

---

FILED	Mar 12, 2019
AT	08:25:58 AM
BOOK	02033
START PAGE	0960
END PAGE	0986
INSTRUMENT #	02246
EXCISE TAX	\$0.00

---

Prepared by: Kyle Smalling, Capital City Law, 116 N. Person St., Raleigh, NC 27601  
Return to: Preparer

**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS FOR  
THE PRESERVES AT HAW RIVER HOMEOWNERS ASSOCIATION, INC.**

Submitted electronically by Capital City Law in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Chatham County Register of Deeds.

**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS FOR  
THE PRESERVES AT HAW RIVER HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION is made on the date hereinafter set forth by Primo Investments, LLC, a North Carolina limited liability company (hereinafter "Declarant");

WITNESSETH:

WHEREAS, Declarant is now the owner of all that certain property further described on the attached "Exhibit A", and being the property more fully reflected on the plat recorded in Book of Maps 2019, Page 50, Chatham County Registry (as hereinafter defined as "Property"); and

WHEREAS, Declarant desires to create on such property an exclusive residential community of detached single-family homes to be known as THE PRESERVES AT HAW RIVER SUBDIVISION (hereinafter sometimes referred to as the "Subdivision"); and

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

WHEREAS, Declarant have deemed it advisable to create an organization to own, maintain and administer the Common Area, including, without limitation, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and to maintain and administer certain storm water control devices located within the Subdivision, and Declarant has therefore incorporated under North Carolina law as a nonprofit corporation, THE PRESERVES AT HAW RIVER HOMEOWNERS ASSOCIATION, INC. for the purpose of exercising said functions; and

WHEREAS, Declarant shall be initially responsible for the management of THE PRESERVES AT HAW RIVER HOMEOWNERS ASSOCIATION, INC. and Declarant desires to submit the Property to the same covenants, conditions, restrictions, easements, charges, and liens as set forth in this Declaration and to further join and utilize THE PRESERVES AT HAW RIVER HOMEOWNERS ASSOCIATION, INC. to administer and enforce these covenants and restrictions applicable to the Subdivision.

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

interest in said real property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I DEFINITIONS**

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

1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act.

2. "Association" shall mean and refer to THE PRESERVES AT HAW RIVER HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors, and assigns.

3. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in the Bylaws.

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

5. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or easement, for the common benefit of the Owners of Lots within the Subdivision. Common Area also includes water and sewer lines which serve more than one Lot and are not located within a Chatham County or Declarant utility easement or a public street right-of-way. Common Area shall also include any private right of way providing access to and from any Lots in the Property, and any storm water control devices located within the Property. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility as set forth herein.

6. "Declarant" shall mean and refer to Primo Investments, LLC, a North Carolina limited liability company. It shall also mean and refer to any person, firm or corporation to whom or which Primo Investments, LLC, shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Chatham County Registry.

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

(a) December 31, 2025;

(b) When the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; provided, however, that, Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus making Declarant the Owner, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, of a sufficient number of votes (at the 10-to-1 ratio) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of Declarant Control shall occur automatically as often as the foregoing shall occur); or

(c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

8. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision maps of the Properties, except for any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded maps. If any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plats, any newly-platted lot shall thereafter constitute a Lot.

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

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

11. "Properties" shall mean and refer to the Property described in Exhibit A to this Declaration and any additional property annexed pursuant to Article II.

12. "Special Declarant rights" means rights reserved for the benefit of the Declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of Declarant control.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION**  
**OF THE PRESERVES AT HAW RIVER HOMEOWNERS ASSOCIATION, INC.**

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

2. Additions to Existing Property. At any time prior to December 31, 2025, additional lands may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of plats showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subject to this Declaration (or separated from such property only by the right-of-way of a public street or road) and must be approved by Chatham County and, if appropriate, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Should Declarant elect to annex any Additional Property and accordingly subject such property to the terms and conditions of this Declaration, Declarant reserves the right to provide a new subdivision name for the Additional Property, to alter the restrictions contained in this Declaration as to the Additional Property and to provide for an alternative assessment structure with regard to any Additional Property.

The annexation of Additional Property authorized under this section of the Declaration shall be effective upon the recording of a Supplementary Declaration of Covenants and Restrictions for the Additional Property which shall extend the effect and operation of this Declaration to the Additional Property. The Supplementary Declaration may contain changes, deletions and/or modifications as may be necessary or convenient, in the sole discretion of the Declarant, to reflect the difference in character, if any, of the Additional Property and the change in plan of development for said Additional Property from the Existing Property.

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

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS**

1. Membership. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

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

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Class B Member (as hereinafter defined). When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots".

(b) Class B Member. The Class B Members shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to five (5) votes for each Lot that it owns or each lot it is under contract to purchase (each a "Class B Lot").

Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

3. Vacant/Leased Dwellings. An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for THE PRESERVES AT HAW RIVER HOMEOWNERS ASSOCIATION, INC., recorded in the Chatham County Registry. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Each Owner shall furnish the Association a copy of any lease or sublease of his dwelling.

**ARTICLE IV  
PROPERTY RIGHTS**

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

- (a) the provisions of the Chatham County zoning ordinances and regulations, the right of the Association to charge reasonable admission and other fees for the use of any facilities hereafter situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants, and guests, as provided in Section 2 of this Article IV.
- (b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.
- (c) the provisions of the Chatham County zoning ordinances and regulations, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to Chatham County or to another nonprofit corporation for the aforementioned purposes. Notwithstanding any other provision of this Declaration, the Board of Directors of the Association may, without vote of the Members, exchange Common Area for equivalent real property, if Chatham County approve such exchange.



- (d) the provisions of the Chatham County zoning ordinances and regulations, the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.
- (e) the right of the Association, as provided by and consistent with the Chatham County zoning ordinances and regulations, as same may be amended from time to time, to exchange all or part of the Common Area for other property and consideration of like value and utility.

2. Delegation of Use.

- (a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Chatham County, North Carolina.
- (b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy a residence within the Properties.
- (c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants, or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

3. Conveyance of Title to The Association. Declarant covenants, for itself, its successors, and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision to an Owner, it will convey to the Association title to those portions of the Common Area, if any, owned in fee by the Association. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Properties for constructing any improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Subdivision, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Subdivision, and the lien of ad valorem taxes not yet due and payable. Any planned improvements or amenities placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements or amenities.



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

- (a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within any Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on or in any Common Area; (4) fill or excavate any Common Area or any part thereof; or (5) plant vegetation or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

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

- (b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the undeveloped Common Area in its vegetated or natural state; or if in an improved state, keep it free of impediments to its free use by the Owners; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.
- (c) Association's Right of Entry for Maintenance of Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot

reserved or designated as a Common Area easement, and any other portion of the Lot to the extent necessary to gain access to the Common Area easement, for the purposes of: (i) installing and maintaining entrance signage and other signage; (ii) making such improvements to the Common Area easement as have been approved by the Association; and (iii) maintaining the Common Area easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use. No such entry set forth in this paragraph shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

## ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 7 of this Article V and all costs of collection, including reasonable attorneys' fees, shall be a charge on the land and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

It is the intent of the Declarant that any monetary fines imposed against an Owner pursuant to Section 1 of Article VI of the Bylaws shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area or any stormwater control device(s) and/or areas that are created for the purpose of detaining and/or treating stormwater including any and all ditches, pipes, and other conveyance structures, access easement areas, and other area, land, or structures located within any easement area shown on the plat or described herein. Such facilities may include but are not limited to dry detention areas, wet detention ponds, wetlands, level spreaders, conveyance structures, access easement areas and all associated constructed and natural features that allow such devices or areas to function as intended (hereinafter collectively referred

to as "Stormwater Facilities"); (ii) maintenance, repair and reconstruction of the Common Area, including any public street right of ways until such time as the right of ways are dedicated to public use and accepted by a public agency, authority or NCDOT; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance; (v) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; and (vii) such other obligations as established in this Declaration or as needs as may arise.

3. Maximum Annual Assessment. Until December 31, 2019, the Maximum Annual Assessment shall be \$500.00 for each Class A Lot.

- (a) From and after January 1, 2020, the Maximum Annual Assessment for Class A Lots may be increased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed ten percent (10%) of the Maximum Annual Assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.
- (b) The Maximum Annual Assessments for Class A Lots may be increased without limitation if such increase is approved by not less than two-thirds (2/3) of the votes cast by the Class A Members present, in person or by proxy, at a meeting duly called for that purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment incident to a merger of consolidation as provided in § 47F-2-121 of the Act.

4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month following the issuance of a certificate of occupancy for a completed dwelling built upon a Lot. There shall be no annual assessment for Class B Lots.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not more than the Maximum Annual Assessment in effect for the appropriate assessment year. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Annual assessments shall be fixed at a uniform rate for all Class A Lots and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an

assessment has been paid, such certificate shall be conclusive evidence of payment. Such authority may be assigned by the Board to the property management company.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as provided in Section 6 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than ten percent (10%) larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until the Members ratify a subsequent budget proposed by the Board.

Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Area or located in a Stormwater Facility, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, and the cost to purchase Lots and dwellings at foreclosure sales of Association liens, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair, or replacement of a capital improvements upon the Common Elements. This assessment may not be used for any other purposes including litigation involving the Association.

6. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or

5 shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

7. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur a monthly late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than eighteen percent (18%) per annum or the maximum rate allowable by law, whichever is greater. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

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

10. Working Capital Fund. At the time of closing of any sale of each Lot, a sum equal to four hundred fifty dollars (\$450.00) shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.