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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**BRIAR CHAPEL**

Prepared by / upon recording, please return to:

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**This document being re-recorded to attach missing pages of Exhibit E**

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"A"	Land Initially Submitted	1
"B"	Land Subject to Annexation	7
"C"	Initial Restrictions and Rules	3
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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS****FOR****BRIAR CHAPEL**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 28 day of August, 2007, by NNP- Briar Chapel, LLC, a Delaware limited liability company, on behalf of itself, its successors, and assigns ("**Declarant**").

**PART ONE: INTRODUCTION TO THE COMMUNITY**

*NNP-Briar Chapel, LLC, as the developer of Briar Chapel, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance and preservation of Briar Chapel as a planned community.*

**Article I      Creation of the Community****1.1.      Purpose and Intent.**

Declarant, as the owner of the real property described in Exhibit "A," intends by this Declaration to establish a general plan of development for the planned community known as Briar Chapel. An integral part of the development plan is the creation of Briar Chapel Community Association, Inc., an association comprised of all owners of residential real property in Briar Chapel, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

This document establishes a planned community under the North Carolina Planned Community Act, N.C.G.S. §47F-1-101, *et seq.* (as it may be amended, the "Act").

**1.2.      Binding Effect.**

All property described in Exhibit "A," and any additional property which is made a part of Briar Chapel in the future by amendment of this Declaration or by recording one or more Supplemental Declarations, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Briar Chapel, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended, is intended to have perpetual duration, subject to the right of the Owners to terminate this Declaration and the planned community established by this Declaration in accordance with the procedures set forth in Article XX.

1.3. Governing Documents.

The Governing Documents for Briar Chapel consist of:

- this Declaration and such Supplemental Declarations as may be recorded from time to time;
- the Association's Articles of Incorporation and By-Laws;
- the Restrictions and Rules described in Article III;
- the Design Guidelines described in Article IV; and
- such resolutions as the Association's Board of Directors may adopt;

all as they may be amended. In the event of a conflict between or among any of the Governing Documents, the documents shall be given priority in the order listed above.

Some areas within Briar Chapel may be subject to additional covenants, restrictions and easements. If there is a conflict between the Governing Documents and any such additional covenants or restrictions, the Governing Documents shall control; however, if one document is simply more restrictive than another, the more restrictive shall control.

The Governing Documents apply to all Owners and occupants of property within Briar Chapel, as well as to their respective tenants, guests and invitees. If a Unit is leased, the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents and the lease shall so provide.

The Association, the Declarant, and every Owner shall have the right to take legal action to enforce the Governing Documents. The Association shall have the specific enforcement powers and remedies described in Section 7.5 and elsewhere in the Governing Documents.

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

Throughout the Governing Documents there are diagrams to illustrate the concepts discussed and aid in the reader's comprehension. Such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Governing Documents, the text shall control.

Diagram 1.1 identifies the various Governing Documents and their functions.

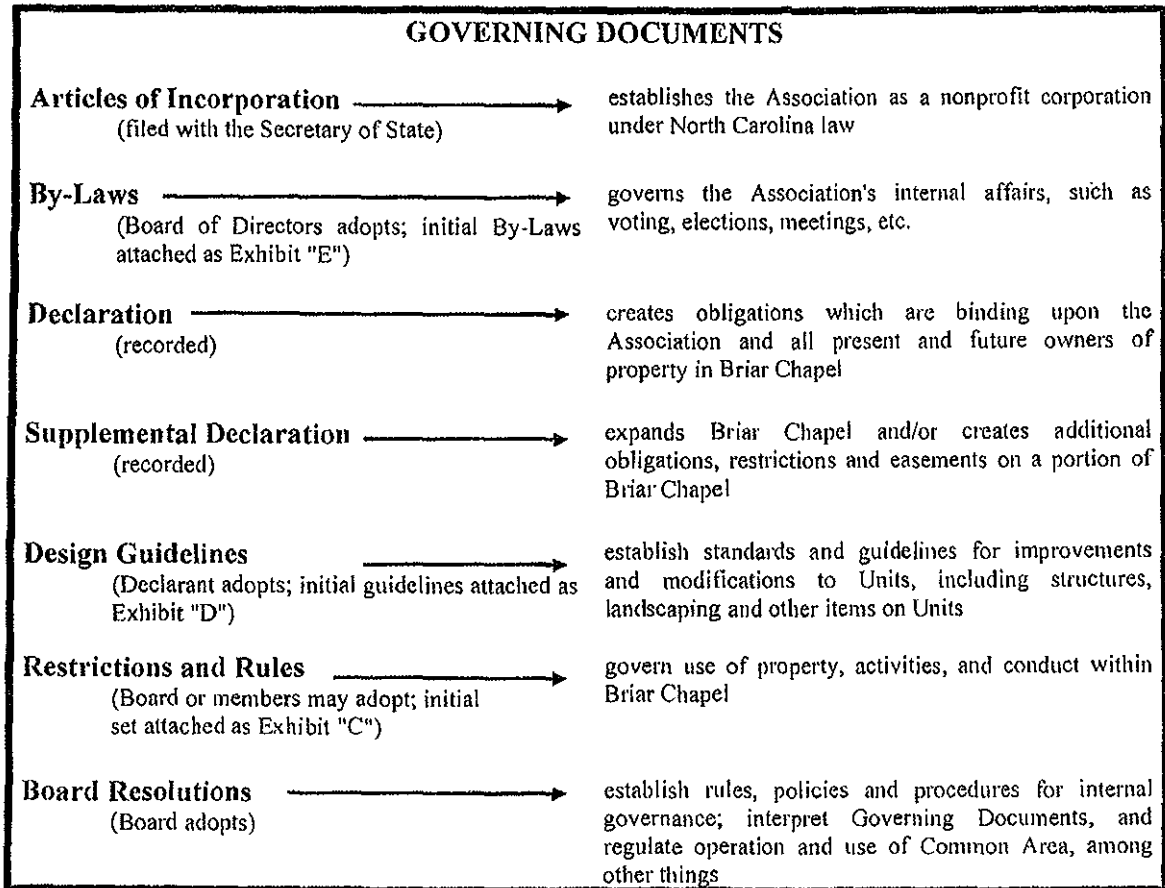


Diagram 1.1 - Governing Documents

1.4. Briar Chapel Community Council.

Declarant has created Briar Chapel Community Council, Inc. as a vehicle for generating, enhancing, and preserving a genuine sense of community within Briar Chapel. While the Association is created primarily to manage the real property and enforce restrictions and standards established for Briar Chapel, the Community Council exists to empower, encourage, and provide a means for each Owner and resident of Briar Chapel to participate in and benefit from community-oriented affairs, services, programs, and activities. It is Declarant's intent that the Association and the Community Council work together and cooperate in performing these complimentary roles within Briar Chapel. The Association may, but shall not be obligated to, provide financial support to the Community Council over and above such amounts as the Community Council may be entitled to collect directly from the Owners pursuant to the Community Covenant for Briar Chapel recorded by the Declarant and running with the title to all or any portion of the Community (the "**Community Covenant**").

The Community Council has rights and responsibilities which are described in and governed by the Community Covenant and its by-laws and articles of incorporation. The Community Council's affairs are administered by a board of trustees selected as provided in its bylaws. The Association and all Owners are subject to the Community Covenant and to the Community Council's jurisdiction. Unless otherwise indicated, any reference in the Governing Documents to approval or other action by the Community Council refers to action by the Community Council's Board, as governed by the Community Council's governing documents. In any event, the Community Council's approval shall not unreasonably be withheld, conditioned, or delayed. In the event of a conflict between the Governing Documents and the Community Council's governing documents with respect to the Community Council's rights and responsibilities, the Community Council's governing documents shall control.

## Article II Concepts and Definitions

### 2.1. Defined Terms.

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Additional Association": A condominium association or other owners association, if any, having jurisdiction over any portion of the Community concurrent with (but subject to) the jurisdiction of Briar Chapel Community Association, Inc. Nothing in this Declaration shall require the creation of any Additional Associations.

"Act": The North Carolina Planned Community Act, N.C.G.S. § 47F-2-101, *et seq.*, as it may be amended.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles": The Articles of Incorporation of Briar Chapel Community Association, Inc., filed with the Office of the Secretary of State, State of North Carolina, as they may be amended.

"Association": Briar Chapel Community Association, Inc., a North Carolina non-profit corporation, its successors or assigns.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.

"Briar Chapel" or "Community": The real property described on Exhibit "A" together with such additional property as is submitted to this Declaration pursuant to Article IX.

"Builder": Any Person who purchases one or more Units from the Declarant or a Builder for the purpose of constructing a dwelling thereon for later sale to consumers, or who purchases one or more parcels of land within Briar Chapel from the Declarant for further subdivision, development, and/or resale in the ordinary course of its business.

"By-Laws": The By-Laws of Briar Chapel Community Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "E."

"Class "B" Control Period": The period of time during which the Declarant, as the Class "B" Member, is entitled to appoint a majority of the members of the Board, as provided in Article III of the By-Laws. The Class "B" Control Period shall terminate not later than 90 days after the first to occur of the following:

- (a) the date that 75% of the total number of Units permitted by the Master Plan for the property described in Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders; or
- (b) 20 years from the date of recording of this Declaration; or
- (c) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" Control Period.

Temporary suspension of the Class "B" Membership pursuant to Section 6.2(a) shall not affect the Class "B" Control Period.

"Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Limited Common Area, as defined below.

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary or appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless approved by Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, except payments due under leases of capital improvements such as street lights, and costs of purchasing or installing capital improvements such as street lights or an irrigation well, if the Board determines such purchase to be in the best interests of the Association, shall not be considered an initial development expense or original construction cost subject to this limitation.

"Community" or "Briar Chapel": The real property described on Exhibit "A" together with such additional property as is submitted to this Declaration pursuant to Article IX.

"Community Council": Briar Chapel Community Council, Inc., a North Carolina nonprofit corporation, or its successors or assigns, being the entity referenced in Section 1.4.

**"Community Covenant"**: That certain Community Covenant for Briar Chapel recorded by the Declarant and running with the title to all or any portion of the Community, as referenced in Section 1.4.

**"Community-Wide Standard"**: The standard of conduct, maintenance, or other activity generally prevailing in Briar Chapel, or the minimum standards established pursuant to the Design Guidelines, Restrictions and Rules, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Briar Chapel change.

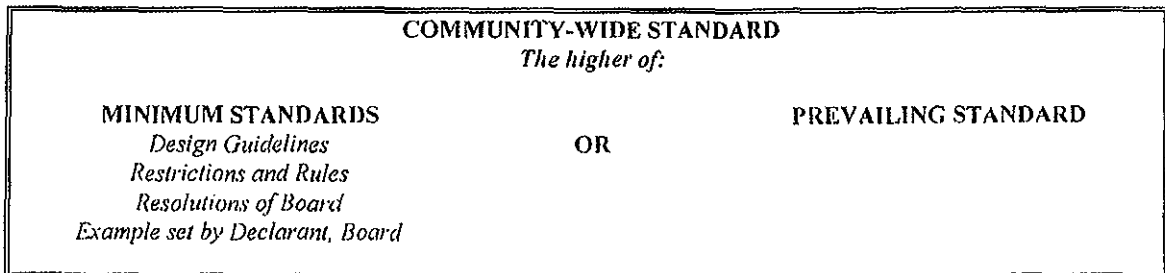


Diagram 1.2. Community-Wide Standard

**"Covenant to Share Costs"**: any declaration of easements and/or covenant to share costs which Declarant executes and records that creates certain easements for the benefit of the Association or the present and future owners of the subject real property and/or that obligates the Association and such owners to share the costs of maintaining property described in such Covenant to Share Costs.

**"Declarant"**: NNP-Briar Chapel, LLC, a Delaware limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale and who the immediately preceding Declarant designates as Declarant in a recorded instrument.

**"Declarant Affiliate"**: Any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

**"Design Guidelines"**: The guidelines and standards for design, construction, landscaping, and exterior items placed on Units adopted pursuant to Article IV, as they may be amended.

**"Development and Sale Period"**: The period of time during which Declarant, any Declarant Affiliate, or any Builder owns property subject to this Declaration or Declarant holds an unexpired option to unilaterally expand the Community pursuant to Section 9.1.

**"Eligible Mortgage Holder"**: a holder, insurer or guarantor of a first priority Mortgage on a Unit who has submitted a written request to the Association to notify it of any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders pursuant to Article

XV. The term "**Eligible Mortgage**" shall refer to the Mortgage held by an Eligible Mortgage Holder.

"**General Assessment**": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.2.

"**Governing Documents**": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, the Restrictions and Rules, and Board resolutions, all as they may be amended.

"**Grinder Pump Station**": a portion of the wastewater collection system serving the Community which is installed on a Unit, consisting of a wastewater grinder pump, tank, controls and related service lines and equipment, into which wastewater from the dwelling on such Unit enters, is ground, and pumped to the wastewater collection main.

"**Limited Common Area**": A portion of the Common Area assigned, pursuant to Article XII, for the primary benefit or use of one or more, but less than all, Units.

"**Master Plan**": The master plan for the development of Briar Chapel approved by Chatham County, North Carolina, as it may be supplemented or amended, which includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to submit such property to this Declaration, nor shall the omission of property described in Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article IX.

"**Member**": A Person subject to membership in the Association pursuant to Section 6.2.

"**Mortgage**": A mortgage, a security deed, a deed of trust, or any other form of security instrument affecting title to any Unit. The term "**Mortgagee**" shall refer to a beneficiary or holder of a Mortgage.

"**Owner**": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"**Person**": A natural person, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.

"**Restrictions and Rules**": The initial restrictions and rules set forth in Exhibit "C," as they may be supplemented, modified and repealed pursuant to Article III.

"**Service Area**": A group of Units designated as a separate Service Area pursuant to this Declaration for purposes of sharing Limited Common Areas and/or receiving other benefits or

services from the Association which are not provided to all Units. For example, all Units served by alleys, if any, shall be assigned to an "Alley Service Area" for purposes of sharing the benefits provided and expenses incurred by the Association in connection with the ownership, maintenance, repair, and servicing of such alleys. Other Service Areas may be established as described in Section 7.3. A Service Area may be comprised of more than one housing type and may include noncontiguous parcels of property. A Unit may be assigned to more than one Service Area. Where the context permits or requires, the term "Service Area" shall also refer to any Service Area Committee established in accordance with the By-Laws to represent the interests of Owners of Units within a Service Area.

"Service Area Assessments": Assessments levied against the Units in a particular Service Area to fund Service Area Expenses, as described in Section 8.2.

"Service Area Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Service Area.

"Special Assessment": Assessments levied in accordance with Section 8.3.

