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NB Ammons Acres, LLC
4020 Westchase Blvd., Suite 150
Raleigh, NC 27607

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Please index in Grantor index under "NB Ammons Acres, LLC"
Please index in Grantee index under "Ponder" and "Ponder Community Association, Inc."

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

PONDER

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA.

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

EXCEPT AS EXPRESSLY PERMITTED IN SECTION 3.4 OR APPROVED PURSUANT TO ARTICLE IV OF THIS DECLARATION, NO PERSON SHALL DISPLAY ANY FLAG (INCLUDING THE FLAG OF THE UNITED STATES OR THE STATE OF NORTH CAROLINA) OR ANY SIGN OF ANY KIND (INCLUDING, WITHOUT LIMITATION, POLITICAL SIGNS) ON ANY LOT.

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PONDER

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made by NB AMMONS ACRES, LLC, a Delaware limited liability company authorized to do business in North Carolina, on behalf of itself, its successors, and assigns ("**Declarant**").

PART ONE: INTRODUCTION TO THE COMMUNITY

NB Ammons Acres, LLC, as the developer of Ponder, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance and preservation of residential properties within Ponder.

ARTICLE I CREATION OF THE COMMUNITY

1.1. Purpose and Intent

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

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

1.2. Binding Effect

All property described in **Exhibit "A**," and any additional property which is submitted to this Declaration in the future by amendment to this Declaration or by recording one or more Supplemental Declarations in accordance with Article IX hereof (referred to collectively in this Declaration as the "**Community**"), shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Community, their heirs, successors, successors-in-title, and assigns.

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

1.3. Governing Documents

The governing documents for the Community consist of:

- this Declaration and such Supplemental Declarations as may be recorded from time to time;
- the Association's Articles of Incorporation and By-Laws;

- the Design Guidelines described in Article IV; and
- the Rules described in Article III;
- such resolutions as the Association's Board of Directors may adopt;

all as they may be amended (the "**Governing Documents**").

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

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

Diagram 1.1 identifies the various Governing Documents and their functions.

GOVERNING DOCUMENTS	
Declaration: (recorded)	this Declaration of Covenants, Conditions and Restrictions for Ponder, which creates obligations that are binding upon the Association and all present and future owners of property in the Community
Supplemental Declaration: (recorded)	a recorded Supplemental Declaration, which may submit additional property to this Declaration, designate special areas as described in Section 7.3, impose additional covenants, restrictions and easements over the property described in the Supplemental Declaration, create exceptions to this Declaration to reflect the different character of such property, or any of the foregoing
Articles of Incorporation: (filed with Secretary of State)	the Articles of Incorporation of Ponder Community Association, Inc., as they may be amended, which establish the Association as a nonprofit corporation under North Carolina law
By-Laws: (copy attached as Exhibit "D")	the By-Laws of Ponder Community Association, Inc. adopted by its board of directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc.
Design Guidelines: (Declarant adopts, unrecorded)	the design standards and architectural aesthetics guidelines adopted pursuant to Article IV, as they may be amended, which govern new construction and modifications to property in the Community, including structures, landscaping, and other items constructed or installed by anyone other than the Declarant
Rules: (initial Rules attached as Exhibit "C")	the rules of the Association, which regulate use of property, activities, and conduct within the Community and other matters as authorized in Section 3.2, as they may be amended, expanded, and repealed
Board Resolutions: (Board adopts)	the resolutions adopted by the Association's board of directors to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of property that the Association owns or controls

Table 1.1 – Governing Documents

ARTICLE II CONCEPTS AND DEFINITIONS

2.1. Defined Terms

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below or in the paragraph where the term first appears in bold print. An index to defined terms may be found following the Table of Contents at the beginning of this Declaration.

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

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

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

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

"**Association**": Ponder Community Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.

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

"**Builder**": Any Person who: (i) purchases one or more Units from the Declarant or a Builder for the purpose of constructing a dwelling thereon for later sale to consumers; purchases one or more parcels of land within Ponder from the Declarant for further subdivision, development, and/or resale in the ordinary course of its business; or is a landbanking entity that acquires and holds the land for future sale to a Builder; and (ii) is designated a "Builder" hereunder in a written instrument executed by the Declarant.

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

"**Common Area**": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Limited Common Area, as defined below. In the event the Association acquires a Unit following foreclosure of its lien or by other means, such Unit shall not be considered part of the Common Area unless the Unit is held by the Association for the use and benefit of all Owners.

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

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

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

	COMMUNITY-WIDE STANDARD	
	The higher of:	
MINIMUM STANDARDS	**OR**	**PREVAILING STANDARD**
Design Guidelines		
Rules		
Resolutions of Board		
Example set by Declarant, Board		

Diagram 1.2. Community-Wide Standard

"**Covenant to Share Costs**": Any declaration of easements and/or covenant to share costs which Declarant executes and records that creates certain easements for the benefit of the Association or the present and future owners of the real property described therein, and/or that obligates the Association and such owners to share the costs of maintaining certain mutually beneficial property or providing mutually beneficial services, as described in such Covenant to Share Costs.

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

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

"**Declarant Control Period**": The period of time during which the Declarant is entitled to appoint a majority of the members of the Board, as provided in Article III of the By-Laws. The Declarant Control Period shall commence on the date of incorporation of the Association and shall terminate upon the first to occur of the following:

(a) the date that 100% of the total number of Units permitted by the Master Plan for the property described in Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders; or

(b) 30 years from the date of recording of this Declaration; or

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

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

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

"**Development and Sale Period**": The period of time between the recording of this Declaration and the date as of which (i) the Declarant, any Declarant Affiliate, and Builders cease to own any property subject to this Declaration; (ii) the Declarant's right to unilaterally expand the Community pursuant to Section 9.1 has expired; and (iii) every Unit has become an Improved Unit.

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

"**Governing Documents**": This Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, the Rules, and Board resolutions, all as they may be amended.

"**Improved Unit**": A Unit (as defined herein) which has been improved with a dwelling that either: (i) has been issued a certificate of occupancy by the applicable governmental authority and is owned by a Person other than a Builder; or (ii) is or has been occupied for residential purposes. For purposes of this definition, use of a dwelling by Declarant or a Builder as a sales office, business office, and/or model home shall not constitute use for residential purposes.

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

"**Master Plan**": The land plan for the development of Ponder approved by the Town of Wendell, North Carolina and/or Town of Zebulon, North Carolina, as it may be supplemented or amended. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to submit such property to this Declaration, nor shall the omission of any property from the Master Plan bar its later submission to this Declaration as provided in Article IX.

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

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

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

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

"**Ponder**": All of the real property described or depicted on the Master Plan, whether or not it has been made subject to this Declaration.

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

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

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

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

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

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

"**Supplemental Declaration**": An instrument recorded pursuant to Article IX which subjects additional property to this Declaration, designates Service Areas, and/or creates or imposes additional easements, restrictions and obligations on the land described in such instrument. A Supplemental Declaration need not be named as such, and a Supplemental Declaration may consist of a recorded plat or deed if the instrument describes the additional property, provides that such property is subject to the provisions of this Declaration, and is executed by the party or parties required under Article IX hereof.

"**Unit**": A portion of the Community, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings which has been submitted to a condominium regime with the Declarant's approval, each "unit" as defined by state law and/or the recorded condominium instruments shall constitute a separate "Unit" hereunder.

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

Units may be combined or further subdivided, and boundary lines of Units may be changed, only by recording of a plat or other legal instrument further subdividing or resubdividing the parcel of property (which subdivision shall be subject to such other restrictions as may be set forth in this Declaration or the Rules). In the absence of recording such a legal instrument, ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single dwelling.

2.2. Interpretation of Certain References

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

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

(c) *Notice*. All references in this Declaration and the By-Laws to "**notice**" shall refer to notice delivered in accordance with the provisions for notice set forth in the By-Laws, unless the context or North Carolina law authorizes or requires notice to be delivered in a different manner.

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

2.3. Conflicts and Ambiguities

In the event of a conflict between or among applicable law and the Governing Documents, applicable law shall control. In the event of a conflict between or among any of the Governing Documents, then this Declaration, the Articles of Incorporation, the By-Laws, the Design Guidelines, and the Rules shall control, in that order, to the extent not inconsistent with applicable law. If there is a conflict between the Declaration and any additional provisions set forth in a Supplemental Declaration applicable only to the property described in such Supplemental Declaration, the Supplemental Declaration shall control as to such property.

For purposes of this provision, a "conflict" shall exist when requirements of two or more documents or laws are inconsistent and mutually exclusive, making compliance with all such requirements impossible. If two or more of the foregoing impose requirements that address the same matter, but are not inconsistent or mutually exclusive, both shall be complied with, it being the intent that the Governing Documents shall supplement, and may be more restrictive or expansive than, applicable law to the extent permitted by applicable law, and that one Governing Document may be more restrictive or detailed than another so long as not in conflict with the document that would control under this paragraph in the event of a conflict.

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

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

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

The Board may, by resolution, resolve any ambiguities in the Governing Documents, and the Board's reasonable interpretation of an ambiguous provision shall be determinative.

* * *

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

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

ARTICLE III USE AND CONDUCT

3.1. Framework for Regulation

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

3.2. Rule Making Authority

(a) ***Declarant Authority***. So long as the Declarant has the right unilaterally to amend this Declaration pursuant to Section 19.1, the Declarant may unilaterally amend the Rules to add new Rules or to modify or rescind existing Rules.

(b) ***Board Authority***. Subject to the terms of this Article and the Board's duty to exercise its powers in a reasonable, fair and nondiscriminatory manner, the Board may modify, cancel, limit, create exceptions to, or expand the Rules by majority vote of the directors at any meeting. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval.

(c) ***Member Authority***. Subject to the terms of this Article, Members may, at an Association meeting duly called for such purpose, modify, cancel, limit, create exceptions to, or expand the Rules then in effect upon approval of persons entitled to cast more than 50% of the total Class "A" votes in the Association. In addition, during the Development and Sale Period, any such action shall require the written consent of Declarant.

(d) ***Notice of Proposed Rule Change***. The Board shall send notice to all Owners or publish notice in a community newsletter or on a community intranet or website concerning any Rule change proposed under subsections (b) or (c) above at least five business days prior to the meeting of the Board or Members at which such action is to be considered. At any such meeting, Members shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(e) ***Effective Date***. Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Rules to each Owner. The effective date shall be no less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Rules then in effect to any requesting Member or Mortgagee.

(f) ***Limitation***. No action taken under this Article shall have the effect of modifying, repealing or expanding the Design Guidelines or any provision of this Declaration other than the initial Rules set forth in Exhibit "C." The procedures set forth in this Section 3.2 do not apply to Rules that the Board may adopt establishing administrative policies, such as payment procedures, or to procedures and operating policies relating to the Common Area, such as use rules or health and safety regulations, notwithstanding that such policies or procedures may be published as part of the Rules. The posting of such operating policies and fees in a conspicuous manner and location within the Community, on the Association's website, or the publication in a newsletter of general circulation within the Community shall be deemed sufficient notice to all users.

3.3. Owners' Acknowledgment and Notice to Purchasers

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

3.4. Protection of Owners and Others

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

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

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

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

(d) ***Political Signs***. No rule shall regulate or prohibit the indoor or outdoor display of a political or campaign sign on a Unit by the Owner or occupant of the Unit, except that the Association may adopt rules (i) prohibiting the display of political signs earlier than 45 days before the day of the election and later than seven days after an election day, and (ii) regulating the size and number of political signs that may be placed on a Unit, subject to the limitations set forth in Section 47F-3-121 of the Act. For the purposes of this subsection (d), "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot. Notwithstanding the foregoing, the Rules may prohibit signs or displays containing profanity, obscene graphics or markings, that are patently offensive to a passerby, or contain derogatory terms referring to a candidate's race, ethnicity, religion, sexual orientation, as determined by the Board.

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

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

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

(h) ***Alienation***. No rule shall prohibit the transfer of any Unit, or require consent of the Association or Board for the transfer of any Unit.

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

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

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

3.5. Restriction on Occupancy

Occupancy of each Unit shall be limited to that number of persons equal to twice the number of bedrooms shown on the plans for the Unit approved pursuant to Article IV or, alternatively, up to two adults and all children under the age of 18 for whom either or both of such adults are the parent, legal custodian, or designee authorized in writing by the child's parent or legal custodian to care for the child. For purposes of this Section, a person shall be deemed to be in "occupancy" if they stay overnight in the Unit more than 7 nights, consecutive or nonconsecutive, in any 30-day period or more than 14 nights in any 6-month period.

3.6. Leasing of Units

(a) ***Definition***. "**Lease**" and "**leasing**," as used in this Declaration, refers to occupancy of a Unit by any person other than an Owner of the Unit, the Owner's parent or adult child, or the beneficiary of an Owner which is a trust (any of which shall be an "**Owner Substitute**") when the Owner or an Owner Substitute is not occupying the Unit. For purposes of this Section, an Owner or Owner Substitute shall be considered to be occupying the Unit only if they furnish and maintain the Unit as their principal residence and regularly reside in the Unit except during occasional brief periods of travel out of town.

(b) ***Restriction on Leasing***. In order to maintain the predominantly owner-occupied character of the Community and facilitate the financing of Unit purchases, leasing of Units shall be prohibited except as specifically authorized in Section 3.6(c) and (d), and then subject to the conditions set forth in Section 3.6(e). Any leasing transaction which is not authorized under Section 3.6(c) or (d) shall be voidable at the option of the Board.

(c) ***Exemptions***.

(i) Hardship Exemption. The Board may (but shall not be obligated to) allow leasing of a Unit not otherwise exempt under this Section 3.6(c) or authorized to lease under Section 3.6(d), if the Board deems it appropriate to avoid undue hardship to the Owner, including, but not limited to, a situation in which:

(A) the Owner who has been occupying the Unit must relocate his or her residence more than 30 miles from the Community and has been unable, within six months from the date that the Unit was placed on the market, to sell the Unit for a price no greater than the current appraised market value, after having made reasonable efforts to do so;

(B) the Owner who has been occupying the Unit dies and the Unit is being administered by his or her estate; or

(C) the Owner who has been occupying the Unit temporarily relocates and intends to return to reside in the Unit.

Any Owner who believes that he or she must lease its Unit to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing and such other information as the Board may reasonably require. Upon the Board's written approval of such application, the Owner may lease the Unit for such duration as the Board reasonably determines necessary to prevent undue hardship. Upon expiration of such authorized period, any lease of the Unit shall terminate unless the Owner has applied for and been granted an extension of the hardship exception, which may be granted or withheld in the Board's sole discretion.

(ii) Exemptions for Builders' Models. Any Unit which a Builder sells and leases back for the Builder's use as a model home shall be exempt from the restriction on leasing under Section 3.6(b) during the term of the Builder's lease or such period as the Builder continues to be engaged in construction and sale of homes in the Community, whichever is shorter (the "**Exemption Period**"), provided the Unit is maintained and used as the Builder's model home and is not occupied for residential purposes during such Exemption Period.

(iii) Exemption for Institutional Lenders. An institutional lender which acquires title to a Unit upon foreclosure of its first priority deed of trust on the Unit or by a deed in lieu of such a foreclosure may lease the Unit so long as owned by such lender; however, this subsection (c)(iii)) shall not permit leasing by any Owner, other than such lender, who purchases the Unit at a foreclosure sale or acquires title to the Unit from the lender subsequent to the foreclosure of a deed of trust or granting of a deed in lieu of foreclosure.

(iv) Exemption for Build-to-Rent Zone. Any Unit which is part of a Build-to-Rent Zone (as defined in subsection (f) hereof) may be leased in accordance with the provisions of such subsection.

