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PREPARED BY AND RETURN TO:
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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
HERRON COVE HEIGHTS**

This Declaration of Covenants, Conditions and Restrictions of Herron Cove Heights (the "Declaration") is made and entered into this 18th day of June, 2007, by HERRON COVE ASSOCIATES, LLC (hereinafter referred to as "Declarant"), a North Carolina limited liability company, pursuant to the North Carolina Planned Community Act, Chapter 47 of the North Carolina General Statutes (the "Act").

WITNESSETH:

That Whereas, Declarant is the owner of all the real property shown on that plat entitled "Herron Cove Heights" duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 110 at Page 183 (the "Property" or "Subdivision"). Declarant wishes to develop said real property into a residential community and to that end has subdivided said Property into lots (as hereinafter defined) that are to be used for residential purposes only, as well as Common Elements (as hereinafter defined) to be owned by a homeowners association to which the owner(s) of a lot must belong and pay lien supported maintenance assessments. Declarant is the current owner of all the lots and Common Elements shown on said plat entitled "Herron Cove Heights" duly recorded in said Register's Office in Plat Book 110 at Page 183; and

Whereas, Declarant desires for the protection and benefit of all persons who may hereafter become owners of lots located within the Subdivision that the Property be developed with limitations, restrictions and uses. These covenants, conditions and restrictions hereinafter set forth are to run with the Property and be binding upon all parties purchasing lots within the Subdivision and all persons claiming by, through or under Declarant until May 31, 2027 at which time said covenants shall be automatically extended for successive periods of ten (10) years each

unless by vote of sixty seven percent (67%) of the lot owners in the Subdivision it is agreed to change these covenants in whole or in part.

NOW, THEREFORE, Declarant hereby declares that all lots and common elements (as each is hereinafter defined) located within the Subdivision are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved in accordance with and subject to the following covenants, conditions, easements and restrictions, all of which are hereby established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of said lots within the Subdivision. All of the covenants, conditions and restrictions hereinafter set forth shall run with the land and shall be binding upon the Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Property or any portion thereof, subject to such covenants, conditions and restrictions, and shall inure to the benefit of Declarant and every one of Declarant's successors in title to any of the Property.

ARTICLE I

Definitions

Definitions. As used herein, the following words and terms have the following meaning:

1.1. "Act" means the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.

1.2. "Assessments" means those amounts levied, from time to time, by the Association in accordance with the Act, this Declaration and the Bylaws of the Association, to pay the Common Expenses and any other costs and expenses for which assessments may be made under this Declaration, the Bylaws or the Act.

1.3. "Association" means the Herron Cove Heights Property Owners' Association, Inc., a nonprofit corporation organized pursuant to Section 47F-3-101 of the Act whose membership is made up entirely and exclusively of the owners of the lots in the Subdivision.

1.4. "Board" or "Board of Directors" means the Board of Directors of the Association.

1.5. "Bylaws" means the Bylaws of the Association.

1.6. "Common Elements" means (i) the private road constructed by Declarant within the right of way for Herron View Lane as shown on the Plat, or any other subdivision Plat recorded by Declarant, but not including the two (2) twenty (20) foot private rights of way shown on the Plat, one of which serves Lots 11 and 12 and one of which serves Lots 8 and 9, each of which is designated on the Plat as "20' Private R/W"; (ii) the entrance area, if any, shown on the Plat; (iii) the Subdivision sign located on Lot 2 as shown on the Plat; (iv) any other property designated as such by the Declarant; and (v) any real property owned by the Association, other than a lot.

1.7. "Common Expense(s)" means all expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves and shall include, without

limitation, all charges, costs and expenses incurred by the Association for and in connection with the administration and operation of the Subdivision, including, without limitation, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Elements, including, without limitation, the road located within the right of way for Herron View Lane and the Subdivision sign; the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies and equipment therefor; all liability for loss or damage arising out of or in connection with the Common Elements and their use; all premiums for hazard, liability and other insurance with respect to the Subdivision; all administrative, accounting, legal, and managerial expenses, if any, and the expense of any utilities used in connection with the Common Elements including, without limitation, the cost of electricity billed to the Association for the street lights installed by Declarant on Herron View Lane. "Common Expenses" shall also include amounts incurred in replacing, or substantially repairing, capital improvements within the Common Elements of the Subdivision, including, but not limited to the Subdivision sign located upon Lot 2 as shown on the Plat. "Common Expenses" shall also include any reserve fund established by the Association.

1.8. "Common Expense Liability" means the liability for common expenses allocated to each lot as set forth on Exhibit A attached hereto.

1.9. "Declarant" means Herron Cove Associates, LLC, its successors and assigns, including any person who succeeds to any Special Declarant Rights as set forth herein and in the Act.

1.10. "Declaration" means this Declaration of Covenants, Conditions and Restrictions of Herron Cove Heights.

1.11. "Declarant Control Period" means the time period commencing on the date hereof and continuing to the earlier of (i) the date two (2) years after Declarant has ceased to offer lots for sale in the ordinary course of business, (ii) the date on which Declarant surrenders control of the Subdivision by providing written notice of such surrender to the Association, (iii) the date on which Declarant no longer owns a lot in the Subdivision, or (iv) July 1, 2017.

