



Doc ID: 017907690032 Type: CRP
Recorded: 10/23/2006 at 10:24:02 AM
Fee Amt: \$107.00 Page 1 of 32
Workflow# 2070811
Buncombe County, NC
Otto W. DeBruhl Register of Deeds

BK 4304 PG 1652-1683

DECLARATION OF TERMS, RESTRICTIONS, CONDITIONS, & COVENANTS
TYPE OF DOCUMENT

GRANTOR: BEE TREE DEVELOPERS, LLC

GRANTEE: TOWN HOMES OF CREAMY BLOSSOM
CONDO HOME OWNERS ASSOCIATION

PREPARED BY: MCGUIRE WOOD & BISSETT

MAIL TO: ERIC ZETTERHOLM
RIVERWOOD REAL ESTATE DEV CO.
PO Box 19630
ASHEVILLE, NC 28815

2

STATE OF NORTH CAROLINA

Rev. 10-23-06

COUNTY OF BUNCOMBE

**DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND
PROTECTIVE COVENANTS FOR TOWN HOMES OF CHERRY BLOSSOM COVE**

THIS DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND PROTECTIVE COVENANTS FOR TOWN HOMES OF CHERRY BLOSSOM COVE made and entered into this the 23rd day of October, 2006 by and between **BEE TREE DEVELOPERS, LLC**, a North Carolina Limited Liability Company (herein “Declarant”) and all Future Owners of Lots in **TOWN HOMES OF CHERRY BLOSSOM COVE** (herein “Development”) as hereinafter described.

WITNESSETH:

THAT WHEREAS, Developer is the owner of certain property in Buncombe County, North Carolina, referred to as “Town Homes of Cherry Blossom Cove Development”, said property (the “Property”) being more particularly described on Exhibit “A” attached hereto (the Property described being and comprising the “Development” and as shown on that Plat recorded in **Plat Book 106, at Page 130**, Buncombe County Registry (herein “Plat”); and

WHEREAS, the Developer desires for the protection and benefit of all persons who may hereafter become owners of lots located within the Development that the Property be developed with limitations, restrictions and uses. These covenants are to run with the land and be binding upon all parties purchasing Lots and all persons claiming by, through or under Developer until January 31, 2022 at which time said covenants shall be automatically extended for successive periods of (10) years unless by vote of a majority of persons then owning lots within the Development it is agreed to change these covenants in whole or in part.

AGREEMENT:

NOW THEREFORE, the Developer does hereby make the following declaration as to limitations, restrictions and uses to which the above-described Property known as Town Homes of Cherry Blossom Cove Development (herein “Development”) shall be and are hereby subjected:

**ARTICLE I
Definitions**

1. “Act” shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes (a copy of which is attached hereto, but which shall not be recorded herewith).

2. “Association” shall mean and refer to Town Homes of Cherry Blossom Cove Homeowners Association, Inc., a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns.

3. “Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association.

4. “Bylaws” shall mean and refer to the Bylaws of the Association which are attached to this Declaration as Exhibit B.

5. “Common Elements” shall mean and refer to i) private roads designated on any Development Plat hereinafter recorded by Declarant, as well as any other private road constructed by the Developer serving the Development or any property adjoining the Development; ii) the entrance area as shown on such Plat; iii) any other property designated as such by the Developer; and iv) any real estate owned by the Association, other than a Lot.

6. “Developer” and/or “Declarant” shall mean Bee Tree Developers, LLC, a North Carolina limited liability company, or its successors and/or assigns; including any person which succeeds to any Special Declarant Rights as set forth herein.

7. “Directors” shall mean and refer to the members of the Board of Directors of the Association.

8. “Lot” shall mean and refer to any parcel of land within the Development as described on Exhibit “A” and as shown on the Plat (or on any other plat hereafter recorded by Developer of all or any part of the Property and all other Lots which may be added pursuant to any expansion right of Developer as described herein), and designated for separate ownership or occupancy by a Lot Owner.

9. “Lot Owner” and/or “Owner” shall mean and refer to the Declarant or any other person who owns fee simple title to any Lot which is part of the Development; but does not include a person having an interest in a lot solely as security for an obligation.

11. “Member” shall mean and refer to each owner or owners of a lot within the Development who shall also then be a member of the Association for such period of ownership. If a Lot is owned by more than one person, then such persons collectively shall be the Member and shall be entitled to vote only those voting shares allocated to such Lot.

12. “Restrictions” shall mean and refer to this Declaration of Terms, Conditions, Restrictions and Protective Covenants for Town Homes of Cherry Blossom Cove, as the same may be released, amended or changed; either in whole or part, as provided for herein.

13. “Special Declarant Rights” shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Declarant.

14. “Subdivision” and/or “Property” shall mean and refer only to that certain real property described on Exhibit “A” and as shown on any Plat of such real property described on Exhibit “A” as recorded by Declarant. The Declarant shall not be deemed to have subjected any other property which the Declarant may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property is recorded in the Buncombe County Register of Deeds office. The Declarant specifically reserves the right to subject any other property which the Declarant may now own or which Declarant may hereafter acquire to the restrictions set forth herein.

15 “Unit” shall mean and refer to a building situated upon a Lot and intended for use and occupancy as a residence.

ARTICLE II

Submission of Property to the Act and Creation of a Planned Community

1. Submission of the Property and Creation of the Development: Pursuant and subject to the terms and provisions of the Act, Declarant hereby creates a planned community subdivision initially comprised of the Property. Declarant hereby submits all of such Property to the Act and the terms of this Agreement, and reserves the right to submit additional platted lots as shown on the Plat of the Subdivision by the recording of additional plats and amendments hereto declaring such additional real property lots to be subject hereto.

2. Name: The name of the Development created hereunder is Town Homes of Cherry Blossom Cove Development.

3. Designation of Lots and Common Elements: The Developer does hereby designate that real property as shown on the Plat as separate Lots and Common Elements.

4. Reservation of Special Declarant or Developer Rights: Developer, and each of them separately, hereby reserves unto itself and its successors in interest as Special Declarant or Developer Rights, the following:

- (a) Those Special Declarant or Developer Rights as set forth in the Act;
- (b) The right, subject to the terms of Article VI, Section 8 herein, during the Developer’s Control Period (as defined in Article VI, Section 9), to modify, amend, change, vary or release all or any part of these Restrictions; and
- (c) The right to re-designate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by such Developer.

ARTICLE III

**Terms, Conditions, Restrictions,
Protective Covenants and Other Matters**

The following terms, conditions, restrictions and protective covenants are applicable to all of the Subdivision (including all Lots):

1. Architectural Control. Prior to commencement of construction of any improvements, all plans, including elevations, specifications and landscape plans, shall be submitted as an application to the Developer, its agent or its successors or assigns, for approval as to quality of materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. The Developer reserves the right, in its sole and absolute discretion to either approve or not approve of any plans and specifications for any reason whatsoever. The Developer shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications. The Developer reserves the right to modify, waive or increase such application fee. Construction shall thereafter be completed in strict

conformity with such approved plans and specifications and the Developer shall be entitled to stop any construction which is in violation of these restrictions. Improvements shall be constructed only by a builder which has been approved by the Developer. The Developer reserves the right to approve the builder and to from time to time compile a list of approved builders. A builder shall be approved or not approved in the Developer's sole and absolute discretion. Either during or after the Control Period, the Developer reserves the right to establish an Architectural Review Committee to succeed to the rights reserved herein to Developer. Such Committee shall be part of the Association and shall be appointed by the Board of Directors.

2. Design and Development Guidelines. The Developer may, from time to time, publish and promulgate architectural, design and landscape guidelines. Such architectural, design and landscape guidelines shall be explanatory and illustrative of the general intent of the development of the Lots and are intended to guide Lot Owners and their improvement designers and builders and to assist the Developer in reviewing plans and specifications for Improvements. Such architectural, design and landscape guidelines may also set out, among other things, the procedures for submission, review and approval of plans and specifications to the Developer and the fees to be imposed by the Developer, as more specifically described in Section 1 above. In any event, such architectural, design and landscape guidelines shall not be binding upon the Developer, may be revised and amended at any time by the Developer, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials submitted to the Developer for approval. The architectural, design and landscape guidelines described above shall herein collectively be referred to as the "Design and Development Guidelines." The Developer may publish and promulgate different Guidelines for different phases or areas of the Development. Lot Owners shall be permitted to make additional minor landscape improvements around and adjacent to their Lots, subject to the prior written consent of Developer, and so long as any such Lot Owner pays to the Developer an amount equal to the cost and expense reasonably necessary to pay for continued maintenance of any such additional minor landscape improvements.

3. Uses. All Lots shall be used solely for single family residential purposes (one single family dwelling per Lot), and no business or commercial activity will be permitted on or upon a Lot and no commercial structure or activity of any type shall be placed on any Lot. This restriction shall not be construed so as to disallow private home offices and child care for no more than two (2) non-custodial children. Home offices for private use are allowed so long as the use of such office does not generate pedestrian or vehicular traffic in conjunction with such office use which reasonably constitutes a nuisance.

