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Franklin County, North Carolina
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Drawn by and HOLD FOR:
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**AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR
ESSEX SOUTH**

**THIS DOCUMENT REGULATES OR PROHIBITS
THE DISPLAY OF POLITICAL SIGNS.**

THIS AMENDED AND RESTATED DECLARATION of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Essex South (hereinafter "Declaration") is made on the date hereinafter set forth by **Franklin Acquisitions 2, LLC** a North Carolina limited liability company (hereinafter "Declarant").

PREAMBLE:

WHEREAS, on July 19, 2022, Declarant caused recording of that certain Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Essex South (the "Original Declaration") in Book 2308, Page 897, Franklin County Registry, encumbering the property described herein, and

WHEREAS, pursuant to Section 2 of Article XI, Declarant may, during the Declarant Control Period, may amend the Declaration without the consent or joinder of the Members or the Association, for any purpose, and

WHEREAS, the Declarant Control Period has not expired per the terms defined in Section 9 of Article I,

NOW, THEREFORE, the Original Declaration is hereby amended by striking it in entirety and substituting in its place the terms of this Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Essex South (the "Declaration").

Declarant is the owner of a 83.55 Acres located in Franklin County, North Carolina as described in Exhibit A attached hereto and incorporated herein, which Declarant intends to develop into a planned community of single-family homes (known as Essex Village) and townhomes (known as the Essex Townes) (collectively hereinafter sometimes referred to as the "Subdivision" or "Essex South"); and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area (hereinafter defined) within the Subdivision and for the option of the maintenance of the exterior of the Townhome Dwellings (hereinafter defined), and to provide for enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of such property and each owner thereof; and

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to maintain the exterior of the Townhome Units, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has incorporated under North Carolina law as a nonprofit corporation, Essex South Homeowners Association, Inc., for the purpose of exercising the aforesaid functions; and

NOW, THEREFORE, Declarant declares that the real property described in **EXHIBIT A** to this Declaration, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any

part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, as the same may be amended from time to time.

Section 2. "Association" shall mean and refer to the **ESSEX SOUTH HOMEOWNERS ASSOCIATION, INC.** a North Carolina nonprofit corporation, its successors and assigns.

Section 3. "Board of Directors" and "Board" (the terms being used interchangeably) shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in the Bylaws, and is the "Executive Board" as defined in the Act.

Section 4. "Builder" shall mean and refer to any persons, firms or entities that purchase one or more Lots in the Properties for the purpose of constructing a Dwelling for resale to consumers in the ordinary course of its business.

Section 5. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 6. "Code" shall mean and refer to the Franklin County, North Carolina, Code of Ordinances, as amended from time to time.

Section 7. "Common Expense" shall mean and refer to all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, this Declaration and other Governing Documents and including specifically, but without limitation, all of the following:

- (i) all expenses of ownership, administration and maintenance of Common Area, including repair, restoration and replacement thereof, and expenses for acquisition, maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members, and including monies allocated to reserve funds for any of the same;
- (ii) any fees or charges for utilities used in connection with the Common Area;
- (iii) *ad valorem* taxes and public assessments, if any, levied against the Common Property owned in fee by the Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained by the Association result in additional taxes on such real property that would not be assessed in the absence of such improvements, in which event such additional taxes shall be paid by the Association as a Common Expense);

- (iv) any unpaid assessments following the foreclosure of a First Mortgage or an assessment lien;
- (v) financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (vi) costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the County of Franklin or other Governmental Entity;
- (vii) premiums for hazard, liability and other insurance insuring the Common Property or the Association, its officers, directors and employees, or the Townhome Lots;
- (viii) fees and expenses of management agents, attorneys, accountants, and other Persons employed by the Association for Association business;
- (ix) expenses declared to be or described as Common Expenses by the Act, the Code, or this Declaration;
- (x) expenses determined by the Board of Directors or by the Members to be Common Expenses; and
- (xi) all other expenses incurred by the Association in performing its functions, including operating, management and administrative expenses. (Common expenses for the maintenance of Limited Common Property are "Limited Common Expenses", which is a subcategory of Common Expense.)

Section 8. "Declarant" shall mean and refer to **FRANKLIN ACQUISITIONS 2, LLC**, a North Carolina limited liability company. It shall also mean and refer to any person, firm or corporation to whom or which Declarant may assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Franklin County Registry.

Section 9. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2036;
- (b) Not later than four months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, a sufficient number of votes (at the 9-to-1 ratio provided in Section 2(b) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or
- (c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104(d) of the Act.
- (d) Upon the sale and closing of the last Lot in Essex South to a third-party homeowner.

Section 10. "Declaration" shall mean and refer to this "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Essex South", and all amendments thereto and supplements thereof.

Section 11. "Development Parcel" shall mean and refer to any portion of the Properties which is intended to be developed as part of the Properties, but which has not yet been converted into Lots as provided herein.

Section 12. "Dwelling", "Dwelling Unit" and "Unit" shall mean and refer to any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, and specifically including detached dwellings located on separate Lots and attached dwellings located on separate Lots (for example, Townhome Dwellings, in which more than one Dwelling may be located in a single building, but each Dwelling is on a separate Lot). A detached or attached Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor. A Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

Section 13. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of any portion of the Subdivision (regardless of whether the Lot has been subjected to this Declaration as provided in Article II hereof), with the exception of any Common Area owned in fee by the Association. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 14. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 15. "Mortgage" means any mortgage or deed of trust or deed to secure debt encumbering a portion of the Properties, including a Lot. "First Mortgage" means any recorded Mortgage with first priority or seniority over other Mortgages on a particular portion of Property subject to this Declaration.