"Specific Assessment": Assessments levied in accordance with Section 8.4.

"Supplemental Declaration": An instrument recorded pursuant to Article IX which subjects additional property to this Declaration, designates Service Areas, and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument.

"Unit": A portion of Briar Chapel, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or Declarant's site plan, whichever is more recent, until such time as a subdivision plat is recorded subdividing all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and the number of Units in any remaining portion shall continue to be calculated in accordance with this paragraph.

Units may be combined or further subdivided, and boundary lines of Units may be changed, only by recording of a plat or other legal instrument further subdividing or resubdividing the parcel of property (which subdivision shall be subject to such other restrictions as may be set forth in this Declaration or the Restrictions and Rules). In the absence of

recording such a legal instrument, ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single dwelling.

2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the Office of the Register of Deeds for Chatham County, North Carolina, or such other place as may be designated as the official location for filing documents affecting title to real estate in Chatham County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

**PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for use and conduct, maintenance, architecture, landscaping and other aesthetic matters at Briar Chapel are what give the community its identity and make it special. Each Owner and resident participates in upholding such standards and can take pride in the results of that common effort. This Declaration establishes procedures for adopting, modifying, applying and enforcing such standards while providing the flexibility for the community standards to evolve over time.*

**Article III Use and Conduct**

3.1. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for Briar Chapel, a framework of covenants, easements and restrictions that govern Briar Chapel. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, and trends. Therefore, this Article establishes rulemaking authority and procedures for modifying and expanding the initial Restrictions and Rules set forth in Exhibit "C." This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to Section 7.1(c), nor to administrative policies which the Board may adopt by resolution to interpret, define or implement the Restrictions and Rules.

3.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty pursuant to Section 6.1 of the By-Laws to exercise its powers in a reasonable, fair and nondiscriminatory manner, the Board may modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice to all Owners or publish notice concerning any proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

(b) In addition to the Board's authority under subsection (a) above, Members may, at an Association meeting duly called for such purpose, modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Any such action shall require approval of persons entitled to cast more than 50% of the total Class "A" votes in the Association. In addition, during the Development and Sale Period, any such action shall require the written consent of Declarant.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing or expanding the Design Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in Exhibit "C." In the event of a conflict between the Design Guidelines and the Restrictions and Rules, the Design Guidelines shall control.

3.3. Owners' Acknowledgment and Notice to Purchasers.

**ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR UNITS AND THE COMMON AREA IS LIMITED BY THE RESTRICTIONS AND RULES AS AMENDED, EXPANDED AND OTHERWISE MODIFIED FROM TIME TO TIME.** Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

3.4. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in Exhibit "C," all Restrictions and Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly; however, the Restrictions and Rules may vary by housing type or area.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

(c) Flags. No rule shall regulate or prohibit the display on a Unit of the flag of the United States or the flag of North Carolina, of a size no greater than four feet by six feet, by the Owner or occupant of such Unit, provided the flag is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. Sections 5-10, as amended, governing the display and use of the flag of the United States.

(d) Political Signs. No rule shall regulate or prohibit the indoor or outdoor display of a political sign on a Unit by the Owner or occupant of the Unit, except that the Association may adopt rules (i) prohibiting the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) regulating the size and number of political signs that may be placed on a Unit, subject to the limitations set forth in Section 47F-3-121 of the Act. For the purposes of this subsection (d), "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

(e) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(f) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance to persons outside the Unit.

(g) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(h) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; however, rules may restrict leasing of multiple Units by the same Owner or by related or affiliated Persons and may require a minimum lease term of up to 12 months. The Association may also require that Owners use lease forms approved by the Board.

(i) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(j) Reasonable Rights to Develop and Sell. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop Briar Chapel, nor restrict Declarant or such Builders as Declarant may so authorize from maintaining upon Common Areas and Units which they own any facilities necessary or incidental to construction or sale of Units. By way of example and not limitation, no rule shall prohibit Declarant or such Builders as Declarant may so authorize from maintaining temporary structures for use during construction of a Unit or from using any home as a sales office.

The limitations in subsections (a) through (j) of this Section 3.4 shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XVIII provided such amendments are not inconsistent with the Act.

#### **Article IV Architecture and Landscaping**

##### **4.1. General.**

No structure or thing shall be placed, erected, or installed upon any Unit and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within Briar Chapel, except in compliance with this Article and the Design Guidelines. This Article and the Design Guidelines shall not be construed to regulate or prohibit those flags or political signs permitted under Section 3.4(c) or those antennae and other Permitted Devices described in Exhibit "C", provided they are installed in compliance with those sections and such rules as are specifically authorized in those sections.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

All construction on Units shall comply with all applicable building codes and requirements.

This Article shall not apply to structures in existence on the date of recording of this Declaration, or to Declarant's activities during the Development and Sale Period, or to the activities of the Association during the Class "B" Control Period.

4.2. Design Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges that Declarant has a substantial interest in ensuring that the improvements within Briar Chapel enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property in, or in the vicinity of, Briar Chapel. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of Briar Chapel or any real property that may be made a part of to Briar Chapel pursuant to Section 9.1 and until a certificate of occupancy has been issued for a dwelling on every Unit, unless earlier terminated in a written instrument that Declarant executes and records.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) a design review committee appointed by the Board of Directors (the "DRC"), or (ii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them.

(b) Design Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRC, shall assume jurisdiction over design and aesthetic matters. The DRC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the DRC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount if any, as the Board may establish.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over design and aesthetic matters.

(c) Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) Design Guidelines. The initial Design Guidelines applicable to Briar Chapel are set forth on Exhibit D. The Declarant may adopt additional Design Guidelines, which may contain general provisions applicable to all of Briar Chapel as well as specific provisions that vary by housing type and from one area to another within Briar Chapel. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines so long as it has any rights under this Article, as described in Section 4.2(a), notwithstanding a delegation of reviewing authority to the DRC, unless Declarant also delegates the power to amend to the DRC. Upon termination or delegation of Declarant's right to amend, the DRC shall have the authority to amend the Design Guidelines with the consent of the Board. However, no amendment shall be inconsistent with applicable Chatham County ordinances or the design guidelines approved by Chatham County, North Carolina in conjunction with issuance of a Zoning Determination Permit for the Community.

Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within Briar Chapel.

(b) Procedures. Except as otherwise specifically provided in this Declaration or the Design Guidelines, no activities shall commence on any Unit until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and

colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable ("Plans"). The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Until expiration of Declarant's rights under this Article, the DRC shall notify Declarant in writing within three business days after the DRC has approved any application within the scope of matters delegated to the DRC by Declarant. The notice shall be accompanied by a copy of the application and any additional information that Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC.

The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination by the DRC subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. Notice shall be deemed given when deposited in the U.S. Mail, certified mail, return receipt requested, properly addressed to the applicant at the address stated in such applicant's notice, or upon receipt if given by any other means.

In the event that the Reviewer fails to give notice of its approval or disapproval of any application within the time period required above, the applicant may notify the Reviewer by certified mail, return receipt requested, at the address for such notices set forth in the current edition of the Design Guidelines, stating that no response has been received and that unless a written response is given at the address set forth in such notice within 15 days of the Reviewer's receipt of the applicant's notice, as evidenced by the return receipt, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

If construction does not commence on a project for which Plans have been approved within nine months after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may (i) pre-approve Plans for Builders and excuse such Builders from all or a portion of the application and review procedures set forth in this Section with respect to construction undertaken in accordance with such pre-approved Plans; and (ii) by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

#### 4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case the Reviewer may elect not to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

#### 4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

#### 4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Briar Chapel; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring

that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Neither Declarant, the Association, the Board, any committee, nor any member of any of the foregoing, shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in Briar Chapel; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board, the DRC, and the members of each shall be defended and indemnified by the Association as provided in Article VI of the By-Laws.

4.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall preclude the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

**Article V Maintenance and Repair of Units**

5.1. Maintenance by Owners.

Except to the extent that such maintenance responsibility is otherwise assigned to or assumed by the Association pursuant to Section 7.2 or any Supplemental Declaration applicable to the Unit, each Owner shall maintain:

(a) his or her Unit and all landscaping and improvements comprising the Unit; and

(b) the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Unit boundary and any wall, fence or curb located on the Common Area or public right-of-way within 15 feet of the Unit boundary;

all in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, except that there shall be no right to remove trees, shrubs or similar vegetation without prior approval pursuant to Article IV.

5.2. Maintenance of Additional Association's Property.

Any Additional Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants.

Any Additional Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence or curb located on the Common Area or public right-of-way within 15 feet of its boundary; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article IV.

The Association may assume maintenance responsibility for property within the jurisdiction of any Additional Association, either upon designation of the area as a Service Area pursuant to Section 7.3 or upon the Board's determination, pursuant to Section 7.5(a), that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.3. Responsibility for Repair and Replacement; Insurance by Owners.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Association is obligated to carry such insurance pursuant to any Supplemental Declaration or other covenants applicable to the Unit, or unless the Association otherwise notifies the Owner in writing that it is carrying such insurance on the Unit (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

In the event of damage to or destruction of structures on or comprising a Unit, the Owner shall, within 180 days thereafter, complete the repair or reconstruction of the damaged structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

This Section shall also apply to any Additional Association responsible for common property within its jurisdiction in the same manner as if the Additional Association were an Owner and the common property were a Unit. Additional covenants applicable to any area of the Community may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such area and for clearing and maintaining the Unit in the event the structures are not rebuilt or reconstructed.

Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Unit, their family, guests or

invitees, nor shall the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of the Association, Declarant or their respective agents or employees.

### **PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

*This Declaration establishes the Association as a mechanism by which each Owner is able to participate in the governance and administration of Briar Chapel. While many powers and responsibilities are vested in the Association's board of directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership -- the owners of property in Briar Chapel.*

#### **Article VI The Association and its Members**

##### **6.1. Function of Association.**

The Association has been established to administer Briar Chapel in accordance with the Governing Documents. Its responsibilities include, but are not limited to:

- (a) management, maintenance, operation and control of the Area of Common Responsibility; and
- (b) interpretation and enforcement of the Governing Documents; and
- (c) establishing and upholding the Community-Wide Standard; and
- (d) upon delegation or termination of Declarant's authority under Article IV, administering the design review process for Briar Chapel, as provided in that Article.

##### **6.2. Membership.**

(a) Classes of Membership. The Association initially shall have two classes of membership, Class "A" and Class "B". Class "A" Members shall be all Owners, including the Declarant as to any Unit which it owns. The sole Class "B" Member shall be the Declarant. The Class "B" membership shall be temporarily suspended during any period that the Declarant does not own a Unit, subject to automatic reinstatement upon Declarant's acquisition of any Unit or annexation of additional property pursuant to Article IX; however, such temporary suspension shall not suspend, terminate, or otherwise affect the Class "B" Control Period. The Class "B" membership shall terminate upon the earlier of:

- (i) the date that 75% of the total number of Units permitted by the Master Plan for the property described in Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders; or
- (ii) 20 years from the date of recording of this Declaration; or

(iii) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" membership.

Upon termination of the Class "B" membership, Declarant shall hold a Class "A" membership for each Unit that it owns.

(b) Automatic Membership; Exercise of Privileges. Every Owner automatically becomes a Member of the Association upon taking title to a Unit and remains a Member as long as the Owner holds title to such Unit. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

The voting rights of each class of membership shall be as follows:

(a) Class "A". Each Unit owned by a Class "A" Member is assigned one vote equal to that of every other Unit owned by a Class "A" Member. If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

No vote shall be exercised for any property that is exempt from assessment under Section 8.7.

(b) Class "B". The Class "B" Member shall not have Class "B" voting rights relative to the number of Units it owns; rather, the consent of the Class "B" Member shall be required for various actions of the Board, the membership and committees, as specifically provided elsewhere in the Governing Documents. In addition, the Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III of the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. In addition, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

**Article VII Association Powers and Responsibilities**

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of Article XVIII. The Association may enter into leases, licenses or operating agreements for portions of the Common Area, for such consideration or no

consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of owners, occupants and residents of Briar Chapel.

(b) Declarant, any Declarant Affiliate, and their respective designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B." Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area that Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) Declarant may convey Common Area to the Association in one or more transactions. Each conveyance of Common Area shall be free and clear of all liens and encumbrances of a monetary nature.

(d) The Association shall be responsible for management, operation and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance of Area of Common Responsibility.

(a) Except as otherwise provided in this Section 7.2, the Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility shall include, but need not be limited to:

(i) all portions of and structures situated on the Common Area, including recreation areas and open space; and

(ii) all streets and alleys within Briar Chapel unless and until such time as they are accepted by a public body for perpetual maintenance; provided, the Association shall have no responsibility for removal of snow or ice on streets or alleys; and

(iii) any landscaping, signage, sidewalks, and street trees within public rights-of-way or sidewalk easements lying within or abutting the property subject to this Declaration, except to the extent that such responsibility is otherwise assigned to Owners pursuant to Section 5.1 or assumed by a governmental body or utility provider; and

(iv) streetlights and light poles along streets and alleys within the Community, unless such streetlights are leased from and maintained by the utility provider pursuant to the terms of any lease;

(v) all culverts, pipes, ponds, and other stormwater management facilities located within the Common Area, rights-of-way, or easements granted to the Association, and any pipes,

lines, pumps, or other apparatus comprising any irrigation system supplying irrigation water to the Area of Common Responsibility, to the extent located within Common Area, rights-of-way, or easements granted to the Association; and

(vi) the community signage and entry features located at all vehicular entrances to the Community from U.S. Highway 15-501, Andrews Store Road, and Mann's Chapel Road;

(vii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association; and

(viii) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The community trail system will contain different types of trails with different levels of improvement varying from earthen paths which depend on foot and bicycle traffic to keep the trail clear of undergrowth, to mulch, gravel, or asphalt and other hard surfaces. Portions of the trail system may be maintained by one or more third parties pursuant to an agreement or easement relating to construction and use of the trails by persons other than Owners and occupants of Units. Neither the Association nor any such third party shall have any obligation to improve or maintain all portions of the trail to the same standard.

(c) Some portions of the Area of Common Responsibility may consist of open space or conservancy areas intentionally left in a natural or relatively undisturbed state. The level of maintenance that the Association provides to the Area of Common Responsibility may vary from a high level of landscaping and regular, weekly maintenance to intermittent or no maintenance, depending on the nature and intended use of the particular open space area. Open space, wetlands, or other natural areas may serve as habitats for a variety of native plant, animal, and insect species, and may contain creeks, fallen trees and other naturally occurring conditions, some of which may pose hazards to persons or pets coming in contact with them. Neither the Association, the Declarant, or any Builder shall have any responsibility for providing maintenance in such areas or taking action to abate such conditions, and any maintenance provided shall be consistent with the terms of any recorded restrictions or easements affecting such property, including any conservation easement or covenants and restrictions recorded by the Declarant as part of a final compensatory mitigation plan required by the U.S. Army Corps of Engineers or the State of North Carolina pursuant to the 401 Water Quality Certification No. 3567 issued by the North Carolina Department of Environment and Natural Resources, Division of Water Quality, dated May 9, 2006, as it may be amended.

