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FOR REGISTRATION REGISTER OF DEEDS  
REBECCA P. SMITH  
NEW HANOVER COUNTY, NC  
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INSTRUMENT # 2006006611

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR  
PORTERS CROSSING**

This Declaration of Covenants, Conditions, and Restrictions For Porters Crossing (Declaration), is made the 3<sup>rd</sup> day of February 2006, by Premier Communities, LLC, hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated;

WITNESSETH:

Whereas, Declarant is the owner of certain real property in New Hanover County, North Carolina, known as Porters Crossing, on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 49 Pages 102-104 (the "Plat"), to which reference is made for a more particular description; and

Whereas, the Plat describes Lots 1 through 40, inclusive, and certain Common Areas or Common Elements (the "Property");

NOW, THEREFORE, Declarant declares that the Property, EXCLUDING HOWEVER, that portion of such real property identified on the Plat as "Future Development," shall be held, sold and conveyed subject to the North Carolina Planned Community Act set forth in Chapter 47F of the North Carolina General Statutes (the "Act"), as well as the following easements, restrictions, covenants, and conditions.

ARTICLE I.

DEFINITIONS

In addition to other terms defined herein, the following capitalized terms shall have the following meanings as used herein:

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SECTION 1. Additional Property shall mean and refer to any lands, in addition to the above described Property, annexed to and made a part of the Planned Community, which may include, without limitation, the area shown as Future Development on the Plat. Additional Property may include any real property, whether now owned or hereafter acquired by Declarant or others, and whether developed by the Declarant or others.

SECTION 2. Allocated Interest shall mean the Common Expense Liability and votes in the Association allocated to each Lot.

SECTION 3. Association shall mean and refer to Porters Crossing Homeowners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns, same being the owners association organized pursuant to the Act for the purposes set forth herein.

SECTION 4. Common Elements shall mean and refer to all lands and easements within or appurtenant to the Planned Community, other than a Lot. Common Elements are intended for the common use and enjoyment of the Owners, and include, without limitation, any private roads and storm water retention ponds within the Planned Community, and all areas designated as "Common Element," "Common Area," "Open Space," "Recreation Area," "Amenity Area," or other similar designations on the Plat, and shall include the "Old Nixon Cemetery" and the "Active Recreation Area" designated on the Plat. Common Elements shall not include any area designated as "Future Development" on the Plat unless and until the Declarant shall annex such area into the Planned Community with designation as "Common Area," but upon such annexation any areas now designated on the Plat as "Future Development" which would otherwise be included in the definition of Common Elements shall upon such annexation become Common Elements, and in addition thereto any areas shown on any plats by reference to which annexation occurs shall become Common Elements.

SECTION 5. Common Expenses means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

SECTION 6. Common Expense Liability means the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration or otherwise.

SECTION 7. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to Premier Communities, LLC, and any successors and assigns of Premier Communities to whom express transfer of Declarant Rights or Special Declarant Rights is made in writing and who acquire undeveloped property subject to this Declaration from the Declarant.

SECTION 8. Declarant Control Period shall have the meaning set forth in Article III hereof.

SECTION 9. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 10. Executive Board or Board shall be used interchangeably with the Board of Directors, and means the body, regardless of name, designated in this Declaration or otherwise to act on behalf of the Association.

SECTION 11. Limited Common Elements shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. The Limited Common Elements shall consist of NONE (if none, so state).

SECTION 12. Lot(s) shall mean and refer to any portion of the Planned Community designated for separate ownership by a Lot Owner.

SECTION 13. Lot Owner or Owner shall mean the Declarant or other Person who owns a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 14. Master Association means a master association as defined in the Act.

SECTION 15. Person means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, or agency or other legal or commercial entity.

SECTION 16. Planned Community shall mean and refer to the Property plus any Additional Property made a part of the Planned Community by the exercise of any Special Declarant Right, including but not limited to, that portion of such real property owned by Declarant and identified on the Plat as "Future Development," if made a part of the Planned Community by exercise of any Special Declarant Right.