Section 16. "Mortgagee" means any beneficiary, payee or holder of any Mortgage, and the term Mortgage is deemed to refer to and include mortgages, deeds of trust or deeds to secure debt, as applicable. "First Mortgage" means any beneficiary, payee or holder of a First Mortgage.

Section 17. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 18. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant to said Article II.

Section 19. "Single-Family Detached Dwelling" shall mean and refer to a Dwelling which is not attached to any other Dwelling and is free-standing. "Single-Family Detached Lot" shall mean and refer to a Lot on which a single-family detached Dwelling has been or will be built.

Section 20. “Common Area” or “Common Property” (such terms being used interchangeably) shall mean and refer to the real property, together with any improvements thereon, owned by the Declarant or by the Association, whether in fee or by easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically including, without limitation, all private streets, curbs and sidewalks within the Subdivision, the area within any storm water easements and the facilities constructed therein which serve more than one Lot and are not maintained by any governmental authority, and water and sewer lines (and the easements associated therewith) which serve more than one Lot and are not located within a public utility easement or a public street right-of-way. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility, or another entity as set forth herein.

Section 21. “Common Area Easement” shall mean and refer to Common Area as to which the Association has only an easement interest, and not a fee simple interest.

Section 22. “Townhome Dwelling” shall mean and refer to a Dwelling which is attached to one or more Dwellings by a common wall. “Townhome Lot” shall mean and refer to a Lot on which a Townhome Dwelling has been or will be built.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF THE
ESSEX SOUTH
HOMEOWNERS ASSOCIATION, INC.

Section 1. Existing Property. The real property which, at the time of recording of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto.

Section 2. Additions to Existing Property by Declarant. At any time prior to the end of the Declarant Control Period, additional land may be annexed by the Declarant with the approval of DRB Group North Carolina, LLC without the consent of the Members and, therefore, become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and recording by Declarant of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subjected to this Declaration (or separated from such property only by the right-of-way of a street or road) and further provided that such annexation must be approved by Franklin County and, if required, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members. Following the termination of the Declarant Control Period, the Members of the Association may annex additional property by amending this Declaration following the same process as any other amendment.

Section 3. Conveyance of Common Area in Annexed Property. Prior to the conveyance of the first Lot within any newly annexed property to an Owner other than Declarant, the owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two (2) classes of membership with respect to voting rights:

(a) Class A Members. Class A members mean and refer to, collectively, all of the Class A-1 and Class A-2 Members, each of whom shall be a Class A Member.

Until such time as the Class A members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be a non-voting membership except as to matters and in such events as hereinafter specified.

The Class A members shall be entitled to full voting privileges on the earlier of the following dates to occur: (i) the date which the Declarant may so designate by notice in writing delivered to the Association; (ii) the termination of the Declarant Control Period. Until the earliest of these dates occurs, the Class A members shall be entitled to vote only on matters for which it is herein specifically provided, or for which it is provided by law, that approval of each and every class of membership of the Association is required. When entitled to vote, Class A members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership.

(i) Class A-1 Members. Class A-1 Members shall be those Owners of Single-Family Detached Lots, except for those Persons who are Class B members.

(ii) Class A-2 Members. Class A-2 Members shall be those Owners of Townhome Lots, except for those Persons who are Class B members.

(b) Class B Member. Declarant and DRB Group North Carolina, LLC shall be the only Class B Members. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters and in all events. A Lot or Development Parcel owned by the Declarant shall be a "Class B Lot". Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot and Development Parcel that it owns; however, such Declarant owned Lots and Development Parcels shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the directors and officers of the Association. Declarant's intent to exercise or continue to exercise that right may be set forth in the notice of each annual meeting of the Members. See §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters or if any Dwelling within the Properties is leased

for rental purposes to tenants, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by rules and regulations adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot. These rights are subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however that the Association may not suspend an Owner's right to use of any Common Area providing access or utilities to his Lot.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to Franklin County or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided that such exchange is approved by a vote of

the Members at a meeting of Members, one of the purposes of which is to vote on the exchange, and, if required, by Franklin County.

Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Franklin County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence in Franklin County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision to an Owner, Declarant will convey to the Association title to those portions of the Common Area located in that phase which are to be owned by the Association. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself, and its respective successors and assigns, an easement over, under, across and through the Common Area so long as any of them own any Lot within the Properties, for the purpose of constructing any improvements on the Common Area and/or the Lots as it or they deem necessary or advisable; provided that, following construction of improvements, the Common Area shall be restored to its prior condition to the extent practicable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Properties, utility, drainage, conservation, greenway and other easements of record or shown on the recorded plats of the Properties, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained Franklin County or other governmental entity, or a public or private utility company. The Association shall accept transfer of ownership of any and all Common Property.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements. It is the intent of Declarant that the Common Area (whether owned in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, the Declarant, by recording any plat or map of any phase or section of the Subdivision, grants to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior

written consent of the Association: (1) remove any trees or vegetation from Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on or in any Common Area; (4) fill or excavate any Common Area or any part thereof; or (5) plant vegetation on or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

It is the intent of the Declarant that a Common Area Easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized or approved in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein or the Lot, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area (including Common Area Easements) is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration or rules and regulations adopted by the Association as provided herein or in the Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

In addition, the Association shall maintain such other insurance coverage as it may determine to be desirable and necessary.

