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NEW HANOVER COUNTY, NC
TAMMY THEUSCH BEASLEY
REGISTER OF DEEDS

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SCOTTS HILL MEDICAL PARK**

RETURN: * BAILEY & BUSBY, PLLC - WILMINGTON OFFICE

**PREPARED BY AND RETURN TO:
MURCHISON, TAYLOR & GIBSON, PLLC
1979 EASTWOOD ROAD, SUITE 101
WILMINGTON, NC 28403**

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SCOTTS HILL MEDICAL PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SCOTTS HILL MEDICAL PARK (this "Declaration") is made effective as of the 11th day of October 2019, by **WPE HOLDINGS, LLC**, a limited liability company organized and existing under the laws of the state of North Carolina ("Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of certain real property located in New Hanover County, North Carolina which property is described herein; and

WHEREAS, this Declaration is being executed and recorded by Declarant in order to facilitate the development of the Property as an integrated business and commercial development to be known as "Scotts Hill Medical Park" and to fix and establish certain covenants, conditions and restrictions upon and subject to which the Property shall be improved, held, leased, sold and/or conveyed; and

THEREFORE, the Declarant declares that all the Property described herein, and any additional real property as may, by subsequent amendment and/or supplement hereto, be added to and subjected to this Declaration, is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions and easements, which shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the Property (as defined below) or any part or parts thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1
DEFINITIONS**

The following terms shall, except where the context otherwise requires, have the meanings hereinafter specified:

1.01 "Additional Property" shall mean any of the real property located within two (2) miles of the Property, any of which may hereafter be annexed to and made a part of the Property and subjected to the terms and conditions of this Declaration.

1.02 "Architectural Review Committee" or the "ARC": means the committee of the Association as specified in Article 6, to interpret and enforce the Design Guidelines, as further provided in Article 6.

1.03 "Area of Common Responsibility" shall mean 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.

1.04 "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.

1.05 “Assessments” shall mean and refer collectively to all assessments of any kind or nature provided for in this Declaration (including, without limitation, Master, Special and Specific Assessments).

1.06 “Association” shall mean Scotts Hill Medical Park Owners’ Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

1.07 “Board of Directors” or “Board” shall mean the duly elected and constituted Executive Board of the Association.

1.08 “Building” shall mean any structure on the Property which (i) is permanently affixed to the land, (ii) has one or more floors and a roof, (iii) is normally accessible for human use, and (iv) has been issued a Certificate of Occupancy by the applicable government authority.

1.09 “Bylaws” shall mean the Bylaws of the Association, as amended from time to time.

1.10 “Common Areas” shall mean any and all real and personal property (including any related equipment, fixtures, and apparatus), and all other easements and/or other interests in real property from time to time, including easements and private streets and roads, which either (i) the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners and/or (ii) the Declarant has designated or designates in the future in the Declaration or a Recorded plat or other Recorded instrument as existing for the common use and enjoyment of some or all of the Owners. The Common Areas of Scotts Hill Medical Park shall include, without limitation, the following:

(a) All roads within the Property, to the extent such roads have not been dedicated to and accepted by New Hanover County or any other governmental body;

(b) All rights of way landscaping of the roads, and any other areas so designated by the Declarant or the Board;

(c) All entrance features so designated by the Declarant or the Board;

(d) All drainage easements or stormwater holding, detention and/or retention ponds identified and described in the stormwater permit issued to Declarant for development of the Property;

(e) Any and all vegetative buffers of up to twenty feet (20’) in width located along the outer perimeters of the Property; and

(f) Any area or portion of the Property designated by the Declarant within this Declaration or any amendment or supplement or on any Plat as a Common Area.

1.11 “Common Expenses” shall mean the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, together with any allocation to reserves, as the Board may find necessary and appropriate pursuant to the Governing Documents, including, without limitation, those items further described in Article 19 below. Notwithstanding the foregoing, (i) Common Expenses shall not include any expenses incurred during the Class “B” Control Period for initial development or other original construction costs unless Voting Members representing a majority of the total Class “A” vote of the Association approve and (ii) payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

1.12 “Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing at the Property, or the minimum standards established pursuant to the Design Guidelines, Restrictions and Rules, and Board resolutions, whichever is a highest standard. Declarant shall establish initially 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 the Property change.