SECTION 17. Purchaser means any Person, other than the Declarant, including any Person in the business of selling real estate for any person other than the Declarant's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

SECTION 18. Reasonable Attorneys' Fees means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

SECTION 19. Special Declarant Rights means rights reserved for the benefit of the Declarant including without limitation the right: (i) to complete improvements intended or planned by Developer for the Property or Additional Property; (ii) to exercise any development or other right reserved to the Declarant by this Declaration or otherwise; (iii) to maintain within

the Planned Community sales offices, management offices, construction offices/trailers, signs advertising the Planned Community, and models; (iv) to use the Common Elements for the purpose of making improvements within 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; (vii) to appoint or remove any officer or Executive Board member of the Association or any Master Association during the Declarant Control Period or (viii) to permit other land to be annexed to and made part of the Planned Community in accordance with the terms of this Declaration.

SECTION 20. Stormwater Permit shall mean State Stormwater Permit Number SW8040412 issued by the North Carolina Division of Water Quality (DWQ), Department of Environment and Natural Resources (DENR), as issued and as may be amended from time to time by DWQ.

## ARTICLE II.

### PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Elements, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Elements by the Owners;

(b) The Association may grant a security interest in or convey the Common Elements, or dedicate or transfer all or part of the Common Elements, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least eighty percent (80%) of the Members, excluding the Developer; provided, however, that the Association may without the consent of the Owners grant easements, leases, licenses and concessions through or over the Common Elements. No conveyance or encumbrance of Common Elements shall deprive any Lot of its rights of access or support.

SECTION 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their agents, contractors, employees, successors and assigns (herein sometimes collectively called the "Easements"):

(a) easements as necessary in the lands constituting the Common Elements and the rear and front ten feet of each Lot, and the side ten feet of each except as to any side line of a Lot as to which zero lot line development has been

approved by the Architectural Control Committee, as to which a minimum 10' side setback from the structure on any adjacent Lot shall apply and the side easement shall lie within such side setback rather than at both side lines of the affected Lots, and also easements as shown on the Plat, for the installation, maintenance, repair and replacement of utilities and drainage facilities, including the right to go upon the ground with men and equipment to install, erect, maintain, inspect, repair, replace and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, stormwater control systems and improvements, or other public conveniences or utilities on, in or over the easements over each Lot described herein and such other areas as are shown on the plat of the Property or any Additional Property or Annexed Property recorded or to be recorded in the office of the Register of Deeds of the county where the Planned Community is located; the right to build, maintain, repair and replace drainage pipes, retaining walls and drainage catchbasins, and cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot in any area not designated as an easement on the Plat or herein (with the permission of the Owner of such Lot). No structures, plantings, or other material shall be placed or permitted to remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion. These easement areas (whether or not shown on the Plat, any amendment to the Plat, or any plats recorded for the annexation of Future Development area or Additional Property into Planned Community) but not the improvements within such areas, shall be maintained by the respective Owner, except those improvements for which a public authority, utility company, or the Association is responsible.

(b) easements over all private streets, if any, access easements, and Common Elements within the Planned Community as necessary to provide access, ingress and egress, to and the installation of utilities for any Additional Property.

(c) an easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Elements located thereon, if any, at all reasonable times to perform any maintenance and repair to the Common Elements, the Limited Common Elements, and the Easements required by this Declaration, and to perform routine front lawn care and lawn maintenance for each Lot, and upon failure of an Owner to perform other lawn care and maintenance as provided herein, to perform same at the cost and expense of the Owner.

(d) An easement to enter onto any Lot for the purpose of rebuilding or repairing any dwelling which is damaged or destroyed by fire, storm or other casualty but which the Owner fails to rebuild or repair within two hundred forty (240) days of the casualty causing damage or destruction to the dwelling.

SECTION 3. Other Easements. The following additional easements are granted by Declarant:

(a) an easement to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Elements in the performance of their duties.

(b) in case of any emergency originating in or threatening any Lot or Common Elements, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the immediate right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners.

(c) the Association is granted an easement over each Lot for the purposes of providing routine lawn maintenance to the front lawn of each Lot, and in addition thereto, any other Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration, in addition to the routine lawn care and maintenance to be provided by the Association.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Planned Community, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

### ARTICLE III.

#### HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association shall be incorporated no later than the date the first Lot in the Planned Community is conveyed. The Association shall be a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to operate and maintain the Common Elements and any Limited Common Elements in accordance with this Declaration, its Charter and

Bylaws, and to exercise any rights as member of any Athletic Amenities Association which may be formed by the Declarant. The Association shall be empowered to perform and/or exercise those powers set forth in the Act as it may be amended from time to time, in addition to any powers and authority otherwise granted to it.