(c) Association's Right of Entry for Maintenance of Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) special assessments; (4) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the

Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (5) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (6) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (7) all other assessments and charges imposed or allowed to be imposed by this Declaration.

Any Lot conveyed from Declarant to a Builder or from a Builder to another Builder shall be exempt from payment of assessments until the conveyance of the Lot by the Builder to an Owner other than a Builder. Upon the conveyance of a Lot by a Builder to an Owner other than a Builder, the full amount of the assessment for the Lot shall be paid by the Owner of the Lot commencing on the first day of the first month after said event.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) maintenance of Lots and the exterior of Townhome Units, as provided in Article VI hereof; (iv) payment of taxes and public assessments levied against Common Area owned by the Association in fee; (v) procurement of insurance; (vi) employment of attorneys, accountants and other persons or firms for Association business; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Annual Assessments. The Board of Directors shall adopt, as soon as practicable, a budget for the Association for the period that lasts from the creation of the Association until December 31, 2022, and from such budget the Board of Directors will establish the annual assessment for the period of time that lasts from the creation of the Association until December 31, 2022.

Beginning on January 1, 2022, and thereafter, the annual assessments shall be based on a budget approved under the provisions set forth in Section 4 below.

The annual assessment for all Class B Lots and Development Parcels owned by the Class B Member shall be *zero*, provided, however, that any Lot which contains a Single-Family Detached Dwelling occupied as a residence shall be assessed at the Class A-1 rate, and any Lot which contains a Townhome Dwelling occupied as a residence shall be assessed at the Class A-2 rate.

The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the annual assessments incident to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month following the conveyance of a Lot to an Owner other than Declarant or Builder.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give the Members written notice of a meeting of the Members to consider

ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless, at that meeting, Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the proposed budget provides for annual assessments not more than ten percent (10%) greater than the annual assessment for the immediately preceding calendar year, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Except as otherwise provided in this Declaration, an Annexation Declaration, or any Legal Requirements (e.g., additional or different stormwater assessments or different assessments pertaining to Limited Common Area), annual assessments shall be fixed at a uniform rate for all Lots in each Class or sub-Class and may be collected on a yearly, semiannual, quarterly or monthly basis, as determined by the Board.

Assessments for Common Expenses applicable only to the Class A-1 Lots shall be assessed only against Class A-1 Lots, and assessments for Common Expenses applicable only to Class A-2 Lots shall be assessed only against Class A-2 Lots. Assessments for Common Expenses applicable to all Lots shall, to the extent provided herein, be assessed against all Lots.

The Association shall, upon demand from an Owner, First Mortgagee, or authorized agent of either of the foregoing and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or the management company employed by the Association, setting forth whether the assessments for a specific Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 5. Additional Assessments for Limited Common Area. Declarant reserves the right, by Annexation Declaration or any other declaration applicable only to certain phases or Classes within the Properties, to subject portions of the Properties to provisions requiring the Owners thereof to pay additional annual assessments and special assessments to the Association for the maintenance of Limited Common Area, including, without limitation, related Stormwater Control Facilities and private streets, private rights-of-way, private alleys, and private alley easements on such Limited Common Area.

All of the provisions of this Declaration relating to special assessments shall apply to the additional special assessments for Limited Common Property, with the following exceptions: (i) the additional assessments with respect to any particular Limited Common Property are assessed only against the Owners of the portion of the Properties associated with such Limited Common Property; (ii) the initial additional maximum annual assessment and additional annual assessment for each Lot associated with such Limited Common Property shall be established in the Annexation Declaration that creates or establishes that Limited Common Property or the obligations associated therewith; (iii) the actual additional annual and special assessments may vary from phase to phase, section to section, or whether Class A-1 or Class A-2; and (iv) the additional annual and special assessments for portions of the Properties in any particular phase, section or Class within the Properties shall be used exclusively in connection with the Limited Common Property associated with that phase, section or Class.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole

or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring expenses, *provided that* any such assessment shall have been approved by the Declarant (during the Declarant Control Period) and by not less than two-thirds (2/3) of the votes of the Class A Members present and voting (in person or by proxy) at a meeting of the Members, one of the purposes of which is to vote on the special assessment, and further provided that the special assessment for a Class B Lot shall always be zero. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Written notice of any meeting called for the purpose of voting on a special assessment shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Limited Special Assessments. The Board of Directors, without vote of the Members, may levy a limited special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Any fine imposed against an Owner pursuant to the Bylaws shall also constitute a limited special assessment against such Owner's Lot. Special assessments and limited special assessments shall constitute a lien to the same extent as other annual assessments against the Lot.