1.13 “Cost Sharing Agreement” shall mean any agreement, contract, or covenant between the Declarant (and/or the Association) and an owner of, operator of, or property association having jurisdiction over property within, adjacent to, or in the vicinity of the Property (including, without limitation, any landscaping located on a public right of way) pursuant to this Declaration, creating easements, rights, or obligations for the benefit of the Association and/or the present and future owners of the subject real property and providing for the sharing of the expenses of the same, including but not limited to any costs of maintaining property described in that document with adjacent properties. The Property is subject to that Cost Sharing Agreement described in the Amended and Restated Master Cross-Access Easement and Maintenance Agreement recorded in Book 5991, Page 20 of in the Office of the Register of Deeds of New Hanover County, as the same may be amended and or supplemented (said document is referred to herein as the “Cross Access Agreement”).

1.14 “Declarant” shall mean **WPE HOLDINGS, LLC, a North Carolina limited liability company**, or any successor or assign who both: 1) takes title to any portion of the Property for the purpose of development and/or sale; and 2) who or which is specifically granted some or all of Declarant’s rights pursuant to a recorded instrument executed by the immediately preceding Declarant.

1.15 “Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Scotts Hill Medical Park, as the same may be amended or supplemented from time to time.

1.16 “Design Guidelines” shall mean the guidelines and standards for design, construction, operation, use, appearance and such other requirements as set forth in Article 6, of all Buildings, Structures, landscaping and other improvements erected or to be erected, from time to time, on any portion of the Property (together with all alterations, modifications, additions, deletions thereto), as they may be amended from time to time.

1.17 “Development” shall have the same meaning as the “Property” and “Scotts Hill Medical Park” as defined herein.

1.18 “Directors” shall mean the persons serving from time to time on the Board.

1.19 “Governing Documents” is a collective term referring to the Declaration and any applicable Supplemental Declarations, the Bylaws, the Articles, the Design Guidelines, the Restrictions and Rules, Board resolutions, and Recorded plats of Scotts Hill Medical Park, as any one or more of which may be amended from time to time.

1.20 “Institutional Mortgage” shall mean a Mortgage which constitutes a first lien on a Lot on any portion of the Property and which is held by a bank, savings and loan association, trust company, insurance company or other recognized lending institution, other firms or entities customarily affording loans secured by first liens on real property, or by an institutional or governmental purchaser of mortgage loans in the secondary market.

1.21 “Lot” shall mean and refer to any lot, parcel or tract of land within the Property owned by the Declarant or any lot, parcel or tract of land subdivided out of the Property by Declarant and either conveyed to another person or entity or specifically identified by Declarant as a “Lot” in an amendment, annexation or supplement to this Declaration or on a Plat which is hereafter filed and recorded by Declarant in the Registry. In the event a lot, parcel or tract of land is initially identified by Declarant as a “Lot” in an amendment, annexation or supplement to this Declaration and is subsequently revised or subdivided by Declarant in a different configuration, the “Lot” shall be the lot, parcel or tract of land as it has been revised or subdivided by Declarant. The term “Lot” shall refer to the land described above as well as any improvements thereon.

1.22 “Master Assessments” shall have the meaning ascribed to such term in Article 19 of this Declaration.

1.23 “Master Plan”: The commercial site plan of Scotts Hill Medical Park prepared by Hanover Design Services, P.A., as the same may be amended from time to time. The Master Plan is not required to be Recorded. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property from the Master Plan bar its later submission to this Declaration as provided in Article 23.

1.24 “Member(s)” shall mean the members of the Association as further provided in Section 4.01.

1.25 “Mortgage” with an initial capital letter, shall mean and refer to a mortgage, deed of trust, installment land sales contract and security agreement or other similar security interest instrument granting, creating or conveying a lien upon, a security interest in, or a security encumbered title to a Lot.

1.26 “Mortgagee” with initial capital letter, shall mean and refer to the holder of a Mortgage.

1.27 “Outstanding Votes” shall have the meaning ascribed to such term in Section 4.02.

1.28 “Owner” shall mean the owner of any part of the Property, as shown on the records of the Register of Deeds of New Hanover County, North Carolina, as of the date of any action to be taken by such Owner under the provisions of this Declaration.

1.29 “Person” shall mean an individual, corporation, trustee, partnership, unincorporated organization, limited liability company or other legal entity.