(d) Portions of the Common Area may include sites that are listed on the National Register of Historic Places. In such event, the Association shall maintain and preserve such sites in a manner consistent with the requirements, if any, for such listing and shall not undertake or permit any modifications to such sites that would result in delisting or forfeiture of such designation.

(e) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members entitled to cast at least 75% of the total Class "A" votes in the Association and, during the Development and Sale Period, the Declarant, agree in writing to discontinue such operation. Notwithstanding this, the Association may, but shall not be obligated to, maintain any lake or pond which has formed or forms within the Common Area as a result of stream blockage and no Member approval shall be required for the Declarant or the Association to remove debris blocking streams or breach any beaver or other dams that may be blocking streams, notwithstanding that doing so may result in drainage of lakes, ponds, or other bodies of water within the Community formed as a result of such blockage.

Except as provided above, the Area of Common Responsibility shall not be reduced without Declarant's prior written approval as long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration.

(f) Except as otherwise specifically provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. The costs that the Association incurs or expects to incur for maintenance, repair and replacement of Limited Common Areas and alleys shall be a Service Area Expense assessed against the Units within the Service Area to which the Limited Common Areas or alleys are assigned.

(g) The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

### 7.3. Provision of Benefits and Services to Service Areas.

(a) All Units served by alleys are hereby assigned to an "Alley Service Area." In addition, the Declarant, on Exhibit "A" to this Declaration and/or by Supplemental Declaration submitting additional property to this Declaration, may assign the property submitted thereby to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Units in addition to those which the Association generally provides to all Units. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental

Declaration to redesignate Service Area boundaries; provided, nothing in this Section shall authorize the Declarant to assign property owned by a Builder to a Service Area without the consent of the Builder. All costs associated with the provision of services or benefits to a Service Area shall be assessed against the Units within the Service Area as a Service Area Assessment.

(b) In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association (a) special benefits or services which are not provided to all Units, or (b) a higher level of service than the Association otherwise provides. Upon receipt of such petition signed by Owners of a majority of the Units within the proposed Service Area, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the charge to be made therefor, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit among all Service Areas receiving the same service). Upon written approval of the proposal by Owners of at least 67% of the Units within the proposed Service Area, the Association shall provide the requested benefits or services on the terms set forth in the proposal. The cost and administrative charges associated with such benefits or services shall be assessed against the Units within such Service Area as a Service Area Assessment, subject to the right of the Owners of Units within the Service Area to veto the budget for their Service Area as provided in Section 8.2.

#### 7.4. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes; and

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional

coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits; and

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law; and

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Service Area, obtain and maintain property insurance on the insurable improvements within such Service Area, which insurance shall comply with the requirements of Section 7.4(a)(i). Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units within a Service Area shall be a Service Area Expense; and (ii) premiums for insurance on Limited Common Areas shall be a Service Area Expense of the Service Area to which such Limited Common Areas are assigned, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Durham, North Carolina area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.4(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate; and

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Service Area shall be for the benefit of the Owners within the Service Area and their Mortgagees, as their interests may appear; and

(iii) be primary and not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually; and

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause; and

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member); and

(vii) provide a waiver of subrogation under the policy against any Owner or occupant of any Unit; and

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners or members of their households, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests; and

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; and

(iii) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal; and

(iv) a cross liability provision; and

(v) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall cause damaged improvements on the Common Area to be repaired or reconstructed unless a decision not to repair or reconstruct is approved within 60 days after the loss or damage by Owners of at least 80% of the Units, including 100% of the Units to which any Limited Common Area is assigned, if the damaged improvements are Limited Common Area, and during the Development and Sale Period, by the Declarant. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed as follows: (i) to the extent that the excess insurance proceeds are attributable to damaged improvements on Limited Common Area that are not rebuilt, they shall be distributed to the Owners of Units to which such Limited Common Area was assigned or to their Mortgagees, as their interests may appear; and (ii) the remainder shall be distributed to all of the Owners or their Mortgagees, as their interests may appear, at an equal rate per Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.4(a).

7.5. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents as set forth in this Section 7.5 and elsewhere in the Governing Documents.

(b) The Board may impose the following sanctions only after notice and a hearing in accordance with the procedures set forth in Article VIII of the By-Laws:

(i) imposing reasonable monetary fines (subject to the limitations set forth in Section 47F-3-107 of the Act), which shall constitute a lien upon the violator's Unit (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board); and

(ii) suspending the vote attributable to a violating Owner's Unit, suspending the privilege of using any recreational facilities within the Common Area, and suspending any services which the Association provides to an Owner or the Owner's Unit, during any period that the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association or for a reasonable period for other violations of the Governing Documents; and

(iii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in Briar Chapel; and

(iv) levying Specific Assessments pursuant to Section 8.4 to cover costs which the Association incurs to bring a Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of an Owner or occupant of a Unit, their guests or invitees.

(c) In addition, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without the necessity of compliance with the procedures set forth in Article VIII of the By-Laws:

(i) requiring an Owner, at the Owner's expense, to perform maintenance on such Owner's Unit, or to remove any structure, item or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition; or

(ii) entering the property and exercising self-help to remove or cure a violating condition upon failure of an Owner to take action as required pursuant to subsection (i) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(iii) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and/or

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XIV, if applicable.

(d) The Association also shall have the power to require specific action to be taken by any Additional Association in connection with its obligations and responsibilities under this Declaration, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. An Additional Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Additional Association fails to comply, the Association shall have the right to effect such action on behalf of the Additional Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

(e) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(f) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

(g) The Association, by contract or other agreement, may enforce applicable county ordinances and may permit the Chatham County to enforce applicable ordinances within Briar Chapel for the benefit of the Association and its Members.

7.6. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except to the extent that the Governing Documents or North Carolina law specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Article VI of the By-Laws.

7.7. Provision of Services to Units.

The Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Association may enter into bulk service agreements by which a particular service is provided (a) to all Units, in which case it may include the costs of such services or facilities in the Association's budget as a Common Expense and assess it as part of the General Assessment; or (b) to all Units which have been improved with a completed dwelling and conveyed for residential occupancy ("**Occupied Units**"), or at the option of each Owner, in which case the cost may be levied as a Specific Assessment. By way of example, such services and facilities might include trash collection, recycling services, landscape maintenance; pest control service; cable, digital, satellite or similar television service; telecommunication and internet connection services; security monitoring; utilities; and other services and facilities.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to this Article.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.8. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

The Declarant may prepare, execute, and record a document creating a covenant to share costs by which the Owners of Units in Briar Chapel and the owners of properties located adjacent to or in the vicinity of Briar Chapel will be obligated to share costs of maintaining certain mutually beneficial properties and/or providing certain mutually beneficial services, as described in such document ("**Covenant to Share Costs**"). The Covenant to Share Costs may obligate the Association to provide such maintenance and other services to such property and may authorize the Association to collect a specified portion of the costs it incurs from the owners of such other properties or any owners association having jurisdiction over such other properties. In addition, the Association may contract with the owner of any neighboring property to provide for an assumption by the Association of maintenance of any stormwater facilities, road rights-of-way, community signage and entry features, or open space benefiting the Community and/or the sharing of costs associated with (a) maintenance and operation of mutually beneficial properties or facilities, or (b) provision of mutually beneficial services.

7.9. Use of Technology.

The Association may, as a Common Expense, provide for or offer services that make use of technological opportunities to facilitate the goals and fulfill the responsibilities of the Association. For example, to the extent North Carolina law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means; collect assessments by electronic means; sponsor a community cable television channel; create and maintain a community intranet or Internet homepage; and maintain an "online" newsletter or bulletin board.

7.10. Safety and Security.

The Association may, but shall not be obligated to, maintain or support certain activities within Briar Chapel designed to enhance the level of safety or security that each person provides for himself and his property. However, no representation or warranty is

made that any systems or measures, including any mechanism or system for limiting access to Briar Chapel or any portion thereof, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Neither the Association, the Declarant, the Builders, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall in any way be considered insurers or guarantors of safety or security within Briar Chapel, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Briar Chapel and each of them assumes all risks of personal injury and loss or damage to their property, including Units and their contents, resulting from acts of third parties.

7.13. Cooperation with the Community Council.

The Association shall cooperate with the Community Council on all matters involving the Community Council's obligations and responsibilities under the Community Covenant. For example, to the extent feasible, the Association shall permit reasonable use of Common Area facilities by the Community Council and "chartered clubs" and other volunteer groups operated by or through the Community Council, for their offices, programs, activities, and services; and, as the Board may determine reasonably appropriate and financially feasible in its discretion, incorporate the Community Council suggestions for community operations, whether such suggestions come from Community Council surveys and focus groups or otherwise.

**Article VIII Association Finances**

8.1. Authority to Levy Assessments for Association Expenses.

(a) Purposes. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles and the Bylaws, specifically including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision, and utilities; taxes, if any, imposed on the Association or the Common Area; the cost of insurance and fidelity bond coverage obtained pursuant to Section 7.4; the cost of water or other utilities provided to the Area of Common Responsibility, and to Units if metered through a master meter and billed to the Association; charges for services provided to Units pursuant to Section 7.7; expenses of monitoring and enforcing compliance with the provisions of the Governing Documents; expenses arising out of the Association's indemnification obligations; expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Units and the Community; expenses incurred in exercising design control under Article IV; expenses of managing the Association, including compensation of management

personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Community in good, clean, and attractive condition and to maintain and enhance property values and marketability of Units within the Community.

(b) Types of Assessments. There shall be four types of assessments: (i) General Assessments; (ii) Service Area Assessments; (iii) Special Assessments as described in Section 8.3; and (iv) Specific Assessments as described in Section 8.4. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments. Such assessments shall commence at the time and in the manner set forth in Section 8.5.

(c) Personal Obligation and Lien. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of Briar Chapel, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution, not to exceed 18% per annum), late charges as determined by Board resolution (subject to the limitations of North Carolina law), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner, and a charge and continuing lien upon each Unit as provided in Section 8.6, until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments that accrued prior to such acquisition of title.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Within 10 business days after receipt of a written request therefor, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth the amount of any unpaid assessments or other charges levied on the Unit. Such certificate shall be binding on the Association and every Owner. The

Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(d) Declarant's Obligations for Assessments. During the Class "B" Control Period, Declarant may satisfy its obligation for General Assessments and Special Assessments for Common Expenses on any Units that it owns in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Units in the same manner as any other Owner, in accordance with the applicable rate of assessment under Section 8.5.

8.2. Budgeting and Allocating Association Expenses.

(a) Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected need by an annual contribution over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of assessments.

(b) Calculation of General Assessments. Upon determining the total amount of income required to be generated through the levy of General Assessments, the Board shall establish the General Assessment at an equal rate per Unit, subject to discount for unoccupied Units as provided in Section 8.5.

Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy. Any such subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. In addition, Declarant may loan funds to the Association to cover one-time Common Expenses, such as the cost of an irrigation well to provide low-cost irrigation water to the Common Area or for the purchase of street lights, and any such loans and the debt service shall be disclosed in the budget as applicable. If characterized as a loan, Declarant may charge and collect interest on the outstanding principal balance of the loan at a rate not to exceed the greater of 10% per annum or two percentage points over the prime rate published by the Wall Street Journal on the date of such loan, such interest rate to be set forth in

a promissory note executed on behalf of the Association. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

(c) Calculation of Service Area Assessments. Except as may otherwise be provided in this Declaration or any applicable Supplemental Declaration, the total amount of estimated Service Area Expenses for each Service Area shall be allocated equally among all Units in the benefited Service Area which are subject to assessment under Section 8.5, to be levied as a Service Area Assessment; provided, unless otherwise specified in the applicable Supplemental Declaration, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures, may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All amounts that the Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(d) Notice of Budget and Assessment; Ratification. Within 30 days following the Board's adoption of any new or revised budget under Section 8.2(a) or (c), the Board shall send a summary of the applicable budget, together with notice of the amount of the General Assessment or Service Area Assessment to be levied pursuant to such budget, to each Owner to be assessed thereunder. The budget shall be accompanied by notice of the date, time and location of a meeting to consider ratification, which meeting shall be set by the Board to occur no less than 10 nor more than 60 days after mailing of the budget summary and notice. The notice shall include a statement that the meeting may be held and the budget may be ratified without a quorum being present.

Subject to the limitation set forth in Section 8.2(a), if applicable, the General Budget shall be deemed ratified unless rejected at the meeting by Owners of at least 75% of the total number of Units then subject to the Declaration. The Service Area Expense budget for each Service Area shall be deemed ratified unless rejected by Owners of at least 75% of the total number of Units in the Service Area to which the budget applies, except that the right to reject a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

If any proposed budget or budget revision is rejected by the percentage vote specified above, then the budget most recently in effect shall continue in effect until a new budget is determined.

(e) Budget Revisions. The Board may revise the budget and adjust the General Assessment or Service Area Assessments from time to time during the year, subject to the notice and ratification requirements set forth above.

### 8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted under Section 8.2. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for general Common Expenses, or against the Units within any Service Area if such Special Assessment is for Service Area Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and during the Development and Sale Period, the written consent of Declarant. Except as otherwise provided in Section 8.5, Special Assessments shall be levied equally on all Units subject to such assessment.

### 8.4. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.7). Specific Assessments for special services may be levied in advance of the provision of the requested service;

(b) in the case of an Occupied Unit (as defined in Section 7.7), to cover the charges for services provided to all Occupied Units pursuant to any bulk service or similar agreement entered into by the Association pursuant to Section 8.1; and

(c) for monetary fines imposed pursuant to Section 7.5 and to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (c); and

(d) pursuant to Section 8.8.

### 8.5. Payment of Assessments.

Except as otherwise provided herein, the obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later; provided, until the first day of the 18th month following the initial conveyance of the Unit by the Declarant or the month in which the Unit is first occupied for residential purposes, whichever is earlier, such Unit shall be assessed only 25% of the full General Assessment rate, shall pay only 25% of any Special Assessment for Common Expenses that would otherwise be payable during such period, and

shall not be assessed for any Service Area Expenses. The first annual General Assessment levied on each Unit, whether levied at the partial or full rate, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year.