Section 8. Effect of Nonpayment of Assessments; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be charge on the Owner's Lot as provided in §47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in §47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a First Mortgage of record or other purchaser of a Lot obtains title to the Lot as a result of a foreclosure of a First Mortgage, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. All assessments and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of

a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

Section 9. Subordination of the Lien to Mortgages. Notwithstanding anything to the contrary contained in this Declaration, the Bylaws or the Articles of Incorporation of the Association, the liens provided for in any of the foregoing shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a First Mortgage, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of First Mortgage.

Section 10. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no Lot devoted to residential use shall be exempt from said assessments.

Section 11. Capitalization of Association. Upon the first sale of each Unit in Essex South after the issuance of a certificate of occupancy for the residential dwelling constructed thereon, a working capital contribution in the amount of Five Hundred and No/100 Dollars (\$500.00) for single family dwellings and Two Hundred Fifty and No/100 Dollars (\$250.00) for townhome dwellings, shall be collected from the purchaser at the closing of such sale payable to Essex South Homeowners Association, Inc. for the benefit of the Association, or if not collected at the closing, shall be paid immediately on demand by the Association. The working capital contribution shall be paid to the Association and may be used by the Association for reserves. The working capital contribution shall be a Specific Assessment against the Unit and shall be in addition to not in lieu of the Working Capital Fund as described in Section 12 hereinafter.

Notwithstanding anything to the contrary herein, the working capital contribution shall not apply to any First Mortgagee who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of indebtedness secured by such First Mortgage, but shall apply to the Owner acquiring the Unit from the foreclosing First Mortgagee.

Section 12. Declarant's Obligation to Fund Operating Deficits. During the Declarant Control Period, Declarant shall be obligated to fund any deficit between the normal operating expenses of the Association and the monies received by the Association from the Owners from assessments. Declarant, at its option, may pay such expenses directly to the Person providing the services or materials or pay to the Association the amounts necessary to fund the operating deficit.

Section 13. Class A-1 Assessments. Subject to the provisions of this Section 13 and notwithstanding any other provision of this Declaration, the Association shall have the power to levy, in addition to all other assessments that may be levied as provided herein, assessments against the Lots in Class A-1 to fund Common Expenses incurred by the Association for the primary benefit of the Lots within such Class including, without limitation, maintenance required to be performed by the Association with respect to property within that Class. Such Class A-1 Assessments shall be collected in the same manner as and shall constitute a lien to the same extent as other assessments against the Lot.

Section 14. Class A-2 Assessments. Subject to the provisions of this Section 14 and notwithstanding any other provision of this Declaration, the Association shall have the power to levy, in addition to all other assessments that may be levied as provided herein, assessments against the Lots in Class A-2 to fund Common Expenses incurred by the Association for the primary benefit of the Lots within such Class including, without limitation, maintenance required to be performed by the Association with respect to property within that Class. Such Class A-2 Assessments shall be collected in the same manner as and shall constitute a lien to the same extent as other assessments against the Lot.

Section 15. Reserve Account. The Association shall establish a separate reserve account to fund major repairs to and replacements of Common Area including, without limitation, major repair or replacement of Stormwater Control Measures. Each annual budget shall show the amount to be placed in reserve for each category for which reserves are to be held.

Section 16. Fines. Subject to the provisions of this Declaration, the Bylaws of the Association, and Section 47F-3-107.1 of the Act, the Board of Directors shall have the right and authority to levy fines or suspend privileges or services provided by the Association for reasonable periods for the violation of any provision of this Declaration and other rules and regulations promulgated by the Board of Directors pursuant thereto, provided, however that the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations. Any monetary fine shall be deemed an individual special assessment against the Lot of the Owner against whom such fine is assessed.

ARTICLE VI MAINTENANCE OF LOTS, UNITS, AND COMMON AREA

Section 1. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements which the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot and/or the exterior of any Dwelling or other structure erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 2 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Every Owner shall maintain in full force and effect at all times fire and hazard insurance from an insurer reasonably approved by the Board, in an amount equal to the full replacement value of his or her Living Unit, including the value of excavations and foundations. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the

Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid as a result of enforcement by the Association or otherwise.

Section 2. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 4 of this Article VI, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be a limited special assessment against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

Section 3. Access at Reasonable Hours. As provided in Section 5 of Article VIII of this Declaration, the Association, through its duly authorized agents or employees, shall have the right, without notice to the Owner, to enter upon any Lot at reasonable hours on any day to perform any maintenance and repairs to be performed by the Association.

Section 4. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners; (ii) pay all property taxes and other assessments levied against all Common Property owned in fee by the Association; and (iii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any Person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area. Notwithstanding anything to the contrary contained herein, during the Declarant Control Period, the Declarant reserves the right to include the insurance obligations of the Association within a master insurance program controlled by the Declarant and upon doing so, the insurance obligations provided for under this Declaration shall be deemed satisfied. By virtue of taking title to a Lot within Essex South, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any Dwelling or other property located thereon.

Section 5. Additional Maintenance for Townhome Lots.