(d) ***Permission to Lease***. Subject to the limitation set forth in Section 3.6(e)(xi), an Owner of a Unit which does not qualify for an exemption under subsection (c) and which is improved with a dwelling for which a certificate of occupancy has been issued ("**Non-Exempt Unit**") may submit a written request to the Board for permission to lease. The Board shall grant such request unless, at the time such request is considered, 10% or more of the Non-Exempt Units in the Community have permission to lease pursuant to this subsection (d), in which case the Board shall deny such request and place the Unit on a waiting list for permission to lease. Such waiting list shall be maintained in the order in which the Association receives the Owners' applications for permission to lease hereunder.

At such time as the percentage of Non-Exempt Units which have permission to lease pursuant to this subsection (d) drops below 10%, the Board shall notify the Owner of the Unit at the top of the waiting list that such Owner has been granted permission to lease. The Owner shall have 90 days after the date of such notice within which to enter into a written lease agreement and provide a copy to the Board or the permission to lease shall expire. If a lease is executed within such initial 90-day period and, at any time thereafter, there is a period of more than 90 consecutive days in which the Unit is not occupied by a tenant pursuant to a lease which complies with this Section 3.6, permission to lease shall expire.

If the Board fails to respond to a written request for permission to lease within 30 days after receipt of such request, the Owner may give written notice to the Board by certified mail, return receipt requested, that the Owner intends to lease the Unit and, if such lease would not result in Owners of more than 10% of the Non-Exempt Units in the Community having permission to lease pursuant to this subsection (d), then permission to lease shall be deemed granted effective as of the fifth (5th) day following the Board's receipt of such notice.

(e) ***Permitted Leasing***. To the extent that leasing of a Unit is permitted under this Section 3.6, the leasing activity shall be subject to the following:

(i) No signs advertising the Unit for rent or lease or otherwise indicating that the Unit is available for rent or lease shall be permitted within the Community or on public rights-of-way adjacent to the Community.

(ii) All leases shall be in writing and shall be in a form specified or approved in advance by the Board. All leases shall have an initial term of at least 12 months, unless the Unit is being leased pursuant to an exemption under Section 3.6(c), in which case the term of the lease shall expire no later than termination of the exemption. If the lease is terminated or the persons occupying the Unit under the lease vacate the Unit within the initial term required hereunder, the Unit may not be leased or subleased to another lessee until expiration of such minimum initial term, unless otherwise approved in advance by the Board.

(iii) Units may be leased for residential purposes only; advertising or rental of Units for parties, events, filmmaking, or other commercial purposes is not permitted. Units may be leased only in their entirety; no fraction, portion, or rooms constituting less than the entire Unit may be leased.

(iv) At least 14 days prior to the effective date of a lease, the Owner of the Unit to be leased shall deliver to the Association written notice of intent to lease, together with a copy of the proposed lease, the name of the lessee and all other people occupying the Unit, and such additional information as the Board may require. The Board may reject the proposed lease by written notice to the Owner within 10 days after receipt of the Owner's notice of intent to lease, if the Board or its designee determines that the Unit is not eligible to be leased under this Section 3.6 or the proposed lease is not in an acceptable form. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee. If the Board does not reject the proposed lease by written notice to the Owner within such 10 day period, the lease shall be deemed acceptable.

The notice of any lease shall also be accompanied by a fee ("**Administrative Lease Fee**") in such reasonable amount as the Board may establish from time to time, to help fund anticipated costs of processing lease applications, updating resident records, issuing identification cards to the occupants of leased Units, and other administrative burdens associated with leasing. The Board may also require payment of (A) a deposit for each identification card, key or other form of pass issued to the occupants of the leased Unit to permit access to recreational facilities, which deposit shall be refunded if the item is returned in usable condition upon termination of the lease; and (B) a security deposit which the Association shall hold in escrow and may draw upon to reimburse the Association for any reasonable expenses which the Association incurs to repair damages or cure any violation of the Declaration or Association rules which it determines, after notice and an opportunity for a hearing pursuant to the By-Laws, to have been caused by the acts or omissions of the occupant of the leased Unit, or to exercise any rights or remedies under this Section 3.6. If the Board draws upon such security deposit, it shall notify the Owner and the Owner shall restore the security deposit to 100% of the original amount within 10 days after the date of such notice, unless the Unit is no longer being leased.

(v) There shall be no subleasing of Units or assignment of leases without prior written approval of the Board.

(vi) The Owner of a leased Unit shall provide to the lessee copies of the Declaration, By-Laws, and the Rules prior to the lessee entering into any agreement to lease a Unit.

(vii) Every lease of a Unit shall be deemed to contain the following provisions, whether or not expressly stated therein:

<u>Contingency for Board Verification</u>. The lessee acknowledges that, notwithstanding the effective date or lease term set forth in this lease, this lease shall not take effect unless and until

submitted to the board of directors of Ponder Community Association, Inc. for verification of the lessor's eligibility to lease the premises and that the lease is in an acceptable form.

Compliance With Governing Documents. The lessee acknowledges receipt of a copy of the Declaration of Covenants, Conditions, and Restrictions for Ponder and the other governing documents referenced therein ("Governing Documents") and agrees to comply with the Governing Documents and to control the conduct of all other occupants and guests of the leased premises in order to ensure their compliance. Any violation of the Governing Documents by the lessee, any person residing in the Unit, or any guest of the lessee or other members of the lessee's household shall constitute a default under the terms of the lease and shall authorize the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. The Owner hereby delegates and assigns to Ponder Community Association, Inc., acting through its board of directors, the power and authority to enforce this provision against the lessee, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof.

(viii) Notwithstanding its rights under this Section 3.6, the Association shall have no duty to take action to evict the occupants of a leased Unit and no liability to any Person for not exercising its rights hereunder. However, in the event the Association proceeds to evict a lessee pursuant to the foregoing provision, the Association may apply any security deposit required under clause (iv) of this subsection (e) toward payment of any costs, including attorney's fees and court costs, associated with the eviction and any costs not covered by such security deposit shall be an assessment against the Unit, secured by the Association's lien under Section 8.6 of this Declaration.

(ix) The Owner of a leased Unit shall be responsible for any violations of the Governing Documents by the lessee or other occupants of the Unit, notwithstanding that the lessee and occupants are fully liable and may be sanctioned for their violations. In the event that the Association imposes a fine for violation of the Governing Documents by the lessee or occupants of the leased Unit, the Association shall give notice to the Owner and the lessee and the Owner shall be responsible for payment if the lessee fails to pay the fine. Unpaid fines shall constitute a lien against the Unit.

(x) When an Owner who is leasing his or her Unit is more than 30 days delinquent in paying any assessment or other charge due to the Association, then the delinquent Owner shall be deemed to have assigned to the Association the right, at the Association's option, to collect any rents due from the lessee during the period of such delinquency, and, upon the Board's written request to the lessee, the lessee shall pay to the Association all rents otherwise payable under the lease up to the amount of such delinquency. The lessee need not make such payments to the Association in excess of, or prior to the due dates for, periodic rental payments unpaid at the time of the Board's request. Notwithstanding anything to the contrary in the lease, all such payments made by the lessee shall reduce, by the same amount, the lessee's obligation to make monthly rental payments to the lessor. The Association may, but shall have no duty to, exercise its rights under this subparagraph (x) or take legal action to collect rents from any lessee pursuant to this subparagraph, and nothing in this subparagraph shall be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she is otherwise responsible.

(xi) The leasing of multiple Units by a single Owner, or the leasing of multiple Units by two or more Owners related by blood, adoption, or marriage, or by Owners with a common ownership interest, or by a group of Owners under the control or direction of a single Owner, shall be prohibited, except that this prohibition shall not apply to restrict the leasing of two or more Units: (A) by an institutional lender pursuant to Section 3.6(c)(iii) following foreclosure of such Unit(s); or (B) within a Build-to-Rent Zone by the Build-to-Rent Owner.

(xii) Upon a determination, after notice and a hearing in accordance with the By-Laws, that the Owner of a leased Unit has failed to comply with the provisions of this Section 3.6 and, if capable of being cured, has failed to cure such non-compliance within 10 days after the date of written notice from the Association of such non-compliance, the Board may terminate such Owner's eligibility to lease the Unit and prohibit such Owner from leasing any Unit in the future.

(f) ***Build-to-Rent Zone.*** A "**Build-to-Rent Zone**" is a portion of the Community designated as such in an applicable Supplemental Declaration and in which: (i) title to all Units is held under single ownership; (ii) all Units improved with a dwelling are under common management and leased or offered for lease except during such periods as are reasonably necessary to undertake construction, maintenance, repairs and renovations; and (iii) all such leases comply with all provisions of Section 3.6(e) except for clause (xi). The designation of a portion of the Community as a "Build-to-Rent Zone" shall be made in a Supplemental Declaration or amendment thereto executed and recorded by the Declarant applicable to such portion of the Community, which Supplemental Declaration describes the Units initially comprising such Build-to-Rent Zone, all of which shall be owned by a single Owner at the time of such designation. Any such designation shall require the consent of the Owner of the Unit at the time of such designation, such consent to be evidenced by such Owner's execution of the Supplemental Declaration or amendment thereto.

Notwithstanding such designation, at such time as title to any Unit within such Build-to-Rent Zone is conveyed to an Owner other than the Owner of all other Units within such Build-to-Rent Zone and/or the Unit ceases to meet the requirements of clauses (ii) or (iii) in the above paragraph, and the Owner fails to cure within 30 days after written notice from the Association, such Unit shall cease to be part of the Build-to-Rent Zone (provided, however, if any such failure can be remedied but not within the 30-day cure period, so long as the Owner has commenced efforts to cure and is diligently pursuing same, such 30-day period may be extended as reasonably necessary for the Owner to complete the cure), but the remaining Units shall continue to constitute a Build-to-Rent Zone so long as they meet the requirements under clauses (i), (ii), and (iii) above as well as any additional requirements that may be imposed by the Supplemental Declaration creating such Build-to-Rent Zone. As used in this Declaration, the term "**Build-to-Rent Unit**" refers to a Unit within a Build-to-Rent Zone, and "**Build-to-Rent Owner**" refers to the Owner of such Build-to-Rent Units.

3.7. Short-Term Lodging

No Person shall advertise, offer, or operate any Unit or portion thereof as a hotel, inn, bed and breakfast, vacation rental, or other lodging for which a fee or other monetary compensation is to be charged. If leasing of a Unit is permitted under Section 3.6, this Section shall not preclude advertising or offering of such Unit for lease, or leasing of such Unit, in full compliance with Section 3.6.

ARTICLE IV ARCHITECTURE AND LANDSCAPING

4.1. General

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

This Article and the Design Guidelines shall not be construed to prohibit solar collectors on Units; provided, the Design Guidelines and/or the Reviewer (as defined in Section 4.2) may regulate the location or screening of solar collectors, which may specifically include, but not be limited to, prohibiting locating solar collectors that are visible by a person on the ground: (1) on the façade of a structure that faces open to Common Area or a common access road; (2) on a roof surface that slopes downward toward a Common Area or common access road; or (3) within the yard area between a structure and the Common Area or any common access road.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of the Owner's Unit without approval. However, portions of window treatments, coatings, or coverings visible from outside the Unit which are not white, beige, light gray, or natural wood colors, and modifications to the interior of screened porches, patios, and other portions of a Unit visible from outside the structure, shall be subject to approval.

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

This Article shall not apply to structures in existence on the date of recording of this Declaration, or to Declarant's activities during the Development and Sale Period, nor to activities of the Association during the Class "B" Control Period.

4.2. Design Review

(a) ***By Declarant.*** Each Owner, by accepting title to any interest in a Unit, acknowledges that Declarant has a substantial interest in ensuring that the structures, landscaping and other improvements within the Community enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property in, or in the vicinity of, Ponder. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Unit unless and until Declarant or its designee, or the Design Review Committee established pursuant to subsection (b), as applicable (the entity having authority hereunder in a particular case being referred to as the "**Reviewer**"), has given its prior written approval for such activity, which approval may be granted or withheld in the Reviewer's sole discretion, subject to the Declarant's veto rights under Section 4.3(b).

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue until termination of the Development and Sale Period, unless earlier terminated in a written instrument that Declarant executes and records.

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

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

(b) ***Design Review Committee***. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRC, shall assume jurisdiction over architectural matters. The DRC, when appointed, shall consist of at least three, but not more than five, persons who shall serve and may be removed and replaced in the Board's discretion. At least a majority of the members of the DRC shall be Members of the Association, spouses of Members, or representatives of Members which are legal entities. The Board may, in its discretion, appoint architects, engineers or similar design professionals who are not Members or representatives of Members to fill a minority of the seats on the DRC, and may compensate such individuals for their service in such manner and amount if any, as the Board may establish.

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

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

(d) ***Construction Deposit***. As a condition of approval of any application hereunder, the Reviewer may require that the Owner post a construction deposit ("**Construction Deposit**") in such amount as the Reviewer determines reasonable in light of the nature and scope of the proposed work, which construction deposit shall be posted with the Association prior to commencing any work on the Unit. All Construction Deposits collected hereunder shall be placed in a segregated account maintained by and in the name of the Association. The Association shall be entitled to draw upon the construction deposit, after notice and an opportunity for a hearing as may be required by Section 7.5, to cover costs which it incurs:

(i) to clean up dirt or debris and/or repair damage to any subdivision improvements or Common Areas, or any portion of Ponder outside of the Community, which the Board determines, after notice to the Owner and an opportunity for a hearing in accordance with the By-Laws, is attributable to the construction activities of the Owner or its contractors, subcontractors, suppliers, or others providing goods or services in conjunction with the construction activities on the Owner's Unit; and

(ii) to complete any improvements or landscaping on the Owner's Unit which are not completed in accordance with the approved plans or to the Community-Wide Standard, or to correct or cure any conditions on the Owner's Unit that the Reviewer determines necessary to conform the Unit to the approved plans or to correct drainage or other conditions on the Unit which fail to meet the Community-Wide Standard or which cause or are likely to cause damage to property outside the Unit, if the Owner fails to do so within a reasonable period of time as set forth in written notice from the Association specifying the action required.

The Owner shall provide funds to restore the Construction Deposit to its original amount within 10 days after written request from the Association notifying the Owner of the amount of any disbursement from the Owner's Construction Deposit. Upon final inspection and approval of the completed construction, the Association shall refund to the Owner or applicant who originally paid the construction deposit the amount of such construction deposit, less any funds expended by the Association pursuant to this subsection (d) and not restored by the applicant.

Nothing in this subsection (ii) shall be construed as limiting the Association's right to seek reimbursement from the Owner for the total amount expended on the Owner's behalf in the event the amount expended exceeds the amount of the Construction Deposit, nor shall anything in this Section be construed to limit any of the rights or remedies granted to the Association by others provisions of this Declaration.

4.3. Guidelines and Procedures

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

Declarant shall have sole and full authority to amend the Design Guidelines so long as it has any rights under this Article, as described in Section 4.2(a), notwithstanding a delegation of reviewing authority to the DRC, unless Declarant also delegates the power to amend to the DRC. Upon termination or delegation of Declarant's right to amend, the DRC shall have the authority to amend the Design Guidelines with the consent of the Board.

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

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

(b) ***Procedures***. Except as otherwise specifically provided in this Declaration or the Design Guidelines, no activities shall commence on any Unit until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable ("**Plans**"). The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

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

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

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

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

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

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

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

4.4. No Waiver of Future Approvals

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

4.5. Variances

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

4.6. Limitation of Liability

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

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

4.7. Certificate of Compliance

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

ARTICLE V MAINTENANCE AND REPAIR OF UNITS

5.1. Maintenance by Owners

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

(a) the Owner's Unit and all landscaping and improvements comprising the Unit; and

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

all in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, except that there shall be no right to remove trees, shrubs or similar vegetation without prior approval pursuant to Article IV other than removal of a diseased or dead shrub from the Owner's Unit, in which case the removed shrub shall be replaced with another plant of the same variety within seven days after such removal. Nothing in this Declaration shall be construed to require irrigation of landscaping to the extent such irrigation would otherwise be prohibited during any period in which the Governor of the State of North Carolina, any agency of the State of North Carolina, or any unit of local government having jurisdiction over any portion of the Community, has imposed water conservation measures.