1.30 “Plat(s)” shall mean the plat or plats of the Property or any property annexed thereto which are recorded by Declarant in the Registry, as same may be amended from time to time.

1.31 “Property” or “Scotts Hill Medical Park” shall mean the real property described in Exhibit “A” attached hereto and incorporated herein by reference, together with such additional property as is subjected to this Declaration in accordance with Article 23.

1.32 “Record”, “Recording” or “Recorded”: The filing of a legal instrument in the New Hanover County, North Carolina land records or such other place as may be designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

1.33 “Registry” shall mean the Office of the Register of Deeds of New Hanover County, North Carolina.

1.34 “Restrictions” shall mean the covenants, conditions, restrictions and other terms and provisions of the Declaration, as amended from time to time, upon and subject to which the Property, or any part thereof, shall be improved, held, leased, sold and/or conveyed, all as hereinafter set forth.

1.35 “Road Association” shall mean the Scotts Hill Road Association, Inc., a North Carolina non-profit corporation that is responsible for the maintenance, repair and replacement of certain “Access Common Areas” as further defined and described in the Cross Access Agreement (defined in Section 1.13 herein).

1.36 “Rules and Regulations” shall mean those reasonable rules and regulations governing building and maintenance standards for and the use, enjoyment and operation of the Property (including, without limitation, all Lots, the Common Areas, and any combination thereof) which may be adopted, altered, amended, rescinded, and enforced by the Association, through its Board, from time to time, as more particularly described in Article 5.

1.37 “Special Assessment” shall have the meaning ascribed to such term in Article 19 of this Declaration.

1.38 “Specific Assessment” shall have the meaning ascribed to such term in Article 19 of this Declaration.

1.39 “Structure” shall mean any physical object temporarily or permanently affixed to the Property, except grass, shrubbery, trees or other landscaping.

1.40 “Useable Acreage” shall mean the actual acreage of the Lot in question *less* any portion(s) of such Lot either used as a road and/or devoted to stormwater detention uses for the benefit of more than one Lot. During the Class “B” Control Period, Declarant shall have the right, in its reasonable discretion, to determine which portion(s) of the Property are devoted as a road and/or to stormwater detention uses for purposes of determining Useable Acreage hereunder. After the expiration of the Class “B” Control Period, the Board shall be entitled to make such determination (in its reasonable discretion). Unless Declarant (or the Board, as the case may be) is found to have been arbitrary, capricious or grossly negligent with respect to the determinations contemplated in this paragraph, such determinations by Declarant (or the Board, as the case may be) shall be deemed final.

ARTICLE 2 GENERAL PURPOSES OF RESTRICTIONS

The Property is hereby subjected to the Restrictions for the following purposes, which purposes are not, and are not intended to be, exhaustive or exclusive:

(a) To encourage development of the Property in a manner which is free from toxic and noxious matter and other hazards, and from offensive noises and odors and other objectionable influences.

(b) To promote the proper and most desirable use and development of the Property in accordance with a well considered plan and scheme of development.

(c) To conserve and enhance the value of Lots and Buildings of Owners of the Property.

(d) To protect against construction on Lots or Structures which is of poor design or quality

and to encourage construction of improvements utilizing good quality and attractive material and good architectural and planning standards compatible with other improvements on the Property.

(e) To preserve and enhance the amenities in the Property and provide for the orderly management of the Common Areas.

ARTICLE 3 PROPERTY RIGHTS AND RESPONSIBILITIES

3.01 Owner's Easements of Enjoyment. Every Owner shall have, and Declarant hereby grants to every Owner, itself and the Association, a nonexclusive right and easement of enjoyment and use in and to the Common Areas and whether or not designated as Common Area and regardless of fee simple ownership, all roadways, walkways, sidewalks, and entries and exits within the Property, which easement shall be appurtenant to and pass with the title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following provisions:

(a) The right (but not the obligation) of the Association, following approval of the Board, to (i) dedicate or transfer all or any portion of the roads to any public agency or governmental entity so that such roads shall be maintained as public roads and (ii) dedicate or transfer to any public or private utility or governmental authority drainage, sewage and/or utility easements on any part of the Common Areas, all subject to such conditions as the Board may determine is reasonable. The rights of the Association under this Section 3.01(a) shall not be subject to the provisions of Section 3.01(d) below.