(a) Association's Responsibility. In addition to maintenance of the Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the following for Townhome Lots and Townhome Dwellings:

(i) Landscape Maintenance. The Association shall maintain the lawns and landscaping located on the Townhome Lots pursuant to the terms of this Section 5(a). The Association shall provide maintenance for the basic lawn and landscaping package provided by the Declarant for each Townhome Lot. The Association shall determine, in its sole discretion, the level of maintenance, if any, for plantings in excess of the basic landscaping package provided for each Townhome Lot and the Association shall have the option but not the obligation to provide maintenance for plantings in excess of the basic landscaping package for a Townhome Lot. The Owner of a Townhome Lot shall be responsible at its sole cost and expense for additional lawn and landscaping maintenance in excess of that maintenance provided by the Association. The costs of this landscape maintenance provided by the Association shall be paid from the Townhome Lot assessments. The Association may discontinue the landscaping maintenance obligations described in this Section 5 only upon the written consent of Owners of Townhome Lots holding ninety percent (90%) of the votes entitled to be cast and, during the Declarant Control Period, the written consent of Declarant.

(1) Landscape Maintenance Easements. Declarant hereby reserves, for the benefit of itself, its successors and assigns, grants to the Association, its successors and assigns, employees, agents and subcontractors, a nonexclusive perpetual easement at all times over the Townhome Lots for the purpose of maintaining the lawn and landscaping located on those Lots. The easement described in this Section expressly permits access within fenced areas of the Townhome Lots. Further, any fences within these Lots must provide for an unlocked rear yard gate to permit the landscaping services provided in Section 5(a)(i) of Article VI. Failure of the Association or its contractors or agents to provide the services described in Section 5(a)(i) of Article VI due to denial of access within a fenced area of a Townhome Lot, for example, if the gate is locked or if there is a dog in the fenced area, shall not be a breach of the responsibilities of the Association as required herein. No Townhome Lot Owner may waive or otherwise escape liability for the Association Assessments by denying access to any portion of a Townhome Lot or the contractors or agents of the Association for the purposes described in this Section.

(ii) Exterior Maintenance. The Association may opt to be responsible, but shall not be required to be responsible, for certain exterior maintenance of the Townhome Dwellings, including the painting, repair, replacement, and care of exterior building surfaces (including exterior doors installed as part of the initial construction of the Townhome Dwelling), sidewalks, and stoops. During the Declarant Control Period, the Association shall not be responsible for maintenance or repair of roofs, gutters and down spouts. After the expiration of the Declarant Control Period, the Association may opt to be responsible, but shall not be required to be responsible, for maintenance and repair of roofs, gutters and down spouts upon a majority vote of the Members. The Association shall not be responsible for maintenance or repair of glass surfaces or screens or for any improvements not part of the original construction unless the architectural approval granted by the Association for such subsequent improvements specifically provides that the Association will maintain such improvements. Furthermore: (i) the Association shall not be responsible for maintaining any fence installed on any Townhome Lot; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; (iii) the Association shall not be responsible for repair or replacement of any plantings or the exterior of any Townhome Dwelling when such repair or replacement is necessitated by work done by or at the request of any Owner for any utility company or governmental entity; and (iv) the Association shall not be responsible for repairing any damage caused by the negligent or willful act or omission of the Owner of such Townhome Dwelling or such Owner's tenants, subtenants, or family members, or the guests, invitees or contractors of any of them.

(b) Party Walls. Each Townhome Dwelling wall which is built as a part of the original construction of the Townhomes upon the Property and placed on the dividing line between the Townhome Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

- (i) Sharing of Repairs and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- (ii) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- (iii) Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner and the Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Common Area to as nearly the same condition as that which existed prior to commencement of the work as is reasonably practicable. Except in an emergency situation, an Owner entering upon another Owner's Lot as provided herein shall give reasonable oral or written notice to the Owner of the Lot on which such entry is to be made.
- (iv) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act or omission, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements and of repairing any damages resulting from such Owner's failure to timely and adequately provided such protection.
- (v) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (vi) Certification by Adjoining Property Owner That No Contribution Is Due. If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to make a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, and without charge; provided, however that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. If an adjoining Owner fails to give a certification within ten (10) days of actual receipt of such request, such failure shall be conclusively deemed a certification that no such contribution is due.
- (c) Insurance. In addition, the Association may procure and uphold a property insurance policy on the Townhome Lots (ISO Special Form or equivalent) in an amount not less than ninety percent (90%) of the replacement cost of the Townhome Dwellings. If the Association chooses to procure such policy, the policy shall be issued by an insurance company licensed to conduct business in North Carolina and with a current rating of at least "A-" by A.M. Best (if

available). Such a policy will convey that each Owner of a Townhome Lot is an insured person with respect to his/her Townhome Dwelling, excluding improvements and betterments, (excluding the personal property of Owner) and his/her proportionate interest in the Townhome Lot. No act or omission by any Owner shall preclude recovery upon the policy. This policy shall be deemed primary in the event of a loss.

ARTICLE VII RIGHTS OF MORTGAGEES

Section 1. Books and Records. Any First Mortgagee, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year, except that the Association shall not be required to provide the financial statement for the preceding fiscal year if said fiscal year expired less than 75 days prior to the date of the request. (See §47-3-118 of the Act).

Section 2. Notice to First Mortgagees. Upon written request to the Association, a First Mortgagee shall be entitled to timely written notice of:

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.
- (b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of Owners or First Mortgagees.
- (d) Any condemnation or casualty loss that affects either a material portion of the Common Area or a Lot secured by a First Mortgage.