4. Completion of Construction. Once begun, construction and clean-up of debris shall be completed within one (1) year from commencement of construction. A dwelling shall not be occupied until completed. A dwelling shall be deemed completed upon final inspection and approval by the applicable government inspector. The Declarant reserves the express right to modify or amend the periods for commencement and completion of construction as Declarant in its sole and absolute discretion may determine.

5. Satellite Dish and Antennas. No erection of any satellite dish, antenna or tower shall be allowed on any Lot without the prior written approval of Developer in accordance with the Architectural review process set forth in Article III, Section 1 above.

6. Signs. No sign of any kind shall be displayed to the public view on any Lot without the prior written approval of Developer in accordance with the Architectural review process set forth in Article III, Section 1 above.

7. Subdivision of Lot. In the event of the destruction of a house on a Lot due to fire or other disaster, or due to any other cause, there shall be no re-subdivision of such Lot so as to create an additional building lot, except any such re-subdivision by Declarant, or with the prior written consent of Declarant which consent shall be within Declarant's sole discretion. In such event, no trailer, basement, tent, shack, garage or other outbuilding on any Lot shall be, at any time, used as a residence or for any other purpose, either temporarily or permanently, nor shall any residence or other improvement be moved onto a Lot within the Subdivision. Specifically, no mobile homes, trailers, manufactured homes, modular homes or structures of similar construction shall be placed on or allowed to remain on any Lot. There shall be no prefabricated buildings placed upon any Lot or other property within the Development, except prefabricated components such as window and door units, roof trusses, or other such components which shall be permitted and approved by Developer.

8. Nuisances and other Prohibitions.

- a) No noxious or offensive activity shall be allowed upon or carried on any Lot nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No disabled, abandoned or unlicensed vehicles shall be permitted on any Lot, nor shall any vehicle be stored thereon, nor shall any repairs be permitted upon any vehicle parked upon any Lot.
- b) No trucks other than pickup trucks of one (1) ton or less shall be kept on any Lot, or within the Development.
- c) No hunting or discharge of firearms of any kind shall be allowed within the Development. No motorcycles, mini-bikes or motorized two-wheel vehicles shall be allowed, other than licensed vehicles which are used exclusively for transportation purposes, and then only if properly managed, with it being further stipulated that such motorcycles, mini-bikes or motorized two-wheel vehicles which are licensed and used exclusively for transportation purposes shall be allowed to operate within the Development only upon the regularly platted roads thereof. All vehicles kept and operated within the Development shall have properly working mufflers.
- e) No window type heating or air conditioning units shall be installed without the approval of Declarant or which shall be visible from the street.
- f) No clothing lines for drying or hanging of clothes shall be erected or used on any Lot, or within the Development.
- h) No street parking shall be permitted within the Development, other than in designated parking spaces.

- i) No vegetable gardens shall be allowed in the Development without the prior written approval of the Declarant.
- j) Children's toys and lawn furniture shall not be left in an unsightly condition or position within the Development.
- k) No unsightly window coverings visible from the exterior shall be allowed.

9. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such shall not be kept outside except in sanitary containers kept from view. Such sanitary containers shall be placed in plain view only on the day garbage is to be collected.

10. Livestock, Poultry and Other Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that animals commonly known as household pets may be kept on a Lot provided that they are not kept, bred, or maintained for any purposes other than as household pets. Kennel operations shall not be permitted. A kennel is defined as housing for more than two (2) animals. Pets must be kept in the house on the Lot, and leashed at all times when outside of the house. Dogs or other animals are not permitted to run unleashed through the Development.

11. Signs. Except as to Developer, no sign of any kind shall be displayed to the public view within the Development. Signs utilized by the Declarant or Declarant's agent shall be of such size and placement as determined by Declarant in Declarant's sole and absolute discretion.

12. Limitation of Access. Except as to Developer, the private roadways shall not be used so as to provide access to any property except the Lots within the Development. Except as to Developer, no part of a Lot shall be used for any access to any property which lies outside of the Development. No other easements, rights of ways or rights of access shall be deeded, granted, or in any way given by any Lot owner to any other person through or over any Lot so as to permit any portion of a Lot or subdivision property to be used for access to or from any adjoining property. This paragraph shall not be construed so as to prevent the Developer from having the special right to re-designate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Developer. The Developer specifically reserves the right to establish such easements or rights of way as Developer deems necessary or desirable for access to adjoining property whether now or hereafter owned by Developer; and such rights of way within the Development shall then be considered appurtenant to such adjoining property and such adjoining property shall thereafter be deemed to be benefited by road rights of way within the Development.

13. Declarant Control. It is understood and agreed and subsequent grantees expressly agree by acceptance of a deed conveying title to any Lot, that any portion of these Restrictions may be released, changed, modified, amended or varied without the consent or joinder of any Lot Owner solely by i) the Declarant if prior to the earlier of January 1, 2022 or the date of the sale by Declarant (other than to a related entity) of the last platted lot within the Subdivision (whether or not such platted lot is a portion of the Property originally defined herein) as shown on the Plat or any subsequently recorded plat adding property as an additional Phase to the Subdivision (herein the "Control Period") or ii) if after expiration of the Control Period, then by a favorable vote by at least

sixty-seven percent (67%) of the then Lot Owners subject to these Restrictions, in accordance with the Act. After expiration of the Control Period, each Lot Owner shall have one vote for each and every Lot then owned by that Lot Owner. The written and recorded modification of these Restrictions, signed by either the Declarant or after the Control Period by at least the required percentage of the Lot Owners subject to these Restrictions as the case may be, shall be sufficient to constitute an amendment to these Restrictions without further notification to any person or persons.

ARTICLE IV Easements, Rights of Ways, Utilities

1. **Utilities.** The Declarant reserves the right to subject the Property to a contract with Progress Energy for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy by either some or all of the Lot Owners. This right shall also apply to the suppliers of other utility services including telephone and, if available, gas and cable television hook-ups. All utility services from a lot line to the residence shall be installed underground.

2. **Road Rights of Way.** The Property is serviced by those certain road rights of way shown on the Plat; which rights of way leads from Bee Tree Road, over and across the property of an adjoining subdivision known as Cherry Blossom Cove Subdivision being separately developed by developer, and across the Development Common Element roadways to the various Lots within the Development as shown on said Plat. Developer does hereby dedicate said rights of way as shown on the Plat as private roadways. As such, and pursuant to NCGS 136-102.6, all future lot owners acknowledge that the rights of way as shown on the Plat are private road rights of way dedicated for Development use and will not be developed to North Carolina Department of Transportation specifications. As such, all future lot owners, and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of such road rights of way as described herein. Each Lot owner shall be subject to only his pro rata share of annual maintenance which shall be determined by taking the total cost of annual maintenance and dividing said figure by the number of lots located within the Subdivision. The covenant of maintenance shall be a covenant running with the Subdivision, and each Lot therein forever, and may be enforceable as a lien against a defaulting Lot owner as if said lien were a Statutory Lien enforceable in accordance with Article 2, of Chapter 44-A of the North Carolina General Statutes, or as otherwise enforceable under the provisions of the Act or the Bylaws of the Association. The Developer specifically reserves the right to extend such rights of way beyond the boundary of the Development as shown on the Plat for the benefit of the Developer's adjoining remaining property; whether now or hereafter acquired. All lots or parcels of property which shall use such right of way because of such an extension shall be obligated to contribute a pro rata share towards the maintenance of said right of way as set forth above. The Developer shall not be obligated to contribute towards the maintenance or upkeep of such rights of way or Common Elements (and shall not be obligated to pay the per Lot assessment set forth above on undeveloped Lots), except to the extent that the funds collected from Lot owners as described above are not sufficient to pay the full obligation for maintenance of such roadways and Common Elements (as determined by Developer) during the Declarant Control Period only. It is understood that a portion of the entry way street shown on the Plat and designated as the Entry Road, which is located on adjoining property of Cherry Blossom Cove subdivision, is to be jointly used and

maintained by the Association, and the association of the adjoining subdivision known as the Cherry Blossom Cove Property Owners Association, Inc. (the "Cherry Blossom Cove Association"). With respect to maintenance of the Entry Road, as well as maintenance of the Joint Sign and Landscape Areas as shown on the plat, all costs shall be apportioned between the Association's Members and the members of the Cherry Blossom Cove Association, such that the Association and its membership are responsible for a total collective pro rata share of annual maintenance as determined by dividing the total number of Lots within the Development by the total number of Lots within the Development added to the total number of lots within the adjoining Cherry Blossom Cove subdivision, and multiplying the percentage by the total annual maintenance associated with such items. Similarly, the collective pro rata share of maintenance of the Cherry Blossom Cove Association with respect to such items (to be divided among the lot owners within such Cherry Blossom Cove Subdivision as other expenses of that association) of such items shall be determined by dividing the total number of lots of the Cherry Blossom Cove subdivision by the total number of Units in the Development added to the total number of lots of the Cherry Blossom Cove subdivision, and multiplying the percentage by the total annual maintenance associated with such items.