(b) The right of the Association, subject to the provisions of Section 3.01(d) below, to mortgage, pledge, hypothecate or otherwise encumber any or all of the Association's real or personal property as security for money borrowed or debts incurred for the purpose of improving or maintaining the Common Areas or providing the services authorized by this Declaration; provided, however, that the Association shall not be entitled to encumber (i) the roads, drainage easements or stormwater holding, detention and/or retention ponds, or (ii) any real estate which is not owned in fee simple by the Association unless the fee simple owner of the applicable easement area consents thereto (it being agreed that the provisions of this paragraph following the phrase "provided, however," may not be amended without the consent of all Owners which would be affected thereby).

(c) The right of the Association, subject to the provisions of Section 3.01(d) below, to give or sell or otherwise transfer all or any part of the Common Areas to any governmental entity, public authority, public service district, or public utility for such purposes and subject to such conditions as may be agreed upon by the Members as provided in Section 3.01(d) below; provided, however, that (i) this Section 3.01(c) shall not permit the Association to materially alter or deny access over the roads to an Owner's Lot unless such Owner consents thereto and (ii) the Association shall not be entitled to transfer any real estate under this Section 3.01(c) which is not owned in fee simple by the Association unless the fee simple owner of the applicable easement area consents thereto (the provisions of this paragraph following the phrase "provided, however," may not be amended without the consent of all Owners which would be affected thereby).

(d) The rights of the Association under Sections 3.01(b) and (c) above are subject to authorization by the affirmative vote of sixty-seven percent (67%) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article 4, and subject to the requirement that written notice of the meeting and of the proposed action is sent to every Member of the Association at least ten (10) days but not more than sixty (60) days prior to such meeting. A true copy of such resolution, together with a certificate of the results of the vote taken thereon, shall be made and

acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument affecting the Common Areas. Such certificates shall be conclusive evidence of authorization by the membership.

3.02 Limitations Upon Use of Common Areas. As provided in Section 5.04, the Board may establish reasonable rules and regulations concerning the use of the Common Areas and facilities located thereon.

3.03 Owner's Maintenance and Repair of Lots.

(a) Each Owner shall, at its sole cost and expense, maintain his or her Lot and all landscaping and improvements comprising the Lot in a manner consistent with the requirements and standards in the Governing Documents, the Community-Wide Standard and all applicable covenants.

(b) Without limiting the foregoing, each Owner shall maintain, repair, service, replace and resurface its Lot, including without limitation, landscaping, parking surfaces, parking lot lights, irrigation systems, dumpster enclosures, equipment and personal property constituting part of its Lot so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair, consistent with that of a first class project.

(c) Notwithstanding the provisions of Section 3.03(b) above, in order to ensure consistency in the appearance and to protect property values, Declarant, during the Class B Control Period and thereafter, the Association, may in its sole discretion, require that all Lot landscaping, parking surface maintenance, parking lot light maintenance, irrigation system maintenance, trash and recyclables removal, and/or grease trap maintenance be performed by the same company or provider for the applicable service on all Common Areas and all Lots. In such event, the costs of any such services allocated to each Lot shall be the responsibility of the applicable Owner and shall be billed directly to and paid directly by each Owner. Nothing in this section shall be construed to obligate Declarant or the Association to require the use of the same company or provider for maintenance services. In addition, Declarant during the Class B Control Period and thereafter, the Association, shall be permitted to modify or cancel existing contracts for services entered into by Declarant in its discretion after first providing each Owner with reasonable notice.

ARTICLE 4 ORGANIZATION AND FUNCTION OF ASSOCIATION

4.01 Membership. Every Owner of a Lot shall be a Member of the Association during the period such Owner holds its fee simple interest. If fee simple title to a Lot is held by more than one person, each such person shall be a Member but the voting rights with respect to such Lot shall be exercised jointly in the manner hereinafter provided. An Owner of more than one Lot is entitled to one membership for each Lot owned. Each membership is appurtenant to and may not be separated from the Lot upon which it is based and such membership shall be transferred automatically by conveyance of fee simple title to that Lot. No person other than a fee simple Owner of a Lot may be a Member of the Association, and a membership in the Association may not be transferred except by the transfer of title to a Lot.