Section 3. Approval of First Mortgagees. Unless at least seventy-five percent (75%) of the First Mortgagees on Lots located within the Properties have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association, unless said conveyance of real property is *de minimis* and for the sole purpose of correcting an error in title of a Lot. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(d) of said Article IV hereof shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to a governmental entity, to a nonprofit entity organized for purposes similar to those of the Association.
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;
- (c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements or,

as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however, that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners to the Association.

Provided, however, that in the event that any First Mortgagee fails to provide the approval required by this Section 3 within sixty (60) days after the Association has sent a written request for such approval, such First Mortgagee will be deemed to have consented to and approved the matter for which such approval or consent was requested.

Section 4. Payment of Taxes and Insurance Premiums. The First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. Collection of Assessments. No Mortgagee shall have any obligation to collect any assessment under the Declaration.

Section 6. Meeting of the Members. A First Mortgagee may attend and address any meeting that a Member may attend.

ARTICLE VIII EASEMENTS

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of ten (10) years from the date hereof, Declarant grants to and reserves for itself, the Association, and their successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the person or entity taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The person or entity taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Support. Every Lot and Unit which contributes to the lateral and/or vertical support of any adjoining Unit(s) shall be burdened with an easement of support for the benefit of such adjoining Unit(s).

Section 3. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 4. Easement Over Common Area. A perpetual, nonexclusive easement over, under and through the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing reasonable access, ingress and egress to, from and over and the use of the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 5. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 6. Easements for Development. For so long as Declarant owns any real property within the Properties, Declarant reserves an easement over the Properties for the purpose of allowing Declarant, its successors and assigns, to develop the Properties and construct improvements thereon.

Section 7. Easement for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 8. Adjoining Areas. Each Owner of a Townhome Lot is hereby declared to have an easement, and the same is hereby granted by the Declarant, over all adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, or additional settlement or shifting of the building, or any other cause. There shall be valid easements for maintenance of such encroachment, which includes any encroachments created during the

original construction of the Townhome Dwelling and related structures on a Townhome Lot, settlement or shifting; provided however, that in no event shall a valid easement for encroachment be created in favor of said Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

ARTICLE IX ARCHITECTURAL CONTROL

Architectural review and approval of any improvement to be constructed or installed on any Lot or the Common Area and any change or modification of any such improvement shall be made in accordance with this Declaration. Notwithstanding the foregoing, written approval must be obtained from the Association prior to any construction, erection or placement of anything, permanently or temporarily, on the outside portions of the Unit in accordance with the provisions of this Declaration or the Design Guidelines. This shall include, without limitation, signs, permanent basketball hoops, swing sets and similar sports and play equipment, hedges, walls, dog runs or animal pen of any kind, garbage cans, woodpiles, docks, piers and similar structures.

ARTICLE X USE RESTRICTIONS

Section 1. Use of Lots and Common Area. It is the intent of the Declarant that all Lots shall be used for residential purposes only. Except as permitted by Franklin County Code, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that (i) the Declarant, real estate brokers, Owners and their agents may show Lots for sale or lease and (ii) any Owner may lease a Lot to residential tenants for profit (such lease to provide that the terms of the lease shall be subject in all respects to this Declaration). Notwithstanding the foregoing, the Declarant shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales and construction efforts; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

Building Type and Size: No building shall be constructed or permitted to remain on any Lot other than one Single Family Residence having no less than 1,550 square feet of heated and living area nor more than 2,300 square feet of heated and living area and a private one to two car garage. The Townhome Lots shall have townhomes constructed having no less than 1,550 square feet of heated and living area nor more than 1,700 square feet of heated and living area and a private one to two car garage. For purposes of calculating the permitted square feet of heated and living area space, space in the following areas shall not be included: space within optional third floor expansion areas or optional rooms over garages (both of which may be heated), garages, crawlspaces or basements that are not heated and cannot be used for normal living purposes. All buildings shall be of new construction and no prefabricated structure (other than prefabricated components, such as roof trusses, etc.) shall be placed upon any Lot.

Section 2. Use of Accessory Structures. No shack, barn, or other building, other than a Dwelling, its garage and outbuildings incident to residential use, shall be erected on a Lot. No structure of a temporary nature may be used temporarily or permanently as a residence. Notwithstanding the foregoing, the Declarant, may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of Units.

Section 3. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the neighborhood. The Board of Directors has the right to determine whether or not a particular animal is a nuisance and to require removal. No person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot or the Common Area.

Section 5. Signs. Except as otherwise required by Franklin County, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant, shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

Section 6. Parking. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. The Board of Directors of the Association shall have the right and authority (but shall not be obligated) to assign parking spaces to Owners on an equal, non-discriminatory basis. The Owner of each Lot shall provide the Association with the make, model, color and license plate number of each vehicle owned or normally driven by the Owner and his family, any person regularly residing with the Owner, and/or any lessee or sub-lessee of such Owner.

No Owner or a member of his family, lessee or sub-lessee or guest of an Owner shall: (i) park any vehicle on the street within or adjoining the Subdivision except in a designated paved parking space; (ii) park on any Lot or street within or adjoining the Subdivision any abandoned, partly dismantled or inoperative vehicle or vehicle not having current registration and inspection stickers displayed; or (iii) park on any Lot or any street within or adjoining the Subdivision any boat or boat trailer, utility or other trailer, recreational vehicle, motor home, camper, bus, truck in excess of one ton weight, commercial vehicle, truck or van, or anything else other than a vehicle normally intended for use as a private passenger vehicle.