SECTION 2. Membership. Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

SECTION 3. Voting Rights. The Association shall have two classes of voting Membership.

*Class A.* Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

*Class B.* The Declarant shall be a Class B Member and shall be entitled to a minimum of sixty-one (61) votes, plus (3) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(a) on the date ten (10) years after the date of the recording of this Declaration in the Office of the Register of Deeds of New Hanover County, North Carolina; or

(b) upon the express written voluntary surrender of all Class B Membership by the holder thereof making specific mention of surrender of Class B Membership and of termination of the Declarant Control Period.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period". During the Declarant Control Period, the Declarant shall have the right to designate and select the Executive Board of the Association and the right to remove any person or persons designated and selected by the Declarant to serve on the Executive Board, and to replace them for the remainder of the term of any person designated and selected by the Declarant to serve on the Executive Board who may resign, die, or be removed by the Declarant.

**SECTION 4. Government Permits.** After completion of construction of any facilities required to be constructed by Declarant pursuant to permits, agreements and easements for the Planned Community, all duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Planned Community with municipal or governmental agencies or public or private utility companies, shall be the duties, rights, obligations, privileges and the responsibility of the Association, notwithstanding that such agreements, easements or permits have not been assigned or the responsibilities thereunder specifically assumed by the Association. There are additional provisions made in this Declaration concerning stormwater facilities and the Stormwater Permit.

**SECTION 5. Common Elements.** The Association shall at its sole cost and expense be responsible for the operation, maintenance, and repair of each Common Element within the Planned Community from the date of completion of its construction or improvement by the Developer, whether or not (i) such Common Element has actually been deeded to the Association, or (ii) any permit issued by a governmental agency to Declarant for the construction and operation of the Common Element has been transferred from the Declarant to the Association or assumed by the Association. If the Declarant is required by any governmental agency to provide any operation or maintenance activities to a Common Element for which the Association is liable to perform such operation and maintenance pursuant to this section, then the Association agrees to reimburse the Declarant the cost of such operation and maintenance within 30 days after Declarant renders a bill to the Association therefor. The Association agrees to levy a Special Assessment within thirty (30) days of the date of such bill, to cover the amount of such bill, if it does not have other sufficient funds available. Declarant shall be entitled to specific performance to require the Association to levy and collect such Special Assessment.

**SECTION 6. Insurance.** The Executive Board on behalf of the Association, as a Common Expense, may at all times keep the Common Elements and other assets of the Association, if any, insured against loss or damage by fire or other hazards and such other risks, including public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect such property, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees. At a minimum, the Executive Board shall maintain the insurance coverages required by the Act.

**SECTION 7. Architectural Control Committee.** The Executive Board shall perform all duties of the Architectural Control Committee if no such committee is appointed by it, subject, however, to the Special Declarant Rights. Any Architectural

Control Committee appointed by the Executive Board shall consist of at least 3 members.

**SECTION 8. Lawn Care and Maintenance.** The Owner of each Lot shall obtain prior approval of the Architectural Control Committee of the proposed species of grass sod to be used on the Owner's Lot. The Owner of each Lot shall sod all portions of the Lot other than areas upon which the dwelling, outbuildings, driveway and any sidewalks are constructed, with grass sod immediately upon completion of construction of a dwelling on the Lot, at the sole expense of the Owner. The Association shall be responsible for the routine care and maintenance of the front lawn of each Lot within the Planned Community from and after the date of completion of sodding of the Lot by the Owner with Grass sod following completion of construction of a dwelling on the Lot. For all purposes of this Declaration, "front lawn" shall mean the portion of each Lot lying between the extension of the front line of the dwelling constructed on the Lot to the side lines of the Lot and the front line of the Lot, unless and until any fencing enclosure of the back yard may occur, upon which the "front lawn" shall mean the portion of each Lot lying between the front line of the fence and the street. For all purposes of this Declaration, "front line of the dwelling" shall mean the front line of the section of the dwelling having the longest dimension in a single plane. The Lot Owner shall be responsible for routine care and maintenance of all lawn areas other than the front lawn, and shall keep such other areas in a tidy mowed, pruned, and raked condition, and shall keep the front lawn in a tidy pruned and raked condition.

