and/or social uses, including, but not limited to, gardening (the "**Green Space**"). It is the purpose of this subsection and the intent of Declarant to maintain as much open Green Space as possible within the Community, whether or not such space is available for use by the Community as Common Area and to confine construction to established impervious areas on a Lot.

6. Other Requirement of Structures

In addition, all structures constructed on a Lot will be designated and constructed in compliance with the requirements of the City of Asheville or any other Governmental Entity with jurisdiction.

B. Alteration of Setbacks²³

Where because of size, natural terrain, City of Asheville standards, or any other reason in the opinion of Declarant, it should be in the best interest of the Community that the setback lines or Building Envelope boundaries on a Lot as shown on a Site Plan or as otherwise designed in the Governing Documents should be altered or changed, then Declarant reserves unto itself, its successors or assigns, and no other, the right to change said setback lines or

²³ "Setbacks" are defined as the minimum amount of space required between a lot line and a building line. Typically contained in zoning ordinances or deed restrictions, setbacks are designed to ensure that enough light and ventilation reach the Property and to keep buildings from being erected too close to property lines.

Building Envelope boundaries to meet such conditions. Declarant specifically reserves the right to transfer and assign this right of approval to the Association²⁴ or the ARC hereinafter established.

C. Use of Lots and Dwellings

1. Residential Use Only

Except as permitted by this Declaration or a Supplemental Declaration, each Lot and Dwelling will be used for Single-Family²⁵ Residential purposes only, and no trade or business of any kind may be carried on thereon. The use of a portion of a Dwelling as an office by an Owner or Occupant will not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic; provided that in no event will any Lot or Dwelling be used as the office of or storage area for any building contractor, real estate developer or real estate broker, except as may be on a temporary basis, with the express written approval of Declarant during Declarant Control Period, and thereafter by the Board, and in accordance with reasonable Rules and Regulations promulgated therefor. Nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on Lots or the showing of Dwellings for the purpose of selling houses in the Community; and nothing herein shall be construed to prevent Declarant or its permittees from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the Community. Except as permitted by this Declaration or a Supplemental Declaration, no commercial, industrial or institutional use of a Lot shall be permitted, including, without limitation, any campus quarters or school.

2. Renting and or Leasing

Lease or rental of a Dwelling for residential purposes will also not be considered to be a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling and all the Improvements thereon, and (b) is otherwise in compliance with Rules and Regulations as may be promulgated and published from time to time by Declarant and the Board. **All leases or rental agreements will be in writing and will be for a duration of one (1) year or more unless, for good cause shown, the Board permits, in writing, a shorter term, which nevertheless, shall not be shorter than six (6) months.** Upon request, the Owner will provide Declarant and the Board with copies of such lease or rental agreement. Any Occupant will in all respects be subject to the terms and conditions of this Declaration and the Rules and Regulations adopted hereunder.

D. Time Sharing Plans; Cooperatives Prohibited

No part of the Property subject to this Declaration, including any existing or future Improvements built thereon, will be used for or subject to any type of Time Share Program or Time Share Project as defined by the North Carolina Time Share Act, N. C. Gen. Stat. 93A-41 (1983), or any subsequent laws of this State dealing with that or similar type of ownership by an Owner. No part of the Property subject to this Declaration will be used for, in conjunction with and/or as an advertised part of any time share exchange program which makes available as accommodations the Dwelling and which is not otherwise registered as a Time Share Program or Time Share Project or which utilizes the Dwelling as accommodations for time share sale prospects of any person. Any residential Dwelling designated in any Supplemental Declaration by Declarant as being subject to a Time Share Program or a Time Share Project shall be permitted without the necessity of any additional consent or writing. No cooperative use of a Lot or Dwelling shall be allowed, except as may be designated in a Supplemental Declaration by Declarant.

²⁴ Unless specifically provided otherwise, any reference to Association approval or designation can be accomplished by the Board of Directors of the Association, rather than by a vote of the entire membership.

²⁵ "Single-Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption or having a guardian/ward relationship created by decree of a Court of competent jurisdiction, or a group of not more than two (2) persons not all so related, who maintain a common household in a Dwelling or who are substantively structured like an integrated family unit.

E. Development, Sales and Construction Activities of Declarant

Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Declarant and its agents, employees, successors and assigns are permitted to maintain and carry on such facilities and activities as may be required, convenient, or incidental to the development, completion, improvement, and sale of the whole or any portion of the Property. This includes without limitation, the installation and operation of development, sales and construction trailers and offices, signs and models, provided that the location of any such trailers of any assignees of Declarant's rights under this Chapter are subject to Declarant's prior written approval. The right of Declarant to maintain and carry on such facilities and activities will include specifically the right of Declarant to use Dwellings as models and as offices for the sale or lease of Lots and Dwellings and for related activities.

F. Use of Trademark

Each Owner and Occupant, by acceptance of a deed to any lands, tenements or hereditament within the Community hereby acknowledges that "The Thoms Estate" is a service mark and trademark. Each Owner and Occupant agrees to refrain from misappropriating or infringing on this service mark or trademark.

G. Owner Recording Additional Restrictions on the Property

No Owner may impose additional restrictive covenants on any lands within the Property beyond those contained in this Declaration without approval of Declarant during Declarant Control Period, and, thereafter, without consent of the Board. Declarant may impose additional restrictive covenants on property then owned by Declarant without the consent of any other Owner or the Association.

H. Assignment of Declarant's Rights to the Association

Declarant reserves the right to assign in writing to the Association, at its sole discretion, its rights reserved in this Declaration, including all rights set forth in this Chapter. The Association hereby agrees to accept any and all assignments of rights hereunder, and no further action will be required by it.

I. Subdividing, Combination and Boundary Relocation

No Lot shall be subdivided, or its boundary lines relocated, for any purpose other than to merge an additional Lot or part thereof so as to create a Lot larger than the original Lot. No subdivision, combination or boundary relocation shall be made without the written approval of Declarant, its successors and assigns or the Board except, however, Declarant hereby expressly reserves to itself, its successors or assigns, the right to re-plat, combine or subdivide any Lot or Lots, shown on the recorded plats, prior to the conveyance thereof, in order to create a modified Lot or Lots. These restrictions herein apply to each Lot which may be so created. Following the combination of two Lots into one larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of this Declaration. Once combined, the resulting larger Lot may only be subdivided with the written consent of Declarant, its successors and/or assigns or the Board. The Board, in its sole discretion, shall determine what effect, if any, the combination or subdivision of a platted Lot has on the Assessments for that modified Lot.

J. Satellite Dishes and antennas

Notwithstanding the above, without prior approval of Declarant or the ARC, an Owner may install, at his or her sole expense, (i) antennas that receive television broadcast signals, (ii) satellite dish antennas 39.37 inches or less in size in diameter that receive or transmit video, data or other programming, or (iii) antennas 39.37 inches or less in size in diagonal measurement that receive or transmit video, data or other programming via multipoint distribution services so long as:

1. Said equipment is installed entirely within the boundaries of the Owner's Lot and within areas exclusively set aside for that Owner's use. Areas that are required by this Declaration to be maintained by the Association shall not be considered "exclusive use" areas; said equipment can be safely installed;
2. The placement of said equipment is in a "Preferred Location" as defined by the ARC and described in the Architectural and Design Guidelines, which location may be unique to said Lot based on such considerations, without limitation, as topography, signal reception, costs, safety and/or aesthetics;
3. The Federal Communications Commission (the "FCC") or any other governmental agency preempts community regulation that is more restrictive than the provisions established in this Chapter; and
4. The Community does not otherwise qualify for an exemption under FCC rules imposing federal limitations on local covenants or rules addressing the installation of equipment described above such as an exemption related to the provision of community antenna or satellite services.

K. Approved Builder Program; No Liability to Declarant; Architectural Drawings and Fee

No builder or general contractor may commence construction of a Dwelling within The Thoms Estate unless said builder or general contractor has been approved in writing by Declarant pursuant to criteria established by Declarant in its sole discretion related to said person's qualifications and experience. As a result of the potential impact on the Community infrastructure and/or property values related to careless workers and/or poor workmanship, each Lot Owner acknowledges the reasonableness of the above restriction. Each such builder or general contractor must apply for Declarant approval prior to submission to the ARC as referenced in Chapter 2 of this Article and, as part of said approval process, Declarant may obtain from said Person any information related to said Person's qualifications and construction experiences, including, but not limited to, financial information, proof of Intermediate or Unlimited Licensing by the North Carolina Licensing Board for General Contractors, references, proof of Liability and Workers Compensation Insurance. Declarant shall not unreasonably withhold or delay approval if a complete application is provided. Declarant's approval shall not be construed as a warranty or guarantee regarding the competency of the builder or general contractor and by conducting the above builder approval program, Declarant shall not impose on itself a duty to the applicable Lot Owner in tort or contract.

L. Construction Deposit; Repairs to Subdivision Improvements.

Prior to commencing any grading, clearing, or other construction activity on the Lot, Owner shall deposit with the Association the amount of \$5,000 ("Construction Deposit"), in cash or such other form as Association may agree to accept. Association may draw upon the Construction Deposit as necessary to cover, among other things: (i) the cost of repairing damage to property and subdivision improvements caused by Owner, its Contractor, or any subcontractor, employee, agent, or supplier that provides labor or materials in connection with construction on the Lot, or (ii) the cost of trash removal and routine maintenance, if not performed by Owner or its Contractor. If Association applies any part of the Construction Deposit pursuant to this Agreement, Owner shall, immediately upon demand, deposit with Association a sum equal to the amount so applied in order to restore the Construction Deposit to its original sum. If Owner fails to do so, Association may file a lien against the Lot to secure the total amount expended and, if such lien is not satisfied within 60 days after notice from Association of the amount due, Association may file suit to collect the sums due and to foreclose its lien. Upon issuance of a certificate of occupancy for a dwelling constructed on the Lot and completion of all landscaping in accordance with the landscape plans approved by the ARC, Association shall release to Owner the Construction Deposit, less any funds expended or to be expended by Association pursuant to this Agreement and not restored by Owner, provided Owner is not then in default hereunder.

Furthermore, prior to commencing any grading, clearing, or other construction activity on the Lot, Owner shall satisfy and implement all requirements and standards for erosion control imposed by government agencies having jurisdiction over the Lot, including but not limited to federal, state, and county agencies. Such erosion control measures include, but are not limited to, silt fencing, temporary silt ponds, hay bales, and strapping the Lot. All erosion control measures for the Lot are the sole responsibility of Owner.

M. RIGHT OF FIRST REFUSAL

1. Applicability

Except for sales and conveyances by Declarant, no "Unimproved Lot," as defined below, in the Community may be sold by any Owner except in compliance with the provisions of this subsection.

2. Right of First Refusal

Until the construction of a Dwelling is commenced as provided in Chapter I of Article I of this Declaration, but not exceeding two (2) years from the sale of said Lot from Declarant, before any Unimproved Lot²⁶ (or any ownership interest therein) may be sold to any Person other than Declarant or its successors, the Owner of such Lot shall first offer in writing to sell the Lot to Declarant or its successors at a price equal to the lesser of the following two determinations, each agreed by Declarant on behalf of itself and all Owners within the Community to be a valid estimate of the fair market value of any such Lot: (1) that price set forth in a bona fide offer or contract to purchase such Lot from a third party, which is acceptable to such Owner, less the costs of removing all liens and encumbrances on the Lot and customary seller's closing costs, and (2) the contract purchase price paid by such Owner for such Lot (excluding all finance charges related to the purchase), less the costs of removing all liens and encumbrances on the Lot and customary seller's closing costs.

Upon receipt by an Owner of a bona fide offer to purchase such Lot, such Owner shall send to Declarant a copy of such bona fide offer along with written notification that such Owner is offering the Lot for sale to Declarant pursuant to this Right of First Refusal at the lower of the two prices as computed pursuant to this subsection. Declarant will have a period of fifteen (15) business days (excluding Saturday, Sunday and Federal holidays) from and after the presentation of such offer in which to exercise its Right of First Refusal by giving such Owner written notice of such exercise in accordance with the provisions of this Declaration. If Declarant fails to respond or to exercise its Right of First Refusal within said fifteen (15) day period, Declarant will be deemed to have waived its Right of First Refusal. If Declarant responds by declining to exercise its Right of First Refusal, Declarant will execute an instrument evidencing its waiver of its Right of First Refusal, which instrument will be in recordable form.

In the event that Declarant does not exercise its Right of First Refusal and such sale to a third party is not consummated on such terms and conditions set forth in the bona fide offer within six (6) months of the date in which the offer is transmitted to Declarant, or within the period of time set forth in such bona fide offer, whichever is later, the terms and limitations of this Chapter will again be imposed upon any sale by such Owner. If Declarant elects to purchase, the transaction will be consummated within the period of time set for closing in said bona fide offer, or within thirty (30) days following delivery of written notice by Declarant to such Owner of Declarant's decision to so purchase such Lot or Dwelling, whichever is later.

²⁶ An "Unimproved Lot" shall constitute any Lot that has not been improved in accordance with the provisions of Article 1, Chapter 1, subsection G.1.

Declarant shall have this Right of First Refusal with regard to each bona fide offer which an Owner receives for the purchase of an unimproved Lot. Any Owner who buys such Lot from another Owner shall be governed by the provisions of this subsection and the waiver of the Right of First Refusal with respect to any sale shall not limit Declarant's Rights of First Refusal with respect to any subsequent sale of any unimproved Lot, as provided in Chapter 1, Article 1. Provided, however, that the Right of First Refusal reserved by Declarant pursuant to this subsection shall be valid and enforceable with respect to any such unimproved Lot only until the construction of a Dwelling is commenced as provided in Chapter 1, Article 1, but not exceeding five (5) years from the initial sale of said Lot from Declarant. Further provided that this subsection shall not be applicable with respect to any foreclosure sale of a first lien deed of trust or first lien mortgage on such unimproved Lot or deed in lieu thereof which is made and delivered in good faith. In each instance where an offer to purchase such unimproved Lot is presented to Declarant by an Owner pursuant to the Right of First Refusal granted herein, Declarant shall determine in its sole discretion and on a case-by-case basis whether to exercise its Right of First Refusal, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose. Should an Owner fail to comply with the provisions of this subsection and sell an unimproved Lot without first offering said Lot to Declarant in accordance with the terms hereof, then the purchaser of such unimproved Lot shall purchase such Lot subject to the Right of First Refusal herein granted, and Declarant shall thereafter at any time have the right to purchase such Lot, whether or not it is subsequently improved, from the purchaser thereof at the price as set forth in this subsection, and shall also be entitled to any other rights and remedies available at law or in equity for the violation of this subsection. **Notwithstanding the above, the one-year Repurchase Option for failure to Commence Construction as defined in Article 1, Chapter 1, Section G shall control over and supersede this Section L as to establishing the repurchase price if the initial 12-month period referenced in said Article 1, Chapter 1, Section G is exceeded.**

3. Death of an Owner; Gift

The personal representative, heirs, successors and assigns of any Owner who dies while owning any unimproved Lot, or the donee of a gift of a Lot from an Owner, shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer and conveyance of such Lot shall be governed by the provisions of this subsection.

4. Transfers to Declarant

In the event that Declarant exercises its Right of First Refusal pursuant to this subsection, the closing of the conveyance of such Lot shall occur within sixty (60) days after receipt by the Owner of written notice from Declarant or its successors that it elects to exercise its Right of First Refusal with respect to such Lot. At the closing, Declarant shall make payment to such Owner of the purchase price as described in this subsection, in certified funds. The Owner shall deliver to Declarant a general warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and any other exceptions which may be approved by Declarant. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

5. No Further Documentation Required

The Right of First Refusal reserved by Declarant in this subsection shall run with the title to each Lot in the Community which is subject to (or hereinafter subjected to) this Declaration, and be binding upon each purchaser of a Lot from Declarant and upon any subsequent Owner, whether such Owner purchased such

Lot from Declarant or from a third party. The provisions of this subsection shall constitute record notice to all purchasers of Lots in the Community subject to (or hereinafter subjected to) this Declaration of the Right of First Refusal herein reserved, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of such Lots in the Community subject to the provisions of this subsection.

CHAPTER 2 ARCHITECTURAL, DESIGN, AESTHETIC AND LANDSCAPING STANDARDS

A. Purpose

The "Community-Wide Standard" refers to the highest of: (1) the standard of use, conduct, design, architecture, landscaping, or aesthetic matters generally prevailing in the Community, or (2) the minimum standards described in the Governing Documents.

The purpose of the establishment and enforcement of architectural guidelines is to enhance the beauty of the Community, to establish and preserve harmonious and aesthetically pleasing designs incorporated into the Community, and to protect and promote values for the Community and the Lots and Dwellings located therein. No Lot Improvement shall be undertaken (including staking, clearing, excavation, grading and other site work, exterior alteration of existing Improvements, and planting or removal of landscaping materials) nor any structures placed, erected, or installed upon any Lot (or adjacent to any Lot where the purpose of the structure is to service the Lot) except in accordance with this Chapter and upon approval as herein provided. The only exception would be in the event that a project was specifically exempted from the application and approval requirements hereof by specific terms and conditions hereof pursuant to this Declaration or pursuant to a writing signed by Declarant in recordable form.

B. General

All Improvements constructed, erected or placed on the property of an Owner within the Community are subject to the Architectural and Design Guidelines of the Community (the "Architectural and Design Guidelines" or "Design Guidelines"). The Architectural and Design Guidelines are those standards, rules and procedures adopted pursuant to this Declaration to regulate the architectural, design, aesthetic and landscaping aspects of the Community. Neither Declarant nor the Association shall be subject to this Chapter during Declarant Control Period.

C. Design Review Authority

1. Declarant Authority

During the Declarant Control Period, Declarant shall have exclusive authority to establish an "Architectural Review Committee," as further defined in this Chapter, to administer the architectural and aesthetic approval process for the Community. An Owner satisfying the architectural guidelines of the ARC functions assigned by Declarant to a Neighborhood Association or to another committee or board established by Declarant pursuant to a Neighborhood Declaration, however, will be deemed to have satisfied the Architectural and Design Guidelines and review procedures hereunder.

In reviewing and acting upon any request for approval, Declarant and any designee(s) of Declarant shall act solely in Declarant's interest.

2. Architectural Review Committee²⁷ (the "ARC")

a. Members of the ARC

The Architectural Review Committee (the "ARC") under this Declaration will consist of not more than five (5) nor less than three (3) members, who need not be Owners. The terms of office for each member and other matters of governance to be applicable to the ARC will be established by

²⁷ "Architectural Review Committee" or "ARC" will mean and refer to the committee established herein to approve, unless otherwise provided herein, all construction conducted on the Property, including but not limited to landscaping projects, exterior and structural Improvements, the siting thereof, and the additions and changes thereto, within the Community. In exercising any right or easement granted to it hereunder, such right or easement shall be deemed to extend to its duly authorized members, officers, agents, employees and contractors.

Declarant prior to the time any review and approval process hereunder would otherwise have to take place. A member appointed by Declarant may be removed with or without cause by Declarant at any time by written notice to the appointee, and any successor appointed to fill the vacancy will serve the remainder of the term of the former member. Any member appointed to the ARC following assignment of the whole or any portion of ARC functions pursuant to the provisions of this Declaration is subject to the prior approval of Declarant until that date which is three (3) years following the termination of the Declarant Control Period.

b. Duties and Powers of the ARC

The ARC is responsible for administering the Design Guidelines, adopted and amended from time to time as provided in this Declaration, and for the review and approval process conducted in accordance with the provisions of this Declaration. The ARC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers, or other professionals.

i. Right to Assign ARC Functions

Declarant reserves the right to assign to the Association, to a Neighborhood Association, or to a committee or board established by Declarant pursuant to a Neighborhood Declaration, at its sole discretion at any time during the Declarant Control Period, the whole or any portion of its rights reserved in this Declaration, which are exercisable by the ARC. The Association, each Neighborhood Association and each such committee or board established by Declarant under a Neighborhood Declaration does hereby agree to accept any such assignment of rights without the necessity of any further action by it. Upon the termination of the Declarant Control Period, any then remaining rights are deemed assigned to the Association, which will succeed to all the rights of Declarant over the ARC then remaining unassigned without further action on the part of either Declarant or the Association.

ii. Liability of ARC Members

No member of the ARC, or any assignee of rights hereunder, will be liable to any Owner for any decision, action or omission made or performed by the ARC member in the course of his duties unless the member acted in bad faith or in reckless disregard of the rights of any person or of the terms of this Declaration.

iii. Indemnification

Until all the ARC functions are assigned, Declarant will, to the full extent permitted by law, hold harmless all persons designated by Declarant to serve as members of the ARC exercising unassigned rights hereunder from and against any liability, including attorney fees, as may be incurred by the members contrary to the provisions of this Chapter. Following any such assignment by Declarant, members of the ARC or successor board exercising rights so assigned are indemnified by the Association or Neighborhood Association to which the exercised right was assigned.