1.12. "Directors" means the members of the Board of Directors of the Association.

1.13. "First Mortgage" and "First Mortgagee". A First Mortgage means any mortgage or deed of trust which has been recorded so as to give constructive notice thereof, which is a first lien on the lot or lots described therein. A First Mortgagee is the holder, from time to time, of a First Mortgage as shown by the records of the Office of the Register of Deeds for Buncombe County, North Carolina (including a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption), who gives notice of such First Mortgage to the Association. If there be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws. The term "Mortgage" shall mean and include any mortgage or deed of trust encumbering a lot or any portion of the Property.

1.14. "Lot" means each separately numbered parcel of land within the Subdivision as shown on the Plat designated for separate ownership or occupancy by a lot owner. Declarant has initially created fifteen (15) Lots in the Subdivision as shown on the Plat.

1.15. "Lot Owner" and/or "Owner" means the Declarant and any other record owner, whether one or more persons or entities, who owns fee simple title to any lot which is part of the Subdivision but does not include any person having an interest in a lot solely as security for an obligation.

1.16. "Member" means each owner or owners of a lot within the Subdivision who shall also, by virtue of such ownership of a lot, 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 only one vote.

1.17. "Person" means a natural person, corporation, limited liability company, business trust, partnership, trust, estate, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity, or any combination thereof.

1.18. "Plat" means the recorded plat of the Subdivision, which Plat appears of record in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 110 at Page 183, as the same may be amended or supplemented from time to time.

1.19. "Resident" means any person living in a home located upon a lot, whether or not such person is a lot owner, their family members, guests and invitees.

1.20. "Residential Dwelling" means the single family residence constructed upon any lot pursuant to the terms, provisions and conditions of this Declaration.

1.21. "Restrictions" means all covenants, conditions, restrictions, easements, changes, liens and other obligations provided for in this Declaration, as the same may be released, amended or changed, either in whole or part, as provided for herein.

1.22. "Special Declarant Rights" means all the rights set forth and defined in Section 47F-1-103(28) of the Act which rights are hereby reserved for the benefit of Declarant including, but not limited to, the right to (i) complete the improvements indicated on the Plat or described in this Declaration; (ii) erect and maintain signs advertising the Subdivision anywhere on the Property; (iii) use easements over, under and through the Common Elements, including, without limitation, use of Herron View Lane for, among other purposes, making improvements within the Subdivision; and (iv) appoint and/or remove members of the Board and officers of the Association during the Declarant Control Period.

1.23. "Subdivision" and/or "Property" means that real property shown on the Plat. 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 Office of the Register of Deeds for Buncombe County, North Carolina. Declarant specifically reserves the right to subject any other real property which the Declarant may now own or which Declarant may hereafter acquire to the restrictions set forth herein.

ARTICLE II

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

2.1. Submission of the Property and Creation of the Subdivision. Pursuant and subject to the terms and provisions of the Act, Declarant hereby creates a planned community comprised of the Property shown on the Plat. Declarant hereby submits all of such Property to the Act and the terms of this Declaration.

2.2. Name. The name of the subdivision created hereunder is Herron Cove Heights.

2.3. Designation of Lots and Common Elements. Declarant hereby designates that real property shown on the Plat as separate lots and designates all such lots for separate ownership.

2.4. Reservation of Special Declarant or Declarant Rights. Declarant hereby reserves unto itself, its successors in interest and assigns, as Special Declarant Rights (i) those Special Declarant Rights set forth in the Act including, without limitation, the right to complete improvements indicated on the Plat or set forth in this Declaration, (ii) the right to erect and maintain signs advertising the Subdivision anywhere on the Property, (iii) the right to use easements through the common elements for the purpose of making improvements within the Subdivision, (iv) the right to appoint and/or remove officers or directors of the Association during the Declarant Control Period as hereinafter provided and (v) the right, during the Declarant Control Period, to modify, amend, change, vary or release all or any part of this Declaration.

2.5. Allocation of Common Expense Liability and Votes in Association. The allocation to each lot of a percentage of liability for the common expenses of the Association, also known as each lot's common expense liability, and votes in the Association are as set forth on Exhibit A attached hereto. As set forth on Exhibit A, votes in the Association and liability for common expenses of the Association are allocated equally to all lots in the Subdivision, each lot having one (1) vote in the Association and an equal share of liability for the common expenses of the Association.

ARTICLE III

Terms, Conditions, Restrictions, Protective Covenants and Other Matters

3.1. Compliance with Declaration and Bylaws. Each lot owner and resident shall comply with all applicable provisions of the Act, this Declaration and the Bylaws of the Association, as amended from time to time. Failure to comply shall be grounds for an action by the Association, an aggrieved lot owner or any person adversely affected, for recovery of damages, injunction or other relief, or any combination thereof.

3.2. Uses. All Lots in the Subdivision shall be used solely for single family residential purposes. 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 upon any lot or allowed within the Subdivision. This restriction shall not be construed so as to disallow private home offices so long as the use of any such private home office is preapproved in writing by the Association and

does not generate pedestrian or vehicular traffic in conjunction with such office use. The approval or denial of any request by a lot owner to operate a private home office out of a residence located upon a lot is subject to the sole and absolute discretion of the Association and the Association's decision on any such request is binding on all interested parties.