3. Private Utilities. It is anticipated that all Lots shall be serviced by public water and sewer services. Furthermore, no individual water well or sewage disposal system shall be permitted on a Lot unless said well or system is approved by Declarant and unless the sewage disposal system is designed in accordance with the requirements, standards and recommendations of the Buncombe County Health Department. Approval of such system as installed shall be obtained from Declarant and/or such governmental authority, or its successors.

ARTICLE V

Town Homes of Cherry Blossom Cove Homeowners Association

The Developer does hereby establish a non-profit corporation which shall be known as the Town Homes of Cherry Blossom Cove Homeowners Association, Inc. (herein "Association"). The purpose of the Association shall be to provide for the orderly enforcement of these covenants, including, but not limited to, the maintenance, upkeep and repair of the joint rights of way within the Development and any common elements or any other matter or area determined by the Association to be a common element or other area of common interest. The Bylaws of the Association are attached as Exhibit B and incorporated herein by this reference. The Board of Directors as established in the By Laws of the Association shall constitute the Executive Board as defined in N.C.G.S. 47F-3-103, and shall operate in accordance with the provisions of such statute, except as set forth in this Declaration of the terms of the By Laws of the Association.

ARTICLE VI

General Matters

1. Adjoining Properties and Governmental Actions. All purchasers of Lots do hereby acknowledge that Developer has made no representations as to uses of adjoining properties and such purchasers have been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Lot within the Development, such Purchasers do hereby understand and agree that Developer is not responsible for any activities or actions conducted on

any property adjoining the Development, or in any way relating to or arising out of any use of any property adjoining the Development. The purchaser of any Lot acknowledges that they have investigated on their own accord how such uses may affect the Development and are satisfied that they do not materially or substantially affect the value, use or enjoyment of any Lot.

2. Special Property Rights. Every owner of a Lot shall have a right and easement in and to the Common Elements which shall be appurtenant to and shall pass with the title of every Lot, subject to the following:

(a) The right of an owner or occupant of each Lot to the exclusive use of that parking area designated for use of such Lot as shown on the Plat, or if none is shown on the Plat then as designated by the Association.

(b) The right of the Association to suspend the voting rights and right to use the Common Elements (except rights of access to Lots) for any period during which any assessment against his Lot remains unpaid (as described in these Restrictions and the Bylaws, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Developer, or the Association, subject to the voting requirements otherwise set forth herein.

(d) The right of the Association to impose rules and regulations for the use and enjoyment of the Common Elements and the improvements thereon, which rules and regulations may further restrict the use of the Common Elements and improvements thereon.

(e) The right of the Association to enter upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Development.

3. Party Walls.

(a) General Rules of Law To Apply. Each wall which is built as a part of the original construction of the Units upon the properties and placed on the dividing line between any of more than one of the Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Adjoining owners shall have an easement for any encroachment of a Lot Owner's Unit onto an adjoining Lot by virtue of settling or shifting of a building, or as a result of a survey error in description. Should a Unit be destroyed and require rebuilding, an easement for any encroachment resulting from such reconstruction shall exist in favor of all adjoining owners.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of party walls shall be shared equally by the owners of Lots or Units adjoining such party wall.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Lot Owner who has used the wall may restore it, and if other Lot Owners thereafter make use of the wall, such Lot Owners shall contribute equally to the cost of restoration thereof, without prejudice, however, to the right of any such Lot Owners to call for a larger contribution from the other under any rule of law regarding the liability for negligence or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article, a Lot Owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Alteration. The Owner of any Lot may not construct, reconstruct, extend or modify a party wall in any manner without the prior approval of the Developer or the Architectural Review Committee (as the case may be) and of any other Lot Owner adjoining the party wall.

(f) Right of Contribution Runs with the Land. The right of any Lot Owner to contribution from any other Lot Owner under this Article shall be appurtenant to the land and shall pass to such Lot Owner's successors in title.

(g) Certification by Adjoining Owner That No Contribution Is Due. If any Lot Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Lot Owner has a right of contribution as provided in this Section 3, request of the adjoining Lot Owner a certification that no right of contribution exists, whereupon it shall be the duty of such adjoining Lot Owner to make such certification immediately upon request and without charge. Where the adjoining Lot Owner does claim a right of contribution, the certification shall contain a recital of the amount claimed and the basis on which the claim is made.

(h) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section 3, such dispute may be settled by the Association Board of Directors with the consent of the Lot Owners involved, otherwise by arbitration as provided by the then existing laws of North Carolina relating to arbitration.

4. Lot and Unit Maintenance and Insurance.

(a) Exterior Maintenance. In addition to maintenance of the Common Elements, the Association shall provide exterior maintenance for each Lot which is subject to assessment hereunder, as follows: paint, repair, replace, and care of roofs, gutters, downspouts, exterior building services, trees, shrubs, walks, and other exterior improvements, except those improvements added by a home owner after the date of closing. Such exterior maintenance shall not include glass surfaces. In order to enable the Association to accomplish the foregoing duties of exterior maintenance, there is hereby reserved to the Association the right of unobstructed access over and upon each lot and

over and upon each such private entrance way at all reasonable times to perform maintenance as provided for in this Section 4.

In the event that the need for maintenance, repair, or replacement as herein described is caused through the willful or negligent act of the Lot Owner, his family, guests or invitees, or is caused by fire or lightening, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke as the foregoing are defined and explained in North Carolina standard fire and extended coverage insurance policies, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such Lot is subject.

(b) Physical Damage Insurance. The Declarant, for each Lot owned within the Development, hereby irrevocably nominates, and each Lot Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to irrevocably nominate the Association, as Trustee, with authority to obtain and maintain fire and extended coverage insurance on the Units located on all Lots, insuring the buildings and fixtures located therein in an amount sufficient to cover the full replacement costs thereof; the fixtures to be covered by such insurance obtained by the Association shall be those fixtures common to all of the Units located within the Development and the Association shall have the responsibility of providing each Lot Owner with an itemized list of those fixtures covered by such insurance; additional fixtures located within such Units should be insured in the individual insurance policies described in subsection (d) of this Section 4. Such insurance obtained by the Association, to the extent available, may include coverage against water damage, vandalism, and malicious mischief. Such policies of physical damage insurance shall be written in the name of the Association, as Trustee for each Lot Owner, and such policies shall be described as *primary policies of insurance* on the items covered by such policies, and such policies shall contain waivers of subrogation and or any reduction of prorata liability of the insurer as a result of any insurance carried by any Lot Owner or of the invalidity arising from any acts of the insureds or any Lot Owner and shall provide that such policies may not be cancelled or substantially modified without at least ten (10) days prior written notice to all of the insureds including any mortgagee of any Lot.

Each such policy of physical damage insurance shall contain a mortgagee clause as requested by the Lot Owner and any loss thereunder shall be payable to such mortgagee as its interest may appear. All such policies shall provide that adjustments of loss may be made by the Association and that the net proceeds thereof shall be payable to the Association as Trustee for such Lot Owner.

The Association shall be responsible for providing to each Lot Owner and their mortgagee at the request of the Lot Owner, duplicate originals of the required policies, or certificates insurance, together with evidence of payment of premiums.

(c) Payment of Assessments. The premium for insurance obtained by the Association on each Lot shall not be a part of the general common area assessments described in Article 9.1 of the

Bylaws of the Association, but shall be a Special Assessment as described in Article 9.7 of the Bylaws of the Association, and therefore shall be an expense of the specific owner of any Lot so covered and a debt of such Lot Owner and shall be paid in thirty (30) days after notice and statement thereof from the Association. Although the Association shall not be liable for payment of premiums, upon default of any Lot Owner, the Association may advance the payment therefor for the account of the defaulting Lot Owner. In default of payment thereof, the premium, together with interest, cost, and reasonable attorney's fees, shall become a continuing lien against the Lot upon which said premium charge is made. Such lien may be enforced in the same manner as set forth in the Act, this declaration and the Bylaws of the Association.

Each such policy of physical damage insurance shall contain a mortgagee clause as requested by the Lot Owner and any loss thereunder shall be payable to such mortgagee as its interest may appear. All such policies shall provide that adjustments of loss may be made by the Association and that the net proceeds thereof shall be payable to the Association as Trustee for such Lot Owner.

(d) Individual Insurance Policies. Lot Owners shall not be prohibited from carrying additional insurance for their own benefit provided that such policies contain waivers of subrogation and further provided that the liability of the carrier issuing the insurance procured by the Association shall not be affected nor diminished by reason of such additional insurance carried by any Lot Owner. It shall be the responsibility of each Lot Owner to maintain insurance coverage against loss by reason of fire or other casualty of his personal contents located within each Lot.