3. Community-Wide Standard Committee

The ARC may form a committee for the purposes of establishing and monitoring the Community-Wide Standard (the "Community-Wide Standard Committee"). Should such committee be established, it shall report to the ARC and the Board and perform all duties as set forth by the ARC and the Board.

D. Architectural and Design Guidelines

Declarant may prepare and amend the initial Design Guidelines, as well as the form of application and review procedures therefor, which will apply to all development and construction activities within the Community. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which may vary according to Neighborhood, location therein, unique characteristics and intended use. At any time prior to the expiration of the Declarant Control Period, Declarant may assign in writing the right to amend the Design Guidelines to the ARC or Board, at which time copies of such standards shall be maintained by the Secretary of the Association with the Association records. **BECAUSE THE DESIGN GUIDELINES WILL MATERIALLY IMPACT THE TYPE AND DESIGN OF THE DWELLING OR STRUCTURE THAT CAN BE PLACED ON A LOT, A PURCHASER OF A LOT OR DWELLING IS CAUTIONED TO READ THE DESIGN GUIDELINES PRIOR TO PURCHASE. THE DESIGN GUIDELINES ARE INCORPORATED BY REFERENCE AS A PART OF THIS DECLARATION AS IF SET FORTH HEREIN VERBATIM.**

1. Interior Improvements

Generally speaking, the Design Guidelines will not cover interior improvements, which will typically not be subject to review and approval by the ARC, unless the review and approval may otherwise be required because the interior improvements are made within an area plainly within view of adjacent properties.

2. Drainage

The Design Guidelines may provide that in connection with the ARC's approval, and to prevent excessive drainage or surface water runoff, the ARC may have the right to establish a maximum percentage of property which may be covered by buildings, structures, or other Improvements. These guidelines may be promulgated on the basis of topography, percolation rates of the soil, soil types and conditions, vegetation cover, and other environmental factors, or to impose guidelines for the installation of storm water management facilities deemed appropriate to limit or control runoff.

3. Siting and Setbacks

Unless otherwise specifically provided or allowed in writing by Declarant, the siting of Improvements and setbacks from other properties may be vested in Declarant or, pursuant to the Architectural and Design Guidelines, in the ARC. In addition to such siting or setback standards, a local Governmental Entity may regulate such subject matter and caution is encouraged to verify such regulatory requirements prior to commencing work.

4. Other Guidelines

The Design Guidelines may, in the sole discretion of Declarant (and following the Declarant Control Period, in the sole discretion of the ARC, unless appealed as provided below), also provide applicable guidelines (i) prohibiting or restricting the erection and use of temporary structures; (ii) setting permissible times of construction and requirements concerning construction debris; (iii) covering the allowance of, and where allowed, the content, size, style and placement location for, signage; (iv) requiring or encouraging visually screened service yards; (v) establishing exterior lighting design and location criteria; (vi) prohibiting or limiting installation and use of wells; (vii) and setting conditions for property subdivision or consolidation, and for subjecting property of the Community to further covenants,

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conditions, restrictions and easements; provided, however, Declarant's activities may be excepted or exempted from any and all such guidelines. The within listing of possible guidelines is not an exhaustive listing and is intended merely to provide an example of the diversity of guidelines as may be incorporated in the Design Guidelines, and will not act as a limitation upon guidelines as they may or may not be implemented.

5. Guidance; Final Authority of ARC

The Design Guidelines are intended to provide guidance, and will not be the exclusive basis for decisions of the ARC, and compliance with the Guidelines will not guarantee approval of any application. The ARC will have the sole discretion to determine whether plans and specifications submitted for approvals are acceptable to it. The refusal to approve any plans and specifications may be based by the ARC upon any reasonable ground which is consistent with the objects and purposes of this Declaration, as may be supplemented by the Design Guidelines, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

6. Inspections, Permit and Certificate Issuance

The Design Guidelines may also provide procedures for ARC inspection of work, for the issuance of a permit to commence work and for the issuance of a certificate following completion thereof, in addition to any such permits and certificates as may be issued by a governmental authority with jurisdiction thereof, which may constitute conditions precedent to use or occupancy.

7. Fees and Charges

In addition to application fees and charges, the Design Guidelines may provide a schedule of fees, charges, required damage or other deposits, fines for noncompliance, and other amounts due and payable by an Owner as part of the application, review and approval processes, including nonrefundable impact fees for anticipated wear and tear on the Community infrastructure resulting from construction-related work. The ARC may increase, modify and amend this schedule at any time. All fees and charges provided herein will constitute Specific Assessments, as defined in Chapter 3 of Article 3, and a Lien upon the Lot to which the fees and charges relate.

E. ARC Landscaping Approval

To preserve the architectural and aesthetic appearance of the Community, no landscaping, grading, excavation, or filling whatsoever, and no construction of Improvements whatsoever, will be commenced or maintained by the Association or any Owner, other than Declarant, on any portion of the Community without ARC approval in accordance with this Chapter. This includes, for example, without limitation, the construction or installation of sidewalks, driveways, parking lots, decks, patios, courtyards, amenities and recreational facilities, walls, fences, or exterior lights.

F. Approval Not a Guarantee

No approval of plans and specifications and no publication of the Architectural Design Guidelines thereunder will be construed as representing or implying that the plans, specifications, or guidelines will, if followed, result in properly designed Improvements. Such approvals and guidelines will in no event be construed as representing or guaranteeing that any Dwelling or other Improvement built in accordance therewith will be built in a good and workmanlike manner.

Neither Declarant, the Association, nor the ARC is responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Chapter or any defects in construction undertaken pursuant to the plans and specifications. Such approval shall in no way be a substitute for any approvals required

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by Buncombe County, the City of Asheville, the State of North Carolina, or any other government agency or entity having jurisdiction over such matters.

G. Appeals Process

If the ARC declines or disapproves of an Owner-applicant's application, the Owner-applicant may appeal such decision to the Board pursuant to the appeals process and procedures adopted by Declarant or the Board in the Rules and Regulations. If no such procedures are provided, then the procedures in Chapter 2 of Article I for hearings shall be followed.

CHAPTER 3 MAINTENANCE

A. Owner Maintenance of Property

This Chapter describes the responsibilities for maintenance and repair of the property. Unless otherwise provided in Table 3.1 below, each Owner will be responsible for maintaining his, her or its property in a neat, clean and sanitary condition, and such responsibility may include without limitation, landscaping and the maintenance, repair and care of all exterior surfaces of all Dwellings, buildings and other structures. Except as provided in this Declaration, each Owner will also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. Such costs and expenses, including reasonable costs and expenses of collection and such fines as may be established by the Association, from time to time, to reimburse the Association for the administrative costs incurred thereby, or otherwise, will be a Specific Assessment as defined in this Declaration.

B. Association Maintenance of the Property

1. Association Maintenance of the Common Area

Except as otherwise provided in this Declaration, the Association will maintain and keep in good repair all portions of the Common Area and any easement area encumbering properties of Owners for which the Association is responsible under this Declaration, including responsibility prior to transfer to the Association in accordance with the provisions of this Declaration or under any Supplemental Declaration. This responsibility will include the maintenance, repair and replacement of the following:

- a. all drainage not under the expressly specified jurisdictional care and maintenance of any Governmental Entity, and walking, ingress and egress easements shown and noted on the Site Plan;
- b. all private roads, road shoulders, walks, trails, ponds, parking lots, landscaped areas, and other Improvements situated within the Common Area or easements;
- c. security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of its said properties and which are not maintained by a public authority, public service district, public or private utility, or other person; and
- d. all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon its said properties.

The Association will not be liable for injury or damage to any Person or property (1) caused by the elements or by any Owner or any other Person, (2) resulting from any rain or other surface water which may leak or flow from any portion of its properties, or (3) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, for which the Association is responsible, becoming out of repair.

The Association will not be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of its properties or any other portion of the Property. No diminution or abatement of Assessments will be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of Improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any

municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

2. Association Maintenance on Behalf of Owners

a. Notice to Owner of Maintenance to be Performed by Declarant or the Association

In the event that Declarant or the Board determines that: (i) any Owner or Occupant has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or she is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or Occupant, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice in accordance with the provisions of this Declaration of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary.

b. Fifteen-Day Window for Owner

Except in the event of emergency situations, such Owner will have fifteen (15) days within which to complete the subject maintenance in a good and workmanlike manner. In the event that such maintenance, cleaning, repair or replacement is not capable of completion within said fifteen (15) day period, the Owner must commence said maintenance, cleaning, repair or replacement within fifteen (15) days and diligently proceed to complete the same in an acceptable and workmanlike manner.

c. Declarant or Association Performance of Maintenance on Behalf of Owners

In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but will not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost will be added to and become a part of the Assessment to which such Owner and his property is subject and will become a Lien against such property. In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association will promptly reimburse Declarant for Declarant's costs and expenses.

3. Neighborhood Association Maintenance

If a separate Neighborhood Association exists, such Neighborhood Association shall maintain its Common Area and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

C. Damage to Common Area by Non-Owners

Each Owner will be responsible for, and may be sanctioned for, all violations of the Governing Documents by the Occupants, tenants, guests, or invitees to their property, and for any damage to the Common Area that such Person(s) may cause.

CHAPTER 4 PERMIT CONDITIONS

A. Conditional Use Permit

Each owner of a Lot and/or Dwelling acknowledges that in order for the Community to be developed, Declarant was required to receive Conditional Use Permit ("CUP") approval from the City Council of the City of Asheville. Such permit was initially received as Ordinance No. 3461 and is dated April 10, 2007. An amendment was requested and Ordinance No. 4150 revised the terms of the CUP on January 8, 2013 (Exhibit D). No Owner of a Lot and/or Dwelling or the Association shall cause any violation of the CUP, the conditions of which are attached hereto as Exhibit D and incorporated herein by reference. Any Person or entity, including the Association, which violates the CUP shall indemnify and hold Declarant harmless from any and all costs, damages, losses, penalties, fees (including reasonable attorney's fees) that said Person or entity may suffer as a result of said violation, except to the extent such violation was caused by the negligence of Declarant.

B. Gated Entrance Requirements regarding Public Use

In accordance with the CUP and the conditions thereof attached as Exhibit D, every Person or entity, including the Association, agrees to comply with the following condition regarding public access within the Community, except to the extent modified by the City and Declarant during the Declarant Control Period: All gated entrances must be operated in such a manner as to allow for the unobstructed ingress and egress by pedestrians and emergency vehicles at all times, and must remain open to all other vehicular traffic during daylight hours (sunrise to sunset).

C. Storm Water Management Requirements

Once completed as provided in Chapter 3 of this Article 2, the Association shall be responsible for the maintenance of all detention or retention basins, rain gardens, ponds and other private storm water management facilities that are established to properly channel or retain the storm water arising from The Thoms Estate development, including the payment of any charges or fees levied by the City of Asheville or other Governmental Entity (the "Inspectors") with jurisdiction thereof for periodic inspections as established by law. The Association shall afford the Inspectors reasonable access to such storm water management facilities at reasonable times in accordance with law. The Association shall perform any corrective work required by the City or other applicable Governmental Entity if reasonable and required by law.

CHAPTER 5 EASEMENTS

A. Owner's Easement of Enjoyment

This Chapter discusses the Easements provided for Owners, Declarant, and the Association within the Community.

An "Easement" is an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose. Essentially, an Easement is one person's right to go onto the property of another person.

Subject to the provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board in accordance with the Bylaws and terms of this Declaration, every Owner and Occupant will have a nonexclusive right, privilege and Easement of use and enjoyment in and to the Common Area, to the extent so entitled under this Declaration.

Such Easement will be appurtenant to and shall pass and run with title, subject to the rights, restrictions, reservations, covenants, easements and obligations reserved, granted or alienable in accordance with this Declaration as further described herein, including, but not limited to:

1. Right of the Association to borrow money;
2. Declarant's reserved rights and Easements;
3. The Association's rights to grant and accept Easements;
4. The Association's rights and Easements; and
5. Declarant's Easements for additional property.

B. Access, Ingress and Egress; Roadways

1. Owners' Waiver of Uncontrolled & Unlimited Access, Ingress and Egress

By accepting title to property conveyed subject to this Declaration, all Owners waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such property and acknowledge and agree that such access, ingress and egress will be limited to roads, sidewalks, walkways and paths located within the Community, provided that pedestrian and vehicular access to and from all such property will be provided at all times.

2. Reservation of Right of Declarant and the Association to Maintain Gate

Subject to the right of Declarant to dedicate any roadways within the Community pursuant to the provisions of this Declaration, there is reserved unto Declarant, the Association, and their respective successors and assigns the right and privilege, but not the obligation, to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Community, provided that access to the Property may be granted to any Person who gives reasonable evidence satisfactory to entry guards, if there are any, that entry is with the specific permission of the Owner, or his duly authorized agent. Neither Declarant nor the Association will be responsible, when exercising its reasonable judgment, for the granting or denial of access to the Property in accordance with the provisions of this Chapter. Notwithstanding the above, the conditions in the CUP as set forth in Chapter 4 of this Article shall control the operation of any entrance gate unless modified by the City of Asheville and Declarant.

3. Signs; Towing

Declarant (or the Association, after title to any private streets and roadways has passed to it from Declarant) may post "no parking" signs along such private streets and roadways within the Community where it, in its sole discretion, determines it to be appropriate to do so. Violators of said "no parking" signs are subject to having their vehicles towed away and will be required to pay the cost of such towing and storage before their vehicle may be recovered. The act of towing said vehicles will not be deemed a trespass or a violation of the Owners' property rights, because the Owner will be deemed to have consented to such action by accepting the right to use the private roads and streets within the Community.

4. Public Roadways within the Community

During Declarant Control Period, Declarant, and thereafter the Association, shall have the right to dedicate any portion of the roadways within the Community to the City of Asheville or the North Carolina Department of Transportation, if applicable, for the purposes of granting public access thereto and over said roadway and having said Governmental Entity assume responsibility for maintenance of such roadways. Furthermore, during Declarant Control Period, Declarant, and thereafter the Association, shall have the right to impose upon the Association, the requirement of maintaining any such dedicated roadway until such time as the roadway is brought up to standards acceptable to such public body, and maintenance thereof is assumed by such public body; provided, however, Declarant may, in its sole discretion, reserve an Easement over any such public roadway to be primarily maintained by such public body for the purpose of doing additional maintenance to said public streets and roads and to maintain landscaping along the unpaved rights-of-way thereof. Thereafter Declarant may denominate on a Site Plan or Supplemental Declaration that said Easement will constitute a Common Area of the Community to be maintained by the Association. The Board may levy a Special Assessment, as defined in this Declaration, against all Owners, without the necessity of a vote pursuant to the provisions of this Declaration, in an amount sufficient to provide funds required to bring any roadway up to standards acceptable to any public body for the assumption by it of maintenance of said roadway.

5. Right of Declarant to Maintain Open Gate during Declarant Control Period

Notwithstanding anything herein contained to the contrary, Declarant hereby reserves unto itself, its successors and assigns, the right and option to control any gate to the Community and to leave the gate in an open position for the unobstructed and uncontrolled passage of construction vehicles for persons engaged in both infrastructure and building construction activities. The within right, if exercised, will be limited to the hours from sunrise to sunset and will terminate upon expiration of Declarant Control Period.

C. Easements over Private Roadways

Police, fire, water, health and other authorized municipal officials, employees and their vehicles; paramedic, rescue and other emergency personnel and their vehicles and equipment; school bus and U.S. Postal Service delivery drivers and their vehicles; private delivery or courier service personnel and their vehicles; and persons providing garbage collection services within the Community and their vehicles and equipment will each have a perpetual, non-exclusive Easement for access, ingress and egress over the private roadways constituting a portion of the Common Area, solely for the performance of their official duties.

D. Development Easements for Declarant

During the Declarant Control Period, Declarant will have an alienable and transferable right and Easement on, over, through, under and across the Common Area for the purpose of constructing Improvements in and to the Lots, and for installing, maintaining, repairing and replacing other Improvements to the Property contemplated by this Declaration. Further, said Easement may be used in Declarant's sole discretion, for the purpose of constructing

any Improvements or changes permitted and described in this Declaration and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event will Declarant have the obligation to do any of the foregoing.

E. Easements for any Additional Property

There is hereby reserved for Declarant and its successors, assigns and successors-in-title to the Additional Property for the benefit of and as an appurtenance to any Additional Property added pursuant to this Declaration without regard to the uses assigned to said land and as a burden upon the then existing Development, perpetual, non-exclusive rights and Easements for the following:

1. Pedestrian, vehicular, access, ingress, egress, parking over, across, within and on all private roads, sidewalks, trails, parking facilities and lagoons, from time to time, located within the Common Area or within Easements serving the Common Area;
2. The installation, maintenance, repair, replacement, and use within the Common Area, and those portions of properties encumbered pursuant to this Declaration for security systems, utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, electrical, gas, telephone, water, sewer, and master television antenna and/or cable system lines; and
3. Drainage and discharge of surface water onto and across the then existing Community, provided that such drainage and discharge shall not materially damage or affect the then existing Community or any Improvements located thereon.

F. Changes in Boundaries, Additions to Common Area

Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Area and any Lots and/or Dwellings between such adjacent properties owned by Declarant, provided that any such change or realignment of boundaries will not materially decrease the acreage of the Common Area and will be evidenced by a revision of or an addition to the Site Plan which will be recorded in the Registry. In addition, Declarant reserves the right, but will not have the obligation, to convey to the Association at any time, any portion of the Additional Property. Any Additional Property conveyed to the Association as an addition to the Common Area will be subject to the provisions of this Declaration.

G. Fire Breaks

During Declarant Control Period, Declarant, and thereafter, the Association, shall have a perpetual, alienable and releasable right and Easement on, over and under any property to cut fire breaks and for other activities which in the opinion of the holder are necessary or desirable to control fires on any property, or any Improvements thereon. Entrance upon property pursuant to the provisions of this Chapter will not be deemed a trespass.

H. Utility Easements

There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable and perpetual right and Easement, as well as the power to grant and accept Easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across:

1. All of the Common Area in accordance with this Declaration;
2. Those strips of land, twenty-five (25) feet in width, running adjacent to and parallel with the front lines of Lots; and

3. Such other easement areas shown on the Site Plan or recited in any Supplemental Declaration for the purpose of installing, replacing, repairing, maintaining and using master television antenna and/or cable systems, security and similar systems, and all utilities, including but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water, and sewer lines.

Such Easements may be granted or accepted by Declarant, its successors or assigns, or by the Board, provided, however, that during Declarant Control Period the Board must obtain the written approval of Declarant prior to granting and accepting any such Easements. To the extent practical, in Declarant's sole discretion, all utility lines and facilities serving the Community and located therein will be located underground. By virtue of any such Easement, it will be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Community so encumbered, to take the following actions within such land described in said Easement:

1. Erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities;
2. Cut and remove any trees, bushes, or shrubbery;
3. Grade, excavate or fill; and/or
4. Take any other similar action reasonable that is necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

I. Easement for Construction and Installation of Walks, Trails, Paths, and Signs

There is hereby reserved for the benefit of Declarant and the Association the alienable, transferable and perpetual right and Easement upon, over and across all portions of the Common Area on which Improvements are not constructed or erected and all areas shown and noted on any Site Plan or described in any Supplemental Declaration for the installation, maintenance, and use as recreational bike, pedestrian and/or equestrian pathways and trails, as well as for traffic, directional signs and related Improvements. During the Declarant Control Period, any such work must receive the prior written consent of Declarant.

J. Easements for the Association

There is hereby reserved a general right and Easement for the benefit of the Association, and to any manager employed by the Association and any employees of such manager, to enter upon any Lot, or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this Easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner directly affected thereby.

K. General Maintenance Easement

There is hereby reserved for the benefit of Declarant and the Association an alienable, transferable and perpetual right and Easement to enter upon any property subject to this Declaration for the purpose of providing general maintenance within the Community as more particularly described in Chapter 3 of this Article 2. Examples of such general maintenance shall include providing insect and reptile control, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Community. Such Easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions, or to provide garbage or trash removal services.