**SECTION 9. Management.** The Association may engage a person or firm to provide community association management services to the Association, and may pay the charges for such services, and in addition may authorize a transfer fee to be paid to such person or firm by the purchaser of each Lot at the time of the transfer of ownership of each Lot, the payment of which is a condition to recognition of the purchaser as an Owner and to the right of such purchaser to exercise the rights of an Owner hereunder, provided such transfer fee shall not exceed 10% of the Annual Assessment as same may change from time to time.

**SECTION 10. Repair or Rebuilding of Dwellings.** Each Lot Owner shall repair or rebuild any damage to any dwelling caused by fire, storm, or other casualty within two hundred forty (240) days of such casualty, unless in the event of a casualty affecting over half of the Lots in the Planned Community the Members of the Association vote not to require repair or rebuilding.

## ARTICLE IV.

### COVENANTS FOR ASSESSMENTS

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** Each Lot Owner covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

- A. Annual Assessments;
- B. Special Assessments;
- C. Insurance Assessments;
- D. Ad Valorem Tax Assessments; and
- E. Working Capital Assessments.

The Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**SECTION 2. Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Planned Community and for the maintenance, repair and replacement and improvement of the Common Elements and any Limited Common Elements, and the Easements, and any improvements located within the Common Elements and any limited Common Elements, and the Easements, and the routine care and maintenance of the front lawns of the Lots in the Planned Community, and for the performance of all obligations and responsibilities of the Association as provided hereunder, and the exercise of all rights of the Association as provided hereunder. The funds arising from said assessments or charges, may be used for any or all of the following purposes: operation, maintenance and improvement of the Common Elements, and any Limited Common Elements, and the Easements including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, fees of any community association management services provider with whom the Association may contract, legal and accounting fees and governmental charges; establishing working capital; paying dues and assessments to any organization or Master Association of which the Association is a member; and in addition, doing any other things necessary or desirable as determined by the Executive

Board of the Association to keep the Common Elements and Limited Common Elements and the Easements, and all improvement to the Common Elements, Limited Common Elements and Easements, in good operating order and repair, and to perform all obligations of the Association and to exercise all rights of the Association, as provided in this Declaration, including but not limited to the obligation of the Association to pay dues and assessments to any Athletic Amenities Association which may arise under Article IX hereof.

**SECTION 3. Annual Assessments.** The Executive Board shall adopt a proposed annual budget at least 90 days before the beginning of each fiscal year of the Association. Within 30 days after adoption of the proposed budget for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the budget and notice of a meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The budget is ratified unless at the meeting a majority of all of the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board. The Annual Assessment for each Lot shall be established based on the annual budget thus adopted, provided however, that the first Annual Assessment shall be set by the Declarant prior to the conveyance of the first Lot to an Owner, and the Annual Assessment for a Lot shall include any amounts due from the Lot Owner under Section 3 of Article VII, Section 4 of Article VI, and under Section 2 of Article VIII, hereof. The date upon which payment of the Annual Assessment shall fall due shall be as may be established by the Executive Board from time to time. The Executive Board shall have the authority to require the Assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid.

**SECTION 4. Special Assessments.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to the year only for the following purposes:

A. To defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and any Limited Common Elements, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of two-thirds (2/3) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting of Owners called for the purpose of approving such Special Assessment shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.

B. Without a vote of the Members, to provide funds to reimburse the Declarant as provided for in Article III, Section 5, hereof.

**SECTION 5. Insurance Assessments.** All premiums on insurance policies purchased by the Executive Board or its designee and any deductibles payable by the Association upon loss shall be a Common Expense, and the Association may at any time levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment.

**SECTION 6. Ad Valorem Tax Assessments.** All ad valorem taxes levied against the Common Elements, if any, shall be a common expense, and the Association may at any time of year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay ad valorem taxes not included as a component of the Annual Assessment.

**SECTION 7. Working Capital Assessments.** At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$500.00 to the Association as working capital to be used for operating and capital expenses of the Association. Such amounts paid for working capital are not to be considered as advance payment of the Annual or any other Assessments.

**SECTION 8. Rate of Assessment.** The Association may differentiate in the amount of Assessments charged when a reasonable basis for distinction exists, such as between vacant Lots of record and Lots of record with completed dwellings for which certificates of occupancy have been issued by the appropriate governmental authority, or when any other substantial difference as a ground of distinction exists between Lots, including installation of sod and resultant front lawn care expense to the Association. However, Assessments must be fixed at a uniform rate for all Lots similarly situated.