3.3. Architectural Control. Except for original construction performed by, or on behalf of, Declarant, no building, house, garage, outbuilding, fence, electric fence, sidewalk, drive, parking area, mailbox or other structure or improvement (collectively and individually an "improvement") shall be erected, placed, altered or maintained anywhere within the Subdivision including, without limitation, on any lot, nor shall any exterior addition, change or alteration therein be made until the proposed building plans and specifications, exterior color and finish, exterior lighting, site design and plot plans showing the proposed location and elevations of such improvement(s) (collectively the "Plans") shall have been submitted to and approved in writing by Declarant, if during the Declarant Control Period, or, if after the Declarant Control Period, by the Board of Directors of the Association, or any architectural committee hereafter appointed by said Board of Directors. Refusal to approve any such Plans, or any portion thereof, by Declarant, the Board of Directors or architectural committee, as appropriate, may be based upon any reasonable ground including, without limitation, lack of harmony of external design, color, location or relation to surrounding structures and topography or purely aesthetic considerations which, in its sole and unfettered discretion, Declarant, the Board of Directors or the architectural committee, shall deem sufficient. The exact location and orientation of any house or accessory building on each lot is subject to the approval of the Declarant, the Board or any architectural committee appointed by the Board, as provided for above. After approval by Declarant, the Board of Directors or any architectural committee, as appropriate, all construction shall be completed strictly in accordance with the Plans therefor approved by Declarant, the Board of Directors or the architectural committee, and no alterations may be made in such Plans, and the construction of the improvements shall not deviate from such approved Plans, except with the prior express written approval of Declarant, the Board of Directors or the architectural committee, as appropriate. One copy of all Plans shall be furnished to the Board of Directors for its records.

3.4. Submission of Plans. All Plans submitted by any lot owner shall be provided in writing, in duplicate, to Declarant, the Board of Directors of the Association or the architectural committee, as appropriate, at the lot owners sole cost and expense. The lot owner (i) shall provide such Plans as Declarant, the Board or the architectural committee, may reasonably request and (ii) may be required to supplement the Plans originally submitted by such lot owner. Once sufficient Plans have been submitted to Declarant, the Board or the architectural committee, as appropriate, Declarant, the Board or the architectural committee shall notify the submitting lot owner in writing of the satisfactory submission of his Plans and shall approve or disapprove the Plans so submitted within thirty (30) days of the date of such notice of satisfactory submission of Plans to the lot owner. In the event Declarant, the Board or the architectural committee, as appropriate, does not approve or disapprove the Plans as submitted within such thirty (30) day time period, the Plans shall be deemed approved as submitted. In the event no civil action has been filed seeking to prevent the construction of any improvement within one hundred and eighty (180) days following completion of such construction, there shall be a presumption that the improvement(s) constructed were approved as required by this Section.

3.5. Prohibited Structures. No trailer, basement, tent, shack or garage on any lot shall be, at any time, used as a residence, either temporarily or permanently, nor shall any residence be moved onto a lot in 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 in the Subdivision. There shall be no prefabricated buildings placed upon any lot in the Subdivision, except prefabricated components such as window and door units, roof trusses, or other such components which shall be permitted and approved by Declarant. However, nothing herein shall be construed so as to prevent or restrict Declarant, if during the Declarant Control Period, or the Board, if after the Declarant Control Period, from consenting to the placement of a modular, panelized, log or timber peg residential dwelling or accessory building upon any Lot which, in the sole and absolute discretion of Declarant or the Board, as appropriate, is in keeping with the architectural style, quality and harmony of the Subdivision. If in Declarant's or the Board's sole and absolute discretion, the placement of a modular, panelized, log or timber peg residential dwelling or accessory building is in keeping with the architectural style, quality and harmony of the Subdivision, then, upon the written consent of Declarant or the Board, as appropriate, such approved modular, panelized, log or timber peg residential dwelling or accessory building may be placed on or constructed upon a lot. All foundations shall be of block, stone, stucco, concrete or other masonry product as approved by Declarant. There shall be no exposed concrete block on any improvement in the Subdivision.

3.6. Dwelling Size and Accessory Buildings.

a) Dwelling Size. Except as set forth in Section 3.6. (b) below with regard to accessory buildings, no building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family residential dwelling not to exceed three (3) stories in height not including any basement level(s). Each residential dwelling on a lot shall have a garage sufficient in size for two (2) automobiles, which garage may be a part of or attached to the residential dwelling or may be contained in a separate accessory building as hereinafter provided for. No one story (not including the basement level, if any) residential dwelling shall be permitted on any lot unless it contains at least one thousand five hundred (1,500) square feet of heated living space, exclusive of any basement area(s). No two story (not including any basement level) residential dwelling shall be permitted on any lot unless it contains at least nine hundred (900) square feet of heated living space on the first or ground floor, and one thousand eight hundred (1800) square feet of total heated living space, exclusive of any basement area(s). No three (3) story (not including any basement level) residential dwelling shall be permitted on any lot unless it contains at least sixteen hundred (1,600) square feet of heated living space on the first or ground floor and a total of three thousand (3,000) square feet of heated living space, exclusive of any basement area(s). Basements, unfinished attic space, garages, porches, decks or any area not enclosed as a part of the main structure shall not be counted as part of the required heated living space. Declarant, during the Declarant Control Period, and the Board, after the Declarant Control Period, may, in its sole and absolute discretion, allow variances with respect to the limitations imposed by this Section 3.6(a) as it may deem appropriate.