If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately or it may, in its discretion, permit payment of the outstanding balance in installments. Neither the Association nor the Owner is obligated to accept any proposed installment payment schedule. The Board may add reasonable administrative fees and costs for accepting and processing installments to the outstanding balance and include them in the installment payment schedule; provided, such costs may include reasonable attorneys fees only if the Owner has first been given notice of the Board's intention to recover attorneys fees and court costs, as required by Section 47F-3-116 of the Act, and given 15 days from the mailing of the notice to pay the outstanding balance without attorneys fees and court costs. The notice shall also provide the name and telephone number for a representative of the Association with whom the Owner may speak to discuss a payment schedule.

#### 8.6. Lien for Assessments.

(a) Subject to North Carolina law, as it may be amended, if any assessment or installment thereof remains unpaid 30 days or more after the due date, the Association shall, upon filing a claim of lien in the office of the clerk of the Superior Court of Chatham County, North Carolina conforming to the requirements of Section 47F-3-116 of the Act, have a lien against each Unit in favor of the Association to secure payment of assessments, as well as interest, late charges, and costs of collection (including attorneys fees and court costs, if and to the extent authorized under Section 8.5 and the Act). Subject to the limitations of North Carolina law, such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

(b) The Association may foreclose its lien through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with North Carolina law, as it may be amended, except that any lien securing only fines and/or service or collection fees may be foreclosed only by judicial foreclosure.

(c) The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be

levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(d) Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

8.7. Exempt Property.

(a) The following property shall be exempt from payment of General Assessments, Service Area Assessments, and Special Assessments:

(i) all Common Area, public streets and alleys, and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;

(ii) property owned by any Additional Association for the common use and enjoyment of its members, or owned by the members of an Additional Association as tenants-in-common.

(b) In addition, the Declarant or the Association may, but shall not be obligated to, grant a full or partial exemption from assessments for:

(i) any property owned by a governmental authority or public utility for public purposes, including, without limitation, schools, public safety facilities, parks, and utility infrastructure; and/or

(ii) any property owned by Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code, so long as such Persons own the property for purposes listed in Section 501(c) of the Internal Revenue Code.

8.8. Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of one-sixth (1/6) of the full General Assessment for the year in which such acquisition occurs. This amount shall be in addition to, not in lieu of, the annual General Assessment and any applicable Service Area Assessment and shall not be considered an advance payment of such assessments, but rather shall be considered a Specific Assessment secured by the Association's lien for assessments under Section 8.6. This amount shall be

deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

8.9. Use and Consumption Fees.

The Board may charge use, consumption, or activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

**PART FOUR: COMMUNITY DEVELOPMENT**

*The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Briar Chapel and to accommodate changes in the master plan that inevitably occur as a community such as Briar Chapel is developed.*

**Article IX Expansion of the Community**

9.1. Expansion by Declarant.

Declarant may from time to time expand Briar Chapel to include all or any portion of the property described in Exhibit "B" by recording a Supplemental Declaration describing the additional property and stating the intent to submit it to the provisions of this Declaration. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand Briar Chapel pursuant to this Section shall expire when all property described in Exhibit "B" has been subjected to this Declaration or 20 years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer, assign, or otherwise permit this right to be exercised by any Person or Persons who are the developers of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer, assignment or permission shall be memorialized in a written, recorded instrument executed by Declarant and the Person to whom it is assigned.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

9.2. Expansion by the Association.

The Association may also expand Briar Chapel to include additional property by recording a Supplemental Declaration describing the additional property and the intent to submit it to the provisions of this Declaration. Any such Supplemental Declaration shall require the affirmative vote of persons entitled to cast more than 50% of the Class "A" votes in the Association represented at a meeting duly called for such purpose and the consent of the owner

of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

Declarant may subject any portion of Briar Chapel to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

**Article X Additional Rights Reserved to Declarant**

10.1. Withdrawal of Property.

During the Development and Sale Period, Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the real property which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Units then subject to the Declaration by more than 10%. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Right to Veto Changes in Standards.

During the Development and Sale Period, the Declarant shall have the right to veto any amendment to or modification of the Restrictions and Rules or Design Guidelines.

10.3. Development and Sales Activities.

During the Development and Sale Period:

(a) Declarant and Builders whom the Declarant so authorizes may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge. Such right shall specifically include the right of Declarant and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge and to restrict use or access to such facilities by the Association, its members and others as long as Declarant is using them for such purposes.

(b) Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

#### 10.4. Control of and Changes in Development Plan.

Every Person that acquires any interest in Briar Chapel acknowledges that Briar Chapel is a master planned community, the development of which is likely to extend over many years, and agrees that neither the Association nor any Additional Association shall engage in, or use Association funds to support, any protest, challenge or other form of objection to (a) changes in uses or density of property within or outside Briar Chapel, or (b) changes in the Master Plan as it relates to property outside Briar Chapel, without the prior written consent of Declarant, which consent may be granted or withheld in Declarant's sole discretion.

#### 10.5. Additional Covenants.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of Briar Chapel without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.

#### 10.6. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and the transferee and recorded. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.7. Exclusive Rights To Use Name of Development.

No Person other than Declarant, its authorized agents, and Builders, shall use the name "Briar Chapel," any derivative of such names, or associated logos or depictions, in any electronic, printed or promotional media or material without Declarant's prior written consent. However, Owners may use the name "Briar Chapel" in printed or promotional matter where such term is used solely to specify that particular property is located within Briar Chapel. The Association shall also be entitled to use the words "Briar Chapel" in its name.

10.8. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Briar Chapel in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection pursuant to the rights reserved in Section 11.6.

10.9. Right of Convert Unit to Common Area or Roadway.

Declarant reserves the right to convert any Unit which it owns to Common Area or to public right-of-way, or to a combination of Common Area and right-of-way. Such right shall include, without limitation, a right to convert a Unit to right-of-way for the purpose of providing permanent access to property adjacent to the Community, whether or not such property is made subject to this Declaration. Upon conveyance of any Unit by Declarant to the Association as Common Area, the Unit shall cease to be a Unit and shall thereafter be Common Area. Upon recordation by Declarant of a plat or other instrument establishing a public right-of-way over a Unit that Declarant owns, the Unit shall cease to be a Unit and shall thereafter be treated in the same manner as any other property in the Community that has been dedicated to the public.

10.10. Central Telecommunication, Receiving, and Distribution System.

To the extent permitted by applicable law, Declarant reserves for itself, its Affiliates, successors, and assignees, the exclusive and perpetual right and easement to operate within the Community, a central telecommunication (including cable television and security monitoring) receiving and distribution system, including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (the "Community System") as Declarant, in its discretion, deems appropriate. Such exclusive and perpetual right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications and cable television service in the Chatham County, North Carolina area, and to charge or authorize such provider to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of any relevant government authority, if applicable.

Declarant may enter into and assign to the Association, or cause the Association to enter into, a bulk rate service agreement providing for access to any Community Systems for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or

Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a General Assessment or Specific Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

Further, if any such contract for a Community System is in effect prior to commencement of construction of the dwelling on any Unit, the Design Guidelines may require the dwelling to be pre-wired to connect to such Community System.

## **PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the community.*

### **Article XI Easements**

#### **11.1. Easements in Common Area.**

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

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions, limitations or easements contained in any deed conveying such property to the Association;
- (c) the Board's obligation to permit access to and use of the recreational facilities within the Common Area (other than Limited Common Area recreational facilities, if any) by any individual with whom the Declarant may have entered into a settlement agreement offering such privilege as a term of the settlement agreement, and by the residents of the Herndon Woods subdivision upon payment of use fees not to exceed that portion of the General Assessment and any Special Assessments paid by Owners allocable to maintenance, repairs, replacements, insurance, and operating expenses for such recreational facilities, including contributions to reserve funds for such purposes, such use to be subject to the same rules, regulations and operating policies as the Board may establish for use by Owners hereunder;
- (d) the Board's right to:
  - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
  - (ii) suspend the right of an Owner to use recreational facilities within the Common Area pursuant to Section 7.5;

(iii) dedicate or transfer all or any part of the Common Area, subject to Section 18.3;

(iv) impose reasonable membership requirements and charge reasonable initiation fees, admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board, and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public, with or without charge as the Board may determine, subject to any recorded easements affecting such property; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 18.3; and

(e) the rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII; and

(f) The right of Declarant, and its designees, including such Builders as Declarant may authorize, to use portions of the Common Area pursuant to Section 10.3.

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

#### 11.2. Easements of Encroachment.

(a) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(b) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area or right-of-way and between adjacent Units as reasonably necessary to install, maintain, repair and replace any fence constructed on or within one foot of the boundary line of any Unit.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, during the Development and Sale Period, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout Briar Chapel (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Briar Chapel, including, without limitation, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, stormwater drainage systems, spray irrigation systems, and street lights and signage, on property which Declarant, the Association, or any Builder owns, or within public rights-of-way or easements reserved for such purpose on recorded plats or in other recorded documents; and

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.5. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over Briar Chapel as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2 and otherwise exercise its authority and fulfill its duties under the Governing Documents. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and designees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. Easement to Inspect and Right to Correct.

Declarant reserves for itself, the Builders, and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Briar Chapel, including Units, and a perpetual, nonexclusive easement of access throughout Briar Chapel to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

11.7. Landscaping and Signage Easements.

Declarant and its designees and the Association shall have perpetual, nonexclusive easements exercisable by their respective employees, agents, and contractors over areas within the rights-of-way of streets within the Community and those portions of Units, if any, designated as landscaping and signage easements, landscape buffers, or by similar name ("**Landscaping and Signage Easement**") on the recorded subdivision plats relating to Briar Chapel for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, and landscaping within the easement area. Nothing herein shall obligate Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any right-of way or Landscaping and Signage Easement. No fences, structures, driveways, plantings, swings, wood piles, dog runs, or any other objects, temporary or permanent, shall be permitted in such easement areas without the Association's prior written approval, other than those installed by Declarant or its designees.

No person shall interfere with the exercise of this easement by Declarant, its designees, or the Association, by removing, defacing, or otherwise vandalizing any signs (temporary or permanent) or other improvements placed within such easement area by Declarant, its designees, or the Association, or otherwise. The Declarant, its designees and the Association, respectively, may remove signs or other improvements which they have placed on the easement area.

11.8. Easements for Storm Water Collection, Retention, and Irrigation Systems.

Declarant reserves for itself, and its successors, assigns, and designees, the nonexclusive right and easement to enter upon any portion of the Common Area, and upon any utility or other easement reserved on any recorded plat ("**Easement Areas**"), to (a) install, operate, maintain, and replace pumps and lines to transport stormwater and/or treated effluent through the Community and sprinklers and other facilities and equipment for operation of a spray irrigation system to discharge treated effluent within such Easement Areas; (b) use any portion of the Common Area for spray irrigation; (c) construct, maintain, and repair structures and equipment used for retaining stormwater runoff and holding treated effluent; and (d) maintain such areas in a manner consistent with the Community-Wide Standard. The person exercising this easement shall promptly return any property damaged as a result of such exercise to substantially the same condition as the property existed prior to the exercise of the easement.

11.9. Easement for Use of Community Trail System.

So long as required by Chatham County, North Carolina, the general public shall be granted access to and shall have a right to use the community trail system established within the Common Area, subject to such reasonable rules as the Board may establish consistent with the terms of any recorded easements or other agreements affecting all or portions of such trail system.

11.10. Facilities and Services Accessible by the Public.

Certain facilities and areas within Briar Chapel, including the community trail system, will be open for use and enjoyment of the public at no charge, and other Common Areas may be open for use and enjoyment of nonprofit organizations, community groups, or the general public on such terms and condition as may be established pursuant to leases, licenses, or other agreements entered into by the Declarant or the Association, or pursuant to any applicable easements. Such use may include the right to hold tournaments or competitions or other special events that attract participants from outside the local community.

Other areas, although intended for the use and/or benefit of residents of Briar Chapel, may be accessible by the general public from neighboring properties or public streets, and it may not be practical or cost-effective for the Association to limit or restrict such unauthorized access. The Association may, but shall have no duty to, monitor or restrict unauthorized access to such areas or to take action to remove unauthorized persons from such areas.

11.11. Easements for Maintenance of Water Bodies.

The Declarant reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access over the lakes, detention ponds or other bodies of water and wetlands within Briar Chapel, and over the Common Area and Units (but not the dwellings thereon) adjacent to or within 25 feet of such lakes, detention ponds or other bodies of water and wetlands, in order to perform such maintenance and repair as the Board may deem appropriate, which may include maintenance of shorelines, bulkheads, and water quality, algae control, removal of silt and debris, breaching of dams, removal of dead or diseased trees, shrubs, and plants, all subject to the conditions of any conservation easement applicable to the property. All persons entitled to exercise this easement shall use reasonable care in and repair any damage resulting from the intentional exercise of such easement. Nothing in this Section shall be construed to make the Declarant, the Association, or any other Person responsible for maintaining any dam, lake, or pond or liable for any damage resulting from flooding due to weather events or other natural occurrences.

11.12. Easement for Installation and Maintenance of Grinder Pump Station.

The Declarant reserves for itself, the operator of the wastewater treatment plant serving the Community (if other than the Declarant), and their respective successors, assigns, and designees, a perpetual, exclusive right and easement over that portion of each Unit served by a pressure wastewater main lying between the sewer lateral stub and the dwelling on such Unit, for the purpose of access to and locating, installing, monitoring, inspecting, maintaining, repairing, and replacing an individual Grinder Pump Station on such Unit as described in Section 16.7, including the tank, service lines, wiring, controls, and related equipment and facilities necessary to provide wastewater treatment service to the dwelling constructed on such Unit.

**Article XII Limited Common Areas**

12.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of particular Units. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped areas and other portions of the Common Area primarily serving a limited number of Units. All costs associated with ownership, maintenance, repair, replacement, management, operation and insurance of a Limited Common Area shall be a Service Area Expense allocated among the Owners in the Service Area to which the Limited Common Area is assigned.

12.2. Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units, so long as Declarant has a right to subject additional

property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area upon approval of (a) the Board, (b) persons entitled to cast a majority of the total Class "A" votes in the Association, and (c) persons entitled to cast a majority of the Class "A" votes attributable to Units to which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require Declarant's written consent.

12.3. Use by Others.

Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

**Article XIII Party Walls and Other Shared Structures**

13.1. General Rules of Law to Apply.

Each wall, fence, driveway or similar structure built as a part of the original construction on the Units that serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

13.2. Maintenance; Damage and Destruction.

Except to the extent that a party structure is designated Limited Common Area or responsibility for maintenance or repair is otherwise assigned to or assumed by the Association or any Additional Association pursuant to this Declaration, any applicable Supplemental Declaration, or other covenants or written agreement:

(a) the Owners of the Units separated by a fence that constitutes a party structure shall each be responsible for maintaining that side of the fence facing such Owner's Unit; and

(b) to the extent that any necessary repair or replacement of a party structure affects both sides of the structure, it shall be the joint responsibility of the Owners of both Units and either Owner may perform the necessary maintenance or repair and, within 30 days after receipt of written evidence of the total cost incurred, the other Owner shall reimburse the Owner who has incurred such cost for one half of the reasonable cost he or she has incurred in performing such maintenance or repair.