(e) Damage to or Destruction of the Unit. In the event of damage to or destruction of any Unit located on a Lot as a result of fire or other casualty, the Lot Owner shall have the responsibility of repairing or reconstructing said Unit. The Association shall collect and make available to said Lot Owner the proceeds from the property damage insurance above referred to and repair or rebuilding shall proceed in conformity with the standards approved by the Developer or the Architectural Review Committee (as the case may be) as described in Article III, Section 1 hereof. In the event the cost to repair or reconstruct said Unit shall exceed the balance of insurance proceeds payable by the Association after first deducting the cost to the Association and discharging the interests of mortgagees, the cost to repair or reconstruct shall be the expense of the Lot Owner of said Unit located on said Lot. In case of default by any such Owner in the payment in full of the cost to repair or reconstruct said Unit, the Association is authorized to advance for the benefit of said Owner and other Owners within the Development the balance necessary to pay for said repair or reconstruction, in which case said sums advanced, together with costs and reasonable attorney's fees incurred in connection with the collection thereof, shall be a continuing lien against the Lot against which such additional costs were incurred and shall also be a personal debt of the Lot Owner of said Lot at the time of such damage or destruction, and the collection of such costs advanced can be enforced in the same manner as a lien for annual or special assessments as the same is set forth in the Act, this declaration and the Bylaws of the Association. In the event that the cost or repair or reconstruction of such Unit is less than the amount of insurance proceeds available for such purpose, then such excess

shall be payable to the Lot Owner of the damaged Unit at the time of the damage or destruction.

In the event of damage to or destruction of more than sixty (60%) percent of the value of all Units within one (1) building, the Owners of such Units and their mortgagees shall have the right to vote not to reconstruct the damaged Units subject to the conditions that the decision not to reconstruct be unanimous, that all debris be removed at the expense of the Lot Owners and their mortgagees, and that the Lot Owners and their mortgagees convey their interest in and to their properties to the Association without consideration to be paid by the Association.

5. Delegation of Use. Any Lot Owner may delegate, in accordance with established rules and regulations regarding such delegation as established by the Association, his rights or enjoyment of the Common Elements and facilities thereon, to the members of his family, his tenants or contract purchasers who reside on the Lot. In any case, the rights to and enjoyment of the Common Elements and facilities thereon shall be limited to those persons actually occupying the Lot; extension of these rights to guests or invitees of such occupants shall be subject to rules and regulations imposed by the Association.

6. Developer Exclusion from Payment of Assessments. Notwithstanding anything else herein to the contrary, and in accordance with the terms of Section 2 of Article IV herein, the Developer shall not be obligated to contribute towards the maintenance or upkeep of the Development roadways, rights of way or Common Elements (and shall not be obligated to pay the per Lot assessment set forth above on undeveloped Lots), except to the extent that the funds collected from Lot Owners as described above are not sufficient to pay the full obligation for maintenance of such roadways, rights of way and Common Elements (as determined by Developer) during the Declarant Control Period only. After the expiration of the Declarant Control Period, Developer shall have no obligation for the payment of assessments on any undeveloped Lot within the Development. A Lot owned by Developer shall only be considered developed (and subject to assessment) upon final completion of an improvement thereon and sale by Developer to a third party.

7. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other property owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorney's fees as a part of such action.

8. Amendment and Modification. The Developer does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All

covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. During the Control Period, the Developer hereby reserves the absolute right to modify and/or to amend these Restrictions in whole or in part in Developer's sole and absolute discretion as the Developer deems proper or appropriate. After the Control Period, an amendment to these Restrictions shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the members, sixty-seven per cent (67%) of the members vote in favor of such amendment and once made, shall become effective when recorded in the Buncombe County Register of Deeds office. Whenever herein the Developer has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Developer. Nothing herein shall require or shall be construed so as to require the Developer or its related persons or entities to subject all or any part of its remaining adjoining property to these Restrictions.

9. Developer Control. The "Control Period", "Declarant Control Period" or "Developer Control Period" shall mean that period of time from the date of the recording of these restrictions through the earlier of 1) January 1, 2022 or 2) that date upon which Developer, or its successors or assigns, conveys the last Lot owned by the Developer (other than to a related entity) as shown on the plat or any subsequently recorded plat adding property. Notwithstanding the above, Developer may, in Developer's sole discretion, terminate the Developer Control Period on that date upon which Developer conveys all of the Common Elements of the Development to the Association; however, nothing contained herein shall be construed to require Developer to terminate the Developer Control Period on such date.

10. Invalidation. Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, then such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

11. Conflicting Terms. In the event of a conflict or ambiguity between these Restrictions and the Act, then these restrictions shall be deemed to govern, except in the event that the Act requires that the terms of the Act shall control, in which case the terms of the Act shall govern. The Act is incorporated herein by reference to the extent not inconsistent with the specific terms of these Restrictions.

16

IN WITNESS WHEREOF, the Developer has hereunto caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, as of the day and year first above written.

Declarant:

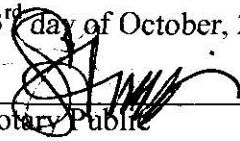
BEE TREE DEVELOPERS, LLC, a North Carolina limited liability company

By:  (SEAL)
Eric Zetterholm, President of Riverwood Real Estate Development Company, Inc., Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of said County and State, do hereby certify that Eric Zetterholm, as President of Riverwood Real Estate Development Company, Inc., Manager of BEE TREE DEVELOPERS, LLC, a North Carolina Limited Liability Company, for and on behalf of said BEE TREE DEVELOPERS, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

Witness my hand and official seal, this 23rd day of October, 2006.