4.02 Voting. The Association shall have two (2) classes of voting membership. The votes aggregated from both voting memberships shall constitute the total outstanding votes available for voting purposes in determining the action of the Association on any matter to be approved by vote (herein "Outstanding Votes").

(a) Class "A". So long as there is Class B membership, "Class A Members" shall be all Owners except the Declarant. The number of votes appurtenant to a Lot owned by a Class A Member shall be computed as follows:

The number obtained by rounding the Useable Acreage of an Owner's Lot to the nearest whole number shall be the total number of votes appurtenant to such Owner's Lot (*i.e.*, there shall be no fractional votes).

Upon termination of the Class B membership, Class A Members shall be all Owners, including the Declarant (assuming Declarant remains an Owner). If only one of a number of co-owners of a Lot is present at a meeting of the Association, the co-owner who is present shall be entitled to cast all the votes allocated to that Lot. If more than one of the co-owners is present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority-in-interest of the co-owners. Majority agreement is conclusively presumed if any one of the co-owners casts the votes allocated to that Lot without protest being made to the person presiding over the meeting by any of the other co-owners of the Lot.

(b) Class "B". The "Class B Member" shall be the Declarant. The Class B Member may appoint and remove the members of the Board during the Class B Control Period (as defined herein). During the Class B Control Period, the number of votes that the Class B Member shall be entitled to cast in Association matters shall be determined as follows:

The number obtained by rounding the Useable Acreage of the Class B Member's owned portions of the Property and Additional Property (which can be calculated together or separated into lots as shown on the Master Plan) to the nearest whole number, and multiplying such whole number by 3 shall be the total number of votes appurtenant to the Class B Member's property.

The Class B membership shall cease to exist and shall automatically be converted to Class A membership upon the termination of the Class B Control Period (as defined herein). For purposes of this Declaration, the "Class B Control Period" shall mean the period beginning on the date of this Declaration and terminating upon the earliest to occur of the following events:

- (i) the voluntary relinquishment by the Declarant of its right to Class B membership by an instrument recorded in the Registry;
- (ii) the date on which the Declarant no longer owns any portion of the Property or any Additional Property; or
- (iii) December 31, 2050.

(c) The total Outstanding Votes in the Association may vary from time to time depending upon the number of Lots sold by Declarant. A quorum consisting of ten percent (10%) of the Outstanding Votes represented by Members in attendance or by proxy will be necessary to vote on all decisions to be made by the Association pursuant to the terms of its Articles and Bylaws, with a simple majority of the Outstanding Votes then present or represented by proxy being necessary for approval or disapproval of an action of the Association (unless a greater percentage is required by this Declaration or the Articles or Bylaws for any specific action).

(d) The Bylaws shall establish reasonable procedures whereby the Association shall, prior to each meeting of the Members, prepare a voting list setting forth the Members entitled to vote together

with the number of votes which may be exercised by each Member and the basis upon which the votes were calculated. If requested in writing by a Member, the Association will deliver to such Member annually a copy of the current voting list.

4.03 Executive Board. The Board shall be established and maintained in accordance with the Articles, this Declaration and the Bylaws.

4.04 Amplification. The provisions of this Declaration may be implemented and amplified by the Association's Articles and Bylaws; but no such implementation or amplification shall alter or amend substantially any of the rights or obligations of the Owners set forth in this Declaration. The provisions of this Declaration and the Articles and Bylaws shall be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, the provisions of this Declaration shall control anything in the Articles or Bylaws to the contrary.

ARTICLE 5 RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

5.01 Common Areas. Subject to the rights of Owners and Declarant as set forth in this Declaration, the Association has exclusive management and control of the Common Areas and all improvements thereon and all furnishings, equipment and other personal property relating thereto.

(a) The Association's duties with respect to such Common Areas include, but are not limited to, the following: (i) the maintenance of the Common Areas; (ii) the management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, irrigation systems, equipment and personal property constituting part of the Common Areas or located upon the Common Areas so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair; (iii) all landscaping and irrigation of the Common Areas and landscaped areas and islands within Road right of ways, whether public or private; (iv) the maintenance of adequate public liability, property casualty and hazard insurance for the benefit of the Association with respect to the Common Areas; (v) the payment of all taxes and assessments validly levied, assessed or imposed with respect to Common Areas; and, (vi) the management, operation, maintenance, repair, servicing, replacing and renewal of all roads and all improvements thereon; provided, however, that following the irrevocable acceptance of the roads for maintenance as public rights of way by the applicable governmental entities, the maintenance obligations of the Association for the roads shall only be the extent such activities are not performed by the applicable governmental entities. The Association also may provide other services, such as, but not limited to, security services as the Association deems appropriate.