b) Accessory Buildings. Only one (1) accessory building may be constructed on each lot as an accessory and appurtenant structure to the main residential dwelling. Such accessory building is subject to architectural control as set forth in Section 3.3. above. Such accessory building must be accessory to the residential dwelling on the lot. In no event may an accessory building be constructed upon a lot until the construction of the main residential

dwelling has commenced and until a building permit for such accessory building has been issued. Any permitted accessory building shall be constructed upon a standard foundation or concrete foundation slab and shall have the same style and color of roof shingle, and the same color, style and material of exterior siding, as the main residential dwelling on the lot. The dimensional requirements for all accessory buildings shall be as follows:

i) Accessory Building That Is A Detached Garage. Any detached accessory building containing a garage for motor vehicles shall be located on the lot in compliance with all minimum yard setbacks set forth in this Declaration. All detached accessory buildings that contain a garage shall not exceed two (2) stories in height (not including any necessary foundation), and shall contain no more than seven hundred fifty (750) square feet of interior space on the first floor or a total of more than one thousand five hundred (1,500) square feet of total interior space.

ii) Non-Garage Accessory Building. All accessory buildings that do not contain a garage for motor vehicles shall be located on the lot in compliance with all minimum yard setbacks set forth in this Declaration. Such non-garage accessory buildings shall be one story in height (not including any necessary foundation), shall not exceed eighteen (18) feet in height (not including any necessary foundation) and shall contain no more than three hundred (300) square feet of interior space. Declarant, during the Declarant Control Period, and the Board, after the Declarant Control Period, may, in its sole and absolute discretion, by written instrument, allow variances with respect to the limitations imposed on accessory buildings under this Section 3.6(b), as it deems appropriate.

Declarant, during the Declarant Control Period, and the Board, after the Declarant Control Period, may, in its sole and absolute discretion, by written instrument, allow variances with respect to the limitations imposed on accessory buildings under this Section 3.6(b), as it deems appropriate.

3.7. Setback Requirements. No building shall be located on any lot nearer than (i) 35 feet from the centerline of a road right of way or (ii) ten (10) feet from any lot line that is not also the centerline of a road right of way. Declarant reserves the right of Declarant, during the Declarant Control Period, or the Board, if after the Declarant Control Period, to grant variances from these building setback requirements and restrictions to the extent necessary to alleviate undue hardship of any lot owner.

3.8. Cutting of Trees. No living tree greater than twelve inches (12”) in diameter shall be cut or trimmed without the prior express written permission of the Declarant, if during the Declarant Control Period, or the Board, if after the Declarant Control Period. This covenant shall not apply to the cutting of trees or limbs where such cutting of trees is necessary for the safe installation and maintenance of any residential dwelling, accessory building, driveway, parking areas or other improvement constructed upon any lot in conformity with Plans therefor approved by Declarant, the Board or any architectural committee.

3.9. Commencement and Completion of Construction. Once begun, construction of any approved improvement and clean-up of all debris related to such construction shall be completed within one (1) year from commencement of construction. A residential dwelling shall

not be occupied until completed. A residential dwelling or accessory building shall be deemed completed upon final inspection and approval by the applicable governmental inspector. 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.

3.10. 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 which is not operational be stored or permitted to remain on any lot thereon, nor shall any maintenance or repairs to any vehicle be made upon any vehicle parked upon any lot except for vehicles located entirely inside any garage or accessory building on the lot.

b) All fuel tanks or other similar storage receptacles, motor homes, boats or other recreational vehicles, machines, equipment or any and all other articles or conditions deemed unsightly by the Declarant shall be screened, in a manner approved by Declarant, from view from any and all roadways and adjoining lots. In no event shall any pickup truck with a capacity to carry in excess of (1) one ton be kept on any lot. No trucks other than pickup trucks of one (1) tonnage or less shall be kept or allowed to remain on any lot.

c) No hunting or discharge of firearms of any kind shall be allowed within the Subdivision. No motorcycles, minibikes 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, minibikes or motorized two-wheel vehicles which are licensed and used exclusively for transportation purposes shall be allowed to operate within the Subdivision only upon the roads or road right of ways shown on the Plat. All vehicles kept and operated within the Subdivision shall have properly working mufflers.

d) No fence, hedge or wall shall be erected on any lot which shall be unsightly in the opinion of the Declarant or which shall in any way interfere with the vision of road and driveways so as to endanger the safety of pedestrians or drivers of vehicles. No barbed wire or chain link fence shall be permitted on any Lot provided that the lot lines which are a part of the exterior boundary of the Subdivision may be fenced with barbed wire or chain link fencing. All fences are subject to architectural control under Section 3.3. of this Declaration.