Furthermore, it is hereby reserved for the benefit of Declarant and the Association an alienable, transferable, and perpetual right and Easement, but not the obligation, to enter upon any unimproved portions of a Lot or Dwelling which are located within twenty (20) feet from the water's edge of any, pond or other body of water within the

Community for the purpose of mowing such area and keeping the same clear and free from unsightly growth and trash and maintaining such bodies of water. Such maintenance includes, without limitation, the maintenance of reasonable water quality standards provided that the foregoing reservation of Easements will not be deemed to limit the responsibility therefor by Owners under the provisions of this Declaration. The costs of such maintenance incurred as a result of the action or inaction of any Owner will be paid by such Owner, and until paid will be a continuing Lien upon the Owner's Lot and/or Dwelling.

L. Environmental Easement

There is hereby reserved for the benefit of Declarant and the Association, an alienable, transferable and perpetual right and Easement on, over and across all unimproved portions of properties subject to this Declaration for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board, or by any Governmental Entity. This Easement shall include, without limitation, the right to drain standing water and the right to dispense pesticides.

M. Construction Setbacks

Construction setbacks and/or Building Envelopes within the Community shall be established initially by Declarant and thereafter by a designee such as the ARC or the City of Asheville, whichever is more restrictive.

N. Irrigation Wells and Pumps & Easements for Pond, and Flood Water Maintenance

There is hereby reserved for the benefit of the Association, for the purpose of irrigating any portion of the Community, an alienable, transferable and perpetual right and Easement to pump water from, ponds and other bodies of water located within the Community and to drill, install, locate, maintain and use wells and pumps within the Common Area. Declarant, the Association, and their respective successors, assigns, and designees shall have an access Easement over and across any portion of the Community which abuts or contains any bodies of water or wetlands, to the extent necessary to exercise their rights under this Chapter.

Declarant reserves for itself, the Association, and their respective successors, assigns, and designees, the nonexclusive right and Easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Area and take the following actions:

1. Install, operate, maintain, and replace pumps and/or other equipment used to supply irrigation water to the Common Area;
2. Construct, maintain, and repair structures and equipment used for retaining water; and
3. Maintain such areas in a manner consistent with the Community-Wide Standard.

Declarant further reserves for itself, the Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and Easement of access and Encroachment over the Common Area and Lots (but not the Dwellings thereon) adjacent to or within twenty-five (25) feet of any bodies of water and wetlands within the Community, in order to (a) temporarily flood and back water upon and maintain water over such property; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Area, including the right to fill, drain, dredge, deepen, clean, fertilize, and dye such bodies of water and wetlands; (c) maintain and landscape the slopes and banks pertaining to such areas; and (d) enter upon and cross such property for the purpose of exercising such rights.

O. Easements Deemed Granted and Reserved

All conveyances of a Lot hereunder, whether by Declarant or otherwise, will be deemed to have granted and reserved, as the context will require, all Easements set forth in this Declaration, including, but not limited to, those set forth in this Chapter 5 of Article 2.

P. No Partition

There will be no judicial partition of the Community or any part thereof, nor will any person acquiring any interest in the Community or any part thereof seek any such judicial partition unless the Community has been removed from the provisions of this Declaration.

Q. Easements in Common Area

Declarant grants to each Owner a nonexclusive right and Easement of use, access, and enjoyment in and to the Common Area, subject to:

1. The Governing Documents, any access agreement, Easement and covenant to share cost, and any other applicable covenants;
2. Any restrictions or limitations contained in any deed conveying such property to the Association; and
3. The Board's right to:
 - a. adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
 - b. suspend an Owner's right to use Common Area facilities;
 - c. dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Chapter;
 - d. impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
 - e. rent any portion of any pavilion or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
 - f. mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

R. Greenway Easement

Declarant hereby reserves a Greenway Easement to the City of Asheville (the "City") along Beaverdam Creek with such dimensions as determined in Declarant's and the City's discretion. This Greenway Easement will be open and dedicated to the public.

S. Easement for Slope Control, Drainage and Waterway Maintenance

Declarant reserves non-exclusive, perpetual, appurtenant Easements for itself, the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Lot for the purposes of:

1. Controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion;
2. Drainage of natural or man-made flow and water areas from any portion of the Community;
3. Changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot, Dwelling or Common Areas;
4. Dredging, enlarging, reducing or maintaining any water areas or waterways within the Community; and
5. Installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Community.

T. Easement for Special Events

Declarant reserves for itself, its successors, assigns and designees a perpetual, non-exclusive Easement over the Common Areas for the purpose of conducting educational, cultural, entertainment, sporting events, and other activities of general community interest, at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying an interest in a Lot/Dwelling, acknowledges and agrees that the exercise of this Easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences. In addition, each Owner agrees on behalf of itself and the Occupants of its property to take no action, legal or otherwise, which would interfere with the exercise of such Easement or to recover damages for or as the result of any such activities.

U. Easement for Community Internet

Declarant hereby reserves for itself, the Association, and their respective successors and assigns, the alienable, transferable and perpetual right and Easement over, across, under, through and upon each Lot for the purpose of installing, maintaining and operating central telecommunication receiving and distribution systems including cable television, high speed data/internet/intranet services and related components, including associated infrastructure, equipment, hardware, and software, to serve potential services provided by the Association or Declarant. Neither Declarant nor the Association shall be obligated in any way to provide such services.

The Association gives continuity and stability to the Community, preserves the integrity of the Community, promotes the community concept and protects the Community's property values.

V. Easement for Emergency Vehicles to Access Thomsland Tract

Police, fire, water, health and other authorized municipal officials, employees and their vehicles; paramedic, rescue and other emergency personnel and their vehicles and equipment; will each have a perpetual, non-exclusive Easement for access, ingress and egress over the private roadways constituting a portion of the Property to access the Thomsland Tract, as described on Exhibit F attached hereto, solely for the performance of their official duties.

ARTICLE 3: THE THOMS ESTATE HOMEOWNER'S ASSOCIATION, INC.

Chapter 1: Definition and Purpose of the Association

Chapter 2: Functions of the Association

Chapter 3: Assessments

Chapter 4: Membership and Voting Rights

CHAPTER 1 DEFINITION AND PURPOSE OF THE ASSOCIATION

A. The Definition of a Homeowners Association

A Homeowners Association is the governance function of a common interest development. This governance is given the authority to enforce the covenants, conditions, restrictions, and manage the common amenities of the Community. A Homeowners Association provides a communal basis for preserving, maintaining, and enhancing homes and property.

All Homeowners Associations have three basic, defining characteristics:

- Membership in the Association is mandatory and automatic for all Owners;
- Governing Documents of the Association create a binding relationship between all Owners and the Association and define rights and obligations of the Association and its Owners; and
- Monetary assessments are imposed on each Owner in order to operate and maintain the Association.

B. The Purpose of the Association

People choose to live in planned developments for many reasons. Many Owners value the inherent benefits offered by such communities (e.g., amenities; Common Area; preservation, management and protection provided by an Association; etc.).

Homeowners Associations are designed to:

- Manage the Common Area of the Community;
- Manage property interests of Owners;
- Provide various services and amenities for Owners; and
- Develop a sense of community.

Although Owners do not have a legal obligation to actively participate in the Association, the Association will not be able to function if no one participates. Therefore, it is important for the Board to cultivate a sense of community to encourage participation.

CHAPTER 2 FUNCTIONS OF THE ASSOCIATION

A. Board of Directors and Officers of the Association

The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, will be responsible for the exclusive management and control of the Community, including management of the Common Area and all Improvements thereon (including furnishings and equipment related thereto). A "Director" is someone who works for the Association and is charged with the conduct and management of its affairs. The directors collectively are referred to as a "Board of Directors" or the "Board." The Board will keep the Community in a good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions set out in this Declaration. Except to the extent otherwise required by the provisions of the Act, the North Carolina Nonprofit Act (Chapter 55A) (the "Corporation Act"), this Declaration, the Bylaws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association shall be exercised by the Board, acting through the officers of the Association (the "Officers") and their duly authorized delegates, without any further consent or action on the part of the Owners. Notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Community, Declarant shall have the right to appoint or remove any Member(s) of the Board or any Officer(s) during the Declarant Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling vests in Declarant such authority to appoint and remove Directors and Officers of the Association.

The Board manages the Community. The Board's authority to act on behalf of the Association, however, is not unlimited. The Governing Documents and the laws of the State of North Carolina, as referenced above, grant and restrict the Board's ability to act. The duties and powers of the Association are more particularly described below, but some examples of the powers granted to the Board include enforcing the Governing Documents, maintaining the Property in the Community, maintaining the Association's financial stability, purchasing adequate insurance, entering into contracts for services, creating and supervising committees, conducting annual meetings and Board meetings, and having the authority to set goals, standards and policies for the Association.

B. Duties and Powers of the Association

The duties and powers of the Association will be those set forth in the provision of the Act, the Corporation Act, the Bylaws of the Association, and the Articles of Incorporation of the Association, together with those reasonably implied to affect the purposes of the Association. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Such powers of the Association will include, for example, but will not be limited to, the power to purchase one or more properties subject to this Declaration and to hold, lease, mortgage, sell and convey the same, including the acquisition (by foreclosure or other means) and subsequent sale of delinquent Lots. Such duties may include, but will not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to the Owners, to furnish trash collections, water, sewer, and/or security service for the properties subject to this Declaration. Notwithstanding the foregoing provision of this Chapter or any other provision of this Declaration to the contrary, during the Declarant Control Period the Association will not, without the written approval of Declarant and subject to the Act, borrow money or pledge, mortgage or hypothecate all or any portion of the Common Area.

1. Ownership of Properties

The Association will be authorized to own, purchase, lease, use under any use agreement, and maintain (subject to the requirements of any Federal, State or local governing body of North Carolina) Common Area, equipment, furnishings, and Improvements devoted to the uses and purposes expressed and implied in this Declaration, including, for example, but not limited to, the following uses:

- a. For walks, paths and trails throughout the Property;
- b. For security services, including security stations, maintenance building and/or guardhouses;
- c. For providing any of the services which the Association is authorized to offer as set forth below; and
- d. For purposes set out in deeds or agreements by which Common Area is conveyed or by which use rights are granted to the Association.

2. Services

The Association will be authorized (unless prohibited by the requirements of any Federal, State or local governing body) to provide such services required to promote the uses and purposes for which the Association is formed as expressed or implied in this Declaration, including, but not limited to, the following services:

- a. *Cleanup and maintenance* of all private roads, roadways, road shoulders, roadway medians, parkways, lakes, lagoons, drainage areas and easements and Common Area within the Property and also all public properties which are located within or in a reasonable proximity to the Property such that their deterioration would affect the appearance of the Property as a whole;
- b. *Landscaping* of Common Area and walking paths within or constituting a Common Area;
- c. *Lighting* throughout the Property;
- d. *Maintenance* of any installed electronic and other access and control devices for the protection of the Property, if any such devices are ever installed, and assistance to the local police and sheriff departments in the apprehension and prosecution of persons who violate the laws of North Carolina within the Property;
- e. *Insect and pest control* to the extent that it is necessary or desirable in the judgment of the Board to supplement the service provided by the state and local governments;
- f. The *services* necessary or desirable in the judgment of the Board to carry out the Association's obligations and business under the terms of this Declaration and to collect Annual Assessments, Special Assessments, Emergency Special Assessments, Specific Assessments, and other fees and charges collectable from the Owners hereunder;
- g. To take any and all actions necessary to *enforce* these and all covenants and restrictions affecting the Property and to *perform* any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Property;
- h. To set up and operate an *architectural review board or committee* in the event that the Association is assigned the whole or any portion of the function of the ARC by Declarant, pursuant to this Declaration;
- i. To *construct Improvements* on the Common Area for use for any of the purposes or as may be required to provide the services as authorized in this Chapter;

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- j. To provide *administrative services* including but not limited to legal, accounting and financial; and communications services informing Members of activities, notices of meetings, Referendums, etc., incident to the above listed services;
 - k. To provide *liability and hazard insurance* covering Improvements and activities on Common Area;
 - l. To provide water, sewage, and any necessary *utility services* not provided by a public body, private utility or Declarant;
 - m. To provide any or all of the above listed services to *another association* or Owners of real property under a contract, the terms of which must be approved by the Board; and
 - n. To provide for *hearings and appeal procedures* for violations of Rules and Regulations.

3. Right of Association to Borrow Money

The Association has the right to borrow money for the following purposes:

- a. Improving the Community, or any portion thereof;
- b. Acquiring additional Common Area;
- c. Constructing, repairing, maintaining or improving any facilities located or to be located within the Community; or
- d. Providing the services authorized herein, to give as security for the payment of any such loan, a mortgage or other security instrument conveying all or any portion of the Common Area; provided, however, that the Lien and Encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any mortgage, irrespective of when such mortgage is executed or given.

The right of the Association to borrow money under this Chapter is subject to the written approval of eighty percent (80%) or more of the Qualified Voting Members of the Association, by a duly held Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting).

4. Rights of the Association to Grant and Accept Easements

Subject to the Act, the Association, through the Board, has the right to grant and accept Easements as provided in this Declaration and to dedicate or transfer fee simple title to all or any portion of the Common Area to any public agency or authority, public service district, public or private utility, or other person, provided that any such dedication or transfer must be approved by the Declarant during Declarant Control period and thereafter for so long as Declarant owns any of the Property primarily for the purpose of development or sale.

5. Association's Rights and Easements

The Association shall have the right to administer and maintain any Easements specifically reserved in this Declaration for the benefit of the Association, its directors, officers, agents and employees.

C. Agreements

Subject to the prior written approval of Declarant during the Declarant Control Period, all agreements and determinations lawfully authorized by the Board will be binding upon the Association and all Owners, their heirs, legal representatives, successors and assigns, and all others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community will comply with and be subject to the authorized actions of the Board. In performing its responsibilities hereunder, the Board will have the authority to delegate such duties as may be determined by the Board to Persons of its choice. Some examples of such delegations are as follows, and are not in any way intended to limit such delegation authority:

1. The Association may obtain and pay for the services of any Person or entity to manage its affairs or any part thereof, to the extent that it deems advisable, as well as such other personnel as the Association will deem necessary or desirable for the proper operation of the Community, whether such personnel are furnished or employed directly by the Association or by any Person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager will be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board, exercise all of the powers and will be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the Directors, Officers or Members of the Association by this Declaration or the Bylaws. Such manager may be an individual, corporation, or other legal entity, as the Board will determine, and may be bonded in such a manner as the Board may require, with the cost of acquiring any such bond to be a Common Expense.
2. The Association may pay for, and the Board may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Community or the enforcement of this Declaration, the Bylaws, or the Rules and Regulations.

D. Mortgage or Pledge

Subject to the provisions of this Declaration, the Board will have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association. Any such loans will be used by the Association in performing its authorized functions upon the approval of eighty percent (80%) or more of Qualified Voting Members of the Association, by a duly held Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting). Declarant may make loans to the Association, subject to approval by Declarant for the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association will not be allowed to reduce the limits of the regular Annual Assessment at any time there are outstanding amounts due to Declarant as repayment of the loans made by Declarant to the Association.

E. Personal Property and Real Property for Common Use

The Association, through action of its Board, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, will be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot and/or Dwelling also transfers the membership in the Association which is an appurtenance to such Lot and/or Dwelling.

F. Rules and Regulations

As provided in this Declaration, the Board may make, amend, revoke and enforce reasonable Rules and Regulations governing the use of the Lots, Dwellings, and Common Area, which Rules and Regulations will be consistent with the rights and duties established by this Declaration. **BECAUSE THE RULES AND REGULATIONS MAY MATERIALLY IMPACT THE USE OF ANY LOT OR DWELLING, A PURCHASER OF A LOT OR DWELLING IS CAUTIONED TO READ THE RULES AND REGULATIONS PRIOR TO PURCHASE. THE RULES AND REGULATIONS ARE INCORPORATED BY REFERENCE AS A PART OF THIS DECLARATION AS IF SET FORTH HEREIN VERBATIM. A copy of the initial Rules and Regulations are attached hereto as Exhibit C and incorporated herein by reference.** Any rule or regulation therein that applies to the use of a Lot or Dwelling shall not become effective until after thirty (30) days has expired from the date of posting of notice of such rule and regulation in a conspicuous location at the offices of the Association or the date that notice of such rule and regulation has been placed in the mail to all Qualified Voting Members to the addresses on file with the Association as provided in Article II above. This effective date requirement for Lot restrictions shall not apply to any emergency rule making as determined in the Board's discretion. In case of emergencies or for regulations pertaining to Areas, the applicable rule or regulation shall apply on the date of adoption.

G. Reduction in Services

During the calendar years of 2013 and 2014, and during the first two years when any Additional Property may be added to this Declaration, the Board will define and list a minimum of services, which will be furnished by the Association. So long as Declarant is engaged in the development of properties that are subject to the terms of this Declaration, the Association will not reduce the level of services it furnishes below such minimum level. Such minimum level of service will expressly include an obligation of the Association to maintain the Common Area and pay the costs and expenses set forth in any lease or use agreement therefor.

H. Obligation of the Association

The Association will not be obligated to carry out or offer any of the functions and/or services specified by the provisions of this Chapter except as otherwise specified in this Declaration. The functions and services to be carried out or offered by the Association at any particular time will be determined by the Board taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments as defined in this Article 3 will be submitted for approval as provided herein. Subject to the provisions of this Declaration, the functions and services which the Association is authorized to carry out or to provide may be added or reduced at any time upon the sole approval of Declarant during the Declarant Control Period, and thereafter, the functions and services which the Association is authorized to carry out or to provide may be added or reduced by the Board acting on the vote of fifty-one percent (51%) or more of the Qualified Voting Members of the Association, by a duly held Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting).

CHAPTER: 3 ASSESSMENTS

A. Purpose of Assessments

Owners are obligated to share in the financial operation of the Community by paying their Assessments. Management of common property, such as open space, parking, amenities, and roads, is funded by monthly "Assessments." The Assessments for Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Community, and maintaining the Community and Improvements therein, all as may be more specifically authorized from time to time by the Board.

B. Creation of Lien;²⁸ Personal Obligation

1. Personal Obligation

Each Owner will be personally liable for the entire amount of his or her individual Assessments. In the event of co-ownership, such co-owners will be jointly and severally liable for the entire amount of their Assessments. Assessments will be paid in such manner and on such dates as may be fixed by the Board in accordance with the provisions of this Declaration, provided that unless otherwise provided by the Board, the Annual Assessments will be paid in equal monthly installments. Owners are obligated to share in the financial operation of the Community by paying their Assessments on time. If they do not do so, the Association may file a Lien on their home and they may lose their home through foreclosure. Each Owner, by acceptance of a deed or other conveyance thereof, whether or not it will be so expressed in such deed or conveyance, is deemed to covenant and agree to pay the Association:

- a. "Annual Assessments," such Assessments to be defined, established and collected as provided in this Declaration;
- b. "Special Assessments," such Assessments to be defined, established and collected as provided in this Declaration;
- c. "Emergency Special Assessments," such Assessments to be defined, established and collected as provided in this Declaration; and
- d. Individual or "Specific Assessments" such Assessments to be defined, established and collected as provided in this Declaration.

2. Claim of Lien

Any such Assessments remaining unpaid for thirty (30) days, together with late charges, simple interest at a rate established from time to time by the Board of Directors as allowed by law, and court costs and attorneys' fees incurred to enforce or collect such Assessments, will be an equitable charge and a continuing Lien when a Claim of Lien is filed or recorded in the Office of the Clerk of Superior Court in Buncombe County, North Carolina and in accordance with the Act. A Claim of Lien²⁹ shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the Claim of Lien is filed, a description of the Lot and the amount of the Lien claimed. A Lien for unpaid assessments is extinguished unless proceedings to enforce the Lien are instituted within three (3) years after the docketing of the Claim of Lien in the Office of the Clerk of Superior Court in Buncombe County, North

²⁸ "Lien" is defined as a legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied.

²⁹ A "Claim of Lien" is a written statement, signed by the lien claimant or his/her agent, describing the property and the basis for claiming a lien on the property.

Carolina. A judgment, decree or order in any action brought under this Chapter shall include costs and reasonable attorney's fees for the prevailing party.

3. Lien Not Affected by Sale or Transfer

Each Owner will be personally liable for Assessments coming due while he is the Owner of a property, and his grantee will take title to such property subject to the equitable charge and continuing Lien therefore, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the Lien for unpaid Assessments will be subordinate to: (a) Liens and Encumbrances (specifically including, but not limited to, a Mortgage on the Lot or Dwelling) recorded before the docketing of the Claim of Lien in the Office of the Clerk of Superior Court, and (b) Liens for real estate taxes and other governmental assessments and charges against the Lot or Dwelling. Sale or transfer of a Lot or Dwelling shall not affect the Lien of the Assessments.