5.2. Maintenance of Additional Association's Property

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

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

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

5.3. Responsibility for Repair and Replacement; Insurance by Owners

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

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

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

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

Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Unit, their family, guests or invitees, nor shall the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the willful misconduct of the Association, Declarant or their respective agents or employees.

* * *

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

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

ARTICLE VI THE ASSOCIATION AND ITS MEMBERS

6.1. Function of Association

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

(a) management, maintenance, operation and control of the Area of Common Responsibility; and

(b) interpretation and enforcement of the Governing Documents; and

(c) establishing and upholding the Community-Wide Standard; and

(d) upon delegation or termination of Declarant's authority under Article IV, administering the design review process for the Community, as provided in that Article.

6.2. Membership

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

(i) the date that certificates of occupancy have been issued for 100% of the total number of dwelling units permitted by applicable zoning for the property subject to this Declaration and any additional property specifically described in Exhibit "B" or encompassed by the Master Plan and the Units on which they are constructed have been conveyed to Class "A" Members other than Builders; or

(ii) 30 years from the date of recording of this Declaration; or

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

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

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

6.3. Voting

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

(a) ***Class "A"***. Each Unit owned by a Class "A" Member is assigned one vote equal to that of every other Unit owned by a Class "A" Member. If there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it. Voting rights shall be subject to suspension for nonpayment of assessments or other charges owed the Association as provided in Section 7.5(b)(ii).

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

(b) ***Class "B"***. The Class "B" Member shall have Class "A" voting rights with respect to any Units that it owns and, in addition, the consent of the Class "B" Member shall be required for various actions of the Board, the membership and committees, as specifically provided elsewhere in the Governing Documents. In addition, the Declarant, as the Class "B" Member, may appoint a majority of the members of the Board of Directors during the Declarant Control Period, as specified in Article III of the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. In addition, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

ARTICLE VII ASSOCIATION POWERS AND RESPONSIBILITIES

7.1. Acceptance and Control of Association Property

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of Article XVIII. The Association may enter into leases, licenses or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of owners, occupants and residents of the Community.

(b) During the Development and Sale Period, the Declarant, any Declarant Affiliate, and their respective designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, which has been made subject to this Declaration. Declarant may convey Common Area to the Association in one or more transactions. Each conveyance of Common Area shall be free and clear of all liens and encumbrances of a monetary nature. Upon Declarant's written request, the Association shall convey or reconvey to Declarant (or quitclaim any interest in) any portions of the Common Area which do not contain structures or facilities for common use, if conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines, subject to such membership approval as may be required by the Act.

(c) The Association shall be responsible for management, operation and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate. The Association may permit use of the Common Area facilities by persons other than Owners and occupants of Units and may charge use fees, in such amount as the Board may establish, for such use.

7.2. Maintenance of Area of Common Responsibility

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

(i) all portions of and structures situated on the Common Area; and

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

(iii) any landscaping, signage, and sidewalks within public rights-of-way or sidewalk easements lying within or abutting the property subject to this Declaration, except to the extent that such responsibility is otherwise assigned to Owners pursuant to Section 5.1 or assumed by a governmental body or utility provider; provided, the Association shall have no responsibility for removal of snow or ice from sidewalks or other walkways; and

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

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

(vi) any pipes, lines, pumps, or other apparatus comprising any irrigation system serving the Common Area, to the extent located within the Common Area, rights-of-way, or easements granted to the Association; and

(vi) the community signage and entry features located at vehicular entrances to the Community from public streets or highways;

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

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

The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. However, nothing herein shall be construed to make the Association liable for any damage or injury occurring on or arising out of the condition of property that it does not own. The Association shall specifically be authorized to enter into agreements with the Town of Wendell, the Town of Zebulon, and other owners of property in or near Ponder for the sharing of maintenance responsibility and/or costs associated with any property or services which the Board deems to benefit the Association and its members.

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

(c) Some portions of the Area of Common Responsibility may consist of open space or conservancy areas intentionally left in a natural or relatively undisturbed state. The level of maintenance that the Association provides to the Area of Common Responsibility may vary from a high level of landscaping and regular, weekly maintenance to intermittent or no maintenance, depending on the nature and intended use of the particular open space area. Open space, wetlands, or other natural areas may serve as habitats for a variety of native plant, animal, and insect species, and may contain creeks, fallen trees and other naturally occurring conditions, some of which may pose hazards to persons or pets coming in contact with them. Neither the Association, the Declarant, nor any Builder shall have any responsibility for providing maintenance in such areas or taking action to abate such conditions, and any maintenance provided shall be consistent with the terms of any recorded restrictions or easements affecting such property, including any conservation easement or covenants and restrictions recorded by the Declarant as part of a final compensatory mitigation plan required by the U.S. Army Corps of Engineers or the State of North Carolina.

(d) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members entitled to cast at least 80% of the total Class "A" votes in the Association and, during the Development and Sale Period, the Declarant, agree in writing to discontinue such operation. Notwithstanding this, the Association may, but shall not be obligated to, maintain any lake or pond which has formed or forms within the Common Area as a result of stream blockage and no Member approval shall be required for the Declarant or the Association to remove debris blocking streams or breach any beaver or other dams that may be blocking streams, notwithstanding that doing so may result in drainage of lakes, ponds, or other bodies of water within the Community formed as a result of such blockage.

Except as provided above, the Area of Common Responsibility shall not be reduced during the Development and Sale Period without Declarant's prior written approval.

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

7.3. Provision of Benefits and Services to Service Areas

(a) All Units served by alleys are hereby assigned to an "**Alley Service Area**." In addition, the Declarant, on Exhibit "A" to this Declaration and/or by Supplemental Declaration submitting additional property to this Declaration, may assign the property submitted thereby to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Units in addition to those which the Association generally provides to all Units. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Service Area boundaries; provided, nothing in this Section shall authorize the Declarant to assign property owned by a Builder to a Service Area without the consent of the Builder. All costs associated with the provision of services or benefits to a Service Area shall be assessed against the Units within the Service Area as a Service Area Assessment.

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

7.4. Insurance

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

(i) Property insurance for all insurable improvements on the Common Area (and within the Area of Common Responsibility, if and to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership) insuring against all risks of direct physical loss commonly insured against. The total amount of such insurance after application of any deductibles shall be not less than 80% of the replacement cost of the insured improvements under current building ordinances and codes at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

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

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

(iv) Directors and officers liability coverage; and

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

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

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

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

If the insurance described in clauses (i) or (ii) of this subsection (a) is not reasonable available, the Association shall promptly cause notice of that fact to be hand-delivered or sent via U.S. Mail, postage prepaid, to all Owners.

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

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

All insurance coverage obtained by the Board shall:

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

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

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

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

(v) provide a waiver of the insurer's right to subrogation under the policy against any Owner or member of the Owner's household; and

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

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(c) ***Restoring Damaged Improvements.*** In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Insurance proceeds shall be paid to the Association to be held in trust for the benefit of Owners and Mortgagees as their interests may appear.

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

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

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

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

7.5. Compliance and Enforcement

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Association, the Declarant during the Development and Sale Period, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents, subject to the provisions of Article XIV. In addition, the Board may impose sanctions for violation of the Governing Documents as set forth in this Section 7.5 and elsewhere in the Governing Documents.

(b) The Board may impose the following sanctions only after compliance with the enforcement procedures set forth in Article VIII of the By-Laws, except that once the Board has complied with such procedures, such compliance shall not be required for any repeat violation of the same provision, by the same person or in connection with the same Unit, occurring within 12 months of the date of notice of the prior violation unless otherwise required by law:

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

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

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

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

(v) exercising self-help in any situation other than as provided in subsection (c), pursuant to the easement set forth in Section 11.6.

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

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

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

(iii) towing of vehicles that are in violation of parking Rules at the owner's expense and without prior notice, except that in the case of a vehicle parked on a Unit in violation of the parking Rules, the Association shall use reasonable good faith efforts to contact the Owner or occupant of a Unit at least 24 hours in advance and provide an opportunity for the Owner or occupant to permanently remove the vehicle from the Community prior to having such vehicle towed. All Owners shall be responsible for notifying their tenants, guests, and invitees of the parking Rules and ensuring their compliance. Any costs incurred by the Association in enforcing parking Rules may be levied as a Specific Assessment against the Owner responsible for such non-compliance and such Owner's Unit;

(iv) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property; and/or

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

The Association may exercise the easement set forth in Section 11.6 as the Board deems appropriate to exercise its authority under this Section.

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

(e) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any situation in which the Association incurs legal fees and/or costs to enforce the Governing Documents, it shall be entitled to assess and recover from the violator or the Owner of the Unit in which the violator resides all costs reasonably incurred, including, without limitation, attorneys' fees and court costs, whether or not suit is filed.

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

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

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

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

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

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

(g) The Association, by contract or other agreement, may enforce applicable ordinances of the Town of Wendell and/or Town of Zebulon.

7.6. Implied Rights; Board Authority

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

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

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

7.7. Provision of Services to Units

The Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Association may enter into "**bulk rate contracts**" for the provision of utility services or other services or facilities of any nature or kind which are provided to all Units, in which case the costs of such services or facilities shall be included in the Association's budget as a Common Expense and assessed as part of the General Assessment, or only to Improved Units. The services provided under bulk rate contracts may include, without limitation, wastewater service, propane service, natural gas service, trash and/or recycling collection, landscape maintenance, cable television, telecommunications, internet access, "broadband services," and any other services of any kind or nature which are considered by the Board to be beneficial to the Units. During the Development and Sale Period, Declarant must approve each bulk rate contract.

In addition, the Association may enter into agreements for the provision of services to a Unit at the option of each Owner, in which case the cost may be levied against the Units receiving service as a Specific Assessment. By way of example, such services might include landscape maintenance; cable, digital, satellite or similar television service; telecommunication and internet connection services; security monitoring; and other services and facilities.

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

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

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

7.8. Relationships with Other Properties

The Association may enter into contractual agreements or cost-sharing arrangements with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance. In addition, the Declarant may prepare, execute, and record a document ("**Covenant to Share Costs**") providing for:

(a) the maintenance and operation of community infrastructure and improvements ("**Shared Properties**") which benefit any portion of the Community and any other real property in or adjacent to Ponder;

(b) the provision of services which benefit the Community and other real property in or adjacent to Ponder ("**Shared Services**");

(c) the sharing of costs incurred in maintaining, operating, and insuring such Shared Properties or the provision of Shared Services between the Association and/or any other Persons designated therein,

(d) easements over any portion of the Common Area, Shared Properties, or any other property (with the consent of the Owner thereof), for the benefit of any real property within or adjacent to Ponder; and/or

(e) easements over any other property for the benefit of all portions of the Community.

Any such Covenant to Share Costs shall be executed by the Declarant and the owner(s) of the property being submitted to such Covenant to Share Costs, if owned by someone other than the Declarant, and shall be binding upon the Association and the Owners of any portion of the Community submitted to such Covenant to Share Costs.

7.9. Safety and Security

The Association may, but shall not be obligated to, maintain or support certain activities within Ponder designed to enhance the level of safety or security that each person provides for himself and his property. However, in so doing, the Association assumes no responsibility for personal safety or security of any Persons or their property. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Ponder or any portion thereof, cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system or measure is designed or intended. Neither the Association, the Declarant, the Builders, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall in any way be responsible for, or considered insurers or guarantors of, personal safety or safety or security of personal property of any Person within or outside of Ponder, whether or Common Area, public or private property, or elsewhere, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

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

Each person using any Common Area facilities does so at their own risk and assumes all risks of personal injury and loss or damage to their personal property while using such facilities. The Association may require each person who desires to use Common Area facilities to have a waiver of liability and assumption of risk on file with the Association, signed by themselves or, in the case of a minor, by a parent or legal guardian, prior to entering or using such facilities. For safety reasons, the Association may deny access to Common Area facilities, to the extent not inconsistent with applicable law, to:

(a) any person who is unable to demonstrate that he or she can read and follow posted instructions and rules for use of the facility or equipment and understand the risks associated with such use, unless such person is accompanied by another person who has demonstrated such ability and assumes responsibility for informing them of the instructions and rules and ensuring their compliance; and

(b) any person of a size or weight or with a health condition that subjects them to significant risk of personal injury to themselves or others in using the facility or equipment; and

(c) any person who fails to comply with all posted instructions and rules for use of the Common Area facility.

ARTICLE VIII ASSOCIATION FINANCES

8.1. Authority to Levy Assessments for Association Expenses

(a) ***Purposes.*** There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles and the Bylaws, specifically including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision, and utilities; taxes, if any, imposed on the Association or the Common Area; the cost of insurance and fidelity bond coverage obtained pursuant to Section 7.4; the cost of water or other utilities provided to the Area of Common Responsibility; charges for services provided to Units pursuant to Section 7.7; expenses of monitoring and enforcing compliance with the provisions of the Governing Documents; expenses arising out of the Association's indemnification obligations; expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Units and the Community; expenses incurred in exercising architectural control under Article IV; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Community in good, clean, and attractive condition and to maintain and enhance property values and marketability of Units within the Community.

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

(c) ***Personal Obligation and Lien.*** Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, and if not paid by the due date, interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution, not to exceed 18% per annum), late charges as determined by Board resolution (subject to the limitations of North Carolina law), administrative fees and other costs incurred by the Association in connection with the delinquent account, and reasonable attorneys' fees and expenses incurred by the Association in connection with the collection of sums due (subject to the limitations of North Carolina law), shall be the personal obligation of each Owner, and a charge and continuing lien upon each Unit as provided in Section 8.6, until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance, except that a Mortgagee or other purchaser who obtains title to a Unit upon the foreclosure of a first priority Mortgage of record shall not be liable for the assessments against the Unit which became due prior to such Mortgagee's or purchaser's acquisition of title to the Unit. For purposes of the foregoing sentence, "acquisition of title" shall be deemed to occur upon the earlier of: (i) the recording of a deed conveying title; or (ii) the time at which the rights of the parties are fixed following the foreclosure of such Mortgage.

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

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

Within 10 business days after receipt of a written request therefor, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer or duly authorized agent of the Association setting forth the amount of any unpaid assessments or other charges levied on the Unit. Such certificate shall be binding on the Association and every Owner. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate, such to any limitations set forth in the Act.

(d) ***Declarant's Obligations for Assessments***. Declarant shall be liable for assessments on its unsold Units in accordance with the applicable rate of assessment under Section 8.5; however, during the Development and Sale Period, Declarant may elect to satisfy its obligation to pay General Assessments on any Units that it owns either in the form of cash or by "in kind" contributions of services or materials, or by a combination of these, provided that the fair market value of any "in kind" contributions is fair and reasonable to the Association. The value of any "in kind" contributions shall be documented in the Association records.

8.2. Adoption and Ratification of Budgets; Annual Assessment Rates.

(a) ***Preparation of Budgets***. At least 45 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

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

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of General Assessments or Service Area Assessments calculated in accordance with subsection (b) or (c), as applicable.

Declarant may, but shall not be obligated to, reduce the amount of assessments that would otherwise be required to fund any budget by payment of a subsidy to the Association for any fiscal year. Payment of a subsidy in any fiscal year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant. Any such subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion; provided, any such subsidy and the characterization thereof shall be conspicuously disclosed in the applicable budget and on the Association's balance sheet.

In addition, Declarant may loan funds to the Association to cover any budget shortfall or Common Expenses which are due prior to the due date of assessments under the applicable budget; provided, any such loans and the debt service shall also be disclosed in the applicable budget. The Declarant may charge and collect interest on the outstanding principal balance of any loan at a rate not to exceed the greater of 10% per annum or two percentage points over the prime rate published by the Wall Street Journal on the date of such loan, such interest rate to be set forth in a promissory note executed on behalf of the Association.