Notwithstanding the above, if maintenance or repairs to a party structure are necessitated by the conduct of the Owners, occupants or guests of only one of the Units that share such party

structure, then the Owner of such Unit shall be responsible for the necessary maintenance or repairs.

In the event that any Owner installs, constructs, or erects a fence on the common boundary line such Owner's Unit and an adjacent Unit, and the owner of the adjacent Unit thereafter attaches another section of fence to it or otherwise makes use of such fence for the purpose of enclosing all or a portion of the adjacent Unit, then such fence shall become a party fence for the purpose of each Owner's responsibility for contributing to the maintenance, repair, and replacement of such fence. However, nothing herein shall confer any ownership interest in or right to remove any such fence on the Owner of the adjacent Unit.

In the event that either Owner fails to provide necessary maintenance or repairs to a party structure within 10 days after the date of written notice from the Association advising of the need for such maintenance or repairs, the Association or any Additional Association having jurisdiction over the Units shall have the right to provide the necessary maintenance or repairs and assess the costs incurred against the responsible Owner(s) and his (or their) Unit(s).

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

*The success of Briar Chapel as a community in which people enjoy living and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.*

### Article XIV **Dispute Resolution and Limitation on Litigation**

#### 14.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, the Community Council and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Briar Chapel without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents; or

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within Briar Chapel, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner; and

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards), and any suit by the Association to enforce the Governing Documents if the Association has already complied with the notice and hearing procedures set forth in the By-Laws; and

(iii) any suit which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

#### 14.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim; and

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

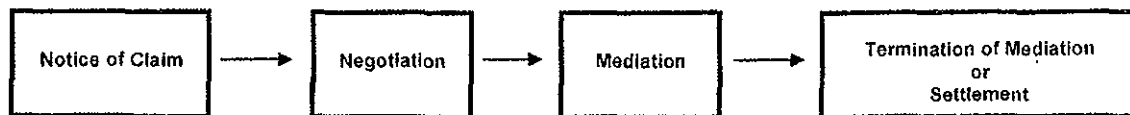
(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 14.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Durham, North Carolina metropolitan area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

#### Alternative Dispute Resolution Process



(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

#### 14.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first

approved by a vote of persons entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period; or
- (b) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens; or
- (c) initiated to challenge ad valorem taxation or condemnation proceedings; or
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

#### **Article XV Mortgage Provisions**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in Briar Chapel. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

##### **15.1. Notices of Action.**

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

- (a) Any condemnation loss or any casualty loss which affects a material portion of Briar Chapel or which affects any Unit on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or
- (b) Any delinquency in the payment of assessments or charges owed for a Unit subject to the Eligible Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days; or
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders.

15.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

**Article XVI Additional Relationships and Disclosures**

16.1. Irrigation Using Treated Effluent.

Each Owner and occupant of a Unit, and their respective guests and invitees, are hereby advised that the water used to irrigate property within or adjacent to Briar Chapel, including the Area of Common Responsibility and other landscaped areas adjacent or in close proximity to Units, may be treated effluent. Although treated effluent is considered safe for irrigation and limited contact, it is not suitable for human or animal consumption and should not be used for drinking, bathing, swimming, or any purpose other than irrigation.

16.2. High Voltage Power Lines; Radio and Telecommunication Towers.

Every Owner and occupant of a Unit is hereby advised that there are high voltage power transmission lines and radio towers located within or in the vicinity of Briar Chapel. While various studies have failed to establish any causal relationship between living in proximity to high voltage power transmission lines or radio towers and cancer or other diseases, there remains some speculation that such a relationship may exist. Every Owner and occupant of a Unit must evaluate such risk for themselves prior to making a decision to purchase or occupy a Unit. Neither Declarant, Builders, the Association, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall be liable for any damage or injury to any Person or any property arising out of or related to proximity to high voltage power transmission lines and/or radio towers.

Every Owner and occupant of a Unit is further advised that telecommunication towers and related equipment may also be built within or in the vicinity of Briar Chapel. Neither Declarant, Builders, the Association, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing shall be liable for any damage or injury to any Person or any property arising out of or related to the construction, installation, maintenance and operation of any such towers that may now or hereafter be located in or in the vicinity of Briar Chapel.

16.3. Noise and Odors from Water and Sewer Operations.

(a) The water utility provider may make use of multiple wells, pumps, pipes and lines for pumping and transport of water. Water lines and pipes may be located within easements for such purpose on Units. The pumping and transport of water from such wells may generate noise which is audible to occupants of Units and other persons in the vicinity of such wells, pumps, pipes or lines. Likewise, the sewage system serving Briar Chapel may require the installation and operation of sewer lift stations at various points throughout the Community which may generate motor noise when operating that may be audible to occupants of Units and other persons in the vicinity of such lift stations. Wastewater treatment facilities in the vicinity of the Community may release odors which are detectable by persons in the Community. Neither Declarant, Builders, the Association, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall have any duty to take action to abate such noise or odors, nor shall any of them be liable for any claim of damages or injury to any Person or property arising out of or related to noise or odors resulting from such water or sewer facilities, equipment or operations.

16.4. Fire Station.

The Declarant reserves the right to designate and convey sites anywhere within the Community, subject to local government approvals, for use as a fire station or similar facility which would involve emergency vehicles entering, leaving, and passing through the Community and alarms and sirens audible within the Community at any time of day or night. The Declarant has no obligation to locate any such facility away from dwellings or to take any other action to minimize the disturbance of residents as a result of such alarms and sirens.

16.5. Stormwater Facilities.

Some Units may be located adjacent to Common Area containing lakes, ponds or stormwater detention or retention facilities that may from time to time contain water. Owners and occupants of such Units have no right to erect fences, attach docks, build retaining walls, anchor or store boats or other watercraft, or landscape, clear, or otherwise disturb vegetation within natural areas located within the Common Area between the boundary of the Unit and the water's edge, or within the nondisturbance buffer on any Unit.

16.6. Notices and Disclaimers as to Community Systems.

In recognition of the fact that interruptions in service provided by any Community System may occur from time to time, neither the Association, the Declarant, nor any Declarant Affiliate shall be held liable for any interruption in Community Systems services.

16.7. Wastewater Collection System.

The wastewater treatment plant and collection system serving the Community is privately owned and operated. The dwellings on some Units are unable to utilize gravity service lines to connect to the system and require installation and use of a Grinder Pump Station to collect, grind and pump wastewater from the dwelling on such Unit to a pressure wastewater main. Such

Grinder Pump Station will be installed at the Owner's expense by the operator of the wastewater treatment plant and collection system ("**System Operator**") and will become the property of the owner or operator of such system. The Owner shall be responsible for providing and maintaining electric power to serve such system, which may require an emergency generator for use during power outages, and paying the cost of such electrical service and generator, if required. The operator shall have no liability for any damages incurred as a result of any power outage should a portable generator not be connected to the Grinder Pump Station.

Each Owner of a Unit served by a Grinder Pump Station shall be responsible for complying with the System Operator's and grinder pump manufacturer's guidelines with respect to chemicals and items that may not be disposed of into the wastewater system and with respect to flushing of the system prior to extended absences from the dwelling and shall be responsible for all costs of repair or replacement of the Grander Pump Station should the Owner or any occupant or guest of the Owner's Unit fail to comply.

## **PART SEVEN: CHANGES IN THE COMMUNITY**

*Communities such as Briar Chapel are dynamic and need the ability to monitor and adjust as circumstances, technology, needs and desires, and applicable laws change over time.*

### **Article XVII Changes in Ownership of Units**

#### **17.1. Notice of Transfer.**

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

#### **17.2. Administrative Transfer Fee.**

The Association may charge an "**Administrative Transfer Fee**" on transfer of title to each Unit to cover the administrative expenses associated with updating the Association's records. Any such Administrative Transfer Fee shall be reasonably determined by the Board to cover its costs, including, but not limited to, any fees charged for updating records by a management company retained by the Association, except that any administrative fee charged on the initial sale of a Unit by a Builder shall not exceed \$25.00.

**Article XVIII Changes in Common Area**

18.1. Condemnation.

If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award. Any condemnation award shall be payable to the Association and shall be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, during the Development and Sale Period, and Members entitled to cast at least 75% of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.4(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as if proceeds from the sale of Common Area pursuant to Section 18.3.

18.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to such approval as may be required under Section 18.3.

18.3. Mortgaging, Conveyance or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Chatham County or the State of North Carolina, or to any other governmental or quasi-governmental entity, or may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Members entitled to cast at least 80% of the total Class "A" votes in the Association and the Declarant during the Development and Sale Period; or

(b) if Limited Common Area, upon written agreement of all Owners of Units to which the Limited Common Area is assigned.

The proceeds from the sale or financing of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from

the sale or financing of Limited Common Area shall be disbursed as provided by the agreement authorizing such sale or security interest.

No sale or encumbrance of Common Area may deprive any Unit of rights of access or support.

#### **Article XIX Amendment of Declaration**

##### **19.1. By Declarant.**

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, until termination of the Development and Sale Period, Declarant may unilaterally amend this Declaration for the purpose of (a) bringing any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) enabling any reputable title insurance company to issue title insurance coverage on the Units; (c) enabling any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Units; or (d) complying with the requirements of any state or federal law or any local, state or federal governmental agency. However, any unilateral amendment by Declarant pursuant to this Section shall not materially adversely affect the allocation of voting rights or assessment burdens among the Units or title to any Unit unless the Owner shall consent in writing.

##### **19.2. By Members.**

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Persons entitled to cast at least 67% of the total Class "A" votes in the Association, and during the Development and Sale Period, the Declarant's consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

##### **19.3. Validity and Effective Date.**

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within

one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Amendments shall be indexed in the Grantee index under the names "Briar Chapel" and "Briar Chapel Community Association, Inc." and in the Grantor index under the name "NNP-Briar Chapel, LLC."

19.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration that refer to such exhibits.

**Article XX Termination of Declaration**

This Declaration may be terminated only upon recording a termination agreement signed by the then Owners of at least 80% of the Units and, during the Development and Sale Period, by the Declarant. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

[continued on next page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

DECLARANT: NNP-BRIAR CHAPEL, LLC, a Delaware limited liability company

By: [Signature]  
Name: Mitch Barron  
Its: Assistant Vice President

Attest: [Signature]  
Name: Tracy Graves  
Its: Assistant Vice President

STATE OF NORTH CAROLINA )  
  )  
COUNTY OF Durham )

I, Kendall Owen a Notary Public in and for Durham County, North Carolina, certify that Tracy Graves personally came before me this day and acknowledged that s/he is an Assistant Vice President of NNP-BRIAR CHAPEL, LLC, a Delaware limited liability company, and that by authority duly given and as a fact of said limited liability company, the foregoing instrument was signed in its name by Mitch Barron, as Assistant Vice President, on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 6<sup>th</sup> day of Sept., 2007.

[Signature]  
Notary Public

My Commission Expires:  
Jan 2, 2012

[NOTARY SEAL]

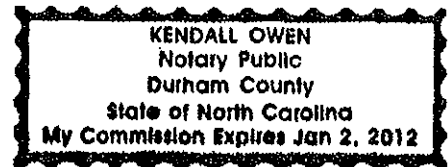


EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Chatham County, North Carolina, and being more particularly described on that certain Subdivision, Easement Dedication and Right of Way Dedication Plat of Briar Chapel, Phase 3 and Phase 4, Section 1 recorded on ~~November 16~~ 2007, in Plat Book 2007, Page A30, in the office of the Register of Deeds of Chatham County, North Carolina, as such plat may be revised from time to time; EXCEPTING THEREFROM those parcels identified as "Tract 1 Remainder," "Tract 2 Remainder," "Tract 3 Remainder," and "Future Development Parcel #67.

EXHIBIT "B"

Land Subject to Annexation

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Chatham County, North Carolina, containing 849.06 acres more or less and being more particularly described as follows as Tracts I through 10:

TRACT I

Being all of the certain tracts or parcels of land located in Baldwin Township, Chatham County, North Carolina, containing 638.0 acres more or less and being more particularly described as follows:

Beginning at an iron pipe along the western right of way of US 15-501, iron also lying on the eastern property line of lands now or formerly owned by James Bunn Riggsbee (DB 596, PG 222); thence from said POINT OF BEGINNING South  $18^{\circ}12'31''$  East, a distance of 861.28 feet to a point; thence South  $18^{\circ}12'34''$  East, a distance of 262.46 feet to a right of way pin on the northern right of way of Hubert Herndon Road (50' Public R/W); thence with the northern right of way of Hubert Herndon Road, South  $51^{\circ}50'46''$  West, a distance of 104.68 feet to a point; thence South  $78^{\circ}43'07''$  West, a distance of 132.01 feet to a point; thence South  $82^{\circ}54'27''$  West, a distance of 240.48 feet to an existing iron pipe; thence along a non-tangent curve to the left having a radius of 286.12 feet, an arc length of 108.28 feet and a chord bearing and distance of South  $72^{\circ}56'12''$  West, 107.63 feet to an existing iron pipe; thence South  $62^{\circ}06'55''$  West, a distance of 285.23 feet to an existing iron pipe being the northeast corner of Herndon Woods Subdivision (Plat Book 93, PG 197); thence South  $62^{\circ}05'46''$  West, a distance of 346.75 feet to an existing iron pipe; thence South  $62^{\circ}06'24''$  West, a distance of 136.19 feet to an existing iron pipe; thence South  $62^{\circ}05'53''$  West, a distance of 415.15 feet to an existing iron pipe; thence South  $62^{\circ}07'59''$  West, a distance of 58.73 feet to an existing iron pipe on the eastern line of lands now or formerly owned by Leroy Clark Jr. (Deed Book JL, PG 106); thence North  $00^{\circ}34'47''$  East, a distance of 385.00 feet to an existing iron pipe being southeast corner of lands now or formerly owned by William Aaron Crutchfield (Plat Book 2002, PG 183); thence North  $00^{\circ}17'08''$  East, a distance of 372.04 feet to a iron pipe; thence North  $89^{\circ}59'15''$  West, a distance of 775.68 feet to a iron pipe; thence South  $00^{\circ}16'17''$  East, a distance of 96.96 feet to an existing iron pipe; thence South  $00^{\circ}14'22''$  East, a distance of 22.34 feet to a point being the northeast corner of lands now or formerly owned by Percy Fearington ("Parcel 2" Plat Book 2003, PG 324); thence South  $87^{\circ}12'43''$  West, a distance of 1,066.43 feet to an existing iron pipe; thence South  $05^{\circ}23'18''$  East, a distance of 263.05 feet to a iron pipe; thence along a curve to the left having a radius of 270.00 feet, an arc length of 284.97 feet and a chord bearing and distance of South  $35^{\circ}37'30''$  East, 271.93 feet to a iron pipe; thence South  $65^{\circ}51'43''$  East, a distance of 961.98 feet to a iron pipe; thence leaving Fearington's line, South  $00^{\circ}28'39''$  West, a distance of 18.14 feet to a point on the western right of way line of Taylor Road - S.R. 1529 (Public 60' R/W); thence South  $23^{\circ}13'41''$  East, a distance of 76.31 feet to a point; thence South  $30^{\circ}08'24''$  East, a distance of 70.00 feet to a point; thence South  $30^{\circ}05'03''$  East, a distance of 28.79 feet to a iron pipe being the northeast corner of lands now or formerly owned by Sam Clark (Plat Book 2002, PG 368); thence North  $53^{\circ}35'17''$  West, a distance of 27.01 feet to a iron pipe; thence