FORECLOSURE EXCEPTION: Where the holder of a Mortgage, or other purchaser of a Lot or Dwelling obtains title thereto as a result of foreclosure of a Mortgage, such purchaser and its heirs, successors and assigns, shall not be liable for the Assessments against such Lot or Dwelling by such purchaser. Such unpaid Assessments shall be deemed Common Expenses collectible from all the Owners including such purchaser, its heirs, successors and assigns.

C. Establishment of Annual Assessment

1. Budget

It will be the duty of the Board of Directors at least ninety (90) days prior to the first day of the Association's first full fiscal year, and each fiscal year thereafter, to prepare a budget covering the estimated Common Expenses during the coming year. Such budget may include a reserve account, if necessary, for the capital needs of the Association. In calculating the budget, the Board shall have the power to either reduce the budgeted expenses for the fiscal year being budgeted or to set aside such surplus in such operating and/or capital reserve account as the Board, in its sole discretion, shall determine.

2. Notice; Rate of Assessment

The Board will cause notice of the budget and the proposed total of the Annual Assessments to be levied against properties subject to this Declaration for the following year to be delivered to each Owner either personally or at the mailing address on file with the Association at least thirty (30) days prior to the first day of the fiscal year for which the budget and Assessments are established. Such notice shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) days, or more than sixty (60) days after mailing of said notice. The determination of the total amount of Common Expenses for any given fiscal year of the Association shall be within the sole discretion of the Board. The Board shall allocate Assessments for Common Expenses in such amounts to be fixed from year to year and the Board may (but is not obligated to) establish different rates for various general classifications of Lots after considering factors that include (but are not limited to) (i) the use of said Lots; (ii) the location of said Lots; and (iii) the benefits from Common Expenses accruing to said Lots, including, but not limited to, services specially provided by the Association to said Lots or access to Limited Common Elements.

For example, the Board may allocate in any given fiscal year, Assessments for Common Expenses based, at least in part, on whether a Lot is improved or unimproved, or contains a Single-Family Attached Dwelling. It is within the Board's discretion to determine what Assessment is warranted in cases where a Lot is combined or subdivided. The Board may also allocate Assessments in any given fiscal year for Common Expenses based, in whole or in part, on the number of Lots owned by a Member. For example, as a result

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of some perceived minimal impact on the community infrastructure, the Board may, in its discretion, levy a reduced assessment for each additional unimproved Lot that a Member owns in the Community. For purposes of illustration only, a Board may charge a full Annual and/or Special Assessment for a Member's Lot and twenty-five percent (25%) of said Annual and/or Special Assessment for every additional Lot that said Member may own. The Board may also assign different Assessment rates based on a designation of Limited Common Elements for a Neighborhood or for one or more Lots. For purposes of N.C. Gen. Stat. §47F-3-115(b) of the Act, the reference to "allocations set forth in the declaration" for Common Expense Assessments shall mean the allocations assigned to each Lot as established in the annual budget adopted by the Board for each fiscal year of the Master Association. **BY ACCEPTING A DEED FOR A LOT OR DWELLING IN THE THOMS ESTATE, A PURCHASER ACKNOWLEDGES HIS OR HER UNDERSTANDING OF THE STANDARD IN THIS DECLARATION BY WHICH TO MEASURE A MEMBER'S ASSESSMENT LIABILITY AND THE PURPOSES FOR SAID ASSESSMENTS.**

3. Disapproval of Annual Assessments

The annual budget and Annual Assessments, as determined by the Board, as provided in this Chapter, will become effective unless disapproved by Declarant in writing during the Declarant Control Period, and or by a majority of the total Association votes at a meeting to consider ratification of the budget. Such percentage will also constitute the quorum required for any such meeting. Notwithstanding the foregoing, in the event the proposed budget and Annual Assessments are disapproved or in the event the Board fails for any reason to determine an annual budget and to set the Annual Assessments, then and until such time as a budget and Annual Assessment will have been determined as provided herein, the budget and Annual Assessments will be the Default Budget and Default Annual Assessments defined in this Chapter and calculated in accordance with the provisions of this Declaration.

4. Authority of the Board to Increase Annual Assessments

If the Board determines that the important and essential functions of the Association budgeted for the year will not be properly funded by the Annual Assessments herein provided, it may increase such Assessment. An increase in Assessments in any year pursuant to special Board action as aforementioned, however, will in no way affect Annual Assessments for subsequent years.

5. Initial Annual Assessments

The initial Annual Assessments for all Owners of Lots and Dwellings for the calendar year in which this Declaration is recorded in the Registry will be established by the Board within ninety (90) days following the date this Declaration is recorded. Notwithstanding the establishment of such initial budget and initial Annual Assessments, the Board may charge a lesser amount until such time as Improvements constituting Common Area have been substantially completed.

6. Billing of Annual Assessments

The Annual Assessments may, in the sole discretion of the Board, be billed monthly, quarterly, semiannually, or annually, and will be due and payable on or before the last day of the month in which billed.

7. Rounding

All Annual Assessments charged by the Association will be rounded off to the nearest dollar.

8. Assessments for Common Expenses

The Common Expenses to be funded by the Annual Assessments may include, for example, without limitation, the following:

- a. Management fees and expenses of administration, including legal and accounting fees;
- b. Utility charges for utilities serving the Common Area and charges for other common services for the Community, including trash collection and security services, if any such services or charges are provided or paid by the Association;
- c. The cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and other insurance coverage determined by the Board to be in the interests of the Association and the Owners;
- d. The expenses of maintenance, operation, and repair of those portions of the Common Area which are the responsibility of the Association under the provisions of this Declaration;
- e. The expenses of any architectural review board established to receive and administer the whole or any portion of the ARC functions transferred and conveyed to the Association pursuant to this Declaration which are not defrayed by plan review charges;
- f. Ad valorem real and personal property taxes assessed and levied against the Common Area;
- g. 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 Lots or Dwellings; and
- h. The establishment and maintenance of a reasonable reserve fund or funds (1) for maintenance, repair and replacement of those portions of the Common Area which are the responsibility of the Association and which must be maintained, repaired or replaced on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or Liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

D. Determination of Default Budget and Default Annual Assessment

Upon the failure of the Board to adopt a budget, or upon the disapproval of any budget pursuant to the provisions of this Declaration, the Default Budget and Default Annual Assessments will be the greater of:

1. The then existing budget and Annual Assessments, increased in proportion to the percentage increase, if any, in the "CPI-U," as defined in this Chapter, from December of the preceding year to November of the then current year in which the said maximum budget and Annual Assessment is being determined, or by five percent (5%) whichever is greater; or
2. The budget and Annual Assessments for the year in which this Declaration is recorded by Declarant, increased to the year in which the said maximum budget and Annual Assessment is being determined in proportion to the percentage increase, if any, in the "CPI-U", as defined in this Chapter, from December of the year preceding the year in which this Declaration is recorded to November of the year in which the said maximum budget and Annual Assessment is being determined, or by five percent (5%) per annum, compounded, whichever is greater.

The "CPI-U" refers to the Consumer Price Index for All Urban Consumers (1982-84'100), or, if such index is discontinued or revised, by reference to such other government index or computation with which it is replaced or which would produce substantially the same measure as would be obtained if such index had not been discontinued or revised.

E. Change in Default Amounts Upon Merger or Consolidation

The limitations of the provisions of this Declaration will apply to any merger or consolidation in which the Association is authorized to participate and under the Bylaws of the Association.

F. Special Assessments for Improvements and Additions

1. Purposes

In addition to the regular Annual Assessments authorized by this Declaration, the Association may levy **Special Assessments**, for the following purposes:

- a. **Construction, Reconstruction, and Repair:** For the construction, reconstruction, unexpected repair or replacement of a damaged capital Improvement upon the Common Area, including the necessary fixtures and personal property related thereto as well as any insurance policy deductible if the damage is an insured loss;
- b. **Provide Essential Facilities and Equipment:** For the unexpected and unbudgeted acquisition of necessary facilities and equipment required for the Association to offer the services authorized herein;
- c. **Extraordinary Expenditures:** To provide funding for such other extraordinary and unbudgeted expenditures of the Association as the Board shall determine to be required for the efficient discharge of the Association duties and responsibilities hereunder and which cannot, in the Board's reasonable judgment, be delayed until the next budget is prepared.

2. Approval by Declarant and Disapproval of Members

Except as otherwise permitted in this Chapter, any Special Assessment will only be levied if: (a) during the Declarant Control Period Declarant approves, in writing, such Special Assessment; and (b) after the Declarant Control Period the Special Assessment is not disapproved by sixty-seven percent (67%) or more of Qualified Voting Members of the Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting.

The notices of such special meeting will include one statement from the Directors favoring the Special Assessment and one statement from those Directors opposing the Special Assessment containing the reasons for those Directors' support and opposition for the Special Assessment, if any such statements are provided by the Directors supporting and opposing the Special Assessment (Directors being under no obligation to provide such statements). Neither statement, either supporting or opposing the Special Assessment, will exceed five pages in length.

3. Apportionment

Special Assessments will be apportioned among the Lots and Dwellings in the same proportion as Annual Assessments.

G. Emergency Special Assessments

In addition to the Annual Assessments authorized by this Chapter and the Special Assessment authorized by this Chapter, the Association may levy Assessments for repairs, reconstruction, alterations or improvements due to emergencies of any type, as determined by the Board, in their sole discretion ("**Emergency Special Assessment**"). Any Emergency Special Assessment may be imposed without a vote of the Members. Emergency Special Assessments will be apportioned among the Lots and Dwellings in the same proportion as Annual Assessments unless it is determined by the Board that another apportionment thereof is more reasonable and more equitably justified by the circumstances giving rise to such emergency.

H. Declarant Subsidies

For any Lot that Declarant is required by law to pay an Assessment as denominated herein, Declarant may, in advance, offset or deduct from said Assessments owed to the Association, if any, the amount of any voluntary payments made by Declarant to the Association for the maintenance, upkeep and/or improvement of the Common Area after such areas have been turned over to the Association for care or to carry any budget or reserve shortfalls, or for any other purpose for which the Association is organized. Declarant shall provide to the Board within thirty (30) days after demand or otherwise within a reasonable period of time documentation of such expenditures made on behalf of the Association. Any such subsidy will, in Declarant's sole discretion, constitute one of the following: (i) a contribution to the Association, (ii) a credit or an advance against future Annual Assessments due from Declarant, or (iii) a loan to the Association.

The amount and character (contribution, advance or loan) of such payment by Declarant will be conspicuously disclosed as a line item in the budget described in this Chapter and will be made known to the Owners. The payment of such a subsidy in any year will under no circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant. Any such subsidy payment by Declarant may be made in kind.

I. Individual Specific Assessments

Any expenses incurred by the Association or Declarant because of the negligence or misconduct of one or more Owners or Occupants (and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Declaration), any fines as may be imposed against an Owner in accordance with the provisions of this Declaration, and any Common Expense or portion thereof benefiting fewer than all of the Lots and chargeable therefor, will be specifically assessed as a **Specific Assessment** against each such Owner and the Owner's Lot or Dwelling to whom and to which such expense or fine is chargeable. The provisions hereof are subject to the right to a hearing pursuant to the provisions of this Declaration if such Specific Assessment is assessed as a result of a damage to or destruction of a Common Area. Assessments to pay a judgment against the Association shall be made only against the Lots in the Community at the time the judgment was entered, in equal proportions, as an individual Specific Assessment.

J. Effect of Nonpayment and Remedies of Association

1. Late Charge

An Assessment shall be due in full not later than the last day of the month in which the Assessment is billed, and any Assessment or portion thereof that is not paid when so due will be delinquent. Any delinquent Assessment will incur a late charge in an amount as may be determined by the Board and, upon adoption of a policy therefor by the Board, will also commence to accrue simple interest at the rate set by the Board not to exceed eighteen percent (18%) per year.

2. Claim of Lien

A Claim of Lien may be filed as discussed in this Chapter for each Assessment installment remaining unpaid for thirty (30) days as the same will become due and payable, and if an Assessment installment has not been paid in accordance with the pronouns of this Chapter, the entire unpaid balance of the Assessment installments remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full. The continuing Lien and equitable charge of such Assessment will include all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by Jaw, subordinate only to Liens as provided in this Declaration.

3. Foreclosure

In the event that the Assessment remains unpaid sixty (60) days following the date when so due, the Association may institute a suit to collect such amounts and to foreclose its Lien within three years from the docketing of the Claim of Lien in the Office of the Clerk of Superior Court for Buncombe County, North Carolina, otherwise said Lien will be extinguished. The equitable charge and Lien provided for in this Chapter will be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such Assessments as a debt and/or to foreclose the aforesaid Lien in like manner as a deed of trust securing real property. The Association will have the power to bid on the Lot or dwelling at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Area or abandonment of his Lot, and an Owner will remain personally liable for Assessments, including interest and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot.

K. Certificate

The Treasurer, any Assistant Treasurer, or the manager of the Association will, within ten (10) days of a written request, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate signed by the Treasurer, Assistant Treasurer, or manager setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest and other penalty charges. Such certificate will be conclusive evidence for the Association, the Board, and every Lot Owner of payment of any Assessments stated therein to have been paid.

L. Date of Commencement of Assessments

The Assessments provided for herein will commence on the date on which the first Lot is conveyed to a Person other than Declarant and will be due and payable in such manner and on such schedule as the Board may provide. Annual Assessments, Special Assessments and Emergency Special Assessments will be adjusted for such property according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such property is first conveyed.

M. Working Capital Collected at Initial Closing

Notwithstanding anything to the contrary in this Declaration, a working capital fund will be established for the Association by collecting from each Owner who acquires title to a Lot a working capital amount equal to 6/12 of the Annual Assessment then in effect (six monthly payments), which Assessment will be due and payable, and will be transferred to the Association, at the time of transfer of each Lot by Declarant to any other Owner. **SUCH SUM IS AND WILL REMAIN DISTINCT FROM THE ANNUAL ASSESSMENT AND WILL NOT BE CONSIDERED ADVANCE PAYMENT OF THE ANNUAL ASSESSMENT.** It is the intent of this provision that the Working Capital so collected will

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fund the operations of the HOA, build capital reserves for the Community, and be used to beautify Common Areas of the Community.

N. Community Enhancement Contribution

Notwithstanding anything to the contrary in this Declaration, authority is hereby established for the Association to collect a Fee upon each transfer of title to a Lot (exempting the initial sale by the Declarant). Such Fee is owed by the new Owner acquiring title of a Lot and is set at an amount equal to 6/12 of the current year Annual Assessment then in effect (six monthly payments), which Fee will be due and payable, and will be transferred to the Association, at the closing of the transfer. **SUCH SUM IS AND WILL REMAIN DISTINCT FROM THE ANNUAL ASSESSMENT AND WILL NOT BE CONSIDERED ADVANCE PAYMENT OF THE ANNUAL ASSESSMENT.** The Association shall have the same lien rights for this contribution as for annual Assessments. It is the intent of this provision that the Fee so collected will fund the operations of the HOA, build capital reserves for the Community, and be used to beautify Common Areas of the Community.

CHAPTER 4 MEMBERSHIP AND VOTING RIGHTS

A. Membership

The individual Owner in a homeowners association has the opportunity to become involved and participate in the ongoing affairs of the Community. Owners also have the responsibility to make sure that the Association's conduct conforms to the Bylaws and Declaration. Every Owner, including Declarant, of a Lot and Dwelling will be a Member of the Association. Ownership of a Lot will be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

B. Voting Rights

The Association will initially have two (2) types of voting memberships which are as follows:

1. Type A Member

Type A Members will be Owners (including Declarant) of Lots and Dwellings. A Type A Member will be entitled to one (1) vote for each Lot and Dwelling owned.

2. Type B Member

The Type B Member will be Declarant or its designated assign. The Type B Member will be entitled to three (3) votes for each lot it owns, plus one (1) vote (tie breaker vote) during the Declarant Control Period. Thereafter, the Type B Member will exercise one vote for each lot it owns as any other Type A Member.

C. Creation of Additional Membership Types

Declarant may create additional types of Members for any Additional Property added to this Declaration pursuant to the provisions of this Declaration.

D. Members in Good Standing Entitled to Vote

Payment of Special Assessments or Emergency Special Assessments will not entitle Type A Members to additional votes. Only those Members in good standing and eligible to vote as Qualified Voting Members pursuant to the Bylaws shall be entitled to cast any vote required or permitted hereunder, and only the votes of Members in good standing and eligible to vote shall be considered in any calculation of votes or any required percentage thereof.

E. Voting by Multiple Owners

When any Lot or Dwelling of a Type A Member of the Association is owned in the name of two or more persons, (other than husband and wife, either of whose vote will bind both) by an entity, or in any other manner of joint or common ownership, the Owner who is present at said meeting of the Association is entitled to vote on behalf of such Lot or Dwelling. If more than one Owner is present at an Association meeting, (a) the vote for such Lot or Dwelling will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting, or (b) the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners, a copy of which will be delivered to the

Secretary of the Association and will remain effective for all meetings until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.

F. Association Governance by the Board

As provided in the Bylaws, a Board of Directors consisting of a minimum of three (3) natural persons and a maximum of seven (7) natural persons will govern the Association.

G. Meetings and Membership Voting

Except as otherwise provided in this Declaration, rules and procedures of the Association, including, but not limited to, conducting elections, meetings (both regular and special), and for casting of votes by members, and the number thereof required for quorums and approval or ratification, shall be as set forth in the Bylaws.

ARTICLE 4: PROTECTIVE PROVISIONS FOR DECLARANT, OWNERS AND ASSOCIATION

Chapter 1: Insurance and Casualty Losses

Chapter 2: Mortgage

Chapter 3: Condemnation

Chapter 4: Alternative Dispute Resolution

Chapter 5: Conflicts

Chapter 6: Disclosures and Disclaimers

CHAPTER 1 INSURANCE & CASUALTY LOSSES

A. Property Insurance

The Board will have the authority to obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association. Such coverage will insure all insurable improvements in and to the Common Area against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief. Such coverage to be in an amount sufficient to cover, after application of any deductibles, not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. If adequate property insurance cannot be obtained at reasonable rates, the Board shall promptly cause notice of that fact to be hand delivered or mailed first class, postage prepaid, to all Owners.

B. Liability Insurance

The Board will have the authority to and will obtain and continue in effect a public liability policy covering all the Common Area and all damage or injury caused by the negligence of the Association, its Members, its Directors and Officers, or any of its agents. Such public liability policy will provide such coverage as are determined to be necessary by the Board. If adequate liability insurance cannot be obtained at reasonable rates, the Board shall promptly cause notice of that fact to be hand delivered or mailed first class, postage prepaid, to all Owners.

C. Fidelity Bonds

The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a blanket fidelity bond for all Officers, Directors, trustees, and employees of the Association and all other persons handling or responsible for funds belonging to or administered by the Association, including any professional management company assisting with the administration of the Association. The total amount of the fidelity bond coverage required will be based upon the best business judgment of the Board.

Fidelity bonds will meet the following requirements:

1. The Association will be named as an obligee;
2. The bonds will contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and
3. The bond will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days prior written notice to the Association and each Mortgagee listed as a scheduled beneficiary of a first priority deed of trust in the fidelity bond.

D. Other Insurance

The Board will have the authority and may obtain workers' compensation insurance to the extent necessary to comply with any applicable laws and other types and amounts of insurance as may be determined by the Board to be necessary or desirable, including, but not limited to, fidelity and Directors' and Officers' liability coverage.