The Board of Directors shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, and the cost of towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered or the Owner of the vehicle, as appropriate.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable legal requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Properties.

Section 7. Antennae and Roof Structures. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, a satellite dish not more than eighteen inches (18") in diameter may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); and (iii) is integrated with the Dwelling and surrounding landscape.

Section 8. Garbage; Unsightly Storage. All trash and rubbish shall be kept in such a manner as not to be visible from the street upon which the Unit fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or any other unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

Section 9. Fences. Any fence or wall installed within the Subdivision must meet all requirements of any applicable zoning ordinance and must be approved as provided in the Declaration and the architectural guidelines approved for Essex South (if any). Chain-link fences are not permitted. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

Section 10. Fines. The Board of Directors, in accordance with the Bylaws, shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration and/or the rules and regulations hereafter promulgated by the Board pursuant thereto. Any monetary fine or penalty shall be deemed a limited special assessment against the Lot of the Owner against whom such fine or penalty is assessed.

Section 11. Pools. Above ground and below ground pools are prohibited.

Section 12. Flags/Signs. No approval under Article IX or Article X of this Declaration shall be required for any Owner or occupant to display the flag of the United States of America and the current flag of the State of North Carolina on a Unit in accordance with the provisions of the U.S. Flag Code (36 U.S. Code 10) and in accordance with the regulations contained herein. The Board of Directors of the Association may promulgate reasonable rules and regulations (in addition to the rules contained herein) with respect to the display of flags in the Properties, including, without limitation, regulating the size of flags that may be displayed. In accordance with the Freedom to Display the American Flag Act of 2005, the Declarant or the Association shall not enact any rule or regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on any Unit in the Properties; provided, however, the Declarant, the Association, or the Board, as applicable, shall be entitled to enact reasonable time, place, and manner restrictions pertaining to the display of the United States flag located on a Unit in the Properties. The following flag and sign rules and regulations shall apply to the Properties:

- (a) Free standing flag poles shall be prohibited;
- (b) Permitted signs and flags shall include for sale signs (no larger than 24 x 28 inches and higher than 3 feet off the ground); American flags, decorative garden flags, and sports team flags; and
- (c) Nonpermitted flags shall include but not be limited to, for rent or lease signs; political signs which are not directly and specifically promoting a candidate or a specific ballot issue by name; private residence signs; and any sign or flag that is not specifically listed above as permitted.

Section 13. Portable Play Equipment. Equipment, including portable basketball hoops, soccer goals, pitching/catching devices, children's toys, bicycles, tricycles and other such items, must be stored from view when not in use.

Section 14. Hours of Construction. No construction activity can take place except after the following hours:

Monday –Friday after 7:00am

Saturday after 8:00am

Sunday after 12:00pm

There will be no construction activity on New Year's Day, Easter, Thanksgiving and Christmas.

Section 15. Restricted Activities. The following activities are prohibited within Essex South unless expressly authorized by, and then subject to such conditions as the Board may impose:

(a) Parking any vehicles on streets or thoroughfares within Essex South for longer than three (3) continuous days in a row 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; however, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area. This restriction shall not apply to Declarant, Aqua North Carolina, Inc. (hereinafter "Aqua") or the Association;

(b) Raising, breeding or keeping animals, livestock or poultry of any kind, except that a reasonable number of dogs, cats (the combined number of dogs and cats not to exceed three) or other usual and common household pets may be permitted on a Lot. Any animal which, makes objectionable noise or, in the Board's judgment, constitutes a nuisance or inconvenience to the Occupants of other Lots, shall be removed by the owner upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. Rottweilers,

pit bulls, chows and other aggressive breeds of dogs shall not be allowed within the Community. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Owners shall clean up behind any Pet while walking such Pet on any Common Area. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity that emits foul or obnoxious odors outside the Lot or creates noise or other conditions, which tend to disturb the peace or threaten the safety of the Occupants of other Lots;

(d) Any activity that violates local, state, or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities, which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Lot;

(f) Any noxious or offensive activity (including, without limitation, barking dogs) which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the Occupants of other Lots;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Lot;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to Occupants of other Lots, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) 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 on Lots provided care is taken to minimize runoff;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers. Such containers shall be either screened from view or kept inside, except as reasonably necessary for garbage pick ups;

(l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant, Aqua, and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent;

(m) Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and recorded, except that Declarant shall be permitted to subdivide or replat Lots it owns;

(n) Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within Essex South. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams, or other bodies of water within or adjacent to Essex South;

(o) Use of any Lot for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program;

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and Aqua and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment;

(r) Any business, trade, or similar activity, except that an Owner or Occupant residing in a Lot may conduct business activities within the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve door-to-door solicitation of residents of the Community; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked within the Community which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents within the Community, as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Lot shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant, Aqua or a builder approved by Declarant with respect to its development and sale of the Community or its use of any Lots which it owns within the Community;

(s) Capturing, trapping, or killing of wildlife within the Community, except in circumstances posing an imminent threat to the safety of persons using the Community;

(t) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Community;

(u) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Lot without prior approval pursuant to Article V;

(v) Operation of motorized vehicles on pathways or trails maintained by the Association;