(b) ***Calculation of General Assessments***. Upon determining the total amount of income required to be generated through the levy of General Assessments to fund the Common Expense budget, the Board shall establish the General Assessment at an equal rate per Improved Unit, and at a discounted rate as provided in Section 8.5 for Units which are not yet Improved Units, sufficient to generate the required income. The Board shall give notice to the Owners of such budget and assessment as provided in Section 8.2(d).

(c) ***Calculation of Service Area Assessments***. Upon determining the total amount of income required to be generated through the levy of Service Area Assessments to fund the budget for any Service Area, the Board shall establish the Service Area Assessment at an equal rate per Unit within the Service Area, except as may otherwise be provided in this Declaration or any applicable Supplemental Declaration. Unless otherwise specified in the applicable Supplemental Declaration, any portion of the Service Area Assessment levied for maintenance, repair or replacement of improvements or landscaping on Units or reserves related thereto, insurance on Units, or utilities or other services provided only to Improved Units, may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

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

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

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

If any proposed budget is rejected or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

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

8.3. Special Assessments

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted under Section 8.2. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for general Common Expenses, or against the Units within any Service Area if such Special Assessment is for Service Area Expenses related to such Service Area. Except as otherwise specifically provided in Section 7.4(c) and as may be required to fund deficits under the General Budget due to delinquencies in payment of assessments, any Special Assessment shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and during the Development and Sale Period, the written consent of Declarant. Except as otherwise provided in Section 8.5, Special Assessments shall be levied equally on all Units subject to such assessment.

8.4. Specific Assessments

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

(a) to cover the costs, including overhead and administrative costs, of providing services to such Unit(s) pursuant to Section 7.7, either under a bulk service contract entered into by the Association to provide services to less than all Units (for example, only to Improved Units) or upon request of the Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.7). Specific Assessments for special services may be levied in advance of the provision of the requested service;

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

(c) pursuant to Section 8.8.

8.5. Payment of Assessments

Except as otherwise provided herein, the obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later; provided, until the first day of the month in which the Unit becomes an Improved Unit or first day of the 24th month following the initial conveyance of the Unit by the Declarant, whichever is earlier, the Unit shall be assessed only 25% of the General Assessment rate applicable to Improved Units and shall pay any Special Assessment to which it is subject during such period at 25% of the rate that would apply if it were an Improved Unit, and shall not be assessed for any Service Area Expenses. The first annual General Assessment levied on each Unit, whether levied at the partial or full rate, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on that Unit. During the year in which a Unit converts from a partial assessment rate to a full assessment rate hereunder, the full General Assessment shall be prorated based on the number of months remaining in the year on the date the Unit becomes subject to assessment as the full General Assessment rate.

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

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

8.6. Lien for Assessments

(a) Subject to North Carolina law, as it may be amended, if any assessment or installment thereof remains unpaid 30 days or more after the due date, the Association shall, upon filing a claim of lien in the office of the Register of Deeds of Wake County, North Carolina conforming to the requirements of Section 47F-3-116 of the Act, have a lien against each Unit in favor of the Association to secure payment of assessments and other sums due to the Association as authorized by the Act, Section 8.1(c) hereof, or other provisions of the Governing Documents, or as the result of any arbitrator's, mediator's or judicial decision, as well as interest, late charges, administrative fees and other costs incurred by the Association in connection with the delinquent account and, subject to the limitations set forth in Section 8.5 and the Act, reasonable attorneys' fees and expenses and court costs incurred by the Association in connection with the collection of sums due. Subject to the limitations of North Carolina law, such lien shall be superior to all other liens, except (i) the liens of all real estate taxes, governmental and other assessments and charges which by law would be superior, and (ii) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value and recorded prior to the filing of the claim of lien.

(b) If an assessment against a Unit remains unpaid for 90 days or more and the Board votes to proceed with foreclosure of the Association's lien on that particular Unit, the Association may foreclose its lien through judicial or non-judicial foreclosure proceedings in accordance with North Carolina law, as it may be amended, except that any lien securing only fines and/or service or collection fees may be foreclosed only by judicial foreclosure.

(c) The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

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

8.7. Exempt Property

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

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

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

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

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

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

Any exemption granted pursuant to this subsection (b) shall be set forth in writing, signed by the Declarant or the Association, and a copy shall be filed in the records of the Association.

8.8. Capitalization of Association

At the time of first occupancy of the dwelling on an Improved Unit for residential purposes, the Owner thereof shall make a contribution to the working capital of the Association in an amount to be fixed by the Board from time to time, but not to exceed 50% of the General Assessment levied by the Association against Units subject to full assessment for the year in which such first occupancy occurs. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessments, but rather shall be considered a Specific Assessment secured by the Association's lien for assessments under Section 8.6. This amount may be used by the Association for operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws, or for funding of reserves as the Board may determine in its discretion.

8.9. Use and Consumption Fees

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

* * *

PART FOUR: COMMUNITY DEVELOPMENT

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

ARTICLE IX EXPANSION OF THE COMMUNITY

9.1. Expansion by Declarant

Declarant may from time to time expand the Community to include all or any portion of the property described in Exhibit "B," and/or any property lying within a 2-mile radius of the perimeter boundaries of the property described in Exhibits "A" or "B," by recording a Supplemental Declaration describing the additional property and stating the intent to submit it to the provisions of this Declaration. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand the Community pursuant to this Section shall expire 30 years after this Declaration is recorded. Until then, Declarant may transfer, assign, or otherwise permit this right to be exercised by any Person or Persons who are the developers of at least a portion of the real property described in which is subject to, or may be made subject to, this Declaration. Any such transfer, assignment or permission shall be memorialized in a written, recorded instrument executed by Declarant and the Person to whom it is assigned.

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

9.2. Expansion by the Association

The Association may also expand the Community to include additional property by recording a Supplemental Declaration describing the additional property and the intent to submit it to the provisions of this Declaration. Any such Supplemental Declaration shall require the affirmative vote of persons entitled to cast more than 50% of the Class "A" votes in the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements

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

9.4. Effect of Filing Supplemental Declaration

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

ARTICLE X ADDITIONAL RIGHTS RESERVED TO DECLARANT

10.1. Withdrawal of Property

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

10.2. Right to Veto Changes in Standards

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

10.3. Development and Sales Activities

During the Development and Sale Period:

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

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

(c) Declarant reserves for itself and its designees the right, without the consent of or payment of compensation to the Association or any Person, to enter upon the Common Area and any public property within or adjacent to the Community to take photographs and to capture, produce, and reproduce, by any method and in any format or media, images of any Common Area, streetscapes, signage, public spaces, or other portions of the Community which are readily visible from public streets or Common Area, and to use such images on websites for itself and Declarant Affiliates and in advertising, marketing materials, displays, presentations, and publications of any kind, including, without limitation, newspaper, internet, television, and other media, except that there shall be no right to sell such images for commercial use by others. Any Person using the Common Area or public streets, sidewalks, or other public property within the Community is deemed to have consented to the exercise by Declarant and its designees of the rights described in this subsection (c) and to have waived any personal or proprietary right such Person may have in connection with such images to permit such use.

10.4. Control of and Changes in Development Plan

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

10.5. Special Declarant Rights

Declarant may exercise any or all of the "Special Declarant Rights" described in N.C.G.S. Section 47F-1-103(28).

10.6. Additional Covenants

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

10.7. Right to Transfer or Assign Declarant Rights

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

10.8. Exclusive Rights To Use Name of Development

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

10.9. Right to Notice of Design or Construction Claims

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant, in the case of improvements to the Common Areas, and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection pursuant to the rights reserved in Section 11.7.

10.10. Right of Convert Units

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

10.11. Technology Systems

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

Declarant may enter into and assign to the Association, or cause the Association to enter into, a bulk rate service agreement providing for access to any Technology Systems for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a General Assessment or Specific Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

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

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PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

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

ARTICLE XI EASEMENTS

11.1. Easements in Common Area

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

(a) the Governing Documents and any other applicable covenants;

(b) any restrictions, limitations or easements contained in any deed conveying such property to the Association;

(c) the Board's right to:

(i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(ii) suspend the right of an Owner and the occupants of the Owner's Unit to use recreational facilities within the Common Area pursuant to Section 7.5;

(iii) designate portions of the Common Area for community gardens, a working farm, and other agricultural uses and for related activities (collectively, "**Farming and Related Uses**"), which may include, without limitation, planting, raising, and harvesting of crops; grazing and keeping of poultry, goats, and other livestock (excluding pigs and hogs); and the operation of farmers markets, produce stands, and similar community activities and events, all subject to applicable zoning and such Rules and policies as the Board may establish governing the operation thereof;

(iv) to enter into leases and operating agreements or grant licenses authorizing exclusive use of portions of the Common Areas for Farming and Related Uses, on such terms and conditions as the Board deems to benefit the Association and its members;

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

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

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

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

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

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

Any Owner may extend his or her right of use and enjoyment to the occupants of his or her household and their guests, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2. Easements of Encroachment

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

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

11.3. Easements for Utilities, Etc.

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

(i) installing utilities and infrastructure to serve Ponder, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, stormwater drainage systems, spray irrigation systems, and street lights and signage, on property which Declarant, the Association, or any Builder owns or within public rights-of-way or easements reserved for such purpose on recorded plats or in other recorded documents; and

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

(iii) access to read utility meters.

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

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

11.4. Right of Entry for Maintenance by Owners

If any dwelling is located within five (5) feet of the boundary of any Unit and such location conforms to all applicable laws, ordinances, and Design Guidelines, the Owner shall have a perpetual, nonexclusive easement over the Unit adjoining such boundary to the extent reasonably necessary to perform maintenance and repairs on such Owner's dwelling. All work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Unit to as nearly the same condition as that which existed prior to such entry as reasonably practicable.

11.5 Easements to Serve Additional Property

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property which has been submitted to this Declaration or may be submitted to this Declaration pursuant to Article IX. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

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

11.6. Easements for Maintenance, Emergency and Enforcement

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

Except in an emergency situation, entry onto an occupied Unit for any purpose other than performing, during daylight hours, exterior maintenance which is the Association's responsibility under this Declaration or any Supplemental Declaration, shall only be during reasonable hours and after notice to the Owner.

11.7. Easement to Inspect and Right to Correct

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

11.8. Landscaping and Signage Easements

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

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

11.9. Easements for Storm Water Collection, Retention, Drainage and Irrigation Systems

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement to enter upon any portion of the property within the Community, including Units, to (a) install, operate, maintain, and replace pumps and lines to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for draining and retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly return any property damaged as a result of such exercise to substantially the same condition as the property existed prior to the exercise of the easement.

Without limiting the generality of the foregoing, Declarant reserves for itself, the Association, and their successors, assigns, and designees, a nonexclusive easement for the foregoing purposes described in this Section 11.9 over that portion of the Units identified as Lots 146, 147 and 148 on the Phase 1A Plat described in Exhibit "A," attached hereto, as "New Private Drainage Easement Area – 3598 SF/0.082 AC."

11.10. Facilities and Services Accessible by the Public

Certain areas within the Community, including, but not limited to public parks, trails and greenways, may be designed and dedicated for use by the general public. Other areas within or adjacent to Ponder, including Common Areas, although intended for the use and benefit of residents of Ponder, may be accessible by the general public from neighboring properties or public streets and it may not be practical or cost-effective for the Association to limit or restrict such unauthorized access. The Association may, but shall have no duty to, monitor or restrict unauthorized access to such areas or to take action to remove unauthorized persons from such areas.

11.11. Easements for Maintenance of Water Bodies

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

ARTICLE XII LIMITED COMMON AREAS

12.1. Purpose

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

12.2. Designation

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat or in the Supplemental Declaration relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

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

12.3. Use by Others

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

ARTICLE XIII PARTY WALLS AND OTHER SHARED STRUCTURES

13.1. General Rules of Law to Apply

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

13.2. Maintenance; Damage and Destruction

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

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

(b) to the extent that any necessary repair or replacement of a party structure affects both sides of the structure, it shall be the joint responsibility of the Owners of the Units served or separated thereby ("**Benefited Units**"). Upon not less than 10 days prior written notice to the Owner(s) of each other Benefitted Unit specifying the need for maintenance or repairs to such Party Structure and the estimated cost thereof, the Owner giving such notice may perform any necessary maintenance or repair. Maintenance or repair specified in such notice shall be presumed "necessary" unless an Owner of a Benefitted Unit gives written notice within such 10-day period to the Owners of each other Benefitted Unit and to the Board, challenging the necessity of such maintenance or repair, in which case the Board may determine whether the maintenance or repair is necessary and appropriate and the Board's determination shall be final and binding. Within 30 days after receipt of a written request for reimbursement for any necessary maintenance or repair, accompanied by written evidence of the total cost incurred, the Owner(s) of the other Benefited Units shall reimburse the Owner who has incurred such cost for their pro rata share of the reasonable cost he or she has incurred in performing such maintenance or repair. If an Owner responsible for reimbursement fails to pay the amount due within 30 days after receipt of such request, the Owner who has incurred the cost shall have the right to file a lien against the Benefitted Unit of the Owner from whom the reimbursement is due to secure the amounts due plus interest at the lesser of 10% per annum or the highest rate allowed by North Carolina law from the 30th day after the date of such request, which lien may be filed in the same manner as a mechanics or materialmen's lien under North Carolina law and subject to the same notice requirements.

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

(c) Notwithstanding the above, if maintenance or repairs to a party structure are necessitated by the conduct of the Owners, occupants or guests of only one of the Units that share such party structure, then the above procedures shall apply but the Owner of the Unit whose conduct (or occupant's or guest's conduct) necessitated the maintenance or repairs shall be liable for the full cost of any necessary maintenance or repairs.

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

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

* * *

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

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

ARTICLE XIV DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

14.1. Agreement to Encourage Resolution of Disputes Without Litigation

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

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

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

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

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

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

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

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

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

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

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

14.2. Dispute Resolution Procedures

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

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

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

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

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

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

(c) ***Mediation***. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Claim Notice (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the

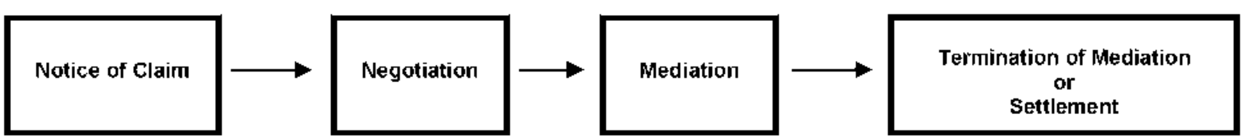
Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Raleigh, North Carolina metropolitan area. The mediator shall notify the parties in writing of the date, time and location of the mediation, which shall be within 25 days after the mediator receives the written request from the Claimant. The provisions of N.C.G.S. 7A-38.3F(d), (h), and (i) shall apply to any mediation hereunder.

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

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

Each Party shall bear its own costs of the mediation, including attorneys' fees. The fees and expenses of the mediation proceeding (including the fees charged by the mediator) shall be shared equally by the Claimant and Respondent; provided, if there is more than one Claimant or more than one Respondent, 50% of the costs shall be shared equally by the Claimants and 50% of the costs shall be shared equally by the Respondents.

Alternative Dispute Resolution Process



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

14.3. Initiation of Litigation by Association

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

(a) initiated during the Declarant Control Period; or

(b) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens; or

(c) initiated to challenge *ad valorem* taxation or condemnation proceedings; or

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

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

ARTICLE XV MORTGAGEE PROVISIONS

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

15.1. Notices of Delinquency

Upon written request of an institutional holder, insurer, or guarantor of a first Mortgage ("**Eligible Holder**") stating the name and address of such Eligible Holder and the street address of the Unit to which its Mortgage relates, the Association shall provide a statement of any delinquency in the payment of assessments or charges owed for such Unit or any other violation of the Governing Documents relating to such Unit or the Owner or occupant thereof which has not been cured.