E. Policies of the Association

All such insurance coverage obtained by the Board will be written in the name of the Association as trustee for each of the Owners to the extent of his insurable interest and costs of all such coverage will be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Community will be vested in the Board; provided however, that no Mortgagee or other security

holder of the Common Area having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. To the extent permitted by law, the Association will be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

1. All policies will be written with a company holding a *rating of A+* in a financial category of 10, or better rating and financial category, as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best possible rating.
2. All property insurance policies will be for *the benefit of the Owners and their Mortgagees* as their interests may appear.
3. All policies will contain a *waiver of the insurer's right to cancel* without first giving thirty (30) days' prior written notice of such cancellation to the Association and to any Mortgagee to which a Mortgagee endorsement has been issued.
4. In no event will the insurance coverage obtained and maintained by the Board be *brought into contribution* with insurance purchased by individual Owners or their Mortgagees, and all policies will contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners to their Mortgagees.
5. All policies will contain a *waiver of subrogation* by the insurer as to any claims against the Association, the Association's Directors and Officers, the Owners, Occupants, the Association's manager and any Owner or member of the Owner's household.
6. All policies will contain a provision that no policy may be cancelled, invalidated, or suspended due to the conduct of one or more of the individual Owners or Occupants or due to the acts of any Director, Officer, employee, or agent of the Association or of its manager, *without prior demand in writing to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured*, said time to be at least thirty (30) days. All written demands shall be delivered to the Association and to each 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 address.
7. All liability insurance will contain *cross-liability endorsements* to cover liability of the Association to an individual Owner.
8. All policies will contain a provision that no act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will *preclude recovery* under the policy.
9. All policies will contain a provision that the insurer issue certifications or memoranda of insurance to the Association, and upon written request, to any Owner, Mortgagee or beneficiary under a deed of trust; provided further, however, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each 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.

F. Owner's Insurance

It will be the individual responsibility of each Owner at his own expense and election to provide public liability, property damage, title and other insurance with respect to his or its own Lot and Dwelling. The Board of Directors may require all Owners to carry public liability and property damage insurance with respect to their respective properties and to furnish copies or certificates thereof to the Association.

G. Damage or Destruction to Common Area and Insurance Recovery

Immediately after damage or destruction by fire or other casualty to all or any part of the Common Area covered by insurance written in the name of the Association, the Board or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance, and in any such event, the Board will obtain reliable and detailed estimates of the cost of Repair or Reconstruction³⁰ of the damaged or destroyed property. Within sixty (60) days following any damage or destruction to all or a part of the Common Area, the Association will restore or replace such damaged Improvements, unless one of the following occurs: (i) the Association is terminated; (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance; (iii) the Owners, by a vote of eighty percent (80%) or more of the votes of the entire Association, including one hundred percent (100%) approval of Owners assigned to any Limited Common Elements not to be rebuilt by a duly held Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), and to which Declarant consents during the Declarant Control Period, vote not to rebuild or restore.

If any insurance proceeds for such damage or destruction are not sufficient to defray the cost thereof, including any amount attributable to Association's insurance deductible, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a Special Assessment against all Owners, without the necessity of a vote, pursuant to this Chapter. Such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost of Repair or Reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any Repair or Reconstruction. If it is determined that the damage or destruction for which the insurance proceeds are paid will not be repaired or reconstructed, such proceeds will be used to restore the damaged or destroyed Common Area to a condition compatible with the remainder of the subdivision. Any remaining insurance proceeds will be distributed to the Owners or Lien holders, as their interests may appear, in proportion to the Common Expense liabilities of all Lots.

H. Damage or Destruction to Owners' Properties

In the event of damage or destruction by fire or other casualty to any property subject to this Declaration, or the Improvements thereon, and in the further event that the Owner responsible for the repair and replacement of such property elects not to repair or rebuild, such Owner will promptly clear away the ruins and debris of any damaged Improvements or vegetation and leave such property in a clean, orderly, safe and aesthetic condition.

Should such Owner elect to repair or rebuild such property or other Improvements thereon, such Owner will repair or rebuild substantially to the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, the procedures and Design Guidelines in accordance with the provisions of this Declaration) and all applicable zoning, subdivision, building, and other governmental regulations. All such work, repair or construction will be commenced promptly following such damage or destruction and will be carried through diligently to conclusion.

I. Damage or Destruction to Common Area by Owners

If an Owner is responsible for damage inflicted on any Common Area, the Association may direct such Owner to repair such damage, or the Association may itself cause the repairs to be made and recover the amount from the Owner.

³⁰ "Repair" or "Reconstruction," as used in this Chapter means repairing or restoring the damaged property substantially to the same condition in which it existed prior to the fire or other casualty.

J. Damage to an Owner's Lot by the Association

If damage is inflicted on any Lot by an agent of the Association in the scope of that agent's activities as an agent, the Association is liable to repair such damage or to reimburse the Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner due to such damage.

K. Hearing Procedure Following Damage or Destruction

When a claim arising under this Chapter is less than or equal to \$4,000 or the then current jurisdictional amount for small claims pursuant to N.C. Gen Stat. §47F-3-107, the aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Board to determine if an Owner is responsible for damages to any Common Area or if the Association is responsible for damages to a Lot. The adjudicatory panel may assess liability for the damage incurred by the aggrieved party. If the amount of damage is found to be more than the current jurisdictional amount for small claims, liability of any Owner or the Association shall be determined as otherwise provided by law.

1. If the party charged is assessed an amount pursuant to this Chapter said amount will be due within thirty (30) days of receipt of the amount assessed.
2. Any assessment payable by an Owner remaining unpaid for thirty (30) days, together with simple interest at a rate established from time to time by the Board, not to exceed eighteen percent (18%) per year, will be an equitable charge and continuing Lien when a Claim of Lien is filed of record in the Office of the Clerk of Superior Court in Buncombe County, North Carolina. A Claim of Lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the Claim of Lien is filed, a description of the Lot and the amount of the Lien claimed. A Lien for unpaid assessments for damages by an Owner is extinguished unless proceedings to enforce the Lien are instituted within three (3) years after the docketing of the Claim of Lien in the Office of the Clerk of Superior Court in Buncombe County, North Carolina.
3. A judgment, decree or order in any action brought under this Chapter shall include costs and reasonable attorney's fees of enforcement and collection for the prevailing party.
4. In addition, any liabilities of the Association determined by the adjudicatory panel in the hearing pursuant to the terms of this Declaration or as otherwise provided by law may be offset by the 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.
5. Procedure

In the event an aggrieved party requests that an Owner or the Association be brought before an adjudicatory panel, the following procedures shall control.

a. Notice

If an aggrieved party requests a hearing pursuant to this Chapter, then the Board shall provide the party charged with twenty (20) days of the time and place of the hearing and the damage alleged.

b. Hearing

All hearings under this Chapter will be held before an adjudicatory panel appointed by the Board, or if no adjudicatory panel is appointed, the hearing will be before the Board itself sitting as the

adjudicatory panel. The party charged will be afforded an opportunity to be heard and to present witnesses and written notice of the decision.

CHAPTER 2 MORTGAGES

The following provisions are for the benefit of beneficiaries, insurers and guarantors of first priority deeds of trust on Lots and Dwelling in the Community. The provisions of this Chapter may apply to both this Declaration and the Bylaws, notwithstanding any other provisions contained therein.

A. Clarification of "Mortgage" vs. "Deed of Trust"

When a person or entity obtains a loan to purchase real property, the lender usually requires that person or entity to execute a **Security Instrument**.³¹ Depending on where that real property is located within the United States, this document could be in the form of a mortgage or a deed of trust. In the State of North Carolina, a deed of trust is used in place of a mortgage. While a mortgage involves two people (the borrower and the lender, commonly termed "mortgagor" and "Mortgagee," respectively) a deed of trust involves three people - the borrower (the "trustor"), the lender (the "beneficiary") and a trustee, a neutral third party, such as, but not always, an attorney. Deeds of trust are recorded in the Registry. A deed of trust essentially serves the same purpose as a mortgage; however, there are important differences with respect to parties involved, title holder, and foreclosure process.³²

Given the fact that most people commonly refer to their home loans as "mortgages," this Declaration often uses the terms "mortgage" and "Mortgagee" in the place of the terms "deed of trust" and "beneficiary," for explanatory purposes only.

B. Notice of Action

An institutional holder, insurer, or guarantor of a first mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot or Dwelling to which its mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

1. **Condemnation or Casualty:** Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot or Dwelling on which there is a first mortgage held, insured or guaranteed by such Eligible Holder;
2. **Assessment Payment Delinquency:** Any delinquency in the payment of assessments or charges owed by an Owner of a Lot or Dwelling subject to the mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of this Declaration or Bylaws relating to such Lot or Dwelling or the Owner or Occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Lot or Dwelling of any obligation under this Declaration or Bylaws, which is not cured within sixty (60) days;
3. **Insurance Change:** Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
4. **Matter Requiring Vote:** Any proposed action that would require the consent of a specified percentage of Eligible Holders.

³¹ A "Security Instrument" is a document that is executed and recorded in the Registry that provides for an interest in specified real property to guarantee the performance of an obligation.

³² When a deed of trust is involved, foreclosure can be quicker, less expensive, and less complicated than when a mortgage is the security instrument. When a deed of trust is the security instrument and the loan becomes delinquent, the trustee has the power to sell the home. The lender must provide the trustee with proof of delinquency and request that foreclosure proceedings be initiated, and the foreclosure must progress according to law and as dictated by the deed of trust; however, the foreclosure does not have to go through the court system.

C. Special FHLMC Provision

So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or Members holding at least sixty-seven percent (67%) of the total Association vote consent, the Association shall not:

1. Change the Common Area: By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of Easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this Declaration);
2. Change the Method of Levy: In determining the obligations, Assessments, dues, or other charges which may be levied against an Owner of a Lot or Dwelling;
3. Abandon Architectural Scheme: By act or omission waive or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots or Dwellings and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this provision);
4. Fail to Maintain Insurance: As required by this Declaration; or
5. Use Hazard Insurance Proceeds: For any Common Area losses for purposes other than to repair, replace or reconstruct such property.

First Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may have become a charge against the Common Area and may pay overdue premiums on property insurance policies or secure new property insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

D. No Priority

No provision of this Declaration or the Bylaws gives or shall be construed as giving, any Owner of a Lot or Dwelling, or other party, priority over any rights of the first Mortgagee, in the case of distribution of insurance proceeds or condemnation awards for losses or a taking of the Common Area .

E. Notice to Association

Upon request, each Owner shall be obligated to furnish the Association the name and address of the holder of any mortgage encumbering such Owner's Lot or Dwelling.

F. Amendment by the Board

Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its respective requirements that necessitate the provisions of this Chapter or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Chapter to reflect such change(s).

G. Applicability

Nothing contained in this Chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws, or the laws of the State of North Carolina for any of the acts set out in this Chapter.

H. Failure of Mortgagee to Respond

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

CHAPTER 3 CONDEMNATION

A. Condemnation of Common Area

"Condemnation" is the determination and declaration that certain property is assigned to public use, subject to reasonable compensation. Condemnation is the exercise of eminent domain by a Governmental Entity. "Eminent Domain" is the inherent power of a Governmental Entity to take privately owned property and convert it to public use, subject to reasonable compensation for the taking.

Whenever all or any part of the Common Area of the Community will be taken by any authority having the power of Condemnation or Eminent Domain, or is conveyed in lieu thereof by the Board acting with the affirmative vote of eighty percent (80%) or more of Qualified Voting Members of the Association, by a duly held Referendum or at a duly held meeting of Members, which percentage will also constitute the quorum required for any such meeting, and following written approval by Declarant for so long as Declarant owns any of the Property primarily for development or sale, the award or proceeds made or collected for such taking or sale in lieu thereof will be payable to the Association and will be disbursed or held as follows:

1. Common Area With Improvements

If the taking or sale in lieu thereof involves a portion of the Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, during the Declarant Control Period, and the Board, acting on the vote of the membership as provided above, will otherwise agree, the Association will restore or replace such Improvements so taken, to the extent practicable, on the remaining lands included in the Common Area which are available therefore, in accordance with the plans approved by the Board, the ARC and by Declarant during the Declarant Control Period.

If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for the purpose, the Board may levy a Special Assessment against all Owners, without the necessity of a vote. Said Special Assessment will be in an amount sufficient to provide funds to pay such excess cost for repair or reconstruction. Any Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. If such Improvements are not to be repaired or restored, the award or proceeds will be retained by and for the benefit of the Association.

2. Common Area Without Improvements

If the taking or sale in lieu thereof does not involve any Improvements to the Common Area, or if there are net funds remaining after any such restoration or replacement of such Improvements has been completed, then such award, proceeds, or net funds will be retained by and for the benefit of the Association.

3. Including Owners' Property

If the taking or sale in lieu thereof includes all or any part of an Owner's property and also includes any part of the Common Area, then a court of competent jurisdiction will apportion such award or proceeds and such award or proceeds will be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners for their interest in such property. Such apportionment, however, may instead be resolved by the agreement of: (a) the Board, (b) the Owners of all properties wholly or partially taken or sold, together with the Mortgagees for each such property, and (c) Declarant, during the Declarant Control Period.

B. Condemnation of Owners' Properties

1. Election Not to Restore

In the event that all or any part of a Lot subject to this Declaration, or any Improvements thereon is taken by any authority having the power of Condemnation or Eminent Domain, or is conveyed in lieu thereof, and in the further event that the Owner thereof elects not to restore the remainder of such property, then the Owner making such election will promptly clear away any remaining Improvements damaged or destroyed by such taking or conveyance and will leave such property and any remaining undamaged Improvements thereon in a clean, orderly, safe and aesthetic condition.

In addition, if the size or configuration of such property remaining after such taking or conveyance is insufficient to permit the restoration of the remaining Improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provision of this Declaration and all applicable zoning, subdivision, building and other governmental regulations, then such Owner will have the option, after clearing away all remaining Improvements or portions thereof and placing the remainder in a clean, orderly, safe, and aesthetic condition referred to above, of deeding the remaining portion of the property to the Association as a part of the Common Area, and thereafter any such Owner will not have any further voting rights or membership rights or privileges in the Association or with respect to the Community and will not be subject to any further Assessments imposed by the Association and payable after the date of such deeding and attributable to such property deeded to the Association.

2. Election to Restore

In the event that any part of a property subject to this Declaration, or any Improvements thereon, is taken by any authority having the power of Condemnation or Eminent Domain, or is conveyed in lieu thereof, and if the Owner thereof elects to restore the remainder of the property, such Owner making such election will restore such remainder thereof as nearly as practicable to the same condition it was in, prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration, and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration will be commenced promptly following such taking or conveyance and will be carried through diligently to conclusion.

CHAPTER 4 ALTERNATIVE DISPUTE RESOLUTION

A. Agreement

The purpose of this Chapter is to limit the right to litigate disputes that may arise in the future, circumventing financial and emotional costs of potential litigation. Declarant, the Association, Owners, and any Person not otherwise subject to this Declaration who agrees to submit to this Chapter (collectively, "Bound Parties") agrees to encourage the amicable resolution of disputes between and among themselves involving this Declaration or the Community, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving this Declaration or the Community including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively, "Claims"), except for Exempt Claims, as defined in this Chapter, are subject to the procedures set forth in this Chapter.

All periods of time set forth herein or calculated pursuant to provisions of this Chapter will be strictly adhered to, time being of the essence hereof. This Chapter will not be amended unless the amendment is approved by the requisite percentage of votes of Members, and pursuant to the same procedures, necessary to institute proceedings as provided above.

B. Mediation; Arbitration

Any and all claims and disputes against Declarant arising out of the design and/or construction of Dwellings or Common Elements or the administration of the Association shall be initially subject to mediation in accordance with the North Carolina Rules of Mediated Settlement Conferences as a condition precedent to the institution of further proceedings. Thereafter, any and all claims arising out of the design and construction of Dwellings or Common Elements or the administration of the Association shall be subject to arbitration in accordance with the North Carolina Arbitration Act and the provisions of this Declaration. Venue for arbitration shall be in Buncombe County, North Carolina.

C. Exempt Claims

The following Claims ("Exempt Claims") are exempt from the provisions of this Chapter:

1. **Enforcement of Assessments:** Any suit by the Association against a Bound Party to enforce any Assessments or other charges hereunder.
2. **Court Order to Maintain Status Quo:** Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder until the matter may be resolved on the merits pursuant to this Chapter.
3. **Suits between Owners Not Involving Declaration or Association:** Any suit between Owners which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration and the Community.
4. **Indispensable Party Not a Bound Party:** Any suit in which an indispensable party is not a Bound Party.
5. **Suit Otherwise Barred by Statute of Limitations:** Any suit which otherwise would be barred by any applicable statute of limitation.

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6. **Bound Party Waiver of Mandatory Provisions:** Any suit involving a matter that is not an Exempt Claim under items (1) through (5) above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of this Chapter.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in this Chapter but there is no obligation to do so.

D. **Mandatory Procedures for Non-Exempt Claims**

Any Bound Party having a Claim ("Claimant") against a Bound Party involving this Declaration or the Community, or all or any combination of them ("Respondent"), other than an Exempt Claim under this Chapter will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the procedures set forth below and then only to enforce the results hereof.

1. **Notice**

Within a reasonable time after the Claim in question has arisen and in each event prior to the date when institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitation, Claimant will notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely (a) the nature of the Claim, including applicable date, time, location, Persons involved, Respondent's role in the Claim and the provisions of this Declaration or other authority out of which the Claim arises; (b) what Claimant wants Respondent to do or not do to resolve the Claim; and (c) that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith, ways to resolve the Claim.

2. **Negotiation**

Each Claimant and Respondent (the "Parties") will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation not later than thirty (30) days following the Notice, unless otherwise agreed by the Parties ("Negotiation"). Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint an attorney licensed to practice law in the State of North Carolina to assist the Parties in resolving the dispute by Negotiation, if in its discretion it believes his or her efforts will be beneficial to the Parties. Such an attorney will have been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments and will not have a conflict of interest with any of the Parties.

3. **Final and Binding Arbitration**

If the Parties do not resolve the Claim through Negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), a Claimant will have thirty (30) days within which to submit the Claim to binding arbitration ("Arbitration") under the auspices and the Commercial Arbitration Rules of the American Arbitration Association and in accordance with the substantive and procedural laws of the state of North Carolina, except as said rules, procedures and substantive laws are applied otherwise as follows:

a. **Selection of Arbitrator**

Unless the Parties mutually set another date within ten (10) days following Termination of Negotiation, Claimant and Respondent will jointly select one arbitrator, whose decision will be absolutely binding on all Parties; provided, however, if Claimant and Respondent are unable to jointly select one arbitrator within said ten (10) day period, or on or before any later day set by

them by which to select an arbitrator, the arbitrator will be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

b. Location of Arbitration

The Arbitration will be conducted in Buncombe County, North Carolina before a neutral person who is a member of the Bar of the State of North Carolina, who has been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments, and who has no conflict of interest with any Party.

c. Arbitration Award

The arbitrator may award any remedy or relief that a court of the State of North Carolina could order or grant, including, without limitation, specific performance of any obligation created under this Declaration, or the issuance of an injunction, as well as the imposition of sanctions for abuse or frustration of the Arbitration process; provided, however, the arbitrator will have no authority to award punitive damages or any other damages not measured by the actual damages of the "Prevailing Party," as defined in this Chapter, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Declaration.

d. Abandoned Claims

In the event Claimant does not submit the Claim to binding Arbitration as aforementioned, the Claim is deemed abandoned, and the Respondent is released and discharged from any and all liability to Claimant arising out of the Claim; provided, nothing herein will release or discharge Respondent from any liability to a Person not a Party to the foregoing proceedings, or the mandatory requirements of this Paragraph with respect to any subsequently arising dispute or claim by the Claimant which is identical or similar to the Claim previously deemed abandoned under the provisions of this Chapter.

E. Allocation of Costs of Resolving Claims

1. Costs of Notice and Negotiation

Each Party will bear all of its own costs incurred prior to and during the proceedings described in this Chapter, including the fees of its attorney or other representative. Claimant and Respondent will share equally the costs and expenses of any attorney appointed by the Board pursuant to the paragraph above regarding Negotiation, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the Board is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses.

2. Arbitration Costs

In the event the Claim proceeds to arbitration pursuant to the terms of this Chapter, the "Prevailing Party"³³ will receive from the non-Prevailing Party, all of its costs and expenses, including reasonable expert and attorney's fees, incurred from commencement of selection of the arbitrator under the

³³ The "Prevailing Party" will be determined as follows: not less than ten (10) days prior to the first day of the proceeding, a Party or Parties may file and serve on the other Party (ies) an Offer, and within five (5) days thereafter the Party(ies) served may respond by filing and serving such Party(ies) its own Offer. An Offer will state that it is made under this paragraph and will specify the amount which the Party(ies) serving the Offer is/are willing to agree upon, and will constitute a settlement of all claims in dispute, including the Claim and all counterclaims.

paragraph in this Chapter regarding Final and Binding Arbitration to the issuance of the Award. Furthermore, the non-Prevailing Party will pay all costs and expenses of the arbitration, including the costs and expenses of any attorney appointed by the American Arbitration Association pursuant to the Final and Binding Arbitration paragraph, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the American Arbitration Association is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses.