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 clothes lines for drying or hanging of clothes shall be erected or used on any lot.

g) No swimming pool, tennis court, basketball court or other outdoor recreational facility may be erected or placed on any lot without the prior approval of Declarant or the Board in compliance with Section 3.3 of this Declaration provided that, in all events no such swimming pool, tennis court, basketball court or other outdoor recreational facility shall be

located in front of any residential dwelling or closer than twenty (20) feet of any side or rear lot line. Any swimming pool placed upon any lot shall be properly fenced in or enclosed in such a manner as approved by Declarant so as not to be unsightly or constitute a hazard.

h) No on street parking shall be permitted within the Subdivision.

(i) all sporting, play and recreational equipment shall be located in the rear portion of the lot in such location so as to be hidden from view from the street upon which such lot fronts.

3.10. 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 the residential dwelling or accessory building on any lot except in sanitary containers kept from view. Such sanitary containers shall be placed at the street only on the day garbage is to be collected.

3.11. Storing and Parking. No trade materials or inventories may be stored on any lot and no trucks, boats, trailers, buses, self-motorized camping vehicles, recreational vehicles, tractors or similar vehicles may be stored or regularly parked on any lot except inside a garage or accessory building located on such lot.

3.12. Sight Disturbance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the road right of way shall be placed or permitted to remain on any corner lot. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

3.13. Driveways. All driveways, together with any necessary drainage facilities, shall be completely installed within four (4) months of completion of construction of the residential dwelling on the lot and shall, in all cases, be constructed of concrete or asphalt. All driveways requiring culverts at the intersection to street as determined by the Declarant or any government agency, shall be installed at the lot owners' sole expense, to the specifications of the North Carolina Department of Transportation and to the grade of the drainage ditch.

3.14. Signs. No sign of any kind shall be displayed to the public view on any lot other than signs placed on such lots by Declarant during the Declarant Control Period, except for one sign of not more than six (6) square feet advertising the property for sale during construction or any sales period. The top of any such sign may not be more than four (4) feet above ground level. All such signs must be installed parallel to and within twenty (20) feet of the street right of way serving the lot. Such signs are permitted only until the lot is sold. During the Declarant Control Period, 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.

3.15. 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 such as dogs or cats 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 on any lot. A kennel is defined as housing for more than two (2) animals. Dogs or other animals are not

permitted to run unleashed through the Subdivision. The right of any lot owner or resident to maintain an animal on a lot shall be subject to termination by the Board of Directors of the Association if the Board, in its sole and absolute discretion, determines that the maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or the other lot owners or residents.

3.16. Off-Street Parking Requirements. Each residential dwelling constructed on a lot shall have an exterior parking area outside of any structure sufficient for the parking of at least two (2) but not more than five (5) automobiles, the design and location of which shall be subject to the approval of Declarant or the Board as required by Section 3.3 of this Declaration.

3.17. Satellite Dish and Antennas. No cellular telephone tower, shortwave radio antenna, radio, television or data transmission antenna or tower of any kind may be located upon any lot. Each lot owner shall be permitted to have no more than two (2) satellite dishes located upon his lot, each satellite dish no larger than eighteen (18) inches in diameter, which satellite dish(es) may be placed upon the lot or residential dwelling located on the lot only after architectural approval by Declarant, if during the Declarant Control Period, or the Board, if after the Declarant Control Period, as required by Section 3.3 of this Declaration. The installation of a satellite dish anywhere on a lot is an improvement requiring compliance with Section 3.3 of this Declaration.

3.18. Limitation of Access. No part of any lot shall be used for access to any property which lies outside of the Subdivision. 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 to be used for access to or from any adjoining property.

3.19. Maintenance of Lot. The owners of each lot shall keep such lot free and clear of all rubbish, debris and other unsightly materials and shall keep all grass cut along the area of the lot adjacent to the private roads in the Subdivision. In the event a Lot owner fails to keep this area maintained as required, the Association may have the required work done and bill the lot owner for all costs and expenses incurred in performing such maintenance.

3.20. Fences, mailboxes and other outdoor appurtenances. There shall be no fence, mailbox or other outdoor improvement erected until the Plans therefor have been approved by Declarant, the Board or any architectural committee, in accordance with the provisions set forth in Section 3.3. of this Declaration. In no event shall any fence, mailbox or other outdoor improvement be erected without the prior written approval of Declarant, the Board or any architectural committee, as to location, height and materials.

3.21. Yard Lights. No yard lights or exterior lighting shall be placed upon any lot without the prior written consent of the Declarant or the Board pursuant to Section 3.3 of this Declaration. All outdoor lighting on any lot is subject to the Architectural Control provisions set forth in Section 3.3 of this Declaration.

3.22. Subdivision of Lot. No lot in the Subdivision shall be re-subdivided so as to create an additional building lot. No portion of any lot less than the whole shall be sold or conveyed. It shall be permissible, however, for two or more of the lots shown on the Plat to be

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combined into one building lot. An owner of two (2) or more adjoining lots may construct a residential dwelling or other structure permitted hereunder upon and across the dividing line between such lots, all such structures to comply with the minimum building set back lines from the actual boundary line of the combined lot and thereafter such combination of lots shall be treated for all purposes under this Declaration as a single lot. In the event two (2) or more lots are combined into one lot (i) all set backs and all easements reserved along the lot lines shall pertain only to the outside lot lines of the combined lot and (ii) the allocation of common expenses and votes in the Association of the lots combined shall be reallocated so that the allocation of common expenses to the combined lot shall equal the total allocated to all lots combined but such combined lot shall have only one (1) vote in the Association.