**SECTION 9. Commencement of Assessments.** Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

**SECTION 10. Effect Of Nonpayment of Assessments And Remedies Of The Association.** Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot. All unpaid installment payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted. The Association may also establish and collect late fees for delinquent installments.

**SECTION 11. Lien for Assessments.** The Association may file a lien against a Lot when any Assessment levied against said Lot remains unpaid for a period of 30 days or longer.

(a) The lien shall constitute a lien against the Lot when and after the claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1 and 47F-3-115 of the Act are enforceable as Assessments.

(b) The lien under this section shall be prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot.

(c) The lien for unpaid assessments is extinguished unless proceedings to enforce the tax lien are instituted within three years after the docketing of the claim of lien in the office of the Clerk of Superior Court.

(d) Any judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(e) Where the holder of a first mortgage or deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors and assigns shall not be liable for the Assessments against the Lot which became due prior to the acquisition of title to the Lot by such purchaser. The unpaid Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners including such purchaser, its heirs, successors and assigns.

(f) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

**SECTION 12. Repair or Rebuilding of Dwellings Assessment.** Each Lot Owner shall repair or rebuild any damage to any dwelling caused by fire, storm, or other casualty within two hundred forty (240) days of such casualty, unless in the event of a casualty affecting over half of the Lots in the Planned Community the Members of the Association vote not to require repair or rebuilding. In the event any Owner having obligation hereunder to repair or rebuild shall fail to repair or rebuild all damage to any dwelling within such time, then the Association shall repair or rebuild the

dwelling and the cost of such repair or rebuilding, including demolition and debris removal, shall be paid by the Owner to the Association within thirty (30) days of demand by the Association, and the cost to the Association of such repair or rebuilding, including demolition and debris removal, shall be assessed against the Lot, and shall be added to and become a part of the Annual Assessment for the Lot for the year in which incurred by the Association.

## ARTICLE V

### RIGHTS OF DEVELOPER

The Declarant shall have, and there is hereby reserved to the Declarant, the Special Declarant Rights as herein defined and the following rights, powers and privileges which shall be in addition to the Special Declarant Rights and any other rights, powers and privileges reserved to the Declarant herein:

**SECTION 1. The Architectural Control Committee/Executive Board.** All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee during the Declarant Control Period and thereafter so long as Declarant shall own: any Lot within the Property, any area identified as "Future Development" on the Plat, or any Additional Property annexed to the Planned Community. The Declarant shall be entitled during the Declarant Control Period to appoint and remove the officers and members of the Executive Board.

**SECTION 2. Plan of Planned Community.** The right to change, alter or re-designate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Planned Community including, but not limited to, the right to change, alter or re-designate road, utility or drainage facilities and easements and to change, alter or re-designate such other present and proposed amenities, Common Elements, or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable, and the right to designate all or part of any Lot owned by the Declarant (or any Person consenting to such designation) as a road or utility or drainage facility or Common Element. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts or Lots shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract or Lot (any Lot resulting from such recombination shall be treated as one Lot for purposes of Assessments); to eliminate from this Declaration or any plats of the Planned Community Lots that are not otherwise buildable or are needed or desired by Declarant for access or are needed or desired by Declarant for use as public or private roads or access areas, whether serving the

Planned Community or other property owned by the Declarant or others, or which are needed for the installation of utilities, Common Elements or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site, access area, roadway or Common Elements.

**SECTION 3. Amendment of Declaration by the Declarant.** This Declaration may be amended without Member approval by the Declarant, or the Executive Board of the Association, as the case may be, as follows:

- A. In any respect, prior to the sale of the first Lot.
- B. To the extent this Declaration applies to Additional Property.
- C. To correct any obvious error or inconsistency in drafting, typing or reproduction.
- D. To qualify the Association or the Property and Additional Property, and any property owned by any Athletic Amenities Association which may be created by the Declarant pursuant to Article IX hereof, or any portion thereof, for tax-exempt status.
- E. To incorporate or reflect any platting change as permitted by this Article or otherwise permitted herein.
- F. To conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Department of Veterans Affairs, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Declarant Control Period, shall be entitled to amend this Declaration pursuant to this Section.