3. Offer of Settlement

- a. An offer of settlement ("Offer") is considered rejected by the recipient unless an acceptance, in writing, is served on the Party(ies) making the Offer prior to the first day of the proceeding.
- b. If an Offer is rejected, it may not be referred to for any purpose in the proceeding, but may be considered solely for the purpose of awarding fees, costs and expenses of the proceeding as provided in this Chapter.
- c. If the Claimant makes no written Offer, the amount of the Claim made or asserted by the Claimant during the action is deemed to be such Claimant's final Offer.
- d. If the Respondent makes no written Offer, the final Offer by the Respondent will be the amount asserted during the action to be due in satisfaction of the Claimant's claims, otherwise the Respondent's Offer is deemed to be zero.
- e. If the Respondent asserts a counterclaim, then Offers shall take into consideration such counterclaim in the manner above provided. Furthermore, any Award shall also take into account such counterclaim.
- f. The Party or Parties whose Offer, made or deemed made, is closer to the Award granted in the proceeding is considered the "Prevailing Party" hereunder. If the difference between Claimant's and Respondent's Offers and the Award is equal, neither Claimant nor Respondent is considered to be the Prevailing Party for purposes of determining the award of fees, costs and expenses of Arbitration.

F. Enforcement of Resolution

If the Parties agree to resolve any Claim through Negotiation as provided in this Chapter thereafter fails to abide by the terms of the agreement reached through Negotiation, or if, allowing Arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in this Chapter. In such event, the Party taking action to enforce the agreement or Award is entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all the Parties jointly and severally) all costs incurred in enforcing the agreement or Award, including without limitation, attorney's fees and court costs.

G. Litigation; Preconditions to Suits Against Declarant

No judicial or administrative proceeding, including any mandatory procedure under this Chapter, with an amount in controversy exceeding twenty-five thousand and No/100 Dollars (\$25,000.00) will be commenced or prosecuted by the Association unless approved by eighty percent (80%) or more of Qualified Voting Members of the Association, by a duly held Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting.

This provision will not apply, however, to the following:

1. Actions brought by the Association to enforce the provisions of this Declaration (including without limitations, the foreclosure of Liens);
2. The imposition and collection of Assessments;
3. Proceedings involving challenges to ad valorem taxation;
4. Counterclaims brought by the Association in proceedings instituted against it; or
5. Actions brought by the Association to enforce written contracts with its suppliers and service providers.

Notwithstanding anything in this Declaration to the contrary, the affirmative vote of no less than eighty percent (80%) or more of Qualified Voting Members of the Association, by a duly held Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting, shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any Governmental Agency which has regulatory or judicial authority over the Community or any part thereof; or (2) assert a claim against or sue Declarant as provided in this Declaration.

H. Declarant's Right to Cure Alleged Defects

It is Declarant's intent that all Improvements constructed or made by it in the Community, including Common Area, be built or made in compliance with all applicable laws. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects," as defined below, amicably, and without the necessity of time-consuming and costly litigation.

Accordingly, the Association, the Board and all Owners shall be bound by the following claims resolution procedure to the extent allowed by law:

1. If the Association, the Board or any Owner (collectively, "Claimant") claims, contends or alleges that any portion of the Property including, without limitation, any Lot, Dwelling, Common Area, or any Improvements constructed on the Property, is defective or that Declarant or its agents, consultants, contractors or subcontractors was negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right to inspect, repair and/or replace the Alleged Defect as set forth herein.
2. In the event that a Claimant discovers any Alleged Defect within one (1) year of purchase of a Lot, the Claimant shall, within a reasonable time after discovery, notify Declarant in writing, at the address specified for notices in this Declaration (or such other address at which Declarant maintains its principal place of business) of the specific nature of such Alleged Defect ("Notice of Alleged Defect").
3. Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservation of right, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Lot and any Improvements or other portion of the Property for the purposes of inspecting and, if deemed necessary by Declarant, repairing or replacing the Alleged Defect. In conducting such inspection, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

4. No Claimant shall initiate any legal action, cause of action, proceeding or Arbitration against Declarant alleging damages (i) for the costs of the repair or replacement of any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from the Alleged Defect, or (iii) for any consequential damages resulting from the Alleged Defect, unless and until (1) the Claimant has delivered to Declarant a Notice of Alleged Defect, and (2) Declarant has, within ninety (90) days after its receipt of the Notice of Alleged Defect, either (a) failed to repair or replace the Alleged Defect or (b) if the Alleged Defect cannot reasonably be repaired or replaced within the 90-day period, failed to commence repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion. The period of limitation on actions for breach of any obligations in connection with an Alleged Defect shall be two (2) years with respect to all claims.
5. Nothing set forth in this Chapter shall be construed to impose any obligation on Declarant to inspect, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to under applicable law. The right of Declarant to enter, inspect, repair, and replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Declarant in the Registry.
6. Notwithstanding anything to the contrary in this Chapter, and to the extent allowed by law, Declarant disclaims any representations and warranties with regard to, and shall have no continuing liability to any Owner or to the Association for, any design or construction defects (whether known or unknown) relating to the Property, including latent defects. Declarant shall have the right to rely on, and use to Declarant's sole gain and advantage any, some or all provisions noted in this Chapter without being deemed to waive any provision in the future not so used or employed for a specific matter.

This Chapter is an agreement of the Bound Parties to arbitrate all Claims against Respondent, except Exempt Claims, and is specifically enforceable under North Carolina law. The arbitration award (the "Award") is final and binding on the Parties, and judgment upon the Award rendered by the arbitrator may be entered upon it in any court of competent jurisdiction.

CHAPTER 5 CONFLICTS

A. Conflicts Between the Governing Documents and State Law

If there are conflicts or inconsistencies between the Act, the Corporation Act, this Declaration, the Bylaws, or the Articles, the provisions of the Act, the Corporation Act, this Declaration, the Articles, and the Bylaws, in that order, will prevail, and each Owner of a property within the Community, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

B. Conflicts Between the Governing Documents and Additional Covenants

Owners have the right to impose additional covenants on their property with such approval as may be required by the Governing Documents. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), and the provisions of any such additional covenants are more restrictive than the provisions of this Declaration, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

C. Conflicts Within the Governing Documents

The Governing Documents use footnotes and tables to illustrate concepts and assist the reader. If there is a conflict between any tables and the text of the Governing Documents, the text shall control.

D. Severability

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

CHAPTER 6 DISCLOSURES AND DISCLAIMERS

This Chapter discloses essential information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, acknowledges and agrees to the matters set forth in this Chapter.

A. Owner Responsibility for Safety and Security

Each Owner and Occupant of a Lot and/or Dwelling, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. In addition, each Owner acknowledges that he or she assumes all risks of personal injury and loss or damage to his or her property, including the Lot, Dwelling and contents of such Dwelling, resulting from acts of third parties.

B. Responsibility of Declarant and the Association for Safety and Security

The Association may, but shall not be obligated to, maintain or provide and/or support certain activities within the Community designed to promote or enhance the level of safety or security which each Person provides for himself or herself and his or her property. Neither the Association nor Declarant, however, shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems, gates, or any other mechanism or system limiting access to the Community, cannot be compromised or circumvented, not that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other Occupants of such Owner's property, that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety.

C. Areas Open to the Public

Certain areas within the Community may be open for use and enjoyment of the public. Declarant may designate such areas as open to the public at the time Declarant makes them a part of the Common Area, or the Board may so designate at any time thereafter. This provision in no way guarantees any such areas to be dedicated to the public and does not obligate Declarant or the Association to provide such.

D. Changes in Plans for the Community

The development of the Community is expected to take many years and the development plan will likely be modified from time to time to respond to varying market conditions and changes in circumstances. Declarant reserves the right to modify or abandon the plans for the development of the Community described or depicted in this Declaration or any other plans or renderings associated with the development of the Community.

E. View Impairment

Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, any open space within the Community, or any body of water will be preserved without impairment. Declarant, agents of Declarant, and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. With respect to the Common Area, the Association shall have the right to plant trees and provide for additional and/or different landscaping from time to time. There shall be no express or implied Easements for view purposes or for the passage of light and air.

F. Notices and Disclaimers as to Community Services to be Provided by the Association

Each Owner acknowledges that interruptions in community systems and services such as cable/satellite television, internet access, community intranet and street light maintenance and/or operation will occur from time to time. Declarant, agents of Declarant, and any of its respective successors or assigns shall not be liable for, and no Owner shall be entitled to a refund, rebate, discount, or offset in applicable fees for, any interruption in such community service(s) provided by the Association, regardless of whether or not such interruption is caused by reasons within the service provider's control. Each Owner also acknowledges that this Chapter in no way guarantees such services to be provided by Declarant or the Association.

G. Gate Access

Neither Declarant nor the Association shall in any way be considered insurers or guarantors of any gate or controlled access to the Property or safety measures undertaken with respect thereto by either or both of them, nor shall either or both be liable for any loss or damage resulting from any failure to provide controlled access or safety measures, or from leaving any gate open, as permitted in this Declaration, or from a failure or ineffectiveness of any such controlled access or safety measures undertaken by either or both of them. No representation, warranty or covenant is given to any Owner or Occupant by Declarant or the Association that any controlled access or safety measures installed or undertaken cannot be bypassed or compromised, or that they would, in fact, avert damage or loss resulting from that which they are designed to prevent. In addition, each Owner, by acceptance of a deed to a Lot or Dwelling, and each Occupant thereof, shall indemnify and hold Declarant and the Association harmless from any damage and costs and expenses, including attorneys' fees, incurred by either or both of them as a result of any such assertion or determination.

H. Natural Habitats

Many areas within the Community as well as areas surrounding the Community may serve as habitats for a variety of native plants and wildlife, including but not limited to bear, deer, fish, insects, snakes and other reptiles, some of which may pose hazards to Persons or pets coming in contact with them. Each Owner and every person entering the Community (1) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or through the Community; and (2) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community. Neither Declarant, nor the Association, nor the Members, partners, affiliates, Officers, Directors, agents nor employees of any of the foregoing shall have any duty to control, remove or eradicate such plants and wildlife, nor shall they have any liability for any injury resulting from the presence, movement or propagation of any plant or wildlife within and through the Community.

I. Declarant Liability

Declarant has, using its best efforts and all due diligence, prepared and recorded this Declaration so that each Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner in the Community. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot or Dwelling, acknowledges that Declarant shall have no such liability.

J. Density and Other Representations; Conflict with Sales Literature

Notwithstanding any representation concerning density on any sales literature, unrecorded or recorded plats or any other document, Declarant has the sole discretion in determining the number of Lots that will make up the Community and what acreage will be encumbered by this Declaration and amendments thereto. Any such density projections or figures are speculative in nature, not binding on Declarant, and cannot be relied upon by any purchaser of a Lot. In case of a conflict between the disclaimer in this Chapter and the information provided in any sales literature or in any other document, this Chapter shall control. **IN CASE OF ANY CONFLICT BETWEEN THE**

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REPRESENTATIONS IN THIS DECLARATION AND ANY VERBAL REPRESENTATIONS, WRITTEN SALES LITERATURE OR OTHER DOCUMENTS, THIS DECLARATION SHALL CONTROL.

K. Choice of Law

This Declaration and the provisions contained herein shall be construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, Declarant, has caused these presents to be signed this 20th day of May, 2013.

DECLARANT: GATED COMMUNITIES OF ASHEVILLE, LLC

By: Ronald A. Britton, Manager (SEAL)

Print Name and Title: Ronald A. Britton, Manager

STATE OF FLORIDA
COUNTY OF MARTIN

I, KIRK A. HUNTER, a Notary Public of Martin County, Florida, certify that RONALD BRITTON personally came before me this day and acknowledged that he is, MANAGER, the Manager of Gated Communities of Asheville, LLC, a North Carolina limited liability company, and that he, as Manager of the company, being authorized to do so, executed the foregoing on behalf of said company.

Witness my hand and official seal, this the 25 day of MAY, 2013

(Official Seal)



Kirk A. Hunter
Notary Public
KIRK A. HUNTER
(Notary, print or type name)
My commission expires: 9/20/2013

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EXHIBIT A – Property Description

BEING all of that property, Phase I of The Thoms Estate Development, as shown on Plats recorded in Plat Book 114, Page 57, Plat Book 114, Page 58, and Plat Book 114, Page 59, of the Buncombe County, North Carolina Register of Deeds Office (the "Registry"), to which plat references are hereby made for a more particular description of said property.

EXHIBIT B – Bylaws of the Thoms Estate Homeowner’s Association

**BYLAWS OF THE THOMS ESTATE HOMEOWNER'S ASSOCIATION, INC.,
A NORTH CAROLINA NON-PROFIT CORPORATION**

ARTICLE I

Identity

These are the Bylaws of the THE THOMS ESTATE HOMEOWNER'S ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association").

For purposes of these Bylaws, terms specifically defined either in the Declaration of the Community Covenants (the "Declaration") for the residential community to be known as "The Thoms Estate" and located off Elk Mountain Scenic Highway in Buncombe County, North Carolina (herein "The Thoms Estate"), or the North Carolina Nonprofit Corporation Act, Chapter 55A, North Carolina General Statutes (herein "the Corporation Act"), or the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes (herein "the Community Act") shall have the same meaning herein. In case of a conflict with defined terms, the Declaration shall control to the extent allowed by law. Unless the Declaration or Bylaws expressly provide otherwise, the procedures and substantive matters governing the Association can be determined by reference to the Corporation Act or the Community Act. In the event of any conflict between the Corporation Act and the Community Act, the Community Act shall control.

ARTICLE II

Qualifications and Responsibilities of Members

2.1. Membership; Voting Member. Every Owner of a Lot in The Thoms Estate shall be a member of the Association, and shall remain a member until he ceases to be an Owner of a Lot. When there is more than one Owner of a Lot, all such persons shall be members of the Association; provided, however, that in such a case, said Owners shall designate in writing with the Secretary of the Association a Voting Member for purposes of casting the one (1) vote per Lot on matters requiring a vote of the Association, including, but not limited to, any amendments to the Declaration or election of persons for the Association Board of Directors ("Board"). For the purpose of sufficient receipt of notice of violations or for any other notices required by the Declaration or these Bylaws, notice to the Voting Member shall be binding on all other Owners of the Lot.

2.2. Registration. It shall be the duty of each Owner of a Lot to register his/her name and his/her mailing address with the Secretary of the Association. If an Owner of a Lot does not so register, the Association shall be under no obligation to recognize his privileges of being a member. In no event shall an Owner of a Lot avoid personal responsibility for the obligations of being a member, including the payment of assessments, from his or her failure to register.

2.3. Prohibition of Assignment. The interest of a member in the Association assets or obligations cannot be transferred or encumbered except as an appurtenance to his Lot.

ARTICLE III

Members' Meetings and Voting

3.1. Place. Meetings of the members shall be held at such place within The Thoms Estate or within Buncombe County, North Carolina, as may be designated from time to time by the Board of Directors of the Association (the "Board").

3.2. Annual Meeting. The members shall meet at least once each year the day being specified in the notice of such meeting given pursuant to Section 3.4 below. At each annual meeting the members may transact any business properly coming before them.

3.3. Special Meetings. Special meetings of the members may be called at any time by the President or by a majority of the Board, and shall be called and held within sixty (60) days after written request thereof signed by Qualified Voting Members of the Association as defined below entitled to cast at least fifty-one percent (51%) of

the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4. Notices. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent prepaid by United States mail to the members at the addresses of their respective Lots and to other addresses as any member may have designated to the President or Secretary as it appears on the records of the Association, at least thirty (30) days in advance of any annual or special meeting. Notice shall be deemed delivered when deposited in the United States mail addressed to the member at his address for the respective Lot and/or as it appears on the records of the Association. The Association may vote or transact business on any matter at an annual meeting whether or not specific notice of said item had been given in the notice of the annual meeting. However, for special meetings, only items which were included in the meeting's notice to members can be voted on. Notwithstanding the above, notice to the Qualified Voting Member shall be sufficient notice for any Lot under the Declaration or the Bylaws and such notice shall be imputed to any remaining owners of the applicable Lot.

3.5. Quorum; Adjournment if no Quorum. A quorum shall consist of Qualified Voting Members present, in person or by proxy (or by ballot as may be permitted by the Board), entitled to cast at least fifty-one percent (51%) of the total votes in the Association. If a quorum is not present, the meeting may be adjourned, subject to the 30-day notice requirement in Section 3.4 above, to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement for the next meeting called due to the lack of a quorum shall be twenty-six (26%) percent of the total votes in the Association.

3.6. Vote. Except for Lots owned by the Declarant, each Lot is entitled to one (1) vote. Prior to the expiration of the Declarant Control Period, Declarant is entitled to cast three (3) votes for every Lot that Declarant owns, plus one additional vote in case of a tie vote. The reference in the Bylaws and the Community Act to the number of votes allocated in the Association shall include the votes the Declarant is entitled to vote as provided above.

3.7. Manner of Casting Votes. Votes may be cast in person, by proxy and/or by ballot. A proxy must be in writing, be signed by all owners of the Lot or Unit, the votes of which are subject to the proxy, be given only to another Qualified Voting Member, and be filed with the Secretary on or before the meeting. A proxy shall be valid until revoked in writing by all Owners of such Lot or Unit or by the attendance and announcement to the person presiding over the Association meeting of all Owners of such Lot or Unit. A proxy should denote the vote desired on a specific issue and/or general authorization to the proxy holder to vote according to his discretion. A proxy is void if not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term. A ballot, if applicable, shall be on a form proscribed by the Board and shall comply with N.C. Gen. Stat. §55A-7-08.

3.8. Required Votes. All questions shall be decided by a majority of the votes cast by Qualified Voting Members on the question, unless the provisions of applicable law, the Declaration or these Bylaws require a greater vote.

3.9. Action by Members without Meeting. Any action that may be taken at a meeting of the members may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law. Notwithstanding the above, action of the Association can be taken by a ballot process without the need for a meeting of the members if a sufficient number of ballots are collected from Qualified Voting Members to otherwise satisfy the quorum requirements in Section 3.5 above.

3.10. Prohibition of Cumulative Voting. There shall be no cumulative voting.

3.11. Declarant Control Period. "Declarant Control Period" shall mean the time as defined in the Declaration in which Declarant has to exercise certain exclusive rights such as, but not limited to, appointing and/or removing one or more of the Board of Directors of the Association and vetoing certain amendments to the Declaration.

3.12. Qualified Voting Member. For purposes of these Bylaws, "Qualified Voting Member" shall mean a member who is authorized to vote for a Lot or is otherwise designated as the Voting Member for a Lot as set forth in 2.1 above and whose Lot is not disqualified from voting as a result of delinquent assessments or other violations of the Declaration, Rules or Regulations or these Bylaws.

3.13. Majority Defined. For purposes of these Bylaws, the term "majority" shall mean those votes totaling more than fifty percent (50%) of the votes cast by Qualified Voting Members or of the Directors.

3.14. Pre-condition to Suits against Declarant. The affirmative vote of no less than eighty percent

(80%) of Qualified Voting Members of the Association shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the The Thoms Estate development or any part thereof; or (2) assert a claim against or sue Declarant.

ARTICLE IV

Directors

4.1. First Board. The first Board shall consist of a minimum of three (3) persons, whose names are set forth as follows: Kevin Reese, Ronald Butler, Alexander Brittan.

4.2. Number and Qualifications of Directors. The Board shall consist of a minimum of three (3) natural persons and a maximum of seven (7) natural persons, as determined in accordance with Section 4.3 below. During the Declarant Control Period, a Director need not be a member of the Association or be a resident of North Carolina. A Board member may be a representative of Declarant. After the Declarant Control Period expires, a Director must be an Owner of a Lot or the individual nominee of an Owner of a Lot which is other than an individual.

4.3. Election of Directors: Transitioning of the Board

So long as the Declarant Control Period has not expired, the Declarant reserves the right to appoint and/or remove the members of the Board as follows:

(a) From the date of the recording of the Declaration until the expiration of five complete (12 consecutive months) fiscal years thereafter, the Declarant may appoint and/or remove all members of the Board;

(b) From the sixth fiscal year after the recording of the Declaration until the expiration of the tenth year thereafter, the Declarant may appoint and/or remove two-thirds of the Board members. The remaining Board member seat or seats shall be filled by an election of members occurring at the next available annual meeting of the members and thereafter with the expiration of that seat or seats;

(c) From the eleventh fiscal year after the recording of the Declaration until the expiration of the Declarant Control Period, the Declarant may appoint and/or remove a majority of the Board members. The remaining Board member seats shall be filled by an election of members occurring at the next available annual meeting of the members and thereafter with the expiration of those seats.