Notary Public

My Commission Expires: 11/11/2009

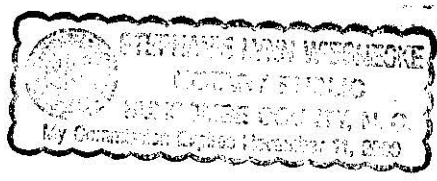


EXHIBIT A

PROPERTY DESCRIPTION

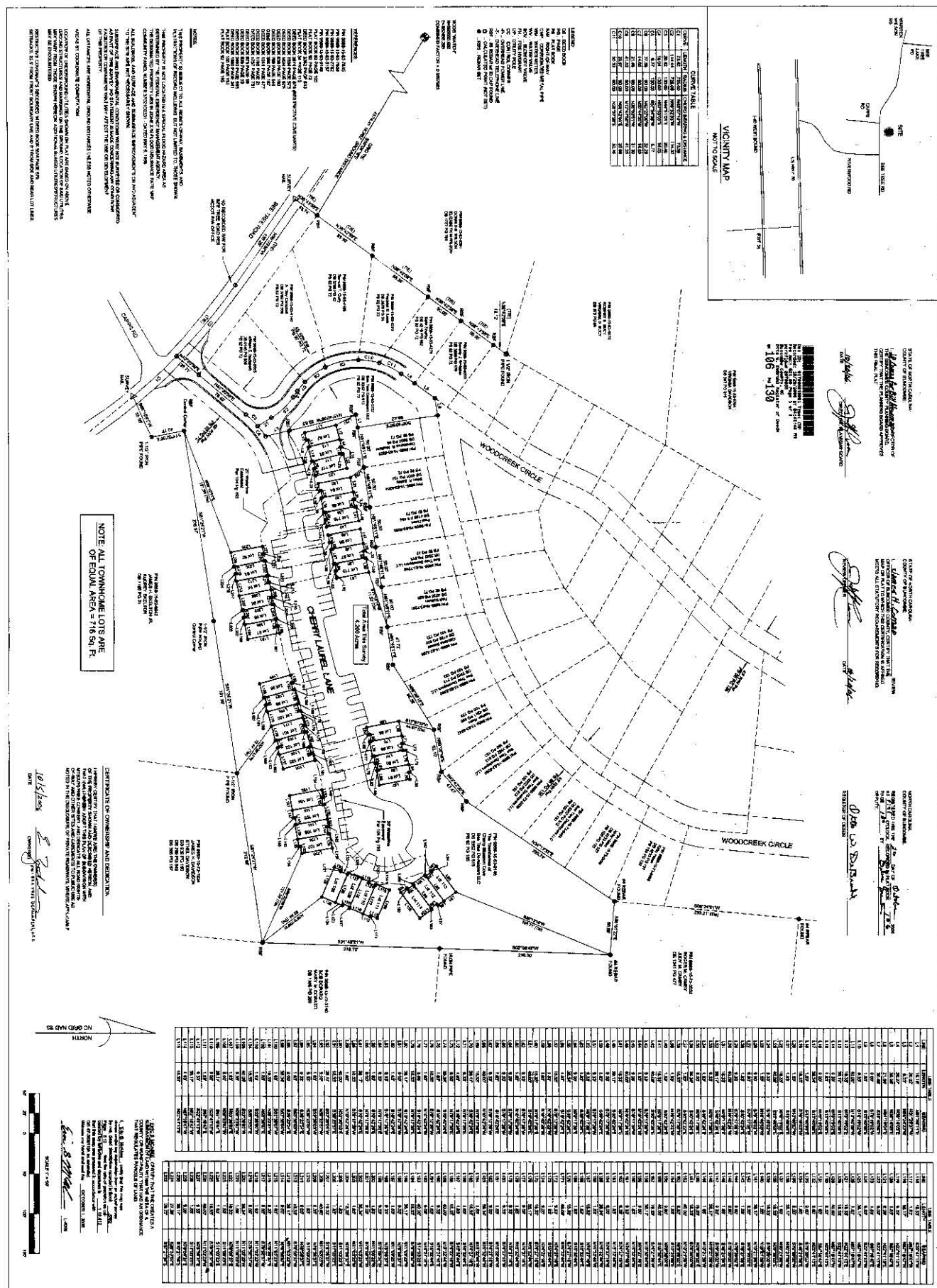


TABLE 1: SUMMARY OF LOT AREAS

LOT NO.	AREA (SQ. FT.)	AREA (SQ. YD.)
1	1,111.11	0.255
2	1,111.11	0.255
3	1,111.11	0.255
4	1,111.11	0.255
5	1,111.11	0.255
6	1,111.11	0.255
7	1,111.11	0.255
8	1,111.11	0.255
9	1,111.11	0.255
10	1,111.11	0.255
11	1,111.11	0.255
12	1,111.11	0.255
13	1,111.11	0.255
14	1,111.11	0.255
15	1,111.11	0.255
16	1,111.11	0.255
17	1,111.11	0.255
18	1,111.11	0.255
19	1,111.11	0.255
20	1,111.11	0.255
21	1,111.11	0.255
22	1,111.11	0.255
23	1,111.11	0.255
24	1,111.11	0.255
25	1,111.11	0.255
26	1,111.11	0.255
27	1,111.11	0.255
28	1,111.11	0.255
29	1,111.11	0.255
30	1,111.11	0.255
31	1,111.11	0.255
32	1,111.11	0.255
33	1,111.11	0.255
34	1,111.11	0.255
35	1,111.11	0.255
36	1,111.11	0.255
37	1,111.11	0.255
38	1,111.11	0.255
39	1,111.11	0.255
40	1,111.11	0.255
41	1,111.11	0.255
42	1,111.11	0.255
43	1,111.11	0.255
44	1,111.11	0.255
45	1,111.11	0.255
46	1,111.11	0.255
47	1,111.11	0.255
48	1,111.11	0.255
49	1,111.11	0.255
50	1,111.11	0.255
51	1,111.11	0.255
52	1,111.11	0.255
53	1,111.11	0.255
54	1,111.11	0.255
55	1,111.11	0.255
56	1,111.11	0.255
57	1,111.11	0.255
58	1,111.11	0.255
59	1,111.11	0.255
60	1,111.11	0.255
61	1,111.11	0.255
62	1,111.11	0.255
63	1,111.11	0.255
64	1,111.11	0.255
65	1,111.11	0.255
66	1,111.11	0.255
67	1,111.11	0.255
68	1,111.11	0.255
69	1,111.11	0.255
70	1,111.11	0.255
71	1,111.11	0.255
72	1,111.11	0.255
73	1,111.11	0.255
74	1,111.11	0.255
75	1,111.11	0.255
76	1,111.11	0.255
77	1,111.11	0.255
78	1,111.11	0.255
79	1,111.11	0.255
80	1,111.11	0.255
81	1,111.11	0.255
82	1,111.11	0.255
83	1,111.11	0.255
84	1,111.11	0.255
85	1,111.11	0.255
86	1,111.11	0.255
87	1,111.11	0.255
88	1,111.11	0.255
89	1,111.11	0.255
90	1,111.11	0.255
91	1,111.11	0.255
92	1,111.11	0.255
93	1,111.11	0.255
94	1,111.11	0.255
95	1,111.11	0.255
96	1,111.11	0.255
97	1,111.11	0.255
98	1,111.11	0.255
99	1,111.11	0.255
100	1,111.11	0.255

VICINITY MAP
NOT TO SCALE

STATE OF NORTH CAROLINA
COUNTY OF WAKE
I, *[Signature]*, Clerk of Superior Court, do hereby certify that the foregoing is a true and correct copy of the original as filed in my office on this 10th day of June, 2010.
#106 and 130
WAKE COUNTY CLERK'S OFFICE

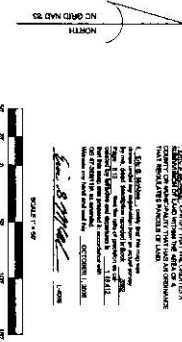
[Signature]
WAKE COUNTY CLERK'S OFFICE

[Signature]
WAKE COUNTY CLERK'S OFFICE

[Signature]
WAKE COUNTY CLERK'S OFFICE

NOTE: ALL TOWNHOME LOTS ARE OF EQUAL AREA = 716 SQ. FT.

CERTIFICATE OF COMPLETION AND ACCEPTANCE
I, *[Signature]*, Surveyor, do hereby certify that the foregoing is a true and correct copy of the original as filed in my office on this 10th day of June, 2010.
WAKE COUNTY CLERK'S OFFICE



PROPERTY DESCRIPTION

LOT NO.	AREA (SQ. FT.)	AREA (SQ. YD.)	ADJACENT TO
1	716.00	0.163	WOODCREEK CIRCLE
2	716.00	0.163	WOODCREEK CIRCLE
3	716.00	0.163	WOODCREEK CIRCLE
4	716.00	0.163	WOODCREEK CIRCLE
5	716.00	0.163	WOODCREEK CIRCLE
6	716.00	0.163	WOODCREEK CIRCLE
7	716.00	0.163	WOODCREEK CIRCLE
8	716.00	0.163	WOODCREEK CIRCLE
9	716.00	0.163	WOODCREEK CIRCLE
10	716.00	0.163	WOODCREEK CIRCLE
11	716.00	0.163	WOODCREEK CIRCLE
12	716.00	0.163	WOODCREEK CIRCLE
13	716.00	0.163	WOODCREEK CIRCLE
14	716.00	0.163	WOODCREEK CIRCLE
15	716.00	0.163	WOODCREEK CIRCLE
16	716.00	0.163	WOODCREEK CIRCLE
17	716.00	0.163	WOODCREEK CIRCLE
18	716.00	0.163	WOODCREEK CIRCLE
19	716.00	0.163	WOODCREEK CIRCLE
20	716.00	0.163	WOODCREEK CIRCLE
21	716.00	0.163	WOODCREEK CIRCLE
22	716.00	0.163	WOODCREEK CIRCLE
23	716.00	0.163	WOODCREEK CIRCLE
24	716.00	0.163	WOODCREEK CIRCLE
25	716.00	0.163	WOODCREEK CIRCLE
26	716.00	0.163	WOODCREEK CIRCLE
27	716.00	0.163	WOODCREEK CIRCLE
28	716.00	0.163	WOODCREEK CIRCLE
29	716.00	0.163	WOODCREEK CIRCLE
30	716.00	0.163	WOODCREEK CIRCLE
31	716.00	0.163	WOODCREEK CIRCLE
32	716.00	0.163	WOODCREEK CIRCLE
33	716.00	0.163	WOODCREEK CIRCLE
34	716.00	0.163	WOODCREEK CIRCLE
35	716.00	0.163	WOODCREEK CIRCLE
36	716.00	0.163	WOODCREEK CIRCLE
37	716.00	0.163	WOODCREEK CIRCLE
38	716.00	0.163	WOODCREEK CIRCLE
39	716.00	0.163	WOODCREEK CIRCLE
40	716.00	0.163	WOODCREEK CIRCLE
41	716.00	0.163	WOODCREEK CIRCLE
42	716.00	0.163	WOODCREEK CIRCLE
43	716.00	0.163	WOODCREEK CIRCLE
44	716.00	0.163	WOODCREEK CIRCLE
45	716.00	0.163	WOODCREEK CIRCLE
46	716.00	0.163	WOODCREEK CIRCLE
47	716.00	0.163	WOODCREEK CIRCLE
48	716.00	0.163	WOODCREEK CIRCLE
49	716.00	0.163	WOODCREEK CIRCLE
50	716.00	0.163	WOODCREEK CIRCLE
51	716.00	0.163	WOODCREEK CIRCLE
52	716.00	0.163	WOODCREEK CIRCLE
53	716.00	0.163	WOODCREEK CIRCLE
54	716.00	0.163	WOODCREEK CIRCLE
55	716.00	0.163	WOODCREEK CIRCLE
56	716.00	0.163	WOODCREEK CIRCLE
57	716.00	0.163	WOODCREEK CIRCLE
58	716.00	0.163	WOODCREEK CIRCLE
59	716.00	0.163	WOODCREEK CIRCLE
60	716.00	0.163	WOODCREEK CIRCLE
61	716.00	0.163	WOODCREEK CIRCLE
62	716.00	0.163	WOODCREEK CIRCLE
63	716.00	0.163	WOODCREEK CIRCLE
64	716.00	0.163	WOODCREEK CIRCLE
65	716.00	0.163	WOODCREEK CIRCLE
66	716.00	0.163	WOODCREEK CIRCLE
67	716.00	0.163	WOODCREEK CIRCLE
68	716.00	0.163	WOODCREEK CIRCLE
69	716.00	0.163	WOODCREEK CIRCLE
70	716.00	0.163	WOODCREEK CIRCLE
71	716.00	0.163	WOODCREEK CIRCLE
72	716.00	0.163	WOODCREEK CIRCLE
73	716.00	0.163	WOODCREEK CIRCLE
74	716.00	0.163	WOODCREEK CIRCLE
75	716.00	0.163	WOODCREEK CIRCLE
76	716.00	0.163	WOODCREEK CIRCLE
77	716.00	0.163	WOODCREEK CIRCLE
78	716.00	0.163	WOODCREEK CIRCLE
79	716.00	0.163	WOODCREEK CIRCLE
80	716.00	0.163	WOODCREEK CIRCLE
81	716.00	0.163	WOODCREEK CIRCLE
82	716.00	0.163	WOODCREEK CIRCLE
83	716.00	0.163	WOODCREEK CIRCLE
84	716.00	0.163	WOODCREEK CIRCLE
85	716.00	0.163	WOODCREEK CIRCLE
86	716.00	0.163	WOODCREEK CIRCLE
87	716.00	0.163	WOODCREEK CIRCLE
88	716.00	0.163	WOODCREEK CIRCLE
89	716.00	0.163	WOODCREEK CIRCLE
90	716.00	0.163	WOODCREEK CIRCLE
91	716.00	0.163	WOODCREEK CIRCLE
92	716.00	0.163	WOODCREEK CIRCLE
93	716.00	0.163	WOODCREEK CIRCLE
94	716.00	0.163	WOODCREEK CIRCLE
95	716.00	0.163	WOODCREEK CIRCLE
96	716.00	0.163	WOODCREEK CIRCLE
97	716.00	0.163	WOODCREEK CIRCLE
98	716.00	0.163	WOODCREEK CIRCLE
99	716.00	0.163	WOODCREEK CIRCLE
100	716.00	0.163	WOODCREEK CIRCLE