15.2. Right to Examine Books and Records

Subject to the provisions of the Act, upon written request of any Eligible Holder stating the name and address of such Eligible Holder and the street address of the Unit to which its Mortgage relates, the Association shall provide the Eligible Holder with a copy of the Association's most recent financial statement and shall permit such Eligible Holder or its agent to inspect the books and records of the Association during normal business hours, subject to the terms of the By-laws.

15.3. No Priority

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

14.4. Notice to Association

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

ARTICLE XVI ADDITIONAL RELATIONSHIPS AND DISCLOSURES

16.1. Irrigation Using Non-Potable Water

Each Owner and occupant of a Unit, and their respective guests and invitees, are hereby advised that non-potable water may be used to irrigate property within or adjacent to the Community, including the Area of Common Responsibility. Although non-potable water is considered safe for irrigation and limited contact, it is not suitable for human or animal consumption.

16.2. High Voltage Power Lines; Radio and Telecommunication Towers

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

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

16.3. Public Safety Facilities

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

16.3. Stormwater Facilities

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

16.4. Notices and Disclaimers as to Technology Systems

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

16.5. Nonresidential Uses

Ponder is a planned unit development in which zoning permits a mix of land uses, including a variety of residential and nonresidential uses in close proximity to residential uses. The development of such nonresidential uses is subject to market conditions and the Declarant makes no representations or guarantees that any particular nonresidential uses will be developed, nor is any builder, broker, managing agent, or other person authorized to make any such representations.

16.6. Other Uses in Vicinity of Ponder

In addition to the specific matters described above, the Declarant, the Association and the Builders have no ability to control the general use, maintenance or appearance of, or noise, odors, and emissions emanating from, nearby expressways, highways, and property owned by third parties adjacent to or in the vicinity of the Community which is not subject to this Declaration. All purchasers of Units should conduct their own diligence with respect to adjacent landowners, land uses, and potential uses of land in the vicinity of the Community which may have an impact on the purchasers' use and enjoyment of their Units.

* * *

PART SEVEN: CHANGES IN THE COMMUNITY

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

ARTICLE XVII CHANGES IN OWNERSHIP OF UNITS

17.1. Notice of Transfer

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall make such disclosure as required by N.C.G.S. Section 47E-1, *et seq*., and in addition shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

17.2. Administrative Fee

The Association may charge a reasonable administrative fee for preparation of a statement of unpaid assessments pursuant to N.C.G.S. Section 47F-3-102(13) and may require that such fee be paid in advance.

ARTICLE XVIII CHANGES IN COMMON AREA

18.1. Condemnation

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

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

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

18.2. Partition

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

18.3. Mortgaging, Conveyance or Dedication of Common Area

The Association may dedicate portions of the Common Area to the Town of Wendell, the Town of Zebulon, or the State of North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, or may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

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

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

except that no conveyance of Common Area shall reduce the total area comprising the Common Area below that required by applicable governmental authorities as a condition of development or subdivision approvals, and no sale or encumbrance of Common Area may deprive any Unit of rights of access or support. Nothing herein shall require membership approval for the Board to grant easements over the Common Area for public utilities or for other purposes which are not inconsistent with the use and enjoyment of the Common Area by the Owners for its intended purpose.

The proceeds from the sale or financing of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or financing of Limited Common Area shall be disbursed as provided by the agreement authorizing such sale or security interest.

ARTICLE XIX AMENDMENT OF DECLARATION

19.1. By Declarant

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

19.2. By Members

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

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

19.3. Validity and Effective Date

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

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

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Amendments shall be indexed in the Grantee index under the names "Ponder" and "Ponder Community Association, Inc."

19.4. Exhibits

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

ARTICLE XX TERMINATION OF DECLARATION

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

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this the 9 day of April, 2026.

DECLARANT: **NB AMMONS ACRES, LLC**, a Delaware limited liability company

By: [signature]
Name: E. William Meyer
Its: Regional President

STATE OF NORTH CAROLINA)
)
COUNTY OF Wake)

I, Gabrielle Torre Pangelinan Notary Public in and for Wake County, North Carolina, certify that ~~Bill Meyer~~ E. William personally came before me this day and acknowledged that s/he is an Regional President of NB AMMONS ACRES, LLC, a Delaware limited liability company, and that by authority duly given and as a fact of said limited liability company, the foregoing instrument was signed in its name by ~~Bill Meyer~~ E. William as Regional President, on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 9th day of April, 2026.

[signature]
Notary Public Gabrielle Torre Pangelinan

My Commission Expires:
03/17/2029

[NOTARY SEAL]

GABRIELLE TORRE PANGELINAN
My Commission Expires
NOTARY
PUBLIC
03/17/2029
WAKE COUNTY, NC

NB Ammons Acres/Declaration-040226

JOINDER, CONSENT AND SUBORDINATION

The undersigned, as holder of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of March 28, 2024 and recorded on March 28, 2024 in Book 19572, Page 1951, in the office of the Register of Deeds for Wake County, North Carolina, as modified by the Modification of Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated January 7, 2025 and recorded on January 8, 2025 in Book 19805, Page 2033, in the office of the Register of Deeds for Wake County, North Carolina (**"Deed of Trust"**), which encumbers the real property described on Exhibit "A" to the foregoing Declaration of Covenants, Conditions and Restrictions for Ponder (**"Declaration"**), hereby joins in execution of such Declaration to evidence its consent and subordinate its interest under the Deed of Trust to such Declaration.

IN WITNESS WHEREOF, the undersigned has duly executed this Joinder, Consent and Subordination by and through its authorized representative this 8 day of April, 2026.

MORTGAGEE:

NASH FINANCING, LLC,
a Delaware limited liability company

By: ______________________
Authorized Signatory
Michiko Fujiwara

Address:
c/o North America Sekisui House, LLC
2101 Wilson Boulevard, Suite 1004
Arlington, Virginia 22201

STATE OF CALIFORNIA }
}
COUNTY OF }

On this 8 day of April, 2026, before me Tsvetelina Danielova Tomova (notary public), personally appeared Michiko Fujiwara (print name), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ______________________ (notary public)

(NOTARY SEAL)

TSVETELINA DANIELOVA TOMOVA
COMM. # 2435783
NOTARY PUBLIC • CALIFORNIA
SAN DIEGO COUNTY
My Comm. Expires January 24, 2027

EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Marks Creek Township, Wake County, North Carolina, and being more particularly described as LOTS 1 through 4, 20 through 40, and 142 through 152, NEW COMMON OPEN SPACE #9, NEW COMMON OPEN SPACE #12, ALLEY 6, ALLEY 7, and ALLEY 13, as more particularly described on that certain Major Subdivision, Easement & Right of Way Dedication Plat of PONDER PHASE 1A SUBDIVISION recorded on ________April 23______, 2026, in Book of Maps 2026, Pages __714 through 727__, in the Office of the Register of Deeds of Wake County, North Carolina, as such plat may be revised from time to time (the "**Phase 1A Plat**").

Service Area Assignments:
None

EXHIBIT "B"

Potential Expansion Property

ALL THOSE CERTAIN PARCELS OR TRACTS OF LAND being situate in Marks Creek Township, Wake County, North Carolina bounded and described as follows:

Commencing from a McKim & Creed control point identified as MC #1 having North Carolina (NAD 83-2011) Grid Coordinates of N: 753,156.462 E: 2,187,830.463; thence from said MC #1 along a tie line S 48° 36' 35" E 1288.60' to a second McKim & Creed control point identified as MC #2 having North Carolina (NAD 83-2011) Grid Coordinates of N: 752,304.461 E: 2,188,797.197; thence from said MC #2 along a tie line S 15° 09' 35" E 1504.06' to a 4" x 4" existing concrete monument (POB) witnessed by a 1" existing iron pipe (EIP) having North Carolina (NAD 83-2011) Grid Coordinates of N: 750,852.74 E: 2,189,190.53; thence with the northern line of Joy B. Allen Currin (DB 3546 PG 180) N 89° 41' 22" W 1776. 71' to a 3/4" EIP; thence with the eastern line of NB Farm Property, LLC (DB 18588 PG 2380) N 00° 09' 08" E 1822.57' to a 1/2" disturbed EIP (leaning- with existing nail at base) witnessed by a 1/2" disturbed EIP (leaning); thence with the eastern line of James D. Johnson Jr. (DB 4081 PG 878) N 00° 10' 17" E 242.87' to a MAG nail set in the center of NC Highway 97; thence with said centerline the following four (4) calls all to MAG nails set in said centerline: a curve, having a chord of N 68° 21' 02" E 344.02', an arc length of 344.34' and a radius of 2,300.64'; N 64° 03' 46" E 26.72'; N 61° 51' 44" E 99.33'; a curve, having a chord of N 58° 51' 47" E 233.67, an arc length of 233.78' and a radius of 2,232.92'; thence N 56° 07' 23" E 416.65' to a computed point; thence N 56° 07' 23" E 24.58' to a MAG nail set; thence leaving said centerline S 00° 42' 43" E 59.02' to a 3/4" EIP on the southern 60' NC Highway 97 right of way (BM 1992 PG 411); thence with the western line of KAK Grand Farm Acres, LLC (DB 18610 PG 2229) S 00° 42' 43" E 1,152.14' to a 3/4" EIP; thence with the southern line of KAK Grand Farm Acres, LLC (DB 18610 PG 2229) N 89° 23' 24" E 788.93' to a 1/2" pinched EIP (found with a 1" disturbed EIP with existing nail at base- all evidence found in concrete); thence with the southern line of Talmadge W. House Jr. (DB 8904 PG 2637) N 89° 24' 35" E 619.98' to a 3/4" disturbed EIP; thence with a southern line of Andrew T. Faison (DB 18202 PG 2248) S 89° 48' 34" E 144.54' to a 3/4" EIP (found in concrete); thence with a western line of Andrew T. Faison (DB 18202 PG 2248) S 00° 22' 26" W 331.58' to a 1" disturbed EIP (with nail at base), thence with a southern line of Andrew T. Faison (DB 18202 PG 2248) S 89° 19' 09" E 572.45' to a 5/8" EIP and S 89° 16' 00" E 3,108.62' to a 5/8" EIP on the west bank of The Little River; thence with a field located west bank of The Little River the following five (5) calls to computed points: S 17° 32' 10" E 106.07', S 15° 09 '52" E 112.17', S 18° 15' 26" E 100.67', S 22° 09' 05" E 98.83' and S 25° 42' 23" E 102.47'; thence with a computed west bank of The Little River the following ten (10) calls to computed points: S 09° 44' 13" E 62.85', S 46° 45' 12" W 303.50', S 24° 42' 00" E 291.03', S 68° 19' 29" E 30.48', S 68° 19' 29" E 193.98', S 06° 27' 41" E 230.29' , S 48° 10' 32" E 110.98', S 53° 50' 55" W 664.07', S 42° 08' 29" E 246.10', and S 01° 34' 14" E 359.38' to a computed point on a field located west bank of The Little River; thence with a field located west bank of The Little River the following seven (7) calls to computed points: S 33° 25' 23" W 59.48', S 29° 10' 51" W 81.91', S 02° 13' 24" E 90.45', S 07° 30' 53" W 103.36', S 04° 49' 48" W 110.14', S 05° 49' 07" E 93.68', and S 06° 09' 43" W 108.80'; thence with a computed west bank of The Little River S 08° 06' 37" W 215.24' to a computed point at the intersection of The Little River and Canal Branch; thence with a computed centerline of Canal Branch, said centerline being the northeastern line of Marshall W. Knott (DB 2803 PG 74) N 56° 45' 00" W 1,397.83' to a computed point; thence with the western line of Marshall W. Knott (DB 2803 PG 74) S 00° 06' 50" E 1,088.61' to a 1/2" EIP; thence with the northern line of Jerry Chamblee Et Al (WB 20-E PG 1107) and passing through a 5/8" EIP at 1,199.19', N 88° 07' 48" W 1,418.11' to a 3/8" EIP witnessed by a 3/8" curved EIP; thence with the eastern line of June W. Tuttle (WB 1182 OOOE) N 00° 00' 25" W 714.68' to a 3/4" EIP on the southern bank of Mill Branch; thence with a computed centerline of Mill Branch the following three (3) calls to computed points: S 82° 30' 42" W 410.27', S 73° 28' 41" W 683.88' and N 89° 07' 56" W 205.68' to a computed point in the field located centerline of Mill Branch; thence with the field located centerline of Mill Branch the following thirty (30) calls: N 86° 36' 23" W 119.46', S

EXHIBIT "B"

Potential Expansion Property
(continued)

83° 16' 03" W 157.06', S 18° 37' 44" W 44.60', S 02° 32' 17" W 94.40', S 59° 25' 01" W 140.69', S 25° 44' 21" W 106.57', S 71° 32' 19" W 77.60', S 59° 48' 08" W 91.89', N 42° 55' 29" W 26.62', N 20° 16' 20" W 102.49', S 85° 05' 09" W 112.02', S 62° 25' 08" W 67.00', S 59° 28' 28" W 95.70', N 88° 18' 33" W 111.33', S 67° 34' 04" W 176.62', S 82° 10' 43" W 149.02', S 66° 25' 41" W 109.75', S 76° 51' 50" W 102.69', S 42° 09'04" W 97.93', S 65° 16'17" W 101.99', S 57° 05' 13" W 129.49', N 07° 33' 30" W 51.81', N 59° 00' 01" W 133.37', S 77° 57' 57" W 70.93', N 71° 39' 11" W 197.03', N 76° 20' 35" W 113.07', N 66° 43' 54" W 123.33', N 52° 47' 22" W 138.23', S 58° 46' 04" W 98.62', S 83° 38' 34" W 130.74'; thence leaving the Mill Branch centerline and with the eastern line of Joshua Furr (DB 16790 PG 314) N 01° 13' 40" E 9.21' to a 3/4" EIP; thence N 70°22'42" W a distance of 129.71' to a point in the same, as evidenced by a 5/8" dia. Iron Rod set; thence, coincident with the same; thence N 53°18'55" W a distance of 166.52' to a point in the same, as evidenced by a 5/8" dia. Iron Rod set; thence, still coincident with the same, S 74°38'15" W a distance of 206.22' to a point in the same, as evidenced by a 5/8" dia. Iron Rod set; thence, coincident with a new boundary line; thence N 01°21'42" W a distance of 234.04' to a point, as evidenced by a 5/8" dia. Iron Rod set; thence, still coincident with a new boundary line; thence N 13°45'42" W a distance of 53.73' to a point in the Southerly line of Furr Property Investments, LLC land (DB 16794, PG 2288), as evidenced by a 5/8" dia. Iron Rod set; thence N 13°45'42" W a distance of 27.50' to a point as evidenced by a 5/8" dia. Iron Rod set; thence N 49°46'41" W a distance of 47.23' to a point as evidenced by a 5/8" dia. Iron Rod set; thence N 08°21'56" E a distance of 94.33' to a point as evidenced by a 5/8" dia. Iron Rod set; thence N 07°53'41" W a distance of 119.43' to a point as evidenced by a 5/8" dia. Iron Rod set; thence N 15°17'55" W a distance of 48.41' to a point as evidenced by a 5/8" dia. Iron Rod set; thence N 23°09'42" W a distance of 61.05' to a point as evidenced by a 5/8" dia. Iron Rod set; thence N 49°32'59" W a distance of 37.07' to a point as evidenced by a 5/8" dia. Iron Rod set; thence N 77°36'50" W a distance of 76.57' to a point as evidenced by a 5/8" dia. Iron Rod set; thence S 17°38'55" W a distance of 292.17' to a point as evidenced by a 5/8" dia. Iron Rod set; thence S 02°04'49" E a distance of 106.09' to a point as evidenced by a 5/8" dia. Iron Rod set; thence S 44°20'42" W a distance of 33.62' to a point in the aforesaid Southerly line of Furr Property Investments, LLC land as evidenced by a 5/8" dia. Iron Rod set; thence, coincident with the same; thence N 89°17'19" W a distance of 631.72' to a point 3.17' East of the Easterly Right of Way line of Marshburn Road (60' wide public Right of Way) as evidenced by a 1/2" dia. Iron Pipe found; thence, coincident with the Westerly line of Furr Property Investments, LLC land, and within said Right of Way of Marshburn Road; thence N 00°29'05" E a distance of 725.49' to a point near the centerline of Marshburn Road, said point being on the Southerly line of Meritage Homes of the Carolinas land (DB 19503, PG 0537) as evidenced by a Mag Nail set; thence, coincident with the same, S 89°10'38" E a distance of 1,415.24' to a point in the same as evidenced by a 5/8" dia. Iron Rod found; thence, coincident with the Westerly line of Meritage Homes of the Carolinas lands; thence S 01°11'25" W a distance of 297.48' to a point in the Northwesterly corner of NB Ammons Acres, LLC lands as evidenced by a 3/4" dia. Iron Pipe with Cap found; thence with a southern line of Robin W. Grover (DB 17732 PG 2050) S 89° 41' 24" E 1,155.07' to a 5/8" EIP; thence with a eastern line of Grover N 0° 15' 59" W 412.48' to a 5/8" EIP; thence with a southern line of Grover N 86° 19' 57" E 1,147.62 to a 4" x 4" existing concrete monument; thence with a eastern line of Grover N 6° 13' 27" W 395.13' to a 4" x 4" existing concrete monument; thence with the eastern line of Joy B. Allen Currin (DB 3546 PG 180) N 6° 11' 21" W 548.34' to a new 5/8" rebar set; thence with said line N 6° 11' 21" W 151.07' to the point and place of beginning containing 480.33 acres, more or less.