3.23. Leases. No lot or the residential dwelling located thereon may be leased for a transient purposes and no person may rent or lease the residential dwelling located upon any lot for any purpose other than residential use. For purposes of this provision, transient purposes shall mean a rental for any period of time less than twelve (12) months. Nothing less than the entire lot and all structures thereon may be leased and all such property shall be leased to the same person. Any failure of any lessee to comply with the terms of this Declaration or the Bylaws, as both are amended from time to time, shall be a default of any such lease. No lot or home located upon any lot shall be subjected to or used for any timesharing, cooperative, licensing or other arrangement that would entail weekly, monthly or any other type of revolving or periodic occupancy by any person.

3.24. Release, Amendment or Modification of Declaration by Declarant During Declarant Control Period. It is understood and agreed, and subsequent grantees expressly agree by acceptance of a deed conveying title to any lot within the Subdivision, that any portion of this Declaration, and the restrictions contained herein, may be modified or amended solely by Declarant during the Declarant Control Period, without the consent or joinder of any other lot owner. Any such modification or amendment of this Declaration by the Declarant shall be effective only upon the recording of a written amendment to this Declaration executed by Declarant during the Declarant Control Period and recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.

ARTICLE IV

Easements, Rights of Ways, Utilities

4.1. Utility Reservation. Easements are hereby created and reserved for the benefit of Declarant and all lot owners, their heirs, successors or assigns, for the installation, maintenance, repair and, if necessary, replacement, of any and all utility services and/or drainage facilities over, under, across and upon (i) that strip of land ten (10) feet in width on either side of all lot lines of all lots shown on the Plat, (ii) within the right of way of Herron View Lane as shown on the Plat and (iii) within the right of way of all twenty (20) foot private rights of way shown and identified on the Plat as "20' Private R/W". An easement twenty (20) feet in width is also reserved along the exterior property line of the Subdivision as shown on the Plat for installation, maintenance and repair of any utility services and/or drainage facilities. Easements are also hereby created and reserved as shown or noted on the Plat, reference to which is hereby made for purposes of further description of such easements.

4.2. Utilities Underground. All utility services from the lot line to the residence or accessory building on any lot shall be installed underground.

4.3. Maintenance of Herron View Lane. All lots in the Subdivision other than Lot 1 are provided ingress, egress and regress by way of that forty five (45) foot right of way for Herron View Lane which runs from Upper Herron Cove Road to the various lots within the Subdivision as shown on said Plat. Declarant does hereby dedicate said right of way for Herron View Lane as shown on the Plat as a private roadway. As such, and pursuant to North Carolina General Statutes § 136-102.6, all future lot owners acknowledge that the right of way shown on the Plat for Herron View Lane is a private road right of way and will not be developed to North Carolina Department of Transportation specifications. As such, all future lot owners, 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 (until such time as the Department of Transportation assumes the obligation for the maintenance of said road right of way; if ever). Except as otherwise provided in this Declaration, maintenance, repair and, if necessary, replacement of Herron View Lane is a Common Expense to be paid for by the Association. In default thereof, each lot owner shall be responsible for his equal, prorata share of the cost and expense of maintenance of such road, which shall be determined by taking the total cost of annual maintenance, upkeep and repair of Herron View Lane and dividing said figure by the number of lots located within the Subdivision (15). This covenant of maintenance shall be a covenant running with the Subdivision 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. Furthermore, each lot owner shall be responsible for all damage to said Herron View Lane caused by construction trucks or other equipment using such road to access such lot owner's lot during construction upon such lot. All costs and expenses to repair any such damage may be assessed against such lot owner and his lot by the Association as a special assessment.

4.4. Creation of Joint Drives to Access Lots 8 and 9 and Lots 11 and 12 and Maintenance of Such Shared or Common Driveways. There is hereby created and reserved, for the benefit of Lots 8 and 9 and Lots 11 and 12 respectively, a non-exclusive easement and right of way twenty (20) feet in width over, across and upon those twenty (20) foot strips of land designated as "20' Private R/W" as shown on the Plat providing access to Lots 8 and 9 and Lots 11 and 12. Such twenty (20) foot private rights of way are for the purposes of providing a joint or shared driveway within such easement area to be used by the owners of Lots 8 and 9 and Lots 11 and 12, respectively. The owner of any of these lots may construct, at such lot owners expense, in accordance with the provisions of this Declaration including, without limitation, Section 3.3, a driveway within such twenty (20) foot private right of way. In the event the owners of Lots 8 and 9 and the owners of Lots 11 and 12 do in fact use a common driveway located within such twenty (20) foot private rights of way for access to the residential dwellings located upon said lots, the shared driveways now or hereafter located within these twenty (20) foot private rights of way for access to said lots shall be constructed, installed, maintained, repaired, and, if necessary, replaced in good all weather condition and repair, at all times, at the sole cost and expense of the lot owners using such shared driveway and not the Association or other lot owners. All cost of installation, maintenance and repair of such shared drives within such twenty (20) foot private rights of way shall be paid equally by the owner or owners of the lots using such shared drive.