(w) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article V of the Declaration. This shall include, without limitation, landscaped or grassed areas; signs; basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans;

woodpiles; docks, piers, and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind. Under no circumstances shall the ARC approve the replacement of all or a majority of the grassed area of a Lot with mulch or stone; and

(x) If a holiday display creates a significantly increased traffic flow within the Community, the Lot's Owner or Occupant responsible for such display shall remove it upon request of the Board and if the Owner or Occupant does not remove such display within a reasonable time, the Board may remove the display;

Section 16. Prohibited Conditions. The following shall be prohibited within Essex South:

(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;

(b) Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, dilapidated, or otherwise fallen into disrepair;

(c) Installation of any sprinkler or irrigation systems or wells of any type, other than those initially installed by Declarant or a Declarant approved builder, which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Community, except that Declarant, Aqua, and the Association shall have the right to draw water from such sources;

(d) Satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community; and (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) satellite dishes designed to receive video programming services via multi point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices") shall be permitted; however, any such Permitted Device must be placed in the least conspicuous location on the Lot (generally being the rear yard) at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property or is screened from the view of adjacent Lots in a manner consistent with the Community-Wide Standard and the Architectural Guidelines;

(e) Window air conditioning units; and

(f) Installation of exterior decorative items, including but not limited to statuary, fountains or wishing balls, but not including flags, political signs and/or permitted exterior decorative lights.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner (including the Declarant) shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Section 2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may also be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. Notwithstanding the foregoing, during the Declarant Control Period, the Declarant may amend this Declaration, without the consent or joinder of the Members or the Association, for any purpose.

In addition to and not in limitation of Article VII, Section 3, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to First Mortgagees including but not limited to those set forth in Article V, Section 9 and Article VII, unless a majority of such First Mortgagees (based on the original principal amount of the First Mortgages) shall join in the amendment. Whenever the consent or approval of the First Mortgagee is required by the Bylaws, this Declaration or any applicable statute or law to any action of the Association or to any other matter relating to the Association, the Association shall request such consent or approval of such First Mortgagee by written request sent by certified mail, return receipt requested. Any First Mortgagee receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested in writing within sixty (60) days after such First Mortgagee receives such request. The response of First Mortgagee must be sent by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association). If a First Mortgagee fails to timely respond, such First Mortgagee shall be deemed to have consented to and approved the matter for which such approval or consent was requested.

Section 3. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant during the Declarant Control Period, and thereafter by the Association, and, if required, by Franklin County. Subdivision or recombination of any Lot(s) may, as appropriate, increase or decrease the number of votes in the Association.

Section 4. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the restrictive covenants and other use restrictions applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may

include, but are not limited to, reasonable monetary fines, which fines shall be deemed a limited special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

The Association shall have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 5. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon is taken by power of eminent domain or is damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house.

Section 6. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable and made with an entity not affiliated with the Declarant.

Section 7. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

 CERTIFICATE OF ESSEX SOUTH HOMEOWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the ESSEX SOUTH HOMEOWNERS ASSOCIATION, INC., was held on [Date and Year] at [Time].

The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [described the action approved] was approved by at least _____% of the Members as required by the Declaration and Bylaws of the Association.

[President/Secretary]

Section 8. Number and Gender. Whenever the context requires, the singular shall include the plural, and *vice versa*, and one gender shall include all.

Section 9. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 10. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Declaration and shall not be deemed to nullify or affect and other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local laws, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 11. Conflicts. In the event of a conflict between this Declaration and the Articles of Incorporation of the Association, the Declaration shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control.

Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. Chapter 55A), and the Franklin County Code shall in all cases control over any construction inconsistent therewith. The provisions of the Act and the Nonprofit Corporation Act shall in all cases control any conflicting provisions of the Franklin County Code.

Section 12. Rule Against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant to thereto and §47F-3-102(1) of the Act. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Declaration violates any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

Section 13. Security Measures. Neither the Declarant, the Association nor the Board shall have any responsibility for establishing or maintaining any security measures within the Property, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the Franklin County Sheriff's Department.

[signature on following page]

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed in its name by its duly authorized officer or Manager, as of the date set forth in the notary acknowledgment below.

DECLARANT:

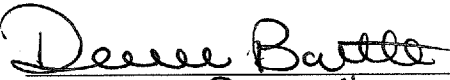
Franklin Acquisitions 2, LLC
A North Carolina limited liability company

By: 
Name: SCOTT CARLE
Title: Manager

State of NC - County of Franklin

I certify that the following person(s) personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Scott Carle

Date: 10/19/22
[Official Seal]


Denielle Bartlett Notary Public
(Print Name)
My Commission Expires: 2-6-25

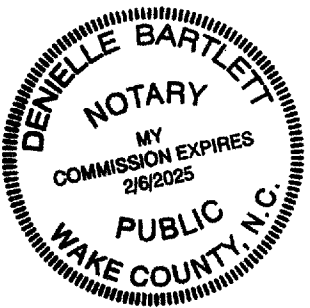


EXHIBIT A

Lying and being in Franklin County, North Carolina, and being more particularly described as follows:

Being all of that 41.254 acre tract denoted As "Land Conveyed to Franklin Acquisitions 2, LLC" on that certain map recorded in Book of Maps 2021, Page 230, Franklin County Registry.