Any additional property located within a one-mile radius of the perimeter boundaries of the above-described property.

EXHIBIT "B"

Potential Expansion Property
(continued)

LESS AND EXCEPT from the above-described property that property described on Exhibit "A" of this Declaration.

Note to clerk and title examiners:

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

EXHIBIT "C"

Initial Rules

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

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

2. **Restricted Activities**. Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board or the Declaration, the following activities are prohibited within the Community, except to the extent undertaken by the Declarant or its designees in the course of development, marketing and sale of the Community:

(a) Parking of automobiles, trucks, motorcycles, scooters, bicycles, trailers, or other vehicles of any kind (collectively, "**Vehicles**") on public or private streets or in alleys within the Community, except that public safety and emergency personnel may park their official Vehicles on streets while responding to an emergency or otherwise acting in the course of their official duties;

(b) Parking of Vehicles overnight on Common Areas except that occasional overnight guests of an Owner or occupant of a Unit may park their vehicles in such areas, if any, which the Board has designated for parking, but only while staying overnight in the Unit and only in places designated by signage or painted lines as parking spaces. Bicycles may be parked or left on the Common Area only in bike racks provided by the Association. Neither the Declarant nor the Association shall have any responsibility or liability for theft, vandalism, or other loss or damage to vehicles or contents of vehicles parked or left on Common Areas at any time;

(c) Parking of Vehicles on Units in places other than garages, carports, or driveways, except that commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles may be parked or stored only in enclosed garages except temporarily during loading and unloading; provided, construction, service and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. For purposes of this provision, "commercial vehicles" shall be defined as trucks or vans with commercial writing on their exteriors or vehicles primarily used or designed for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size or official vehicles owned by governmental or quasi-governmental bodies. The Association is authorized to tow any vehicle which is parked within the Community in violation of these Rules, including vehicles parked or placed on Units, at the owner's expense in accordance with Section 7.5(c) of the Declaration. All Owners are responsible for notifying their tenants, guests, and invitees of these parking Rules and ensuring their compliance. Any costs incurred by the Association in enforcing these parking Rules may be levied as a Specific Assessment against the Owner responsible for such noncompliance and such Owner's Unit;

(d) Raising, breeding or keeping animals, livestock, or poultry of any kind on or in a Unit, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of

EXHIBIT "C"

Initial Rules
(continued)

the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(e) Any activity on a Unit or Common Area which emits foul or obnoxious odors outside a Unit or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the occupants of other Units (this paragraph shall not restrict construction activities by Builders or the Declarant and their contractors and subcontractors during the Development and Sale Period, nor shall it preclude normal and customary use of power tools, lawn mowers, and other yard maintenance equipment, provided they are used only between the hours of 8:00 a.m. and 8:00 p.m.);

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

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

(h) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

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

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

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

(l) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff;

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

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

EXHIBIT "C"

Initial Rules
(continued)

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

(p) Construction, placement, improvement, or use of any garage, basement, or accessory structure on a Unit as separate, independent living quarters for one or more persons, whether or not related to the occupants of the main dwelling on the Unit, and whether on a temporary or permanent basis, or conversion of any garage to finished space for use as an integral part of the living area on any Unit, or use of any garage for storage or other purposes which preclude its use for parking of that number of vehicles for which it was originally designed, except with the prior written consent of the Declarant during the Development and Sale Period and the Board thereafter, and prior approval pursuant to Article IV;

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

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

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

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

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

(v) Any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve door-to-door solicitation of residents of the Community, (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Community which is noticeably greater than that which is typical of Units in which no business activity is being conducted; (v) the business activity does not involve the sale of controlled substances or firearms or the propagation, growing, sale, or distribution of cannabis or cannabis derivatives for any purpose, whether or not legal; and (vi) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or

EXHIBIT "C"

Initial Rules
(continued)

offensive use, or threaten the security or safety of other residents of the Community as may be determined in the sole discretion of the Board.

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

Leasing of a Unit for residential purposes consistent with the Declaration and the Association's Rules shall not be considered a business or trade within the meaning of this subsection.

This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of Ponder or its use of any Units which it owns within Ponder including the operation of a timeshare or similar program; and

(w) Bullying, harassing, or intimidation, or other behavior which the Board determines to constitute verbal or physical abuse or threaten the safety or physical or emotional well-being of, or create a hostile work environment for, any employee, agent, contractor, or vendor of the Declarant or the Association, or the employees of any such contractor, vendor, or agent, whether conducted in person, by telephone, in writing, through the use of technology, electronic communication, social media, or by any other means. No person except a person whom the Board may designate to supervise an employee, contractor, vendor or agent, shall reprimand, give direction to, or criticize any Declarant or Association employee, contractor, vendor or agent, or any of their employees, except that Members who have constructive criticism, complaints, concerns, or suggestions of any kind relating to any Association operations, personnel, contractors, vendors, or agents, or their respective employees, may bring the same to the Board's attention in writing signed by the Member and detailing any incident giving rise to the specific complaint, concern or suggestion, the date and time thereof, the persons involved and/or affected, and the proposed course of action that the writer requests that Board take in response.

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

(i) an antenna that is one meter or less in diameter and used to receive direct broadcast satellite services, including direct-to-home satellite services, or to receive or transmit fixed wireless signals via satellite; or

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

EXHIBIT "C"

Initial Rules
(continued)

multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite; or

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

(collectively, "**Permitted Antennas**") shall be permitted on Units without prior approval, provided they are installed in compliance with such requirements as to location and screening as may be set forth in the Design Guidelines in order to minimize obtrusiveness as viewed from streets and adjacent property, consistent with the Federal Communications Commission's Over-the-Air Reception Devices rule, 47 C.F.R. 1.4000 adopted pursuant to the Telecommunications Act of 1996, as amended from time to time. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Community, should any master system or systems be utilized by the Association and require such exterior apparatus.

Notwithstanding the above, nothing in this Section 2 shall be construed to preclude farming, agricultural, or related activities which the Board specifically authorizes to be conducted on designated portions of the Common Areas, which may include, without limitation, planting, raising, and harvesting of crops; grazing and keeping of poultry, goats, and other livestock (excluding pigs and hogs); and the operation of farmers markets, produce stands, and similar community activities and events consistent with applicable zoning.

3. **Prohibited Conditions**. The following shall be prohibited in the Community:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community; and

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

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

4. **Restriction on Operation of Drones.**

(a) For purposes of this Section, a "drone" is an unmanned aircraft system which is controlled by an operator on the ground or from a remote location without physical contact with the aircraft. The term includes remote-controlled model airplanes and helicopters as well as other remote-controlled aircraft. The Board may, from time to time and at any time, modify and expand the definition of "drone" set forth herein.

(b) Except as provided in subsection (d), no person may operate a drone within the Community until the drone is: (i) registered with the Association in accordance with such procedures as the Board may establish from time to time; and (ii) registered with the Federal Aviation Administration ("FAA"), if required by the FAA, and a copy of the certificate of FAA registration provided

EXHIBIT "C"

Initial Rules
(continued)

to the Association. Information on registration of drones and additional Federal requirements for drones may be found at https://www.faa.gov/uas/.

(c) Except as provided in subsection (d), the operator of a drone:

(i) may operate such drone within the Community only between the hours of 10:00 a.m. and 6:00 p.m.;

(ii) must not allow the drone to enter into the airspace above any Unit other than the Unit occupied by the operator or on which the operator has been expressly authorized by the Owner or occupant to operate such drone.

(iii) must not allow the drone to enter the airspace above any portion of the Common Area, Limited Common Area, or streets within the Community without the Board's prior written approval; and

(iv) must not operate the drone in a manner which tends to harass or invade the privacy of, or be offensive or detrimental to, Owners or occupants of other Units, their guests or invitees, or persons using the public streets or Common Areas. The Board's judgment on such matters shall be determinative.

(d) This Section 4 shall not apply to the Declarant during the Development and Sale Period. The Declarant and its permittees may periodically utilize drones in the Community for sale and marketing purposes, and for other purposes associated with development of the Community. This Section 4 shall not apply to restrict operation of any drone within the Community by law enforcement or other public safety personnel acting in their official capacities, or by any governmental agency or utility provider or their employees or contractors for legitimate governmental or utility purposes, provided that the drone is used only to perform tasks within the scope of the operator's official capacity or duties and is operated in full compliance with all applicable laws and regulations. The Board may, in its discretion, grant exemptions for other categories of use subject to such conditions as the Board deems appropriate, provided that such exemptions are based on the nature of the drone use and operation within the Community and do not give preferential treatment to any particular business over its competitors.

(e) The Board may establish additional rules and/or policies to prohibit and/or regulate the use and operation of drones in the Community, which may include imposing conditions on registration.

EXHIBIT "D"

By-Laws of Ponder Community Association, Inc.

[attached]

BY-LAWS

OF

PONDER COMMUNITY ASSOCIATION, INC.

TABLE OF CONTENTS

BY-LAWS

OF

PONDER COMMUNITY ASSOCIATION, INC.

Article I Name, Principal Office, and Definitions

1.1. Name

The name of the corporation is Ponder Community Association, Inc. (the "**Association**").

1.2. Principal Office

The principal office of the Association shall be located in Wake County, North Carolina, or such other location within 90 miles of Ponder as the Board may designate from time to time. The Association may have such other offices, either within or outside the state of North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions

Unless otherwise specified, the words used in these By-Laws shall be given their normal, commonly understood definitions except that, unless the context otherwise requires, capitalized terms used in these By-Laws shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Ponder recorded by NB Ammons Acres, LLC in the Office of the Register of Deeds of Wake County, North Carolina (as it may be amended and supplemented, the "**Declaration**"). The term "**majority**," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number. References in the Governing Documents to "votes" or "total votes in the Association" shall refer to the total number of eligible votes existing for the Association at a given time, which eligible number does not include any votes of Units or Members for which voting rights have been suspended.

Article II Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership

The Association initially shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the rights of which shall vary by class to the extent provided in the Articles of Incorporation, the Declaration, and/or these By-Laws. The Declarant, by recording of the Declaration, and each Owner of a Unit, by accepting record title to the Unit or recordation of a contract of sale, is deemed to consent to membership in the Association. Membership shall be resigned or transferred only upon transfer of title to the Unit as provided in the Declaration. The provisions of the Declaration pertaining to membership and the designations, qualifications, rights, privileges and obligations of each class of membership are incorporated by this reference.

2.2. Place of Meetings

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3. Annual and Regular Meetings

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. The Board shall schedule subsequent regular annual meetings to occur during the fourth quarter of the Association's fiscal year, on such date and at such time and place as the Board shall determine. In the Board's discretion, additional regular meetings of the membership may be held in accordance with a schedule for regular meetings published by the Board. At the annual meeting, the President and Treasurer shall report on the activities and financial condition of the Association.

2.4. Special Meetings

The President or any two members of the Board may call special meetings of the membership. In addition, the President or Secretary shall call a special meeting if so directed by Board resolution or upon receipt of a petition, signed and dated by Members representing at least 10% of all votes entitled to be cast on any issue proposed to be considered, requesting that a special meeting be called and stating the purpose thereof. Notice of such meeting shall be given within 15 days after receipt of any such petition and shall call for such meeting to be held within 30 days after the date of such notice. If the President or Secretary fail to comply with this requirement, then any Owner who signed the petition may call such meeting by giving notice to the Owner of each Unit in accordance with Section 2.5 and Section 9.5.

2.5. Notice of Meetings

(a) ***Timing of Notice and Content.*** At least 10 days but not more than 60 days before any membership meeting, the President, the Secretary, or the officers or other persons calling the meeting shall deliver or cause to be delivered to each Member a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including a description of the general nature of any proposed amendment to the Declaration or By-Laws, any proposed budget changes, any proposal to remove a director, and any other matter to be put to a vote of the members. If proxies are permitted, the notice shall also state the procedures for appointing proxies. If the meeting is to be held solely by electronic communications or if participation in the meeting is permitted by electronic communications, as described in Section 2.11 below, the notice shall state the form of communications system to be used for the meeting and the means of accessing the communications system. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 9.5.

(b) ***Record Dates for Notice and Voting.*** The Board may set a record date for determining who is entitled to receive notice of a meeting, which shall be no earlier than 70 days before the meeting date. If no record date is fixed by the Board, Members as of the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting and any person who is a Member on the date of such meeting shall be entitled to vote on any matter coming before the Members for a vote. If a record date is set, the Association shall prepare an alphabetical list of the names of all Members entitled to notice of the meeting, showing the address and number of votes each member is entitled to cast, and shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. Beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, the list of members shall be available at the Association's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held, for inspection by any Member for the purpose of communication with other Members concerning the meeting. The Association shall make the list of Members available at the meeting, and any Member, personally or by or with his representatives, is entitled to inspect the list at any time during the meeting or any adjournment thereof.

2.6. Waiver of Notice

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting and such waiver shall be filed with the minutes of the meeting in the Association's records. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless the Member or the Member's proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment and Recess of Meetings

Members entitled to cast a majority of the votes represented at a meeting may recess the meeting or adjourn to a continued meeting to a time no fewer than 5 nor more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, the meeting shall resume at the point at which it was interrupted by the recess or adjournment and continuation, and, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the meeting when originally called, or if for any reason a new date is fixed for reconvening the meeting or a new record date is set after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings in Section 2.5(a).

Members or their proxies present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of a sufficient number of Members to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Declaration, these By-Laws, or applicable law for specific actions, must approve any action taken. Provisions of the Declaration regarding voting by co-Owners are incorporated herein by this reference.

2.8. Voting

Members shall have such voting rights as are set forth in the Declaration, which provisions are specifically incorporated by this reference. Each Unit shall be entitled to the number of vote(s) specified in the Declaration on all matters put to a vote of the Members generally. However, voting on certain matters pertaining to only Units in a particular Service Area may be limited to those Members within the affected Service Area, as the Board may reasonably determine. A vote may be cast by the Owner of the Unit or by a lawful proxy. If the vote attributable to the Unit has been suspended, neither the vote, the Unit to which it is attributable, nor the Owner thereof shall be counted for purposes of determining the number of eligible votes, Members, or Units with respect to any matter requiring approval of the Members under the Governing Documents.