Members shall elect the Directors by a majority of the votes cast in the election.

After the expiration of the time period referenced in subsection (c) above or such sooner time as agreed to in writing by Declarant, the membership shall elect all new Board member at an annual meeting of the members.

4.4. Term. The term of the initial Board of Directors shall be staggered with Directors designated to serve one year, two year or three year terms. Thereafter, each Director shall serve a three year term. There is no limitation on the number of terms a Director may serve as appointed by the Declarant or as elected by the membership. Once elected, a Director shall hold office until his successor has been duly elected.

4.5. Removal. During the time period referenced in section 4.3 above, the Declarant retains the sole authority to remove a Director that Declarant has appointed, with or without cause. Except for Directors appointed by the Declarant, any Director may be removed, with or without cause, by a vote of the members entitled to cast at least a majority of the total votes in the Association, at a special meeting called for such purpose. For any Board member removed by Declarant, Declarant shall appoint a successor to serve for the balance of the removed Director's term. For any Board member removed by the members, the members by majority vote shall appoint a successor to serve the balance of the removed Director's term.

4.6. Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors (with Declarant consent if the vacancy was a Declarant-appointed Board member), whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

4.7. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors, but at least two (2) times a fiscal year (as that term is defined in Sections 4.1 3(a) and 7.2 below). Notice of regular meetings shall be given to each Director, personally or by mail, telephone, email, facsimile or telegraph, at least thirty (30) days prior to the meeting. Any Board member

who did not receive adequate notice may waive said notice by his or her attendance at the meeting or by a written release.

4.8. Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours' notice of such special meeting shall be given personally or by mail, telephone, email, facsimile or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof. Any Board member who did not receive adequate notice may waive said notice by his or her attendance at the meeting or by a written release.

4.9. Quorum: Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

4.10. Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or these Bylaws.

4.11. Meeting Forums; Board Action without Meeting. Although regular or special meetings may occur at such places as specified in the notice, regular or special meetings by means of a conference telephone or similar communication device are permissible as long as the required notice is given. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in writing, setting forth the action taken, signed by all Directors.

4.12. Compensation of Directors Restricted. Directors shall receive no compensation for their services but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

4.13. Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Corporation Act, the Community Act, the Declaration, the Articles, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Corporation Act, the Community Act, the Declaration, the Articles, and these Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and provide to members annually, a budget summary report for the fiscal year commencing January 15 of the following calendar year (the "Fiscal Year"), said budget summary report containing at least the following:

- (i) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.
- (ii) A statement of the financial condition of the Association for the last Fiscal Year.
- (iii) A statement of the status of any pending suits or judgments in which the Association is a party.
- (iv) A statement of the insurance coverage provided by the Association.
- (v) A statement of any unpaid assessments payable to the Association, identifying the Lot and the amount of the unpaid assessment. All Lot owners do hereby acknowledge that this reporting of unpaid assessments shall not constitute a violation of any federal or state unfair debt collection laws.

The Board shall provide all members a summary of the budget as provided above and in subsection 8.3 below for ratification.

(b) To adopt and amend budgets (with the ratification of the membership as provided in section 8.3 below) and to determine, and collect assessments to pay the Association's common expenses, including operating expenses and Common Area maintenance fees (the term "Common Expenses" being defined with more particularity in Section 8.12), and capital improvement costs. The Board may engage a certified public accountant to do the Association bookkeeping, to file annual returns and to assist in preparing the report described above.

(c) To regulate the use of, and to maintain, repair, replace, modify and improve the Common Area thereof.

(d) To adopt and amend Rules and Regulations and to establish reasonable penalties for infraction

(e) To enforce the provisions of the Declaration, the Articles, these Bylaws, the Act, and Rules And Regulations by all legal means, including injunction and recovery of monetary penalties.

- (f) To hire and terminate agents and independent contractors.
- (g) To institute, defend, intervene in, or settle any litigation or administrative proceeding in its own name on behalf of itself on matters affecting the Common Area or enforcement of the Declaration, the Bylaws or the rules and regulations of the Association.
- (h) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.
- (i) To borrow money for the maintenance, repair, replacement, modification or improvement of the Common Area and to pledge and pay assessments, and any and all other revenue and income, for such purpose.
- (j) To buy Lots in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in Lots from time to time owned by the Association. Lots purchased by the Association are not to be construed as Common Area unless designated as such in writing by the Board.
- (k) To grant leases, licenses, concessions and easements through and over the Common Area, unless contrary to the Declaration.
- (l) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the enforcement of any use restrictions or rules and regulations set forth in the Declaration or these Bylaws.
- (m) To provide for indemnification of the Association's officers and Directors and maintain Officers and Directors' liability insurance.
- (n) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these Bylaws, or the
- (o) Rules and Regulations. Any assessments, charges or fines levied against members shall specifically relate to the need to preserve and fulfill the purposes set forth in the Association's Articles of Incorporation and are applied to owners of Lots in their capacity as owners-members rather than in some other capacity such as customers for services.

ARTICLE V

Officers

5.1. Designation of Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. During the Declarant Control Period, officers do not have to be members or residents of North Carolina. Officers may include the Declarant or a representative of Declarant. After the Declarant Control Period, each officer shall be an Owner of a Lot or the individual nominee of an Owner of a Lot which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

5.2. Election of Officers. Officers of the Association shall be elected by the Board. Elections shall be held every two (2) years at the first meeting of the Board held after the annual meeting of the members. The first Board shall elect officers as soon as practicable after filing of the Declaration.

5.3. Board Term. Each officer shall serve until his successor has been duly elected and has qualified.

5.4. Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

5.5. Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

5.6. Powers and Duties of Officers.

(a) President. The President shall be the chief Executive officer of the Association and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice-President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon request, shall submit them, together with all vouchers, receipts,

records, and other papers to the Board for examination and approval; shall deposit all monies and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation. The Board may delegate to a management company certain responsibilities and oversight with regard to financial matters and accounting.

5.7. Execution of Agreements, Etc. All agreements, deeds, mortgages, or other instruments shall be executed by the President or Vice President with an attest by the Secretary (or Assistant Secretary if appointed), or by such other person or persons as may be designated by the Board.

5.8. Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

ARTICLE VI

Indemnification of Directors and Officers

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the North Carolina General Statutes, as now enacted or hereafter amended. In addition, the Association is authorized to maintain Directors and Officers Liability Insurance.

ARTICLE VII

Fiscal Management

7.1. Depository. The Board shall designate a depository for the funds of the Association, and may change such depository at any time. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the Association, or as authorized by the Board.

7.2. Fiscal Year. The Fiscal Year of the Association shall run from January 1st to December 31st of each given calendar year, provided that the Board, from time to time, by resolution, may change the Fiscal Year to some other designated period.

ARTICLE VIII

Assessments

8.1. Obligation of Members to Pay Assessments; Amount of Levy. Each Owner of a Lot as defined in the Declaration shall be personally and severally liable for all assessments as provided in Article 3, Chapter 3 of the Declaration.

8.2. Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Lot in accordance with its percentage of the share of assessments, and, if allocated, may be paid to the Owner of a Lot or credited against that Lot's share of Common Expenses subsequently assessed. Notwithstanding the above, the Board shall retain the authority to apply said surpluses to any current Fiscal Year expenditures in order to satisfy the exempt function income qualification for nonprofit corporations under Section 528 of the Internal Revenue Code.

8.3. Preparation of Budget and Levying of Assessment. For each Fiscal Year, beginning with the Fiscal Year commencing , the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. The ratification by the membership and levying of assessments shall be done in accordance with Article 3 of the Declaration.

8.4. Assessment a Lien. Every assessment shall constitute a lien upon each Lot or Unit assessed from the date the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against that Lot or and (ii) liens and encumbrances recorded before the recordation of the Declaration.

8.5. Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association, or as the Board may from time to time otherwise direct. Unless the notice states contrary, annual Assessments are typically due and payable within thirty (30) days of the date of the Assessment.

8.6. Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.7. Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the Lots which shall be available in the office of the Association for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Lot, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Lot Owner, or an authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against the Lot. The certificate shall be furnished within fourteen (14) business days after receipt of the request and shall be binding upon the Association and all Lot or Unit Owners. For such certificate a reasonable fee may be charged by the Board. All Owners of Lots acknowledge that such notice provided in an assessment roll or certificate shall not constitute a violation of any state or federal unfair debt collection laws.

8.8. Default and Enforcement. If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Lot, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided in the Declaration and the Community Act. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees.

The Association also shall be entitled to suspend the right of a defaulting Lot Owner to vote; to use the Common Area (except access to the Lot) and its facilities; and/or to receive Community services until the delinquency is cured.

The remedies noted herein for default on assessments shall include, without limitation, any and all remedies set forth in the Declaration or in the Community Act. The failure of the Association to enforce any assessment delinquency shall not constitute a waiver or abrogation of the right of the Association or its agents to enforce such delinquency in the future, irrespective of the number of breaches thereof that may have occurred by the member regarding assessments.

ARTICLE IX

Compliance, Enforcement, Fines and Penalties, Other Than Assessment Liens

9.1. Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, these Bylaws, the Articles, or the Rules and Regulations, as the same may be amended from time to time, by any Lot Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Lot Owner, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Act, the Declaration, these Bylaws, the Articles or such Rules and Regulations as hereinafter promulgated, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Lot and may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and

costs may levy a special assessment against the Lot owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Lot Owner to vote; to use the Common Elements and its facilities; and/or to receive Community services until the default is cured.

9.2. Notice of Default and Failure to Cure. In the event of any such default or failure, the Board or its designee shall serve the offending member with notice and opportunity for a hearing as provided in Article 1, Chapter 2 of the Declaration. To the extent the foregoing limitation period is allowed by law, a violating party shall have thirty (30) days to appeal an adverse decision of the Board or other adjudicatory panel as provided in the Declaration to a court of law and failure to file said appeal within thirty (30) days after receipt of the determination shall bar any challenges or any causes of action brought afterwards by said party.

9.3. No waiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the Rules and Regulations or the Community Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

ARTICLE X

Amendment to Bylaws

During the Declarant Control Period, the power to alter, amend, or repeal the Bylaws or adopt new Bylaws shall be vested in the Board with Declarant approval being necessary for any particular change. After the Declarant Control Period has expired, the amendment of Bylaws or adoption of new Bylaws can only occur at a regular meeting of the members and shall require an affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the Qualified Voting Members present in person or by proxy at said meeting to such changes.

ARTICLE XI

General Provisions

11.1 Rules and Regulations.

(a) By the Board: Effective Date. The Board, including the first Board, may promulgate from time to time such Rules and Regulations as it deems reasonable and necessary governing the administration, management, operation and use of the Common Area so as to promote the common use and enjoyment thereof by Lot Owners and Occupants and

(b) for the protection and preservation thereof. In addition, the Board may adopt such Rules and Regulations as it deems reasonable and necessary with respect to Lots to provide for the common good and enjoyment of all Lot Owners and Occupants, including, without limitation, the right to adopt such restrictions with reference to tenants and leases. In the case of a conflict between the Declaration, the Bylaws or the Rules and Regulations, the more restrictive provision controls. Any Rule and Regulation that applies to the use of a Lot shall not become effective until after thirty (30) days has expired from the date of posting of notice of the Rule and Regulation in a conspicuous location at the offices of the Association or the date that notice of such Rule and Regulation has been placed in the mail to all Qualified Voting Members to the addresses on file with the Association as provided in Article II above. This effective date requirement for Lot restrictions shall; not apply to any emergency rulemaking as determined in the Board's discretion. In case of emergencies or for regulations pertaining to Common Area, the applicable Rule and Regulation shall apply on the date of adoption.

(c) By the Association. After the Declarant Control Period has expired, any such Rule or Regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by a majority of the members represented in person or by proxy at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(d) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all similarly situated Lot Owners and their Occupants, but need not be equally and uniformly applicable if it is determined

that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(e) Copies Furnished. Copies of all such Rules and Regulations and any amendments thereto shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, or post, or make available, such Rules or Regulations shall not affect in any way their validity or enforceability.

11.2. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of

Association proceeding when not in conflict with the Declaration, these Bylaws, the Articles, the Corporation Act, the Community Act or any statutes of the State of North Carolina applicable thereto. The President of the Association shall have the authority to appoint a parliamentarian.

11.3. Conflict: Severability. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control unless otherwise stated above. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

11.4. Notices. Whenever in the Declaration, the Community Act or these By laws it shall be required or permitted that notice or demand be given or served on the Association or a Lot Owner or other party entitled to notice, such notice or demand shall be given in writing by and mailed, postage prepaid, to the addresses on file with the Association. Unless otherwise provided above, all notices or demands provided under the terms of the Declaration, the Corporation Act, the Community Act or these Bylaws shall be effective the earlier of: i) three (3) days after mailing as provided above; ii) when actually received by a party entitled to notice.

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EXHIBT C – Initial Rules for the Thoms Estate Community

INITIAL RULES AND REGULATIONS FOR THE THOMS ESTATE COMMUNITY

These Initial Rules and Regulations (these "Rules") are adopted by Declarant and/or the Association to regulate the use of the Property as well as activities and conduct within the Community. Declarant or the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. These Rules shall apply to all of the Property in the Community until such time as they are amended, modified, repealed, or limited pursuant to Governing Documents:

1. Restricted Activities: Unless expressly authorized by Declaration, the following activities are restricted within the Community:

a. Parking

Parking any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages; provided, construction, service and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot, Dwelling and/or the Common Area.

b. Signs

Except as may be required by law or by legal proceedings and as otherwise permitted in the Governing Documents, no signs or advertising posters of any kind, including, but not limited to, "For Rent", "For Sale", and other similar signs, shall be erected by an Owner, the Association, or any agent, broker, contractor or subcontractor thereof, nor shall any sign or poster be maintained or permitted on any window or on the exterior of any improvements or on any unimproved portion of property located within the Community. The approval of any name and address signs shall be upon such conditions as may be from time to time determined by the ARC and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Chapter shall not apply to Declarant or to any person having the prior written approval of Declarant. In addition, the Association shall have the right to erect reasonable and appropriate signs on any portion of the Common Area in accordance with architectural and design standards adopted therefor by the ARC and approved by governmental authority with jurisdiction thereof, if applicable.

c. Animals and Pets

Raising, breeding, or keeping animals, livestock, or poultry of any kind, except as permitted by Declarant on specifically designated Lots, shall be strictly prohibited. No animals of any kind shall be kept by any Owner or Occupant upon any portion of the Community, with the exception being that a reasonable number of generally recognized house pets (not to exceed three), may be kept in Dwellings, subject to rules and regulations adopted by the Association. All pets shall be registered, licensed, and inoculated as required by law. It is provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. It is further provided that dog houses, kennels, fenced runs or pens for the outside housing of any pet shall be subject to the approval of the ARC, which it may grant or deny in its sole discretion.

No pet shall be allowed to make an unreasonable amount of noise, to endanger the health or safety of other Owners or Occupants, or to become a nuisance. Pets shall be under leash at all times when walked or exercised in any portion of the Common Area, and the owner of any pet shall clean up after said pet. Upon the written request of any Owner or Occupant, the Board may conclusively determine, in its sole and absolute discretion, a particular pet is a generally recognized house pet or such pet is a

nuisance. The Board shall have the right to require the owner of a particular pet to remove that pet from the Community if it is found to be a nuisance or to be in violation of these Rules. The Board shall also have the right, subject to the Governing Documents, to fine any Owner or Occupant for his or her violation(s) of these Rules, and that Owner or Occupant shall be liable to the Association for the cost of repair of any damage to the Common Area caused by that pet. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due to which such Dwelling and its Owner are subject.

d. Nuisances

No rubbish or debris of any kind will be dumped, placed, or permitted to accumulate upon any portion of the Community, nor will any nuisance or odors be permitted to exist or operate upon or arise from the Community so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Community. This includes, but is not limited to, dumping grass clippings leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake or elsewhere within the Community, except that fertilizers may be applied to landscaping provided care is taken to minimize runoff.

Noxious or offensive activities will not be carried on in any part of the Community, and the Association and each Owner and Occupant will refrain from any act or use which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the Occupants of other portions of the Community or which could result in a cancellation of any insurance for any portion of the Community, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, will be located, used or placed within the Community, except as may be permitted pursuant to terms, conditions, rules and regulations adopted therefor by the Board. Any Owner or Occupant who dumps or places any trash or debris upon any portion of the Community will be Liable to the Association for the actual costs of removal thereof plus an additional administrative fee of \$100.00 or such other sum set therefor by the Board as a recoupment of administrative costs in administering the cleanup and notices to the Owner and Occupant. Such sum will be added to and become a part of that portion of any Assessment next becoming due to which such Owner and his property is subject.

e. Fireworks and Firearms

No firearms or fireworks of any variety shall be used or discharged upon the Lots, in any Dwelling or upon any Common Area. The term "firearms" shall include, without limitation, guns, "B-B" guns and pellet guns.

f. Garbage Disposal

Each Owner shall provide covered garbage receptacles or similar facilities in accordance with reasonable standards established by Declarant, or a roll-out garbage rack of the type approved by Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted on the premises. No burning, burying or other disposal of garbage on any Lot or within the Community shall be permitted (except licensed contractors may burn construction debris if, and only if, permitted to do so by the ARC, but only during the period of construction and improvements on the Lot); provided, however, Declarant shall be permitted to modify the requirements of this Chapter where necessary to comply with orders of governmental bodies. No Lot shall be used in whole or in part for the placement, dumping or storage of rubbish, garbage, junk or refuse, including but not limited to junked or unlicensed motor vehicles.

g. Onsite fuel storage

On-site storage of gasoline, propane, or other fuels, shall be prohibited, except that a reasonable amount of fuel may be stored on a Lot or Dwelling for reasonable, day-to-day usage and emergency purposes. The Association, however, shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

h. Vegetation

Activities which materially disturb or destroy the vegetation, wildlife, wetlands, water, or air quality within the Community or which result in unreasonable levels of sound, water, or light pollution, shall be strictly prohibited. The pruning of landscape to create a vista for a Lot or Dwelling without the written permission of the ARC and the Association shall be prohibited.

i. Water Bodies

No stream or other body of water shown on any map of the Community shall not be used for swimming, boating or diving, nor shall the use of any personal flotation devices, jet skis or other such items be permitted in or on any such area. Fishing by Owners may be permitted subject to Association rules and regulations. No piers, docks or barriers shall be constructed on any portion of streams or ponds, nor attached to the shoreline or banks thereof, except those that may be constructed by Declarant. No Owner may use, or give permission for others to use, any water from any pond or other bodies of water for irrigation of such Owner's Lot.

Neither Declarant nor the Association shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within or contiguous to the Community. Nothing shall be done which disturbs or potentially disturbs wetlands within the Community in any manner unless approved by the proper regulatory authority. No dredging or filling shall be undertaken on any property adjacent to any water body or wetland.

j. Clotheslines

No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Lot.

k. Mining and Drilling

No Owner may mine, drill or extract any minerals from the Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Community. No oil, natural gas, petroleum, asphalt, hydrocarbon products or materials of any kind will be produced or extracted from the premises.

l. Above-Ground Utilities

All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead; provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Community. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

m. Garage Sales

Any yard sale, garage sale, moving sale, rummage sale, or similar activity shall be prohibited, except on such dates as the Board may designate for such activities to be conducted on a Community-wide basis;

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n. Drainage

No Owner shall channel or direct drainage water onto a neighboring Lot or Common Area except in accordance with drainage plan approved by Declarant. No Owner shall make any change to or modification of the originally established grades, swales and slopes of his or her lot in any way that changes or impedes the originally established flow of storm water drainage.

o. Motor Vehicles. Trailers. Boats. Etc.