4.5. Sewage Disposal Systems. As of the date of this Declaration, no lots in the subdivision are serviced by public sewer services. All lot owners shall be solely responsible for obtaining and installing their own sewage disposal system and all maintenance thereof for the benefit of their respective lots. Such systems shall be designed and constructed in accordance with the requirements, standards and recommendations of the Buncombe County Health Department and shall be approved by said Department prior to installation.

4.6. Private Well Water Services. At this time public water service is not available to the Subdivision. It is anticipated that all lots in the Subdivision shall obtain water from private water wells installed by each lot owner, at his sole expense, on his lot. All such wells shall be installed and maintained by the lot owners, at their sole expense. Furthermore, no individual water well shall be permitted on a lot unless the well is designed and located in accordance with the requirements, standards and recommendations of the Buncombe County Health Department. Approval of such system as installed shall be obtained from such governmental authority.

4.7. Septic Easement on Lot 12 for the Benefit of Lot 11. There is hereby created, dedicated and reserved, for the benefit of Lot 11 as shown on the Plat, a non-exclusive easement and right of way over, under, across and upon that portion of Lot 12 shown and designated on the Plat as "SEPTIC DRAINFIELD EASEMENT (0.40 AC.) (FOR LOT 11)" for the installation, maintenance, repair and, if necessary, replacement of a septic drainfield serving the residential dwelling located on said Lot 11. Any and all cost and expense of installation, maintenance, repair and, if necessary, replacement of any septic field now or hereafter located within such easement area shall be paid solely by the owner(s) of Lot 11 as shown on the Plat. In addition, the owners of said Lot 11 are hereby granted a non-exclusive easement and right of way over, under, across and upon the right of way for Herron View Lane as it runs along the western line of Lots 11 and 12 as shown on the Plat for purposes of installing, maintaining, repairing and, if necessary, replacing, a sewer line or pipe running from the septic tank now or hereafter located upon said Lot 11 to the septic drainfield now or hereafter located within the easement area hereinabove described on Lot 12.

4.8. Easement for Subdivision Sign on Lot 2. Declarant hereby creates, dedicates and reserves, for the benefit of Declarant, the lot owners and the Association, an easement and right of way over, across and upon Lot 2 as shown on the Plat for the existence, maintenance, repair and, if necessary, replacement, of the presently existing rock and stone Subdivision sign, as and where such sign is presently located. In the event it becomes necessary to repair or replace such Subdivision sign, such sign shall be maintained in its present location, of the same or similar materials and shall in no event be any larger than the presently existing Subdivision sign.

4.9. Access to Lot 7. Declarant hereby creates, dedicates and reserves, for the benefit of the owner(s) of Lot 7, a non-exclusive easement and right of way over, across and upon that portion of Lot 6 shown and designated on said Plat as "Access for Lots 7 (& 6)" for purposes of providing ingress, egress and regress to Lot 7 from Herron View Lane. All cost and expense of the installation, maintenance and repair of any drive located within such easement area shall be paid by the owner(s) of Lot 7 as shown on said Plat, provided that, if the owner(s) of Lot 6 as shown on said Plat also elect use the drive located within such easement area for access to Lot 6, which the owners of Lot 6 may, in their sole and absolute discretion, elect, then in that event the cost of the installation, maintenance and repair of the drive located within such easement area shall be shared equally by the owner(s) of Lot 6 and the owner(s) of Lot 7.

4.10. Declarant's Right to Grant Easements. During the Declarant Control Period, Declarant shall have the right to grant and reserve easements and rights of way through, under, over and across the Property for construction purposes, and for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and cable television and internet facilities and other utilities, provided that no such easement shall permanently interfere with the reasonable use of any lot.

4.11. Declarant's Easement. Declarant hereby reserves unto itself, its successors and assigns, such easements through the Common Elements of the Subdivision as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Subdivision, which easements shall exist as long as reasonably necessary for such purpose.

4.12. Contract for Street Lights. Declarant has entered into a contract with Progress Energy Company for the installation of underground electric cables and the installation of street lighting along Heron View Lane. The street lighting along Herron View Lane requires a continuing monthly payment to Progress Energy Company by the owners of lots within the Subdivision. The charge for such street lighting shall be a common expense paid by the Association or, in default thereof, by all lot owners on an equal pro-rata basis. Declarant reserves the right to subject the Property to easements in favor of suppliers of other utility services including telephone and, if available, gas and cable television hook-ups.

ARTICLE V

Administration

5.1. Administration of Subdivision by Association. To efficiently and effectively provide for the operation, management and administration of the Subdivision by the lot owners, a North Carolina nonprofit corporation known as Herron Cove Property Owners Association, Inc. (the "Association") has been formed. The operation, management and administration of the Subdivision shall be the right and responsibility of the Association and such management duties shall be carried out in accordance with the terms, conditions and provisions of the Act, this Declaration and the Association's Articles of Incorporation and Bylaws.

5.2. Membership in Association. The owner of each lot is automatically a member of the Association upon acquisition of an ownership interest in a lot. Membership of such owner shall terminate automatically upon such owner no longer owning a lot. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any lot shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in said Association or to any of the rights and privileges of such membership.