To the extent not prohibited by North Carolina law, a membership vote on any matter may be conducted at a meeting or by mail, electronic transmission, electronic message, a secure web-based voting system, or any combination of these methods, as the Board determines appropriate, regardless of whether such voting method is specifically provided for in these By-Laws. The Board shall establish voting procedures to provide reasonable assurance that the person casting the vote is the Member or the Member's proxy appointed pursuant to Section 2.9, or an individual appointed to represent the Member in accordance with Section 6.2(b) of the Declaration.

2.9. Proxies

Members may vote in person or by proxy, subject to the limitations of North Carolina law and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, and shall be signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. The Board may, in its discretion, accept proxies filed in person, by mail or by electronic transmission, provided they are signed and the Board has no reason to question the validity of the proxy. The Association shall have no obligation to recognize any proxy that is not actually received prior to the deadline established by the Board for delivery of proxies (which deadline may be earlier for proxies sent via mail or electronic transmission). Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable unless otherwise specifically stated in the proxy and coupled with an interest which has not been extinguished. A proxy shall automatically terminate upon: (a) transfer of title to any Unit for which it was given; (b) receipt by the Secretary of written notice of revocation of a revocable proxy or of the death or judicially declared incompetence of the Member who signed it; (c) attendance and voting by the Member at the meeting; or (c) 11 months from the date of the proxy, unless a different period is specified in the proxy, in which case the period specified in the proxy shall control, subject to termination due to other events specified in this paragraph.

2.10. Quorum

Except as otherwise provided in these By-Laws or the Declaration, the presence, in person or by proxy, of persons entitled to cast 10% of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association, and the casting of ballots representing at least 10% of the total Class "A" votes in the Association shall constitute a quorum for any membership vote conducted by means other than at a meeting; provided, if a quorum is not represented at any meeting when originally called, then the quorum for any subsequent attempt to convene such meeting shall be reduced to 5% of the total Class "A" votes in the Association. During the Class "B" Control Period and thereafter as long as there is a Class "B" Membership, the presence of a representative of the Declarant shall also be necessary to establish a quorum. Notwithstanding the foregoing, unless Members representing at least one-third (1/3) of the total votes in the Association are represented in person or by proxy at any annual or regular meeting of the Members, the only matters that may be voted upon at such meeting are those matters that are described in the meeting notice.

2.11. Conduct of Meetings

The President shall preside over all meetings of the Association. The Secretary shall ensure that minutes of the meetings are prepared, reflecting all resolutions adopted and all other transactions occurring at such meetings. The minutes shall be kept with the Association's books and records.

The Association may hold membership meetings and/or allow Members or their proxies to participate in any membership meeting by conference telephone or similar communications equipment or another suitable electronic communications system if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, the Association must implement measures to verify that every Member and proxy voting at the meeting by means of remote communication is sufficiently identified, and the Association shall keep a record of any votes cast by remote communications. A Member or proxy holder who participates in a meeting by the means described in this Section, whether the meeting is held at a physical location or solely by means of remote communication, is deemed to be present in person at the meeting.

2.12. Action Without a Meeting; Voting by Written or Electronic Ballot

(a) ***General***. Unless the Act, the North Carolina Nonprofit Corporation Act, N.C.G.S. Section 55A-1-01, *et seq.* ("**Nonprofit Corporation Act**"), or the Governing Documents require(s) action to be taken at a meeting of the Members, any action requiring consent or approval of the Members may be taken by obtaining the requisite vote or approval at a meeting, by written consent without a meeting pursuant to N.C.G.S. Section 55A-7-04 and subsection (b), or by written ballot without a meeting pursuant to N.C.G.S. Section 55A-7-08 and subsection (c). Whenever the Governing Documents permit action to be taken by affirmative vote or written consent, a written consent or ballot pursuant to either subsection (b) or (c) shall constitute written consent for purposes of such provision.

A written ballot or written consent may be submitted to the Association by electronic mail transmission, provided that such ballot or consent is accompanied by information indicating that the Member, Member's agent, or Member's attorney-in-fact authorized its electronic transmission. Such consents and ballots (or in the case of electronic balloting, a written record of the results of the balloting) shall be filed with the Association's minutes and shall have the same force and effect as a vote of the Members at a meeting. Once submitted to the Association, a ballot or written consent may not be revoked. The Association shall maintain any written consents or ballots approving any action in its files for a period of at least four years.

Nothing in this Section 2.12 shall authorize action without the approval of such Persons whose approval is specifically required for such action under the Governing Documents.

(b) ***Approval by Written Consent***. Except in the case where a meeting is required, the approval of the Members may be obtained with a meeting and without prior notice if the action is approved by Members representing all eligible votes in the Association. Member approval must be evidenced by one or more consents in writing or by electronic transmission describing the action taken, signed by the requisite number of Members, and delivered to the Secretary. Such consents shall be signed by the Member (or, if the Member is not an individual, by an authorized signatory of the Member), dated, and delivered to the Association within 60 days after receipt of the earliest dated consent.

(c) ***Approval by Ballot***. Except in the case where a meeting is required, the approval of Members may be obtained by ballot without a meeting if the Association delivers a ballot in writing or by electronic transmission to every Member entitled to vote on the action. The Board may determine, in its discretion, whether votes shall be cast by written ballots or by electronic voting, or by both, provided that votes may be cast solely by electronic voting only if all Members entitled to vote have consented to electronic communication in accordance with Section 9.5.

The ballot form for obtaining Member approval shall: (i) set forth each proposed action; (ii) provide an opportunity to vote for or against each proposed action; (iii) specify the time by which the ballot must be received by the Association in order to be counted; and (iv) identify the name and location or address of the person authorized to receive the ballot on the Association's behalf. Unless secret balloting is required on the proposed action, the ballot shall contain or request information sufficient to identify the Member or the Member's proxy submitting the ballot. Approval by ballot pursuant to this subsection (c) is valid only when: (A) the number of votes cast by written or electronic ballot equals or exceeds the quorum required for a meeting of the Members; and (B) the number of votes cast in favor of the proposed action equals or exceeds the number of votes that would be required to approve the action at a membership meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Article III Board of Directors: Selection, Meetings, Powers

A. Composition and Selection

3.1. Governing Body; Qualifications

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. Except with respect to directors appointed by the Declarant, directors shall be Owners or residents of Units. A "**resident**" shall be any natural person 18 years of age or older whose principal residence is a Unit. No more than one eligible person from any Unit may serve on the Board at any time. If an Owner is a legal entity, any officer, director, or partner, or other representative designated in writing by the Owner, shall be eligible to serve as a director unless the Owner otherwise specifies by written notice to the Association; provided, no Owner may have more than one such representative serving on the Board at a time, except in the case of directors appointed by the Declarant.

3.2. Number of Directors

The Board shall consist of three to five directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office

(a) ***Initial Board.*** The initial Board shall consist of the three or four directors appointed by the Declarant, who shall serve until their successors are appointed or elected as provided in this Section 3.3. The Board shall automatically increase to five persons as necessary to accommodate the election of directors as provided in subsection (b) of this Section. The Board may, by majority vote, increase the number of directors earlier than required under subsection (b) but there shall be a maximum of five directors at any time.

(b) ***Directors During Declarant Control Period.*** Except as otherwise provided in this Section 3.3(b), the Declarant, as the Class "B" Member, shall be entitled to appoint, remove and replace the members of the Board in its sole discretion until termination of the Declarant Control Period. During such period, the Class "A" Members shall be entitled to elect a minority of the total number of directors according to the following schedule:

(i) Not later than the next annual meeting after the time that Class "A" Members other than Builders own 80% of the maximum number of Units permitted by applicable zoning for the property specifically described in Exhibits "A" and "B" to the Declaration ("**Permitted Units**"), or whenever the Declarant earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect one director. The remaining three or four directors shall be appointees of the Declarant. The director elected by the Class "A" Members shall not be subject to removal by the Declarant and shall be elected for a term of one year or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) Not later than the next annual meeting after the time that Class "A" Members other than Builders own 90% of the Permitted Units, or whenever the Declarant earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect two directors. The remaining three directors shall be appointees of the Declarant. Directors elected by the Class "A" Members shall not be subject to removal by the Declarant and shall be elected for a term of one year or until the happening of the event described in subsection (c)(i) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c)(i) below, successors shall be elected for a like term.

(c) *Directors After the Declarant Control Period.*

(i) Not later than termination of the Declarant Control Period, the President shall call for an election by which the Class "A" Members shall be entitled to elect three directors. Two directors shall serve a term expiring at the second annual meeting following the six-month anniversary of their election and one director shall serve a term expiring at the first annual meeting following the six-month anniversary of their election, as such directors determine among themselves at the time of their election.

(ii) The Declarant shall be entitled to appoint, remove, and replace two directors until termination of the Development and Sale Period, at which time the term of the directors appointed by the Declarant shall expire and the remaining directors shall be entitled to appoint successors to fill the vacancies until the next annual meeting, at which time the Class "A" Members shall elect a successor to serve a term of two years.

(iii) Upon expiration of the term of office of each director elected by the Class "A" Members, Class "A" Members shall be entitled to elect a successor to serve a term of two years. Directors elected by the Class "A" Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

Diagram 3.1 illustrates the concept of transition of control of the Board of Directors during and after the Class "B" Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS				
Initial Board	**80% of Permitted Units Conveyed**	**90% of Permitted Units Conveyed**	**Termination of Declarant Control Period**	**Termination of Development and Sale Period**
Declarant	Class A	Class A	Class A	Class A
Declarant	Declarant	Class A	Class A	Class A
Declarant	Declarant	Declarant	Class A	Class A
	Declarant	Declarant	Declarant	Class A
		Declarant	Declarant	Class A

Diagram 3.1 Transition of Control of Board

3.4. Nomination and Election Procedures

(a) *Nomination of Candidates.* The Board may appoint a Nominating Committee consisting of a chairperson, who shall be a member of the Board of Directors, and three or more Class "A" Members (or representatives of Class "A" Members which are legal entities). If established, the Nominating Committee shall be appointed at least 30 days prior to the election of directors by the Class "A" Members. The members of the Nominating Committee shall serve a term of one year or until their successors are appointed. The names of the members of the Nominating Committee shall be announced in the notice of each election.

If appointed, in preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Class "A" Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. In addition, at least 30 days prior to any election of directors by the Class "A" Members, the Board shall announce a reasonable period for interested candidates to express an interest in running for election to the Board. In the Board's discretion, nominations may also be permitted from the floor at any meeting at which an election is held, or by write-in on any ballot. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) ***Election Procedures***. At each election, voting shall be by written or electronic ballot in accordance with Section 2.12(c). Each Class "A" Member may cast all vote(s) assigned to its Unit(s) for each position to be filled by Class "A" votes. Cumulative voting shall be permitted, provided that either the meeting notice states that cumulative voting will take place or the procedures set forth in N.C.G.S. § 55A-7-25 are followed. That number of candidates equal to the number of positions to be filled by Class "A" votes receiving the greatest number of votes shall be elected. The Association shall publish the names and addresses of all directors and officers within 30 days after any election of directors.

3.5. Removal of Directors and Vacancies

(a) ***Removal by the Members***. At any regular or special meeting of the membership, any director elected by Class "A" votes may be removed, with or without cause, by the vote of Members holding a majority of the Class "A" votes. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose and given an opportunity to be heard at such meeting prior to a vote being taken on his or her removal. Upon removal of a director by the Class "A" Members in accordance with this subsection (a), the Class "A" Members may then and there elect a successor to fill the vacancy for the remainder of the term of such director. Alternatively, the Board may schedule another meeting of the Members to fill the vacancy to occur no later than 60 days after the removal vote for the purpose of electing a successor for the remainder of the term.

Declarant, in its capacity as such, shall have no unilateral right to remove or replace directors elected by the Class "A" Members but may cast any votes it holds as a Unit Owner for or against the removal of directors. During any period that the Declarant is entitled to appoint one or more directors, neither the Members nor the Board shall have any right to remove or replace directors appointed by the Declarant.

(b) ***Vacancies on the Board***. If any office of a director elected by the Members becomes vacant by reason of death, disability, resignation, disqualification, removal from office or otherwise, a majority of the remaining directors (even though less than a quorum) may appoint a successor to fill the vacancy until the next election of directors by the Members, at which time the Members may elect a successor for the remainder of the term. Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Declarant.

(c) ***Disqualification and Resignation of Directors***. Any director may resign at any time by delivering a written resignation to the President or Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the President or Secretary, and acceptance of the resignation by the Board shall not be necessary. Upon a director ceasing to meet the eligibility requirements under Section 3.1, the director shall be deemed to have resigned. Additionally, any director elected by Class "A" votes who has three consecutive unexcused absences from Board meetings may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present. In the event of the resignation or disqualification of a director elected by the Class "A" Members, or the removal by the Board of a director elected by the Members in accordance with this subsection (c), the Board may declare a vacancy, and a majority of the remaining directors (though less than a quorum) may appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

B. Meetings

3.6. Organizational Meetings

The first meeting of the Board shall be held within 30 days following each annual meeting of the membership.

3.7. Regular Meetings

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least one such meetings shall be held during each fiscal year.

3.8. Special Meetings

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by 20% of the directors then in office.

3.9. Notice; Waiver of Notice

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication; or (iv) electronic mail or other electronic messaging, with confirmation of successful transmission. All such notices shall be given at or sent to the director's telephone number, electronic mail address, or mailing or physical address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be delivered or transmitted at least 48 hours before the time set for the meeting. No notice shall be required for regular meetings conducted in accordance with a published schedule; provided notice of the schedule was delivered to each director in accordance with this subsection (a).

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Remote Participation in Meetings

(a) The Board may conduct any Board meeting through the use of, or permit any or all directors to participate in any meeting by means of, any communication system by which all directors participating in the meeting can hear each other simultaneously.

(b) A meeting of the Board, or of any committee designated by the Board, may be held by means of a "virtual" or remote electronic communications system, including videoconferencing technology or the Internet, but only if (i) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and (ii) the system permits each person participating in the meeting to communicate concurrently with each other participant.

(c) Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

3.11. Quorum of Board; Voting

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration or by North Carolina law.

A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of some directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

Each director shall have one equal vote. Board members may not vote by proxy. Voting may be conducted at a meeting or by written consents without a meeting in accordance with Section 3.14. A director who is present at a Board meeting is presumed to have assented to any action approved at such meeting unless the director: (i) objects at the beginning of the meeting to holding the meeting or transacting the business at such meeting; (ii) votes against the action and the vote is entered in the meeting minutes; or (iii) abstains from voting on the action because the director claims a conflict of interest and the abstention is entered in the meeting minutes.

3.12. Conduct of Meetings

The President shall preside over all meetings of the Board and the Secretary shall ensure that minutes are recorded in a minute book and that a record is made of all Board resolutions and all transactions and proceedings occurring at such meetings.

3.13. Open Meetings; Executive Session

(a) At regular intervals, the Board shall provide Members an opportunity to attend a portion of a Board meeting and speak to the Board about their issues and concerns. The Board may place reasonable restrictions on the number of persons who may speak on each side of an issue and reasonable time restrictions on the persons who speak.

(b) In any Board meeting, upon motion and affirmative vote of the Board, the Board may adjourn and reconvene in executive session, restricting attendance to directors and such other persons as the Board may specifically invite, to discuss matters of a sensitive or confidential nature, such as pending or threatened litigation, personnel matters, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion privacy of Members or their tenants, matters that are to remain confidential by request of the affected parties and agreement of the Board, and such other matters as the Nonprofit Corporation Act may specifically authorize. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of any Members or tenants, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

3.14. Action Without a Formal Meeting

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if all of the directors sign a written consent or consents setting forth the action so taken. Such consent(s) shall have the same force and effect as a unanimous vote at a meeting. Consents may be filed electronically in accordance with Section 2.12.

C. Powers and Duties

3.15. Powers

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or North Carolina law require to be done and exercised exclusively by the membership. Board determinations as to the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable.