17

✓



Doc ID: 030217310017 Type: CRP
Recorded: 04/26/2016 at 12:23:22 PM
Fee Amt: \$34.00 Page 1 of 17
Workflow# 0000342218-0001
Buncombe County, NC
Drew Reisinger Register of Deeds

BK 5418 PG 1815-1831

Prepared by and return to: Dungan, Kilbourne & Stahl, P.A., One Rankin Avenue, Third Floor, Asheville, North Carolina 28801, Box 80

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

**FIRST AMENDMENT TO DECLARATION OF TERMS, CONDITIONS,
RESTRICTIONS AND PROTECTIVE COVENANTS FOR TOWNHOMES OF
CHERRY BLOSSOM COVE**

WHITNESSTH:

WHEREAS, the Declaration of Terms, Conditions, Restrictions and Protective Covenants for Townhomes of Cherry Blossom Cove was recorded in Deed Book 4304, Page 1652 of the Buncombe County, North Carolina Registry on October 23, 2006 ("Declaration");

WHEREAS, the Town Homes of Cherry Blossom Cove Homeowners Association, Inc. ("Association"), a North Carolina nonprofit corporation, is the governing body for the Townhomes of Cherry Blossom Cove under the Declaration;

WHEREAS, Bee Tree Developers, LLC, a North Carolina Limited Liability Company, as the original Developer/Declarant under the Declaration, executed a deed conveying to CBC Project, LLC, a North Carolina Limited Liability Company, Declarant/Developer Rights for the Townhomes of Cherry Blossom Cove under the Declaration, by deed recorded in Deed Book 4606, Page 665 of the Buncombe County, North Carolina Registry;

WHEREAS, pursuant to Article VI, Section 8 of the Declaration, the Developer/Declarant reserves the absolute right to modify and/or amend the Declaration; and

WHEREAS, CBC Project, LLC now desires to amend the Bylaws attached to the Declaration as Exhibit B.

NOW, THEREFORE, the Declaration of Terms, Conditions, Restrictions and Protective Covenants for Townhomes of Cherry Blossom Cove is amended as follows:

Exhibit B is amended by deleting it in its entirety and substituting the following therefor:

**BYLAWS OF TOWN HOMES OF CHERRY BLOSSOM COVE HOMEOWNERS
ASSOCIATION, INC.
A NORTH CAROLINA NON-PROFIT CORPORATION**

**ARTICLE I
Identity**

These are the Bylaws of the Town Homes of Cherry Blossom Cove Homeowners Association, Inc., a North Carolina non-profit corporation, (the "Association").

For purposes of these Bylaws, terms specifically defined either in the Declaration of Terms, Conditions, Restrictions and Protective Covenants for Townhomes of Cherry Blossom Cove, and amendments thereto ("Declaration"), the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes ("Planned Community Act"), or the North Carolina Nonprofit Corporation Act, Chapter 55A of the North Carolina General Statutes ("Non-Profit Act"), shall have the same meaning herein.

**ARTICLE II
Definitions**

2.1 "Common Element", "Community Property" and/or "Common Community Areas" shall mean those areas used in common by all the Owners of Lots within the Development, including the private roads providing access to public rights of way and/or such areas that may be denoted as "Common Element", "Community Property" or "Common Community Areas" on plats of record for the Development.

2.2 "Developer" shall mean CBC Project, LLC, its successors and assigns.

2.3 "Developer Control Period" shall mean the time in which Developer has to exercise certain exclusive rights such as, but not limited to, electing the Board of Directors of the Association and/or retaining approval authority for amendments to the Bylaws. The Developer Control Period shall be as set forth in the Declaration.

2.4 "Lot" shall mean any improved or unimproved parcel of land located within Town Homes of Cherry Blossom Cove Development and intended to be developed now or hereafter as a single-family residential dwelling.

2.5 "Owner" shall mean and refer to the owner or owners as shown by the real estate records in the Office of the Register of Deeds of Buncombe County, North Carolina, of fee simple title to any Lot situated within the Development. For purposes of voting or representation on any Committees or Boards, the marital spouse of the Owner may be treated as being an "Owner".

ARTICLE III Qualifications and Responsibilities

3.1 **Membership.** Every Lot Owner in Town Homes of Cherry Blossom Cove Development shall be a member of the Association, and shall remain a member until he ceases to be a Lot Owner.

3.2 **More Than One Owner.** When there is more than one Owner of a Lot, all such persons shall be members of the Association, but it is understood that each Lot shall be entitled to only one vote on matters coming before the Association (as set forth in Article IV herein) .

3.3 **Registration.** It shall be the duty of each Lot Owner to register his name and his mailing address with the Secretary of the Association. If a Lot Owner does not so register, the Association shall be under no obligation to recognize his privileges of being a member. In addition, a Lot Owner shall register with the Secretary the name and mailing address of any applicable person, firm, or company holding a note secured by a first deed of trust lien on that Lot (the "First Mortgage").

3.4 **Prohibition of Assignment.** The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Lot.

ARTICLE IV Members' Meetings and Voting

4.1 **Place.** Meetings of the members shall be held at such place within the Development or within Buncombe County, North Carolina, as may be designated from time to time by the Board of Directors of the Association ("Board").

4.2 **Annual Meetings.** The members shall meet at least once each year in March, the day being specified in the notice of such meeting given pursuant to Section 4.4. At each annual meeting, the members may transact any business properly coming before them.

4.3 **Special Meetings.** Special meetings of the Association may be called by the president, a majority of the Board, or by Lot Owners having ten percent (10%) of the votes in the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

4.4 **Notice.** Not less than 10 nor more than 60 days in advance of any meeting, the secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer. The Association may vote or transact business on any matter at an annual meeting whether or not specific notice of said item had been given in the

notice of the annual meeting. However, for special meetings, only items which were included in the meeting's notice to members can be voted on.

4.5 Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least fifty percent (50%) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present.

4.6 Voting. Each Lot Owner is entitled to one (1) vote. When there is more than one Owner of a Lot, said Owners shall designate the person authorized to vote for said Lot.

4.7 Manner of Casting Votes. Votes may be cast in person or by proxy. A proxy must be in writing, be signed by all owners of the Lot, the votes of which are subject to the proxy, be given only to another member or to a security holder of that Lot, and be filed with the Secretary on or before the meeting. A proxy shall be valid until revoked in writing by all Lot Owners of such Lot. A proxy should denote the vote desired on a specific issue and/or be a general authorization to the proxy holder to vote according to his discretion.

4.8 Required Votes. All questions shall be decided by a majority of the votes cast on the question, unless the provisions of applicable law, the Declaration or these Bylaws require a greater vote.

4.9 Action by Members Without Meeting. Any action that may be taken at a meeting of the members, may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

4.10 Prohibition of Cumulative Voting. There shall be no cumulative voting.

ARTICLE V

Directors

5.1 Number and Qualifications of Directors. The Board shall consist of three (3) natural persons, as determined by a majority of the members. A Director must be a Lot Owner or the individual nominee of a Lot Owner, which is other than an individual.

5.2 Election of Directors. Election of Directors shall occur at the annual meeting after the term of the Directors have expired. The members shall elect the Directors by a majority of the votes cast in the election. In the event that an insufficient number of members are willing to have their names placed in nomination to serve on the Board of Directors, the names of each and every member who is not otherwise an officer or director of the Association shall be automatically placed in nomination for the position of director, and a sufficient number of members names shall be selected by Lot from the total of such names nominated.

5.3 Term. The term of the Directors shall be for two (2) years. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

5.4 Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least sixty-seven percent (67 %) of the total votes in the Association, at a special meeting called for such purpose. The members, by majority vote, shall appoint a successor to serve the balance of the removed Director's term.