Each Owner will provide for parking of automobiles off the streets and roads within the Community. There will be no outside storage or parking upon any portion of the Community of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart or any other related forms of transportation devices, except in a Dwelling's garage. Any permitted parking of a mobile or motor home within a garage will not be construed as permission for any person to occupy such mobile or motor home, which is strictly prohibited. Furthermore, although not expressly prohibited hereby, the Board may at any time prohibit or write specific restrictions with respect to the operating of mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, all-terrain vehicles (ATVs) and other vehicles upon any portion of the Community, if in the opinion of the Board, such prohibition or restriction will be in the best interests of the Community. Such policies may change from time to time with changing technology. The storage of any such vehicles within a garage will be permitted, even if operating the same is prohibited. No Owners or other Occupants of any portion of the Community will repair or restore any vehicle of any kind upon or within a property subject to this Declaration except (a) within enclosed garages, or (b) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

p. Trees

No Owner, other than Declarant, shall be entitled to cut, remove, or mutilate any tree, shrub, bush or other vegetation without obtaining the prior approval of the ARC; provided, however, that dead or diseased trees which are inspected and certified as dead or diseased by the ARC or its representatives, as well as other dead or diseased shrubs, bushes or other vegetation, shall be cut and removed promptly by the Owner thereof. Nothing herein shall be construed so as to limit any applicable law or ordinance.

q. Antennas and Satellite Dishes

No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Community, except in compliance with Article 2, Chapter 1 of the Declaration or as required by the Telecommunications Act of 1996 and implementing rules therefor issued by the Federal Communications Commission; provided, however, Declarant and the Association will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Community.

r. Water Wells

Subject to the terms of this Declaration, no private deep water well may be drilled, installed or maintained on any part of the Property in the Community. A shallow well pump may be authorized by the ARC, in its sole and absolute discretion, following written application therefor by an Owner for lawn and garden use if tests indicate water is satisfactory and will not cause staining of improvements. Furthermore, the ARC may authorize shallow wells for closed-end, geothermal residential systems.

s. Hunting

Hunting within the Community, except as the Association may expressly authorize, shall be strictly prohibited. This includes, but is not limited to, the capturing, trapping or killing of wildlife within the Community, except in circumstances posing an imminent threat to the safety of persons within the Community.

t. Garages

No garage shall be converted into an apartment or additional living space without the written permission of Declarant or the Association.

u. Illegal Activity

Any activity which violates local, state, or federal laws or regulations shall be strictly prohibited; however, the Board shall have no obligation to make enforcement action in the event of a violation.

v. Other Rights and Reservations

The omission of any right or reservation in the Governing Documents will not limit any other right or reservation by Declarant which is expressly stated in or implied from any other provisions in this Declaration.

w. Tree houses and Other Structures

Construction of tree houses is prohibited in the Community. Construction of recreational structures, courts and equipment must be approved by the ARC. This will be performed on a case by case basis.

2. Prohibited Conditions

a. Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community; Cutting or harvesting timber other than for construction purposes as approved by the ARC, except by the Association, its designees and assigns or upon the Association's express written or authenticated electronic permission; and

b. Structures, equipment, or other items on the exterior portions of a Dwelling which have become rusty, dilapidated, or otherwise fallen into disrepair.

3. Siting of Dwellings and other Improvements

To assure that buildings and other structures will be located so that there will be maximum privacy and minimum impact on the natural environment of the Community, the location of any building or other structure shall be limited to a "building envelope" as designated on a recorded plat; or in the Architectural Design Guidelines; or otherwise by written agreement with Declarant or the ARC. No buildings or other structures shall be located outside the designated building envelope for a particular Lot. Any other improvements to a Lot or Dwelling to be performed outside the designated building envelope may only be commenced upon the express written or authenticated electronic approval of the Declarant or ARC.

Exhibit D – Conditional Use Permit

ORDINANCE NO. 4150

ORDINANCE AMENDING ORDINANCE NO. 3461 GRANTING CONDITIONAL USE PERMIT FOR ELK MOUNTAIN SCENIC HIGHWAY, BEAVERDAM & WILD CHERRY (THOMS ESTATE SUBDIVISION)

WHEREAS, the City has the authority pursuant to N. C. Gen. Stat. 160A-381 to issue or amend conditional use permits; and

WHEREAS, on April 10, 2007, the City of Asheville adopted Ordinance No. 3461, issuing a Conditional Use Permit for the Thoms Estate; and

WHEREAS, the City Council conducted a public hearing on January 8, 2013, to consider an amendment of the Conditional Use Permit; and

WHEREAS, this ordinance is determined to be reasonable and in the public interest for the reasons set out in the Staff Report, and is further determined to be consistent with the City Comprehensive Plan for the reasons set out in the Staff Report;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. The amendments to the Conditional Use Permit for the Thoms Estate be and the same are hereby, approved, as set forth in the Order attached hereto as Exhibit A.

Section 2. That all ordinances and clauses of ordinances in conflict herewith be and are hereby repealed, to the extent of such conflict.

Section 3. That if any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid, then the entire ordinance shall likewise be invalid, and subject to modification or re-adoption as provided by law.

Section 4. This ordinance is enforceable as provided in the Asheville City Code, including Article XVIII of Chapter 7, and Sec. 1-5.

Section 5. That this ordinance shall be in full force and effect on the date of adoption.

Read, approved and adopted this 8th day of January, 2013

Magdalena Paulson [Signature]
City Clerk Mayor

Approved as to form:

[Signature]
City Attorney

Exhibit A

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

CITY OF ASHEVILLE
CITY COUNCIL
File No. 12 CUP

In the matter of:

Conditional Use Permit for property on
Elk Mountain Scenic Highway, Beaverdam &
Wild Cherry (Thoms Estate)

ORDER AMENDING CONDITIONAL USE PERMIT

This matter coming on for public hearing before the Asheville City Council at its January 8, 2013, regular meeting, upon an application for an amendment to the Conditional Use Permit approved on April 10, 2007 (City ordinance No. 3461; herein "2007 CUP") to allow changes to common area amenities, secondary fire department access and architectural design changes for proposed single-family residences (herein "Project") to be located on 82.7 acres of land accessed from Elk Mountain Scenic Highway, Wild Cherry (herein "Subject Property"), and based on the information presented at the public hearing, the City Council makes the following findings and conclusions, and enters the following order:

FINDINGS

1. This public hearing was advertised on December 28, 2012 and January 4, 2013; the Subject Property was posted with signs, and notices were mailed to adjacent property owners within a 200 foot radius of the Subject Property. There were no objections based on a lack of notice.
2. The Project consists of the Thoms Estate, a 132 unit residential subdivision.
3. The Subject Property consists of a subdivision of approximately 82.72 acres located within the vicinity of Elk Mountain Scenic Highway, Tsali Trail, Beaverdam Road, and Wild Cherry Road, as shown on Exhibit A-1, attached hereto.
4. Except as modified by this Ordinance, Council hereby incorporates by reference the findings set out in the 2007 CUP as if fully set forth herein.
5. After approval of the 2007 CUP, construction on the Project began, but due to the economic situation, the Project went into foreclosure. Some infrastructure was completed while the Project was in foreclosure.
6. The 2007 CUP included amenities that were more typical of higher end subdivisions. The current owner is proposing an onsite alternative to the secondary fire department access and to scale back some of the common area amenities.
7. The 2007 CUP required that a cross access agreement be executed between the Thoms property and the property retained by Selene Thoms (Thomsland Inc.) for fire access purposes. The revised request includes a redesigned road system that provides direct, onsite access to Phase III B and IV. This request has been reviewed and approved by the Fire Marshal's office.

8. Home plans for the Project are to be prepared by registered, licensed architects utilizing the European Cottage/Manor Style of residence construction including extensive use of stone, brick and exposed timbers, as well as other architectural styles common in the neighborhoods of North Asheville. Typical styles are included in the conceptual plan attached as Exhibit A-2.
9. The 2007 CUP provided for the following features, which are now proposed to be eliminated or modified as indicated:
 - a) The Manor House and gardens were proposed to be restored and used as a community/fitness center and include a pool. The developer found the home to be in very poor condition, making it financially prohibitive to restore for this purpose. The revised request proposes to demolish the existing Manor House and construct a small community pavilion, gardens, fire pits, walking paths, playground, soccer field, basketball court and horseshoe pits.
 - b) A museum was to be provided in one of the historic structures on the property (Manor House or Killian House). In lieu of this requirement, a memorial garden featuring a statute of Harold Thoms and plaques to highlight his contributions to the City of Asheville will be installed.
 - c) An existing barn and stone silo were to be adaptively reused/transformed into a community pavilion. The barn was previously demolished without approval by the original developer, and the silo was deemed unsafe by a consulting structural engineer and is now proposed to be demolished. The remaining stone is proposed to be reused to construct the fire pits.
 - d) A conservatory was originally required to be provided; the revised proposal eliminates this feature.
 - e) A sidewalk was required to be constructed along Beaverdam Road. In lieu of this requirement, a paved walking trail will be constructed to link the bus shelter to the proposed greenway connection along Beaverdam Creek. The trail along Beaverdam Creek will be constructed to meet greenway standards in order to accommodate future greenway expansion.
 - f) A small parking area is now proposed in the vicinity of the community pavilion and in lieu of the parking area near the stone silo, a small looping trail is proposed.
10. The City's Technical Review Committee has reviewed the Project, and no significant issues of *non-compliance* were noted. The TRC Report and Staff Report presented at the public hearing are incorporated herein and made a part of these findings.
11. The conceptual site plans are attached hereto as Exhibit A-2, incorporated herein by reference, and made a part of these findings.

Based on the findings set forth above, the City Council makes the following jurisdictional conclusions and conditional use determinations:

JURISDICTIONAL CONCLUSIONS

1. Notice of the public hearing on this matter was provided as required by statute and ordinance, and this matter is properly before the City Council.
2. This application is being reviewed as a Level III conditional use pursuant to UDO Sec. 7-5-5, and 7-16-2(b)(2).

CONDITIONAL USE DETERMINATIONS

If the Project is developed in accordance with the approved conceptual site plan as amended and elevation drawings, made a part hereof, and in accordance with the conditions set forth below, the Project will satisfy the standards for conditional uses specified in City Code Sec. 7-16-2(c), and set out below. Council's determination is based on all the facts found above, and summarized below following each standard.

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The Project will meet all public health and will be reviewed in detail by the Technical Review Committee to ensure compliance with safety requirements.

2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.

The majority of the infrastructure for the first three phases of the Project has been completed and the remaining infrastructure for the first three phases of the Project has been completed and the remaining infrastructure and landscaping that has not been installed is covered by a valid letter of credit.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.

The proposed residential use is compatible with the surrounding residential neighborhood and will not injure the value of nearby properties. Completing the remaining subdivision infrastructure and remaining two phases of the Project is expected to benefit the neighborhood and bring closure to a project that has been under some level of construction since 2007.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The completion of a single-family residential subdivision is compatible with surrounding land uses that are similar in scale and density with this project.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

This amendment was submitted with the goal of providing more realistic common amenities to residents of the Thoms Estate.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The TRC and City Staff noted no issues or concerns related to this condition, location and service availability are unchanged from the 2007 CUP.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

There is no traffic congestion or traffic hazard anticipated.

Based on the findings set forth above, the City Council makes the following jurisdictional conclusions and conditional use determinations:

JURISDICTIONAL CONCLUSIONS

1. Notice of the public hearing on this matter was provided as required by statute and ordinance, and this matter is properly before the City Council.
2. This application is being reviewed as a Level III conditional use pursuant to UDO Sec. 7-5-5, and 7-16-2(b)(2).

On the basis of the above findings and conclusions, the Asheville City Council grants the application for the amendment to the Conditional Use Permit for the Project, subject to the following conditions:

1. The Project shall comply with all conditions outlined in the TRC staff report.
2. All site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee.
3. All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans.
4. The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with the application for this Project, and attached hereto.
5. Any deviation from these plans may result in reconsideration of the Project by the reviewing boards.
6. This Project will undergo final review by the TRC prior to issuance of any required permits.

These conditions shall be binding on the Applicant, and any successors in interest.

Read, approved and adopted this the 8th day of January, 2013.

Margaret Boulton
City Clerk

Jim Bellamy
Mayor

Approved as to form:

[Signature]
City Attorney

This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations. G.S. 47-30.2 (h)

Exhibit A-1

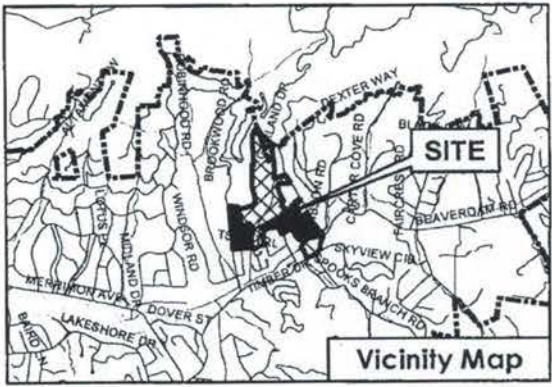
City of Asheville - Exhibit A Map CUP Amendment

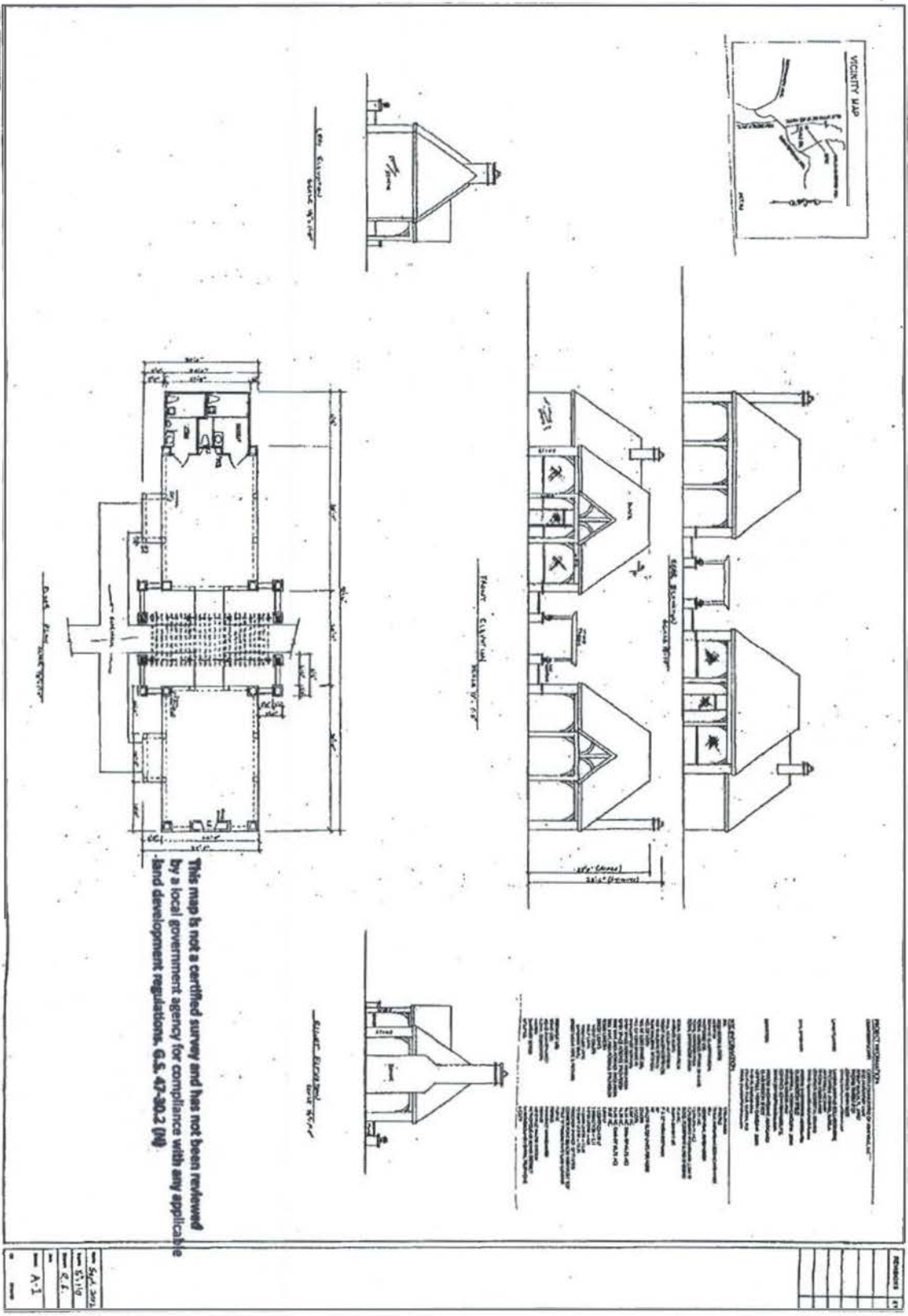


Project Name: Thoms Estate
Project Number: CUP 12-35-003
Project Description: CUP Amendment
Petitioner(s): Gated Comms. of Asheville, LLC
Parcel ID Number(s): Multiple PIN #'s

Location/Address: Elk Mountain Scenic Hwy.

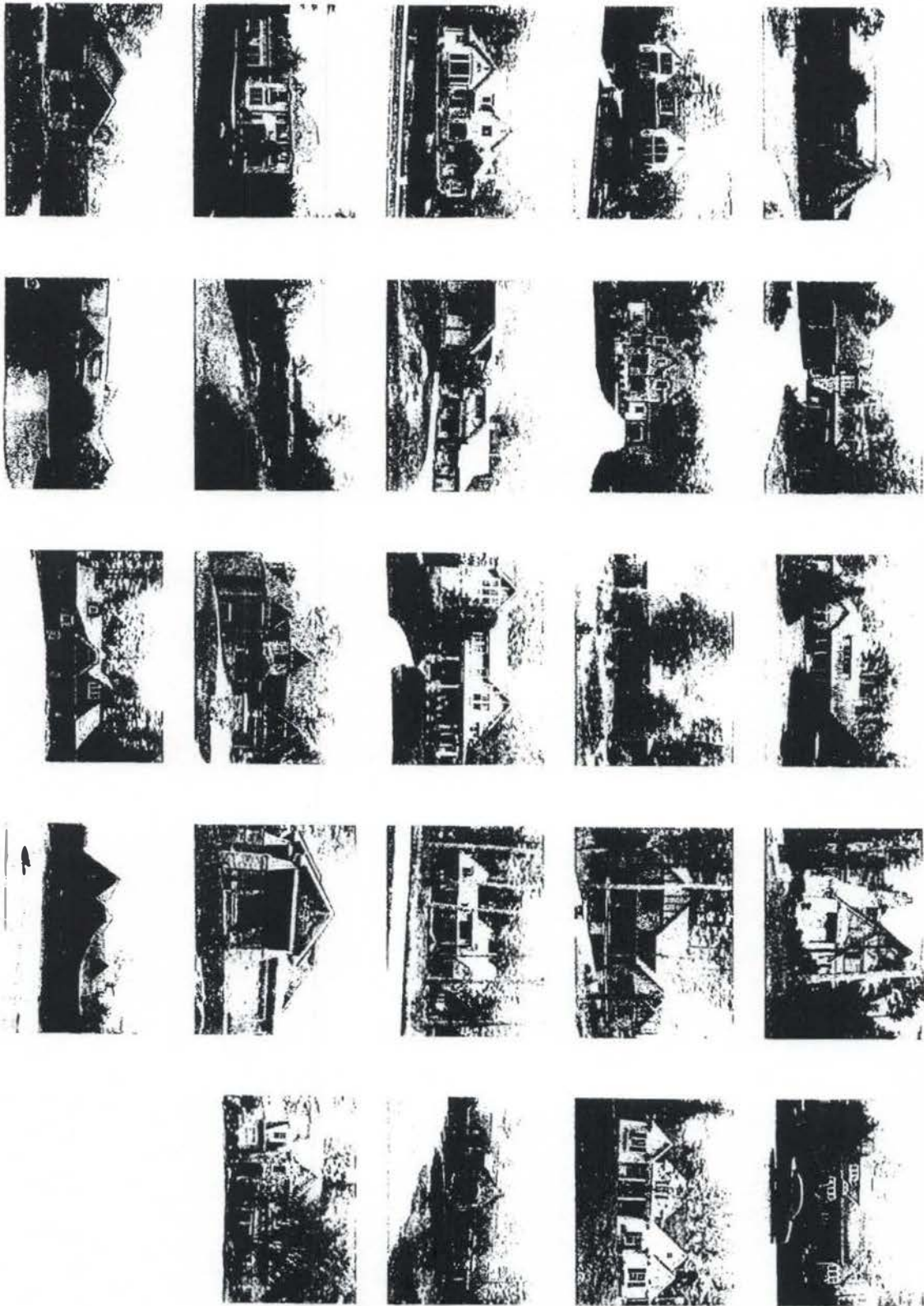
- Project Site
- Zoning Districts
- Streets
- Parcels
- Asheville City Limits
- Streams





This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations, G.S. 47-30.2 (b)

This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations. G.S. 47-30.2 (N)



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THE THOMAS ESTATE CUP REVISION
A 2000 V. 1.0 NORTH CAROLINA

TYPICAL HOUSE STYLES