along a non-tangent curve to the left having a radius of 190.00 feet, an arc length of 89.44 feet and a chord bearing and distance of North  $41^{\circ}21'17''$  West, 88.62 feet to a iron pipe being the northeast corner of lands now or formerly owned by Percy Fearington ("Parcel 3" Plat Book 2003, PG 324); thence continuing along the curve to the left, having a radius of 190.00 feet, an arc length of 36.55 feet, and a chord bearing and distance of North  $60^{\circ}21'04''$  West, 36.49 feet to a iron pipe; thence North  $65^{\circ}51'43''$  West, a distance of 117.02 feet to a point; thence North  $60^{\circ}21'04''$  West, a distance of 845.22 feet to an iron pipe; thence along a curve to the right having a radius of 350.00 feet, an arc length of 369.41 feet and a chord bearing and distance of North  $35^{\circ}37'30''$  West, 352.50 feet to a iron pipe; thence North  $05^{\circ}23'18''$  West, a distance of 328.06 feet to a iron pipe; thence South  $87^{\circ}12'43''$  West, a distance of 1,244.84 feet to a iron pipe being the northeast corner of lands now or formerly owned by JMG Family LLC (Deed Book 977, PG 26); thence North  $76^{\circ}48'17''$  West, a distance of 132.00 feet to a point; thence South  $80^{\circ}41'43''$  West, a distance of 132.00 feet to a point; thence North  $52^{\circ}48'55''$  West, a distance of 66.00 feet to a point; thence South  $62^{\circ}41'05''$  West, a distance of 66.00 feet to a point; thence South  $01^{\circ}18'55''$  East, a distance of 66.00 feet to a point; thence South  $88^{\circ}41'05''$  West, a distance of 231.00 feet to a point; thence South  $04^{\circ}10'27''$  West, a distance of 436.24 feet to an existing iron pipe; thence South  $04^{\circ}38'11''$  West, a distance of 787.66 feet to an existing iron pipe being the northeast corner of lands now or formerly owned by C.L. and Thomas Durham (Deed Book 295, PG 183); thence South  $89^{\circ}26'45''$  West, a distance of 1,266.10 feet to a point being the northeast corner of Tract 1 (Plat Book 2007, PG 111); thence South  $01^{\circ}07'06''$  East, a distance of 1,212.60 feet to a point on the northern right of way of Andrews Store Road - S.R. 1526 (60' Public R/W); thence South  $01^{\circ}07'06''$  East, a distance of 64.33 feet to a point on the southern right of way of Andrews Store Road and being the northwest corner of lands now or formerly owned by C.L. and Thomas Durham (Deed Book 295, PG 183); thence South  $01^{\circ}07'06''$  East, a distance of 768.96 feet to an existing iron pipe; thence South  $00^{\circ}31'08''$  East, a distance of 804.26 feet to a point; thence South  $86^{\circ}22'54''$  West, a distance of 8.08 feet to a point on the north line of lands now or formerly owned by Jesse O, Jesse Jr., and Willa Anne Fearington Trustees (Deed Book 1235, PG 662); thence North  $57^{\circ}00'18''$  West, a distance of 349.66 feet to a point being the northeast corner of lands now or formerly owned by G.B. Parker Heirs (Deed Book JT, PG 592); thence North  $89^{\circ}01'05''$  West, a distance of 1,864.64 feet to a point being the southeast corner of lands now or formerly owned by Reba Parker Sullivan (Deed Book 990, PG 483); thence North  $00^{\circ}58'55''$  East, a distance of 29.72 feet to a point; thence North  $81^{\circ}57'32''$  West, a distance of 231.18 feet to a point; thence North  $35^{\circ}17'07''$  West, a distance of 25.92 feet to a point on the east right of way of Parker Herndon Road - SR 1526 (60' public R/W); thence along a non-tangent curve to the left having a radius of 2,510.00 feet, an arc length of 261.50 feet and a chord bearing and distance of North  $45^{\circ}08'34''$  East, 261.38 feet to a point; thence North  $42^{\circ}09'30''$  East, a distance of 462.56 feet to a point; thence North  $42^{\circ}21'18''$  East, a distance of 119.10 feet to a point; thence along a curve to the left having a radius of 1,949.35 feet, an arc length of 242.19 feet and a chord bearing and distance of North  $38^{\circ}47'45''$  East, 242.04 feet to a point; thence North  $35^{\circ}14'11''$  East, a distance of 110.18 feet to a point; thence North  $34^{\circ}25'50''$  East, a distance of 98.04 feet to a point; thence North  $66^{\circ}42'56''$  West, a distance of 61.15 feet to a existing iron rebar on the western right of way of Parker Herndon Road; thence North  $66^{\circ}42'56''$  West, a distance of 684.51 feet to an existing iron rebar being the northwest corner of lands now or formerly owned by Donald W. and Patricia Parker (Deed Book 456, PG 463); thence North  $01^{\circ}12'15''$  West, a distance of 289.42 feet to an existing iron rebar; thence North  $00^{\circ}28'06''$  West, a distance of 670.97 feet to an existing iron

rebar being the southeast corner of lands now or formerly owned by Carey B. and Jennifer K. Carpenter (Deed Book 565, PG 232); North  $00^{\circ}28'06''$  West, a distance of 260.47 feet to an existing iron pipe on the southern right of way of Andrews Store Road SR-1528 (60' public R/W); thence along a non-tangent curve to the right having a radius of 1,546.61 feet, an arc length of 201.26 feet and a chord bearing and distance of South  $79^{\circ}11'07''$  East, 201.12 feet to a point; thence along a non-tangent curve to the right having a radius of 1,360.00 feet, an arc length of 513.76 feet and a chord bearing and distance of South  $64^{\circ}49'50''$  East, 510.71 feet to a point; thence South  $54^{\circ}00'30''$  East, a distance of 10.35 feet to an existing iron pipe; thence South  $89^{\circ}57'07''$  East, a distance of 51.11 feet to a point in the centerline of Andrews Store Road; thence North  $54^{\circ}00'30''$  West, a distance of 51.73 feet to a point; thence along a curve to the left having a radius of 1,390.00 feet, an arc length of 525.04 feet and a chord bearing and distance of North  $64^{\circ}49'46''$  West, 521.93 feet to a point; thence North  $00^{\circ}26'41''$  West, a distance of 31.01 feet to an existing iron pipe on the north right of way of Andrews Store Road and being the southeast corner of lands now or formerly owned by Glendale Keck Carpenter (Deed Book 667, PG 793); thence North  $00^{\circ}26'41''$  West, a distance of 178.21 feet to an existing iron pipe; thence North  $00^{\circ}26'41''$  West, a distance of 36.56 feet to an existing iron pipe; thence North  $79^{\circ}28'28''$  West, a distance of 208.86 feet to an existing iron pipe; thence North  $00^{\circ}27'42''$  West, a distance of 146.08 feet to an existing iron pipe being the northeast corner of lands now or formerly owned by Johnny Newton Carpenter (Deed Book 844, PG 694); thence North  $00^{\circ}31'17''$  West, a distance of 174.80 feet to an existing iron rebar being the southwest corner of lands now or formerly owned by John Robert Sturdivant (Deed Book 413, PG 705); thence North  $41^{\circ}49'40''$  East, a distance of 187.11 feet to an existing iron rebar; thence North  $29^{\circ}12'48''$  East, a distance of 493.37 feet to a point; thence North  $89^{\circ}48'09''$  West, a distance of 370.00 feet to an existing iron rebar being the northeast corner of lands now or formerly owned by William R. Jr., and Julie C. Davis Etux (Deed Book 1304, PG 530); thence South  $89^{\circ}59'21''$  West, a distance of 200.06 feet to an existing iron rebar; thence South  $89^{\circ}57'24''$  West, a distance of 60.00 feet to a point; thence South  $89^{\circ}59'09''$  West, a distance of 19.51 feet to a point being the southeast corner of lands now or formerly owned by Cameron Properties, Limited Partnership, Daniel D. Cameron, Jr., and Five Star Group, L.L.C. ("Tract B-2", Plat Book 2005, PG 262); thence along a non-tangent curve to the right having a radius of 250.00 feet, an arc length of 232.70 feet and a chord bearing and distance of North  $22^{\circ}37'37''$  East, 224.39 feet to a iron pipe; thence North  $49^{\circ}17'32''$  East, a distance of 250.06 feet to a iron pipe; thence North  $54^{\circ}43'17''$  East, a distance of 510.04 feet to a iron pipe; thence North  $12^{\circ}16'27''$  West, a distance of 79.83 feet to a iron pipe; thence along a curve to the left having a radius of 180.00 feet, an arc length of 122.21 feet and a chord bearing and distance of North  $31^{\circ}43'28''$  West, 119.88 feet to a iron pipe; thence North  $51^{\circ}10'28''$  West, a distance of 265.82 feet to a iron pipe; thence along a curve to the left having a radius of 450.00 feet, an arc length of 77.16 feet and a chord bearing and distance of North  $56^{\circ}05'12''$  West, 77.07 feet to a iron pipe; thence North  $60^{\circ}59'56''$  West, a distance of 258.13 feet to a iron pipe; thence along a curve to the right having a radius of 550.00 feet, an arc length of 197.77 feet and a chord bearing and distance of North  $50^{\circ}41'52''$  West, 196.70 feet to a iron pipe; thence North  $40^{\circ}23'48''$  West, a distance of 219.62 feet to a iron pipe; thence along a curve to the left having a radius of 450.00 feet, an arc length of 84.65 feet and a chord bearing and distance of North  $45^{\circ}47'08''$  West, 84.52 feet to a iron pipe; thence North  $51^{\circ}10'28''$  West, a distance of 116.90 feet to a iron pipe; thence North  $64^{\circ}00'10''$  West, a distance of 246.24 feet to a iron pipe; thence along a curve to the left having a radius of 480.00 feet, an arc length of 99.10 feet and a chord bearing and distance of North  $69^{\circ}55'02''$  West, 98.92 feet to a iron pipe; thence

South 06°20'50" East, a distance of 151.94 feet to a iron pipe; thence South 06°56'38" West, a distance of 163.04 feet to a iron pipe; thence South 34°18'28" East, a distance of 176.70 feet to a iron pipe; thence South 63°22'21" West, a distance of 365.34 feet to a iron pipe on the east line of lands now or formerly owned by Cameron Properties, Limited Partnership, Daniel D. Cameron, Jr., and Five Star Group, L.L.C. ("Tract D", Plat Book 2005, PG 262); thence South 63°22'21" West, a distance of 148.92 feet to a iron pipe; thence North 15°52'21" West, a distance of 436.56 feet to a iron pipe; thence North 39°53'40" West, a distance of 282.09 feet to a iron pipe; thence North 14°07'36" West, a distance of 128.80 feet to a iron pipe; thence North 83°37'55" West, a distance of 683.72 feet to a iron pipe; thence North 00°56'46" West, a distance of 662.19 feet to a pk nail in a rock being the southwest corner of lands now or formerly owned by TC& I Timber Company, LLC. (Deed Book 1293, PG 483); thence South 89°11'59" East, a distance of 1,191.89 feet to an existing iron pipe; thence North 88°46'55" East, a distance of 820.71 feet to a pk nail in a rock being the southwest corner of lands now or formerly owned by Cameron Properties, Limited Partnership, Daniel D. Cameron, Jr., and Five Star Group, L.L.C. (Tract "C", Plat Book 2005, PG 262); thence North 57°38'28" East, a distance of 297.06 feet to a iron pipe; thence along a non-tangent curve to the right having a radius of 1,050.00 feet, an arc length of 122.17 feet and a chord bearing and distance of North 47°44'38" East, 122.10 feet to a iron pipe; thence North 51°04'37" East, a distance of 325.60 feet to a iron pipe; thence along a curve to the right having a radius of 950.00 feet, an arc length of 874.38 feet and a chord bearing and distance of North 77°26'40" East, 843.84 feet to a iron pipe; thence South 76°11'17" East, a distance of 193.12 feet to a iron pipe; thence along a curve to the left having a radius of 950.00 feet, an arc length of 204.40 feet and a chord bearing and distance of South 82°21'07" East, 204.01 feet to a iron pipe; thence South 88°30'58" East, a distance of 125.37 feet to a iron pipe; thence along a non-tangent curve to the left having a radius of 450.00 feet, an arc length of 101.34 feet and a chord bearing and distance of North 02°56'42" East, 101.13 feet to a iron pipe; thence North 03°30'23" West, a distance of 204.75 feet to a iron pipe; thence along a curve to the right having a radius of 1,550.00 feet, an arc length of 229.33 feet and a chord bearing and distance of North 00°43'56" East, 229.12 feet to a iron pipe; thence along a non-tangent curve to the left having a radius of 1,750.00 feet, an arc length of 141.95 feet and a chord bearing and distance of South 76°31'22" East, 141.91 feet to a iron pipe; thence North 55°24'18" East, a distance of 100.01 feet to a iron pipe; thence North 19°57'26" East, a distance of 108.97 feet to a iron pipe; thence North 33°34'38" East, a distance of 116.52 feet to a iron pipe; thence along a non-tangent curve to the right having a radius of 615.00 feet, an arc length of 485.36 feet and a chord bearing and distance of North 64°40'34" East, 472.86 feet to a iron pipe; thence South 80°14'17" East, a distance of 102.80 feet to a iron pipe; thence North 86°21'20" East, a distance of 170.77 feet to a iron pipe; thence North 04°21'22" East, a distance of 206.02 feet to a iron pipe; thence North 22°35'51" East, a distance of 194.73 feet to a iron pipe; thence North 54°04'33" East, a distance of 287.68 feet to a iron pipe; thence North 20°49'39" East, a distance of 173.06 feet to an existing concrete monument being the southwest corner of lands now or formerly owned by Hubert and Marjorie L. Oakley (Deed Book 447, PG 317); thence South 69°26'53" East, a distance of 573.02 feet to an iron pipe; thence South 80°44'48" East, a distance of 670.58 feet to an iron pipe on the southern line of lands now or formerly owned by Walter G. Mcadams (Deed Book 558, PG 339); thence South 29°35'37" West, a distance of 152.64 feet to a point along the centerline of Pokeberry Creek; thence along the centerline of Pokeberry Creek, the following fourteen (14) calls:

- 1.) South 74°47'13" East, a distance of 92.09 feet to a point;

- 2.) South 70°16'33" East, a distance of 48.66 feet to a point;
- 3.) South 14°26'54" East, a distance of 40.56 feet to a point;
- 4.) South 57°41'58" East, a distance of 52.86 feet to a point;
- 5.) South 57°07'46" East, a distance of 62.16 feet to a point;
- 6.) South 48°25'26" East, a distance of 68.48 feet to a point;
- 7.) North 62°09'27" East, a distance of 38.36 feet to a point;
- 8.) South 31°55'24" East, a distance of 25.32 feet to a point;
- 9.) South 73°13'39" East, a distance of 76.26 feet to a point;
- 10.) North 43°12'28" East, a distance of 33.66 feet to a point;
- 11.) South 42°37'46" East, a distance of 95.50 feet to a point;
- 12.) South 54°11'36" East, a distance of 79.94 feet to a point;
- 13.) South 01°07'55" East, a distance of 82.66 feet to a point;
- 14.) South 23°44'17" East, a distance of 46.86 feet to a point on the western line of Polk Trail Subdivision (Plat Book 25, PG 67);

thence South 10°17'56" West, a distance of 253.73 feet to a point; thence North 89°04'56" East, a distance of 60.76 feet to an existing iron pipe; thence North 89°04'56" East, a distance of 426.09 feet to an existing iron pipe; thence North 89°07'28" East, a distance of 171.96 feet to an existing iron pipe; thence North 88°18'19" East, a distance of 83.55 feet to an existing concrete monument being the northwest corner of Oak Island Subdivision (Plat Book 97, PG 451); thence South 24°08'43" West, a distance of 1,177.59 feet to an existing iron pipe; thence South 02°13'37" East, a distance of 187.27 feet to a painted rock; thence South 88°30'40" East, a distance of 419.71 feet to an existing iron pipe being the northwest corner of lands now or formerly owned by John W. and Marion Haywood (Deed Book 454, PG 332); thence South 00°33'00" East, a distance of 295.38 feet to an existing iron pipe being the northwest corner of lands now or formerly owned by John W. and Marion Haywood (Deed Book 466, PG 58); thence South 00°32'23" East, a distance of 424.03 feet to an existing iron pipe being the northwest corner of lands now or formerly owned by James Bunn Riggsbee (Plat Book 12, PG 65); thence South 00°42'46" East, a distance of 364.93 feet to an existing iron pipe; thence South 88°33'39" East, a distance of 1,181.42 feet to an existing iron pipe; thence South 01°33'16" West, a distance of 246.08 feet to an existing iron pipe; thence South 88°26'41" East, a distance of 152.13 feet to an existing iron pipe being the southwest corner of lands now or formerly owned by William and Brenda M. Griffin (Deed Book 462, PG 537); thence South 01°00'03" West, a distance of 194.15 feet to an existing iron pipe; thence North 89°16'04" East, a distance of 127.85 feet to an existing iron pipe; thence North 00°52'35" East, a distance of 194.22 feet to an existing iron pipe; thence South 84°01'51" East, a distance of 296.33 feet to an existing iron pipe being the southwest corner of lands now or formerly owned by Michael S. Bishop (deed Book 820, PG 53); thence South 87°38'03" East, a distance of 208.17 feet to an existing iron pipe; thence North 01°51'09" East, a distance of 210.19 feet to an existing iron pipe; thence South 89°23'07" East, a distance of 1,267.83 feet to a point; thence North 04°40'58" East, a distance of 22.46 feet to an existing iron pipe being the southeast corner of lands now or formerly owned by James Bunn Riggsbee (Plat Book 12, PG 65); thence North 04°40'58" East, a distance of 177.56 feet to the Point of BEGINNING, containing 35,497,012 square feet or 814.90 acres, more or less.

SAVE AND EXCEPT all of that certain tract or parcel of land containing 3.11 acres, more or less, now or formerly owned by Sandra Tripp, as shown in Plat Book 2001, Page 242; and that

certain tract or parcel of land containing 173.76 acres, more or less, now or formerly owned by Cameron Properties, Limited Partnership, Daniel D. Cameron, Jr., and Five Star Group, L.L.C., as shown as "Tract B-1" in Plat Book 2005, Page 262.

TRACT 2

Being all of the certain tracts or parcels of land located in Baldwin Township, Chatham County, North Carolina, containing 20.0 acres more or less and being more particularly described as follows:

Beginning at a point along the centerline of Andrews Store Road, S.R. 1526, point also marking the southeast corner of lands now or formerly owned by Tony G. and Deborah Hill Jones (Deed Book 527, PG 469); thence with the eastern line of Jones and the eastern line of lands now or formerly owned by Marcus Fredrick Jr., and M. Edwards (Deed Book 527, PG 473), North  $11^{\circ}00'16''$  East, a distance of 30.44 feet to a point; thence North  $11^{\circ}00'20''$  East, a distance of 1,669.57 feet to an existing rebar on the southern line of lands now or formerly owned by Cameron Properties, Limited Partnership, Daniel D. Cameron, Jr., and Five Star Group, L.L.C. (Tract "D", Plat Book 2005, PG 262); thence along the southern line of Cameron Properties, Limited Partnership, et al., North  $89^{\circ}52'13''$  East, a distance of 496.00 feet to an existing rebar; thence along the western lines of lots 9C, 9B-2, 9B-1, and 9A-1 (Plat Book 2000, PG 282, Plat Book 91, PG 255, Plat Book 90, PG 187), South  $11^{\circ}00'17''$  West, a distance of 1,849.74 feet to a point ; thence South  $11^{\circ}00'17''$  West, a distance of 30.55 feet to a point on the centerline of Andrews Store Road, S.R. 1526, thence with the centerline of Andrews Store Road, North  $69^{\circ}08'45''$  West, a distance of 493.97 feet to the Point of BEGINNING containing 871,223 square feet or 20.0 acres, more or less.

TRACT 3

Being all of the certain tracts or parcels of land located in Baldwin Township, Chatham County, North Carolina, containing 69.85 acres more or less and being more particularly described as follows:

Beginning at an iron pipe on the northern property line of lands now or formerly owned by Cameron Properties, Limited Partnership, Daniel D. Cameron, Jr., and Five Star Group, L.L.C. ("Tract E", Plat Book 2005, PG 262), iron also being the southeast corner of Persimmon Hill Subdivision (Plat Book A, Slide 82); thence along the eastern line of Persimmon Subdivision (Plat Book A, Slide 82), North  $00^{\circ}03'19''$  East, a distance of 2,309.24 feet to an existing iron pipe on the southern line of lands now or formerly owned by James A. Dixon (Plat Book 2003, PG 258); thence with the southern line of Dixon, South  $89^{\circ}05'42''$  East, a distance of 1,327.52 feet to an existing iron pipe on the western line of lands now or formerly owned by Twin Lakes Golf Course, Inc.; thence with the western line of Twin Lakes Golf Course, Inc., South  $00^{\circ}17'50''$  East, a distance of 1,736.03 feet to an existing iron pipe; thence South  $00^{\circ}03'58''$  West, a distance of 475.54 feet to rock pointers; thence South  $08^{\circ}06'46''$  West, a distance of 41.84 feet to an existing iron pipe on the northern line of Tract E (Plat Book 2005, PG 262); thence along the northern line of Tract E, South  $88^{\circ}28'55''$  West, a distance of 1,332.60 feet to the Point of BEGINNING containing 3,042,607 square feet or 69.85 acres, more or less.

TRACT 4

Being all of the certain tracts or parcels of land located in Baldwin Township, Chatham County, North Carolina, containing 15.69 acres more or less and being more particularly described as follows:

Beginning at an iron pipe being the northeast corner of Lot 1 (Deed Book 246, PG 339); thence along the northern line of Lot 1, North 81°29'14" West, a distance of 124.55 feet to a point on the eastern right of way of Half Dollar Road S.R. 1565 (60' public right of way); thence along the eastern right of way of Half Dollar Road, North 05°39'36" West, a distance of 79.10 feet to a point; thence along a curve to the right having a radius of 250.00 feet, an arc length of 121.79 feet and a chord bearing and distance of North 08°17'46" East, 120.59 feet to a point; thence North 22°15'09" East, a distance of 16.18 feet to an existing iron pipe on the westerly line of lands now or formerly owned by Cameron Properties, Limited Partnership, Daniel D. Cameron, Jr., and Five Star Group, L.L.C. ("Tract C", Plat Book 2005, PG 262); thence along the westerly line of Tract C, North 87°42'03" East, a distance of 561.88 feet to an existing concrete monument; thence South 02°58'38" East, a distance of 1,734.97 feet to an existing concrete monument; thence South 72°03'12" West, a distance of 116.90 feet to a point; thence South 89°04'45" West, a distance of 310.24 feet to an existing iron pipe; thence North 76°59'21" West, a distance of 162.02 feet to a point; thence South 86°11'03" West, a distance of 153.19 feet to an existing concrete monument; thence North 00°12'34" East, a distance of 247.12 feet to a point being the southwest corner of Lot 5 (Deed Book 246, PG 339); thence along the southern line of Lot 5, North 74°06'43" East, a distance of 675.75 feet to an iron pipe being southeast corner of Lot 5; thence with the easterly line of Lot 5, North 35°33'12" West, a distance of 150.47 feet to an iron pipe; thence along a curve to the right having a radius of 1,040.00 feet, an arc length of 439.57 feet and a chord bearing and distance of North 23°26'42" West, 436.30 feet to an iron pipe; thence North 11°20'12" West, a distance of 252.14 feet to a point; thence along a curve to the right having a radius of 1,040.00 feet, an arc length of 269.00 feet and a chord bearing and distance of North 03°55'37" West, 268.25 feet to an iron pipe being the northeast corner of Lot 5; thence along a non-tangent curve to the left having a radius of 25.00 feet, an arc length of 13.65 feet and a chord bearing and distance of North 65°50'30" West, 13.48 feet to a point; thence North 81°29'14" West, a distance of 122.84 feet to the Point of BEGINNING containing 683,499 square feet or 15.69 acres, more or less.

TRACT 5

Being all of the certain tracts or parcels of land located in Baldwin Township, Chatham County, North Carolina, containing 0.19 acres more or less and being more particularly described as follows:

Beginning at an iron pipe at the southeast corner of lands now or formerly owned by William and Brenda M. Griffin (Deed Book 462, PG 537); thence along the eastern line of Griffin, North 03°16'20" East, a distance of 174.67 feet to a point on the southern line of lands now or formerly owned by James Bunn Riggsbee (Deed Book 596, PG 222); thence along the southern line of Riggsbee, North 89°05'12" East, a distance of 289.70 feet to an existing iron pipe on the northwesterly line of lands now or formerly owned by William and Brenda M. Griffin (Deed Book 470, PG 848); thence along the westerly line of Griffin, South 82°33'33" West, a distance of 246.97 feet to an existing iron pipe; thence South 20°25'25" West, a distance of 156.89 feet to

the Point of BEGINNING containing 8,107 square feet or 0.19 acres, more or less.

TRACTS 6-9

Being those parcels of land located in Baldwin and Williams Townships, Chatham County, North Carolina shown as Tracts 1-6 on a survey entitled "Briar Chapel – Property of Fred & Betty Crisp – ASCM/ALTA Land Title Survey," performed by The John R. McAdams Company, Inc., dated January 14, 2004 and last revised January 16, 2004, having a total net area of 103.83 acres more or less and being more particularly described as follows:

TRACT 6:

Beginning at an existing iron pipe being the southeast corner of lands now or formerly owned by Chatham County (deed Book, PG 669), being also on the western right of way of U.S. Highway 15-501 (100' public right of way); thence along said right of way of 15-501 along the arc of a curve to the right having a radius of 921.70 feet, an arc length of 317.63 feet and a chord of South 50°46'52" West 316.06 feet to a point; thence along the arc of a curve to the right having a radius of 1390.00 feet, a length of 207.96 feet and a chord of South 64°56'22" West 207.77 feet to an existing right of way monument; thence South 69°13'32" West 587.42 feet to a point; thence along the arc of curve to the left having a radius of 1046.45 feet, a length of 264.91 feet and a chord of South 61°58'24" West 264.20 feet to an existing iron pipe; thence North 78°34'54" West 57.79 feet to a point on the eastern right of way of Taylor Road (State Road 1529, a 60' public right of way); thence along said right of way of Taylor Road North 31°01'27" West 299.21 feet to a point; thence along the arc of a curve to the left having a radius of 1224.63 feet, a length of 455.38 feet and a chord of North 41°40'37" West 452.76 feet to a point; thence North 52°19'46" West 373.51 feet to a point; thence along the arc of curve to the right having a radius of 970.00 feet, a length of 71.32 feet and chord of North 50°13'23" West 71.31 feet to an existing iron pipe, being the southwest corner of lands now or formerly owned by Fannie Clark Ferrington ("Lot 1", Plat Book 2002, Page 512); thence South 89°59'17" East 332.88 feet to a point being the southwest corner of Herndon Woods Subdivision (Plat Book 93, Page 197); thence South 89°54'37" East 977.49 feet to an existing iron pipe, being the southwest corner of lands now or formerly owned by CP&L (Deed Book 455, Page 606); thence North 87°56'17" East 483.81 feet to an existing iron pipe being the northwest corner of the aforementioned Chatham County parcel; thence South 19°37'53" West 169.88 feet to an existing iron pipe; thence South 71°18'44" East 360.08 feet to the POINT OF BEGINNING, containing 1,009,889 square feet or 23.18 acres, more or less.