5.5 Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

5.6 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors, but at least three (3) times a Fiscal Year (as that term is defined in Sections 5.13(a) and 8.2 below). Notice of regular meetings shall be given to each Director, personally or by mail, telephone, facsimile, or email, at least thirty (30) days prior to the meeting.

5.7 Special Meetings. Special meetings of the Board may be called by the President or the Secretary and held within ten (10) days after written request signed by two (2) Directors is delivered to any other Director. Not less than seventy-two (72) hours' notice of such special meeting shall be given personally or by mail, telephone, facsimile, or email to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place, and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

5.8 Adjournment if no quorum. Fifty percent (50.0%) of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

5.9 Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration, or these Bylaws.

5.10 Meeting Forums: Board Action without Meeting. Although regular or special meetings may occur at such places as specified in the notice, regular or special meetings by means of a conference telephone or similar communication device are permissible as long as the required notice is given. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in writing, setting forth the action taken, signed by all Directors.

5.11 Compensation of Directors Restricted. Directors shall receive no compensation for their services but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

5.12 Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under common law, applicable statutes, the Declaration (as delegated by the Developer), the Articles, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and provide to members annually by December 15th, a budget report for the Fiscal Year commencing January 1st and ending December 31st of each calendar year ("Fiscal Year"), said report containing at least the following :

- i. A statement of the status and amount of any reserve or replacement funds and any portion of the funds designated for any specified project by the Board.
- ii. A statement of the financial condition of the Association for the last Fiscal Year.
- iii. A statement of the status of any pending suits or judgments in which the Association is a party.
- iv. A statement of the insurance coverage provided by the Association .
- v. A statement of any unpaid assessments payable to the Association, identifying the Lot and the amount of the unpaid assessment. All Lot owners do hereby acknowledge that this reporting of unpaid assessments shall not constitute a violation of any federal or state unfair debt collection laws.

(b) To adopt and amend budgets and to determine, and collect assessments to pay the Association's Common Expenses, including operating expenses and Community Property maintenance fees (the term "Common Expenses" being defined with more particularity in Section 9.12) and capital improvement costs. The Board may engage an accountant to do the Association's bookkeeping, to file annual returns, and to assist in preparing the report described above.

(c) To regulate the use of, and to maintain, repair, replace, modify, and improve the Community Property.

(d) To adopt and amend rules and regulations affecting the Lots and to establish reasonable penalties for infraction thereof.

(e) To enforce the provisions of the Declaration, the Articles, these Bylaws, North Carolina Law (if and when applicable), and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate agents and independent contractors.

(g) To institute, defend, intervene in, or settle any litigation or administrative proceeding in its own name on behalf of itself or two (2) or more Lot Owners on matters affecting the Community Property.

(h) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(i) To borrow money for the maintenance, repair, replacement, modification, or improvement of the Community Property and to pledge and pay assessments, and any and all other revenue and income, for such purpose.

(j) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to NCGS 47F-3-112.

(k) To impose and receive payments, fees and charges for the use, rental, or operation of the Community Property for all purposes permitted by a nonprofit corporation.

(l) To grant leases, licenses, concessions, and easements through and over the Community Property, unless contrary to the Declaration.

(m) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the enforcement of any use restrictions or rules and regulations set forth in the Declaration or these Bylaws.

(n) To provide for indemnification of the Association's Officers and Directors and maintain Officers and Directors liability insurance.

(o) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these Bylaws, or the rules and regulations.

Any assessments, charges, or fines levied against members shall specifically relate to the need to preserve and fulfill the purposes set forth in the Association's Articles of Incorporation and are applied to owners of Lots in their capacity as owners-members rather than in some other capacity such as customers for services.

ARTICLE VI

Officers

6.1 Designation of Officers. The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. Each officer shall be a Lot Owner or the individual nominee of a Lot Owner which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect an assistant treasurer, an assistant secretary, and such other officers as in its judgment may be necessary.

6.2 Election of Officers. Officers of the Association shall be elected by the Board. Elections shall be held every two (2) years at the first meeting of the Board held after the annual meeting of the members. In the event that an insufficient number of members are willing to have their names placed in nomination to serve as an officer of the Association, the Board of Directors shall place the names of each and every member who is not otherwise an officer or director of

the Association in nomination for the position of officer, and a sufficient number of members names shall be selected from the total of such names nominated. The determination of which of the chosen names shall fill which of the vacant officer positions shall be in the sole discretion of the Board of Directors.

6.3 Term. Each officer shall serve until his successor has been duly elected and has qualified.

6.4 Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

6.5 Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

6.6 Powers and Duties of Officers.

(a) President. The President shall be the chief executive officer of the Association and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice-President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all monies and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

6.7 Execution of Agreements, etc. All agreements, deeds, mortgages, or other instruments shall be executed by the President or Vice President, or by such other person or persons as may be designated by the Board.

6.8 Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

ARTICLE VII
Indemnification of Directors and Officers

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the North Carolina General Statutes, as now enacted or hereafter amended. In addition, the Association is authorized to maintain Officers and Directors liability insurance.

ARTICLE VIII
Fiscal Management

8.1 Depository. The Board shall designate a depository for the funds of the Association, and may change such depository at any time. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the Association, or as authorized by the Board.

8.2 Fiscal Year. The Fiscal Year of the Association shall run from the 1st of January through December 31st.

ARTICLE IX
Assessments

9.1 Obligation of Members to Pay Assessments: Amount of Levy. Each Lot Owner shall be personally and severally liable for an assessment determined by dividing the total amount of the Association's Common Expenses as determined in the Board's discretion applicable to all of the Lots within the Development by the number of all of the Lots within the Development. The levy of an annual assessment noted above does not include any special assessment which may be levied against a Lot Owner in accordance with Section 9.7 below.

9.2 Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Lot in accordance with its percentage of the share of assessments, and, if allocated, shall be owned by the Lot Owner, and, if allocated, may be paid to the Lot Owner or credited against that Lot's share of Common Expenses subsequently assessed. Notwithstanding the above, the Board shall retain the authority to apply said surpluses to any current Fiscal Year expenditures in order to satisfy the exempt function income qualification for nonprofit corporations under Section 528 of the Internal Revenue Code.

9.3 Preparation of Budget and Levying of Assessment. Except as hereinafter provided, for each Fiscal Year, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. After preparation and adoption of each such budget, the Board shall provide each member with a copy, and shall give each member notice of the assessment made against that member's Lot based upon such budget and may also state the interest to be charged on delinquent payments thereof (other than as provided in these Bylaws). The assessment shall be deemed levied upon the giving of such notice.

9.4 **Assessment Liens.** Every assessment shall constitute a lien upon each Lot as set forth in the provisions of NCGS 47F-3-116, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against that Lot; and (ii) liens and encumbrances recorded before the docketing of a claim of lien.

9.5 **Payment of Assessments.** Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association, or as the Board may from time to time otherwise direct. Unless the notice states to the contrary, annual assessments are typically due and payable in monthly installments at the first of every month.

9.6 **Notice to First Mortgagees.** Although the lien of assessments may be superior to the lien of a First Mortgagee, any enforcement of said assessment lien by the Association's filing of a collection or foreclosure action with the courts shall require the giving of notice to the applicable First Mortgagee, if any. All owners of Lots acknowledge that such notice shall not constitute a violation of any state or federal unfair debt collection laws. Failure to give the notice provided for herein shall not be a defense for the defaulting member in the enforcement action filed by the Association.

9.7 **Special Assessments.** In addition to the assessments levied pursuant to Section 9.3., the Board may levy special assessments at such other and additional times as in its judgment are required for:

- (a) Alterations, restoration and reconstruction of Community Property and its facilities.
- (b) Improvements, acquisitions and additions to the Community Property.
- (c) Payment of costs and expenses incurred in curing defaults pursuant to Sections 10.1. and 10.3 hereof.

Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice. The Board may levy special assessments only with the consent of 67 % of the members voting.

9.8 **Failure to Prepare Budget and Levy Annual Assessment: Deficiencies in Procedure.** The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 9.3, each member shall continue to pay the assessment then previously levied pursuant to Section 9.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

9.9 **Assessment Roll: Certificate.** All assessments shall be set forth upon a roll of the Lots which shall be available in the office of the Association for inspection at all reasonable times by members and security holders, and their duly authorized representatives. Such roll shall

include, for each Lot, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Lot Owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his Lot. The certificate shall be furnished within fourteen (14) business days after receipt of the request and shall be binding upon the Association and all Lot Owners. For such certificate a reasonable fee may be charged by the Board. All owners of Lots acknowledge that such notice provided in an assessment roll or certificate shall not constitute a violation of any state or federal unfair debt collection laws.

9.10 Default and Enforcement. If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Lot, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and such lien may be enforced in accordance with NCGS 47F-3-116 or such other relief allowed by law. All fees, late charges, attorneys' fees, fines, or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

The Association also shall be entitled to suspend the right of a defaulting Lot Owner to use the Community Property, to the extent allowed by law, and its facilities until the delinquency is cured.

The remedies noted herein for default on assessments shall include, without limitation, any and all remedies set forth in the Declaration. The failure of the Association to enforce any assessment delinquency shall not constitute a waiver or abrogation of the right of the Association or its agents to enforce such delinquency in the future, irrespective of the number of breaches thereof that may have occurred by the member regarding assessments.