3.16. Duties

Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;

(b) levying and collecting such assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) opening bank accounts on the Association's behalf and designating the authorized signatories;

(f) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment, in depositories other than banks;

(g) making and amending Rules in accordance with the Declaration;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;

(i) determining when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in Section 7.5(e) of the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 9.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Ponder;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles and these By-Laws; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

Article IV Officers

4.1. Officers

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. One person may hold two or more offices, except that the offices of President and Secretary shall be held by different persons.

4.2. Election and Term of Office

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected. The Association shall give or publish notice to the Members of the names and addresses of all officers within 30 days after any election of directors or any change in officers of the Association.

4.3. Resignation, Removal and Filling of Vacancies

(a) Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

(b) The Board may remove any officer whenever in its judgment the best interests of the Association will be served.

(c) The Board may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the chief executive officer of the Association. The Secretary shall be responsible for preparation of minutes of the directors' and members' meetings and for authenticating records of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Article V Committees

5.1. General

In addition to such committees as the Declarant or the Board may appoint pursuant to the Declaration, the Board may appoint such other committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Any such other committee shall serve in an advisory capacity only and may not exercise the Board's authority unless such committee constitutes a committee of the Board established in accordance with Section 55A-8-25 of the Nonprofit Corporation Act. Each committee shall operate in accordance with the terms of the Board's resolution. Unless such resolution provides otherwise, the members of a committee shall be appointed by the Board and shall serve at the pleasure of the Board. The Board may remove any committee member, with or without cause, at any time and with or without a successor being named.

5.2. Covenants Committee

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than five Members who are neither officers nor directors of the Association, nor the spouse, parent, sibling, or child of any officer, director or employee. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article VIII of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

5.3. Service Area Committees

In addition to any other committees appointed as provided above, each Service Area which has no formal organizational structure or association may elect a Service Area Committee to determine the nature and extent of services, if any, to be provided to the Service Area by the Association in addition to those dictated by any Supplemental Declaration and those provided to all Members of the Association in accordance with the Declaration. A Service Area Committee may advise the Board on any other issue but shall not have the authority to bind the Board. Any Service Area Committee shall consist of three Members; provided, if approved by the vote of at least 51% of the Owners of Units within the Service Area, the number may be increased to five.

The members of any Service Area Committee shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an ex officio member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board under Sections 3.9, 3.10, and 3.11. Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives. Members of a Service Area Committee may act by unanimous written consent in lieu of a meeting.

Article VI Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under state law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in good faith, in a manner that the director or officer believes to be in, or not opposed to, the best interest of the corporation, and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under the North Carolina Nonprofit Corporation Act.

6.2. Liability

The officers, directors, and committee members of the Association shall not be liable for any mistake of judgment, negligent or otherwise, or for any action taken or omitted in such capacities, except for their own individual willful or wanton misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

6.3. Indemnification

Subject to the limitations of North Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under the North Carolina Nonprofit Corporation Act; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses

In accordance with the procedures and subject to the conditions and limitations set forth in the North Carolina Nonprofit Corporation Act, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Board and Officer Training

The Board may, as a Common Expense, conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. The Board may apply for and maintain, as a Common Expense, membership for the Association, its officers and directors, in the Community Associations Institute or any similar nonprofit organization that provides educational opportunities for community association directors, officers and managers in operation and management of community associations.

6.6. Conflicts of Interest

Unless otherwise approved by a majority of the other directors, no director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose to the Board any relationship that the director may have, financial or otherwise, with any contractor doing business or proposing to do business with the Association and any actual or potential conflict of interest affecting the director relative to his or her performance as a director.

Except as provided in Section 7.1, no financial payments or payments in the form of goods or services shall be made to any officer or director, or to any business, business associate, or relative of an officer or director, unless approved by a majority of the directors, excluding any director to whom such payment is proposed to be made or whose business, business associate or relative is proposed to receive such payment.

Nothing herein shall preclude directors appointed by the Declarant from being employed by or otherwise transacting business with the Declarant or its affiliates, or preclude the Declarant from transacting business with the Association or its contractors, notwithstanding the fact that the Board may include directors appointed by the Declarant.

Article VII Management and Accounting

7.1. Compensation of Directors and Officers

Directors and officers shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association and, during the Development and Sale Period, the written consent of the Declarant. Any director or officer may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies furnished to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association, provided that such director's or officer's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding any interested director.

7.2. Right of Class "B" Member to Disapprove Actions

During the Development and Sale Period and thereafter so long as the Class "B" Membership exists, the Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, or interfere with development or construction of any portion of Ponder, or diminish the level of services being provided by the Association. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein unless and until the requirements of this Section have been met.

(a) ***Notice.*** The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) ***Opportunity to be Heard.*** The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant or its representatives or agents shall make their concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 30 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 30 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure or other action required to comply with applicable laws and regulations.

7.3. Managing Agent

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. Declarant or its affiliate may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. Any financial or other interest that the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

7.4. Accounts and Reports

(a) The following accounting standards shall be followed unless the Board by resolution specifically determines otherwise:

(i) cash or accrual accounting, as determined by the Board and as defined by generally accepted accounting principles, shall be employed; and

(ii) cash accounts of the Association shall not be commingled with any other accounts; provided, the Association shall establish controls to account for Service Area Assessments collected and Service Area Expenses for any Service Area separate from its general operating funds.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis; and

(ii) a statement reflecting all cash receipts and disbursements for the preceding period; and

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format; and

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).

(c) An annual report consisting of at least the following shall be made available to all Members within 75 days after the close of the fiscal year: (i) a balance sheet; and (ii) an income and expense statement. Such annual report may be prepared by the Association's management company. In addition, the Association may engage an independent public accountant to prepare an annual financial statement, which may be prepared on an audited, reviewed, or compiled basis, as the Board determines; provided, upon a vote of the majority of the Board, or upon the affirmative vote of a majority of the Members present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose, the Association shall provide an audited financial statement. Any financial statement prepared by an independent public accountant shall be made available to all Members within 30 days after completion, but there shall be no requirement that such financial statement be completed by any certain date.

7.5. Borrowing

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed the greater of $50,000 or 20% of the Association's budgeted gross expenses for that fiscal year. During the Declarant Control Period, no Mortgage lien shall be placed on any portion of the Common Area without such approval as may be required under Article XVI of the Declaration.

7.6. Right to Contract

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts or other owners or residents associations, within and outside Ponder. Any common management agreement shall require the consent of a majority of the total number of directors on the Board.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

Article VIII Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response

The Board or its delegate shall serve the alleged violator with written notice: (a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable; (b) describing the proposed sanction to be imposed; and (c) informing the alleged violator that he or she has seven (7) days after receipt of the notice to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; (d) if the alleged violator fails to respond to the notice within the seven-day period, the Board may impose the proposed sanction; and (e) informing the alleged violator that attorneys' fees and costs may be charged if the delinquency or violation continues after a certain date. If the hearing is to be held before a Covenants Committee, the notice shall also state that the alleged violator has the right to appeal the decision of the Covenants Committee to the Board.

If the alleged violation is of a curable nature, the alleged violator may avoid attorneys' fees and costs by curing the violation within a reasonable cure period stated in the notice, except that the Association shall have no obligation to provide a cure period if the alleged violator has been given notice of the same or similar violation within the preceding 12 months. If the alleged violator fails to respond to the notice within the seven-day period, the Board may impose the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such seven-day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this Article, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing

If a hearing is requested within the allotted seven-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session within 30 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 10 days and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing. At the hearing, the alleged violator shall be afforded a reasonable opportunity to be heard and shall be entitled to make an audio recording of the hearing. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (*i.e.*, the Board's or Committee's decision) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three days after the hearing.

If a timely request for a hearing is not made, the sanction stated in the violation notice shall be imposed; provided, the Board or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within cure period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

8.3. Appeal

If a hearing is held before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the date of the Covenants Committee's decision. The Board shall schedule a hearing to be held within 15 days after receipt of a timely notice of the appeal and shall notify the individual filing the appeal of the date, time and place of such hearing, which shall be held before a quorum of the Board. At such hearing, the person entitled to appeal shall be given a reasonable opportunity to be heard and present evidence supporting the grounds upon which his or her appeal was based, as set forth in the notice of appeal. The minutes of the Board shall contain a written statement of the Board's decision and the sanction, if any, to be imposed. The Board may affirm, vacate, or modify the Covenants Committee's decision, with or without explanation. The Board shall render its decision within 10 days after the appeal hearing and notify the violator of its decision within 5 days thereafter.

Article IX Miscellaneous

9.1. Fiscal Year

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules

Unless the Board or the Members adopt a resolution establishing parliamentary or rules of order, *Robert's Rules of Order* (latest edition) published by the Robert's Rules Association shall govern the conduct of Association proceedings when not in conflict with North Carolina law or the Governing Documents. However, action taken at a meeting may not be challenged because the appropriate parliamentary rules were not used unless a person entitled to be heard was denied the right to be heard and raised an objection at the meeting at which the right to be heard was denied. Any action taken at a meeting is deemed valid without regard to procedural errors related to the parliamentary rules one year after the decision is made, unless the error appears on the face of an instrument memorializing the decision.

9.3. Conflicts

If there are conflicts between these By-Laws and the provisions of any other Governing Document or North Carolina law, the conflicts provisions set forth in the Declaration shall determine the priority of the conflicting provisions.

9.4. Books and Records

(a) ***Maintenance of Books and Records***. The Association shall maintain the following books and records, either in written form or in a form capable of conversion into written form within a reasonable time:

(i) its Articles, By-Laws, Declaration, and Rules, and all amendments to such documents currently in effect;

(ii) resolutions adopted by the Board or the Members relating to the number or classification of directors, or to the characteristics, qualifications, rights, limitations, and obligations of Members;

(iii) minutes of all meetings of the Members and the Board and records of all actions approved by the Members or the Board without a meeting for the three most recent years;

(iv) all written communications by the Association or the Board directed to the Members generally during the preceding three years, whether in writing or by electronic transmission;

(v) copies of the financial statements for the three most recent years; and

(vi) a list of the names and business or home addresses of its current directors and officers.

Subject to subsection (d) below, the Board shall make the records specified in this subsection (a) available for inspection and copying by any Member or any holder or guarantor of a first Mortgage on a Unit, or the duly appointed representative of the foregoing, within five business days after receipt of a written request from the Member or Mortgagee requesting access to the records and specifying the records sought.

(b) ***Additional Corporate Records***. In addition to the records identified in subsection (a) above, the Association shall keep as records the following books and records, either in written form or in a form capable of conversion into written form within a reasonable time:

(i) minutes of all meetings of the Members and the Board;

(ii) records of any actions taken by the Members or the Board by written consent or ballot in lieu of a meeting;

(iii) accounting books and records (including records of all cash receipts and expenditures and all assets and liabilities), tax returns, and financial statements;

(iv) a membership list maintained in a form that permits preparation of a list in alphabetical order showing the names, mailing addresses, and the number of votes each Member is entitled to cast.

Except as otherwise provided in subsection (a) or N.C.G.S. Section 55A-16-02, as it may be amended, and subject to the provisions of subsections (c) and (d), the Board shall make the records specified above in this subsection (b), or excerpts thereof, available for inspection and copying by any Member within five business days after receipt of a written request from a Member; provided: (A) the Member's written request is made in good faith and for a proper purpose reasonably relevant to the Member's legitimate interest as a Member; (B) the Member's request describes with reasonable particularity the purpose and the records the Member desires to inspect; and (C) the records requested are directly connected with such stated purpose.

Notwithstanding the foregoing, the Association shall not be required to make available for inspection or copying any records that contain health or personnel information or identify a particular Owner's violation history, personal financial information, history of payments or delinquencies in paying amounts due to the Association, or contact information other than mailing address for U.S. mail, unless the Owner whose records would be disclosed has given his or her prior written approval to release such information or a court orders such records to be released or made available to the requesting Member or such Member's representative.

(c) ***Membership List.*** Without the Board's consent, neither the Association's membership list nor any part thereof may be obtained or used by any Person for any purpose unrelated to a Member's interest as a Member of the Association. Without limiting the generality of the foregoing, neither the membership list nor any part thereof may be: (i) used to solicit money or property; (ii) used for any commercial purpose; or (iii) sold to or purchased by any Person.

(d) ***Rules for Inspection.*** A Member's agent or attorney has the same inspection and copying rights as the Member he or she represents. The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means. The Association may impose a reasonable charge covering the costs of labor and materials, for pulling and producing documents and making copies of any documents provided under this Section 9.3; provided, the charge may not exceed the estimated cost of production or reproduction of the records. The Association may require advance payment of the estimated cost of production or reproduction of the records before making copies or reproductions.

(e) ***Inspection by Directors.*** Notwithstanding the foregoing provisions of this Section 9.3, every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association; provided such inspection right does not infringe upon any attorney-client privilege or work product privilege or require disclosure of other information or materials which by law the Association is required to keep confidential (such as social security numbers, credit card numbers, medical records, and similar items). A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

9.5. Notices

(a) ***Form of Notice and Method of Delivery.*** Except as otherwise provided in the Declaration or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or by electronic transmission with written confirmation of transmission. Where the Governing Documents or applicable law require notice to an Owner or Member, notice given to any co-Owner of a Unit shall be deemed notice to all co-Owners of such Unit.

Except as otherwise specifically provided in the Declaration, these By-Laws, the Act, or the Non-profit Corporation Act, notices and other communications that are required to be in writing may be given by electronic means if the recipient has consented to the receipt of electronic communications and designated an information processing system (such as email address or other electronic messaging system) for receipt of such electronic communications. The transmission of an electronic notice or other electronic communication shall be valid if properly addressed to the information processing system designated by the recipient and the communication or information transmitted is in an electronic record capable of retention by the recipient at the time of receipt. At present, email is a currently commonly accepted mode of electronic transmission capable of retention by the recipient at the time of transmission, but other electronic systems and information processing systems may exist or be developed in the future which satisfy the foregoing requirements.

It is the responsibility of each Member to give notice to the Association of any change in the Member's address, email address, or other designated information processing system.

(b) ***Delivery Address.*** Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, email address, or other information processing system for electronic communications which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, or email address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section 9.5; or

(iii) if to Declarant, at the principal address of Declarant as it appears on the Secretary of State's records, or at such other address as Declarant shall designate by notice in writing to the Association pursuant to this Section 9.5.

(c) ***Effective Date.*** Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, five days after deposit with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery or verification of delivery by the carrier; or

(iii) if sent by electronic mail or other information processing system for electronic communications, upon transmission, as evidenced by a printed or electronic record confirming transmission.

9.6. Amendment

(a) ***By Board.*** Until termination of the Declarant Control Period, the Board of Directors may amend these By-Laws for any reason upon majority vote of the Board and the written consent of the Declarant. Thereafter, the Board may unilaterally amend (i) to correct clerical, typographical or technical errors; (ii) to bring any provision into compliance comply with any applicable governmental statute, rule, regulation, or judicial determination; and (iii) to comply with the requirements, standards or guidelines of any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans; or (iv) to satisfy the requirements of any local, state, or federal governmental agency.

(b) ***By Members Generally.*** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members or their proxies representing 67% of the total Class "A" votes in the Association and, during the Development and Sale Period, the written consent of the Declarant. Any such amendment shall be subject to the veto right set forth in subsection (c), if applicable. Notwithstanding the above, any amendment that would increase or decrease the vote required for any action to add or eliminate any additional required approvals for any action must satisfy the same approval requirements that would be required for action to be taken before the amendment

(c) ***Validity and Effective Date of Amendments.*** Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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

NB Ammons/CA Docs/By-Laws-Ponder 040226

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Ponder Community Association, Inc., a North Carolina nonprofit corporation;

That the foregoing By-Laws constitute the By-Laws of the Association, as duly adopted by resolution of the Board of Directors thereof on the 9 day of April, 2026

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 9th day of April, 2026

____________________[SEAL]
Secretary