TRACT 7:

Beginning at a point on the existing eastern right of way of old U.S. Highway 15-501, said point being on the new western right of way of Taylor Road Extension, shown on N.C.D.O.T. Project Plan 8.1520104 R-942 B and being South 05°38'37" West 203.89 feet from a new iron pipe at the intersection of the existing western right of way of old U.S. Highway 15-501 and the existing eastern right of way of Taylor Road; thence following the said new western right of way of Taylor Road Extension South 31°03'45" East 401.04 feet to a point on the new western right of way line of new U.S. highway 15-501; thence along said right of way of new U.S. Highway 15-501 South 49°00'45" West 51.15 feet to a point; thence South 65°30'31" West 148.63 feet to a point; thence South 58°59'22" West 113.17 feet to a point; thence along the arc of curve to the left having a radius of 2001.31 feet, a length of 775.63 feet and a chord of South 51°32'48" West

770.78 feet to a point; thence North 49°33'22" West 34.06 feet to the existing eastern right of way line of old U.S. Highway 15-501; thence following the said existing eastern right of way line of old U.S. Highway 15-501 North 32°43'19" East 985.01 feet to a point; thence along the arc of curve to the right having a radius of 825.00 feet, a length of 137.89 feet and a chord of North 37°27'49" East 137.73 feet to a point; thence North 78°08'27" East 78.91 feet to the POINT OF BEGINNING, containing 235,544 square feet or 5.41 acres, more or less.

TRACT 8:

Beginning at a point on the existing eastern right of way of U.S. Highway 15-501, shown on N.C.D.O.T. Project Plan 8.1520104 R-942 B, said point being on the southern right of way of Jack Bennett Road; thence along the said right of way of Jack Bennett Road South 84°34'11" East 13.21 feet to a point; thence leaving said right of way and following the western line of lands now or formerly owned by Betty E Robertson, Etal (Deed Book 99E, Page 13), South 02°52'20" West 897.00 feet to a point; thence South 33°26'42" West 907.11 feet to an existing iron pipe being the northerly corner of Fearrington Section II (Plat Book 23, Page 95); thence South 37°25'43" West 517.88 feet to an existing iron pipe being the northerly corner of Fearrington Section I (Plat Book 17, Page 71); thence South 27°51'39" West 990.23 feet to an existing iron pipe; thence South 58°18'06" West 1,608.08 feet to an existing iron pipe being the southeast corner of lands now or formerly owned by Steve Almond (Deed Book 396, Page 346); thence North 03°59'41" West 129.00 feet to a point; thence North 08°59'41" West 175.00 feet to a point; thence North 25°59'41" West 150.00 feet to a point; thence North 13°59'41" West 50.84 feet to a point on the aforementioned eastern right of way of U.S. Highway 15-501; thence North 14°06'26" East 216.07 feet to a point; thence North 59°32'28" East 80.54 feet to a point; thence North 16°06'00" East 322.48 feet to a point; thence along the arc of a curve to the right having a radius of 3690.94 feet, a length of 348.84 feet and a chord of North 30°04'07" East 348.71 feet to a point; thence North 43°34'13" East 116.88 feet to a point; thence North 15°18'32" East 55.93 feet to a point; thence along the arc of a curve to the right having a radius of 1,837.27 feet, an arc length of 832.36 feet and a chord of North 49°40'14" East 825.26 feet to a point; thence North 84°00'59" East 145.67 feet to a point; thence North 54°40'14" East 259.14 feet to a point; thence North 64°37'50" East 204.38 feet to a point; thence along the arc of a curve to the left having a radius of 2,001.31 feet, an arc length of 238.59 feet and a chord of North 59°14'03" East 238.45 feet to a point; thence along the arc of a curve to the left having a radius of 2,001.31 feet, an arc length of 280.10 feet and a chord of North 51°48'33" East 279.87 feet to a point; thence North 77°12'26" East 121.43 feet to a point; thence North 43°41'41" East 212.00 feet to a point; thence North 04°05'56" East 125.06 feet to a point; thence along the arc of a curve to the left having a radius of 2,001.31 feet, an arc length of 821.05 feet and a chord of North 24°17'38" East 815.30 feet to a point; thence North 32°01'14" East 200.09 feet to the POINT OF BEGINNING, containing 2,818,096 square feet or 64.69 acres, more or less.

TRACT 9:

Beginning at a point on the existing eastern right of way line of old U.S. Highway 15-501, said point being South 51°08'34" East 100.06 feet from an existing iron on the existing western right of way line of old U.S. Highway 15-501 and being the southeast corner of lands now or formerly owned by Chatham County (Deed Book 460, Page 669); thence North 67°36'52" East 50.01 feet to a point on the western right of way line of new U.S. Highway 15-501, shown on N.C.D.O.T. Project Plan 8.1520104 R-942 B, thence with said western right of way line of new U.S.

Highway 15-501 along the arc of a curve to the right having a radius of 1830.70 feet, a length of 359.88 feet and a chord of South 25°01'42" West 359.30 feet to a point; thence South 39°46'14" West 26.50 feet to a point; thence continuing along said right of way South 39°46'14" West 284.94 feet to a point; thence South 20°55'08" West 83.29 feet to a point; thence South 51°41'33" West 250.50 feet to a point; thence South 59°04'34" West 465.73 feet to a point; thence South 69°58'26" West 15.17 feet to a point; thence South 69°58'26" West 75.09 feet to a point on the new eastern right of way line of Taylor Road Extension, shown on the above referenced N.C.D.O.T. Project Plan, thence following the new eastern right of way of Taylor Road Extension North 37°29'01" West 69.03 feet to a point; thence North 31°03'45" West 218.22 feet to a point; thence North 31°03'45" West 106.88 feet to a point; thence North 13°37'02" East 102.97 feet to a point on the existing eastern right of way line of old U.S. Highway 15-501 to a point; thence following said eastern right of way line of old U.S. Highway 15-501 along the arc of a curve to the right having a radius of 946.45 feet, a length of 197.94 feet and a chord of North 63°14'05" East 197.58 feet to a point; thence North 69°13'32" East 587.42 feet to an existing right of way monument; thence along the arc of curve to the left having a radius of 1490.00 feet, a length of 222.92 feet and a chord of North 64°56'22" East 222.72 feet to a point; thence along the arc of curve to the left having a radius of 1021.70 feet, a length of 73.62 feet and a chord of North 58°35'21" East 73.61 feet to a point; thence along the arc of a curve to the left having a radius of 1021.70 feet, a length of 282.04 feet and a chord of North 48°36'59" East 281.15 feet to the POINT OF BEGINNING, containing 459,494 square feet or 10.55 acres, more or less.

#### TRACT 10

Being all that certain tract of land containing 1.50 acres more or less, located in Baldwin Township, Chatham County, North Carolina, shown as Lot A (Plat Book 33, PG 59) and Lot 27, Phase I Herndon Woods Subdivision (Plat Book 88, PG 16), and being more particularly described as follows:

Beginning at an existing right of way monument located at the intersection of the west right of way of U.S. Highway 15-501 (public 100' R/W) and the southern right of way of Herbert Herndon Road (public 50' R/W); thence South 18°07'35" East, a distance of 116.35 feet to a point being the northeast corner of lands now or formerly owned by Floyd Coleman & Kenneth B Hoyl (Deed Book 455, PG 720); thence South 80°29'20" West, a distance of 332.50 feet to an existing iron pipe being the northwest corner of Coleman & Hoyl lands; thence South 86°30'33" West, a distance of 156.20 feet to an existing iron pipe being the northwest corner of lands now or formerly owned by Sean L. and Carolyn L. Wilson (Deed Book 829, PG 903); thence North 14°59'43" East, a distance of 89.39 feet to an existing iron pipe; thence North 10°22'55" West, a distance of 69.02 feet to an existing iron pipe on the southern right of way of Hubert Herndon Road; thence North 83°08'12" East, a distance of 233.51 feet to an existing iron pipe; thence South 82°43'50" East, a distance of 129.17 feet to a chiseled "x"; thence North 80°49'32" East, a distance of 68.00 feet to an existing right of way monument; thence South 80°42'45" East, a distance of 9.98 feet to the Point of BEGINNING containing 65,477 square feet or 1.50 acres, more or less.

**LESS AND EXCEPT** the property described on Exhibit "A."

In addition to the above, as the owner or with the written consent of the owner, Declarant may also submit to the terms of the Declaration any real property situated within two (2) miles of the perimeter boundaries of the property described on Exhibit "A" or this Exhibit "B."

**Note to clerk and title examiners:**

**This Declaration is not intended to create an encumbrance on title to the property described on this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplemental Declaration in accordance with Article IX.**

## EXHIBIT "C"

Initial Restrictions and Rules

The following restrictions shall apply to the Community until such time as they are amended, modified, repealed or limited pursuant to Article III of the Declaration.

1. General. The properties submitted to this Declaration shall be used only for residential, recreational, and related purposes consistent with this Declaration and any Supplemental Declaration. Such purposes may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of property described in Exhibits "A" or "B," offices for any property manager retained by the Association, business offices for Declarant and the Association, and public facilities.

2. Restricted Activities. The following activities are prohibited within Briar Chapel unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of any vehicle (other than emergency vehicles in the course of their duties) in alleys within the Community, 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 except temporarily during loading and unloading; provided, construction, service and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. For purposes of this provision, "commercial vehicles" shall be defined as trucks or vans with commercial writing on their exteriors or vehicles primarily used or designed for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size or official vehicles owned by governmental or quasi-governmental bodies; and

(b) Raising, breeding or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law; and

(c) Any activity on a Unit or Common Area which emits foul or obnoxious odors outside a Unit or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the occupants of other Units (this paragraph shall not preclude normal and customary use of power tools, lawn mowers, and other yard maintenance equipment); and

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

(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 Unit; and

(f) Any noxious or offensive activity 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 Units; and

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

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

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

(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 Briar Chapel, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff; and

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers which must either be stored in an enclosed garage or in the rear yard of the Unit, screened from view of adjacent property in a manner approved pursuant to Article IV except on the day garbage is collected; and

(l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant, its designees, and the Association shall have such right, and Builders may alter drainage flow so long as the alteration does not adversely affect other Units; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent; and

(m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and recorded, except that Declarant and Builders, with Declarant's written consent, shall be permitted to subdivide or replat Units which they own; and

(n) Conversion of any garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Article IV, or use of any garage for storage or other purposes which preclude its use for parking of that number of vehicles for which it was originally designed; and

(o) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit 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 with respect to Units which it owns; and

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

(q) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV; and

(r) Any yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis; and

(s) Swimming or use of personal flotation devices in any stream, pond, or other body of water (other than swimming pools) located within the Community, or fishing or boating in any such body of water except in accordance with such policies and rules as the Board may establish from time to time;

(t) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit 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 Unit; (ii) the business activity conforms to all zoning requirements for Briar Chapel; (iii) the business activity does not involve door-to-door solicitation of residents of Briar Chapel; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in Briar Chapel which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of Briar Chapel and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of Briar Chapel as may be determined in the sole discretion of the Board.

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 Unit in compliance with Paragraph 4 of these Rules shall not be considered a business or trade within the meaning of this subsection; and

(t) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs and flags (except as otherwise provided in Section 3.4(c) and Section 4.1), basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; hedges, walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "**Permitted Antennas**") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Briar Chapel, should any master system or systems be utilized by the Association and require such exterior apparatus.

3. Prohibited Conditions. The following shall be prohibited in Briar Chapel:

(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 Briar Chapel; and

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

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from ground or surface waters within Briar Chapel, except that Declarant, its designees, and the Association shall have the right to draw water from such sources.

4. Leasing of Units. "**Leasing**," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. All leases shall have an initial term of at least six

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months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Restrictions and Rules.

The leasing of multiple Units by a single Owner, or the leasing of multiple Units by two or more Owners related by blood, adoption, or marriage, or by Owners with a common ownership interest, or by a group of Owners under the control or direction of a single Owner, shall be prohibited, except that this prohibition shall not apply to:

(a) Units leased to Declarant or any Builder authorized by Declarant for use as model homes or sales offices, or to the continued leasing of such Units by the same Owner after expiration of any such lease if Declarant or Builder does not offer to renew or extend the lease on substantially similar terms; or

(b) the leasing of Units by an institutional lender following foreclosure on any Unit(s).

EXHIBIT "D"

Initial Design Guidelines

The following design guidelines established by Chatham County shall apply to the Community in addition to such Design Guidelines as may be adopted pursuant to Article 4 of the Declaration. In the event of an inconsistency, the more restrictive requirement shall apply.

**1. Building Setbacks.**

- |                                 |   |
|---------------------------------|---|
| Minimum front building setback: | 10 feet from public street right-of-way<br>10 feet from back of curb of private streets |
| Minimum side building setback:  | 5 feet from public street right-of-way<br>5 feet from back of curb of private streets   |
| Minimum rear building setback:  | 4 feet from alley easement<br>10 feet from rear property line                           |
| Maximum building height:        | 50 feet   |

**2. Buffers.**

- |                   |   |
|-------------------|---|
| Stream buffers:   | 100 feet for perennial streams<br>50 feet for intermittent streams<br>50 feet for ephemeral streams over 25 acres<br>30 feet for ephemeral streams from 10-25 acres |
| Perimeter buffers | 100 feet along perimeter boundary of Community  |

**3. Sidewalks.**

A sidewalk shall be installed along each lot boundary adjacent to a public right-of-way.

**4. Building Character.**

Buildings are to be residential in scale and aligned along the street to create a visual rhythm or streetscape.

Main entrances are to face the major street, and are to be identified by porches, roofs, awnings, or other focal points.

Building facades are to incorporate a 3-part hierarchy of base, middle, and top.

Accessory buildings, landscape walls, fences, and other structures are to be of similar design and construction to the main dwelling structure.

**5. Roofs**

Visible building roofs are to be gabled or hipped or segmented. Flat roofs are not to be visible from the public street level, and are to be screened behind architecturally integrated parapet walls or other rooflines.

**6. Mechanical Equipment**

Both rooftop and ground level units are to be screened from public view.

Gutters and downspouts are to be metal and discharge water in a direction away from pedestrian activities.

**7. Building Materials**

Appropriate building materials include the following:

Walls: Brick, stone, pre-cast concrete, siding, stucco, EIFS (above ground level)

Roofs: Simulated tile or dimensional shingle, standing seam metal, or slate

Windows: Wood, aluminum, anodized aluminum

Doors: Wood or anodized aluminum

**8. Paving**

Acceptable materials for driveways, sidewalks and other paved surfaces include concrete, brick, clay tile, or stone. Asphalt and gravel mulch may be used in trail situations.

**9. Exterior Lighting**

Exterior lighting is to be compatible with adjacent architecture and contextual setting. The Chatham County Lighting Ordinance is to be followed as a guideline.

**10. Chatham County Design Guidelines**

The Chatham County Design Guidelines are incorporated herein by reference, to the extent applicable to residential construction.