(b) Notwithstanding anything herein to the contrary, certain portions of the Common Area are required to be maintained, repaired and replaced by the Road Association pursuant to Cross Access Agreement (as such terms are defined in Article 1 of this Declaration). Therefore, to the extent that any of the Common Areas defined herein are also considered "Access Common Areas" in the Cross Access Agreement, neither the Owners or the Association have a duty to maintain such areas (other than in the case of damages caused by construction or negligence as provided below). Provided however, Scotts Hill Medical Park is obligated to contribute towards Access Common Area Expenses via assessments to the Road Association as further provided in the Cross Access Agreement and in Section 5.07 of this Declaration.

(c) In the event that the need for maintenance upon or replacement of the Common Areas is caused (i) by construction activities on a Lot by an Owner or its agents or contractors, or (ii) by the willful

or negligent acts of any Owner or its agents or contractors, then the cost of such maintenance, replacement or repairs shall be borne exclusively by such Owner, shall be added to and become a part of the assessments to the Lot or Lots of such Owner, and shall constitute a Specific Assessment.

5.02 Services. The Association may obtain and pay for the services of any person to manage its affairs to the extent the Board deems advisable, as well as such other personnel as are furnished or employed directly by the Association or by any person with whom it contracts. Without limitation, the Board may obtain and pay for legal and accounting services necessary or desirable in connection with the Common Areas or its duties and rights under this Declaration, the Articles, the Bylaws and/or the Rules and Regulations (as defined in Article 1); provided, however, the Declarant shall bear all costs to establish this Declaration and related documents required to initially establish the Association.

5.03 Property Owned by Association; Conveyance of Common Areas by Declarant. The Association may acquire, hold, and dispose of real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in the Articles and Bylaws. The Declarant agrees to convey to the Association (by easement or in fee simple) the then-established Common Areas within three (3) months following the termination of the Class B membership; provided, however, the Declarant shall be entitled, in the Declarant's sole discretion, to convey all or any portion of the Common Areas to the Association prior to the deadline provided above. The Association shall accept title to such Common Areas subject to all easements, encumbrances and restrictions of record. All costs, if any, associated with such transfer or assignment shall be borne by the Declarant. Notwithstanding anything herein to the contrary, Declarant reserves the right to convey those portions of the Common Area that are also defined as "Access Common Areas" in the Cross Access Agreement to the Road Association, rather than the Association.

5.04 Rules and Regulations. The Rules and Regulations shall be consistent with the rights and duties established by this Declaration (although same may further restrict the use of the Common Areas). The Rules and Regulations shall be binding upon the Owners, and, subject to applicable laws, the Association shall have the right to establish penalties and fines for any infractions of this Declaration, the Articles, the Bylaws and the Rules and Regulations (including, without limitation, monetary fines and other sanctions for violation of the rules which may be collected by a lien and foreclosure as a Specific Assessment). The validity of the Association's Rules and Regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property as a first class project.

5.05 Implied Rights. The Association may exercise any other right, power or privilege given to it expressly by this Declaration, its Articles or Bylaws, and every other right, power, or privilege reasonably to be implied from the existence of any right, power, or privilege so granted or reasonably to effectuate the exercise of any right, power, or privilege so granted. The Association shall have the power to do any and all lawful things which may be authorized, required, or permitted to be done by the Association under and by virtue of this Declaration and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the safety and/or general welfare of the Owners. Without in any way limiting the generality of the foregoing, after five (5) days' written notice with a specified time stated to adhere to the provisions set forth herein, the Association shall have the power and authority at any time and from time to time, without liability to any Owner, to enter onto any Lot for the purpose of enforcing any and all of the provisions called for herein, or for the purpose of maintaining and repairing any such Lot if, for any reason whatsoever, the Owner thereof fails to maintain or repair such Lot as required pursuant to this Declaration, whereupon the Association may assess all costs incurred against the Lot as a Specific Assessment. The Association shall also have the power and authority from time to time, in its own name, on its own behalf or on behalf of