9.11 Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all sums delinquent more than thirty (30) days shall bear interest at the rate of eighteen percent (18 %) per annum or as set forth in the notice levying the assessment (but not exceeding the highest rate of interest allowed by law) from the date of the delinquency until paid. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

9.12 Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Common Elements; costs associated with the maintenance, repair and improvement of the Common Elements; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 5.13(g) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Element by, or incurred by the Association as a result of the performance,

enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Element, or any part of either thereof, is or may be subject including, but not limited to amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VII hereof.

ARTICLE X

Compliance, Enforcement, Fines and Penalties, Other than Assessment Liens

10.1 **Default and Remedies.** A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Lot Owner or occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Lot Owner, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under North Carolina law (if so required), the Declaration, these Bylaws, the Articles, or such rules and regulations as hereinafter promulgated, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Lot, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Lot owned by such defaulting member. The Association also shall be entitled, to the furthest extent permitted by law, to suspend the right of a defaulting Lot Owner to use the Common Community Areas and its facilities until the default is cured.

10.2 **Notice of Default and Failure to Cure.** In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, and to each First Mortgagee of that member's Lot when required under Section 9.6 of these Bylaws, a written notice specifying the nature of the default or failure, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default or failure specified or serve upon or mail during the specified cure period a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each First Mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member and each such First Mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee that was entitled to notice of the default as above provided, a copy of its determination. A violating party shall have thirty (30) days to appeal a decision of the Board to a court of law and failure to file said appeal within

thirty (30) days after receipt of the hearing determination or notice of default and cure if a hearing is not requested shall bar any challenges or any causes of action brought afterwards by said party. The Board's finding of default shall be conclusive in a case of a party's failure to appeal within the above prescribed time. If the defaulting member: (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

10.3 **Remedy of Abatement in Addition to Other Remedies.** In the event a member fails to effect the cure specified by the Board within the time period set out in Section 10.2 hereof, where the default is a structure, thing, or condition existing in or on the premises of the Member's Lot, the Board, or its duly authorized representative, shall have the right (to the extent permitted under law) to enter upon the premises of the member's Lot in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefor as provided in Section 10.1 hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

10.4 **Injunction.** Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 10.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

10.5 **Recovery of Attorneys' Fees and Costs.** In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at the higher of: (i) 4 % over the prime rate as published in the money section of the Wall Street Journal, at the time the costs are incurred; or (ii) the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

10.6 **Non-waiver of Covenants.** The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations or North Carolina law, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

10.7 **Assessment Liens.** Assessment liens shall be enforced pursuant to Article IX hereof and not pursuant to this Article X.

ARTICLE XI Amendment

During the Developer Control Period, the power to alter, amend, or repeal the Bylaws or adopt new Bylaws shall be vested in the Board with Developer approval being necessary for any particular change. After the Developer Control Period has expired, the amendment of Bylaws or adoption of new Bylaws can only occur at a regular meeting of the members and shall require an affirmative vote of sixty-seven percent (67%) of the members to such changes.

ARTICLE XD General Provisions

12.1 Rules and Regulations.

(a) By the Board. The Board, including the first Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Community Property so as to promote the common use and enjoyment thereof by Lot Owners and occupants and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Lots to provide for the common good and enjoyment of all Lot Owners and occupants.

(b) By the Association. Any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by a majority vote of the members at an annual or special meeting of the members where a quorum is present. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(c) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Lot Owners and their occupants, but need not be equally and uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(d) Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, post, or make available such rules or regulations shall not affect in any way their validity or enforceability.

12.2 Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these Bylaws, the Articles, or North Carolina law. The President of the Association shall have the authority to appoint a parliamentarian.

12.3 Compliance with the Act: Conflict: Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of North Carolina law, the provisions of these Bylaws shall control, except with respect to any

provision of the law which the law requires to take precedence over these Bylaws, in which event the terms of the law shall control unless the it permits these Bylaws to override the it. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

12.4 Form of Notice. Whenever in the Declaration, North Carolina law, or these Bylaws it shall be required or permitted that notice or demand be given or served on the Association or a Lot Owner or a First Mortgagee or other party entitled to notice, such notice or demand shall be given in writing by registered or certified mail, postage prepaid, to the respective addresses as hereinafter set forth. All notices or demands provided under the terms of the Declaration, North Carolina law or these Bylaws shall be effective when actually received by a party entitled to notice or when attempted to be delivered as authorized above. The addresses of a party entitled to notice may be changed, from time to time, by either party serving notice as above provided.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned hereby certifies that the above FIRST AMENDMENT TO DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND PROTECTIVE COVENANTS FOR TOWNHOMES OF CHERRY BLOSSOM COVE is duly adopted pursuant to the Declaration.

This 23rd day of April, 2016.

(Seal)

CBC Project, LLC

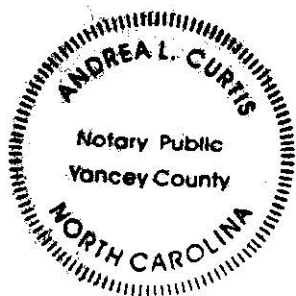
By: *Diane J. Israel*
Diane J. Israel, Member Manager

NORTH CAROLINA
~~BUNCOMBE COUNTY~~ YANCEY COUNTY

I *Andrea L. Curtis*, Notary Public for ~~Buncombe~~ Yancey County, North Carolina, certify that Diane Israel personally came before me this day and acknowledged that she is a Member Manager of CBC Project, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by her as an act of the company.

Witness my hand and official seal, this the 23rd day of April, 2016

(SEAL)



Andrea L. Curtis
Notary Public



Townhomes of Cherry Blossom Cove Homeowners Association

P.O. Box 158, Swannanoa, NC 28778

Solar System Guidelines

The Board of Directors of the Townhomes of Cherry Blossom Cove Homeowners Association adopts these Guidelines to promote the use of solar energy for heating and cooling and to ensure uniform installation and design of solar energy systems.

1. Solar panels must be a roof-mounted array with flush-mounted panels (i.e., the plane of the array is parallel to the roof). If panels are installed on a rear roof, the array may be tilted or raised if a variance is granted.
2. Solar panels must exist within the footprint of the home and cannot extend beyond the roof structure for that lot. Adjoining owners can explore a shared solar system provided that the owners satisfy these Guidelines as well as all legal and regulatory requirements.
3. All applications and plans must be preapproved in writing by the Board or Architectural Review Committee (ARC) before installation.
4. All components of the solar system should be integrated into the design of the home. The color of the solar system components should be black or generally conform to the color of the roof shingles to the extent practical. Solar “shingles” that mimic the look of a composite shingle are acceptable but should match the color of the current roof shingles as much as is practical.
5. The installation of all solar heating and cooling systems shall only be done by a licensed installer or journeyman plumber. All applications and plans should include the following:
 - a. A diagram “drawn to scale” by the licensed contractor installing the system showing where the system will be installed.
 - b. Photos of the roof area where the array will be mounted.
 - c. Material to be used and/or manufacturer’s description of the system, photos and/or pictures of the system, and color of the system.
 - d. Where possible, provide photos of similar existing systems as examples.
6. Piping and electrical connections shall be located directly under and/or within the perimeter of the panels, when possible, and placed as inconspicuously as possible when viewed from all angles.
7. The highest point of a solar panel array shall be lower than the ridge of the roof where it is attached.
8. All painted surfaces shall be kept in good repair.

9. Owners are required to provide the Board proof of insurance covering liability for any damage to building structures or other structural or personal property as a result of the installation or use of the solar system. The Board can request such proof at any time.
10. After receiving written approval from the Association but prior to installation of the solar system, the owner shall execute a document which will be recorded with the Buncombe County Registry acknowledging that the owner and future owners, successors, heirs of the property are responsible for maintenance of the solar system and acknowledging the stipulations in these Guidelines.
11. In the event the roof requires repair or replacement, the owner is responsible for the timely removal and any reinstallation of any portion of the solar system at the owner's expense. Should the owner fail to do so in a timely manner, the Board has the right, after providing the owner with ten (10) days' written notice, to hire a qualified contractor to perform the removal and charge the owner the full expense of the removal and if necessary, the expense of the storage or disposal of the solar system if no action is taken by the owner ninety (90) days after removal. Any such charge shall be treated as an assessment pursuant to the Declaration of Declaration of Terms, Conditions, Restrictions and Protective Covenants for Town Homes of Cherry Blossom Cover recorded in Deed Book 4304, page 1652 of the Buncombe County Registry of Deeds on October 23, 2006.
12. A variance to certain sections of these Guidelines may be granted if compliance with these Guidelines would significantly increase the purchase price of the solar system or significantly decrease the performance or efficiency of the solar system. If an owner seeks a variance, the owner must provide a minimum of two (2) bids depicting the cost of installation of the solar systems – one (1) bid in compliance with these Guidelines and a second bid depicting the desired alternative, unless the variance represents the only feasible installation location. The Board or ARC may require bids or estimates from a second contractor to make an informed decision.