5.3. Power of Association. In the administration of the operation and management of the Subdivision, the Association shall have and is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner provided for in the Act, this Declaration and the Bylaws of the Association, and to perform all other duties and responsibilities imposed on it under this Declaration, the Bylaws and the Act. The Association shall have all of the powers and duties granted to or imposed upon it by the Act,

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this Declaration, the Articles of Incorporation of the Association and its Bylaws including, without limitation, the powers set forth in Section 47F-3-102 of the Act.

5.4. Commencement of Administration by Association. Upon the first conveyance of a lot to a lot owner other than Declarant (i) the Association shall assume responsibly for the maintenance, repair and replacement of the Common Elements of the Subdivision and may levy assessments therefor and (ii) each lot owner shall thereafter be liable for the common expenses and assessments arising as of that date and as assessed by the Association at all times thereafter provided that Declarant shall only be responsible for the payment of assessments on lots owned by Declarant upon which Declarant has begun construction of a dwelling. Assessments shall be allocated to and among the individual lots in accordance with the percentage of liability for common expenses for each lot shown on Exhibit A attached hereto, subject to such modifications thereto as may be set forth elsewhere herein.

5.5. Board of Directors to Act on Behalf of Association. The Board of Directors of the Association is hereby designated to act on behalf of the Association. The Board of Directors of the Association is therefore the executive board of the Association as that term is defined and used in the Act.

5.6. Maintenance Obligations of the Association. The Association, at its expense, shall maintain, operate and keep in good repair, unless such obligation is assumed by any municipal governmental agency having jurisdiction thereof, the Common Elements and all improvements located thereon for the common benefit of the Subdivision. This shall include, without limitation, the maintenance, repair and, if necessary, replacement of Herron View Lane and the Subdivision sign located on Lot 2. The Association shall make the determination as to when maintenance, repair or replacement shall be done and its determination shall be binding upon all lot owners.

5.7. Declarant Control of Board of Directors. Except as provided in Section 5.7. of this Article, Declarant shall have the right to designate, select, appoint and remove all officers and members of the Board of Directors of the Association until the end of the Declarant Control Period. Prior to the expiration of the Declarant Control Period, Declarant may, by written agreement, voluntarily surrender the right to appoint and remove all officers and/or members of the Board of Directors of the Association. In doing so Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or the Board of Directors of the Association must be approved in writing by the Declarant before they become effective. The list of such specific actions which may be taken only after first obtaining written consent of the Declarant shall be set forth in an instrument executed by Declarant which instrument shall be recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.

Whenever Declarant shall be entitled to designate, select and appoint any person to serve on the Board of Directors of the Association, the manner in which such person shall be designated shall be as provided in the Bylaws of the Association, and Declarant shall have the right to remove any person selected by it to act and serve on said Board of Directors and to replace such person with another person to act and serve in the place of any Director so removed. Any Director designated, selected and appointed by Declarant to serve on the Board of Directors of the Association need not be a lot owner, a resident of the State of North Carolina or a member of the Association. Any person serving on the Board of Directors of the Association who was

appointed by Declarant shall not be required to disqualify himself from any vote upon a management contract or other contract or lease between Declarant and the Association where said Declarant may have a pecuniary or other interest. Similarly, Declarant, as a member of the Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other contract or lease between Declarant and the Association where Declarant may have a pecuniary or other interest.

5.8. Members of Board Elected by Lot Owners During Declarant Control Period. Notwithstanding anything to the contrary in Section 5.7 of this Article, no later than sixty (60) days after conveyance by Declarant of fifty percent (50%) of all lots in the Subdivision to lot owners other than a Declarant, at least one member and not less than thirty three percent (33%) of the members of the Board of Directors of the Association shall be elected by lot owners other than Declarant at a Special Meeting of the Association called for such purpose. Any member of the Board elected by lot owners other than Declarant pursuant to this Section shall serve for a term of one (1) year or until the expiration of the Declarant Control Period whichever is shorter, provided that the first director elected hereunder by lot owners other than Declarant shall be elected for a term which expires at the next annual meeting of the members so that thereafter this member of the Board may be elected at the annual meeting of members.

ARTICLE VI

Assessments, Budget, Liens, Collection

6.1. Budget, Assessments, Liens. As a part of its right and obligation to operate, manage and administer the Subdivision, the Association shall have the right, authority and obligation to establish a budget for the Subdivision and provide for the payment of the Common Expenses by levying assessments against the lots for their proportional share of the Common Expenses, which assessments shall be a lien on the lots against which they are assessed and if payment thereof becomes delinquent, the lien may be foreclosed and the lot sold, or a money judgment obtained against the persons liable for such assessment, all as provided for herein, in the Bylaws of the Association and in the Act.

6.2. Assessments for Common Expenses. The Association is given the authority to administer the operation and management of the Subdivision as being in the best interest of all lot owners. To accomplish this and to pay the Common Expenses of the Association, the Association has been granted the right to make, levy and collect assessments against the various lots and lot owners. Until the Association makes a Common Expense assessment, Declarant shall pay all the Common Expenses. Thereafter, subject to the provisions of Section 6.13 of this Declaration regarding the liability of Declarant for payment of assessments on lots it owns, each lot owner shall be personally and severally liable for the assessments that are levied against his lot.

6.3. Assessments Based on Percentage of Common Expenses Allocated to Each Lot. All assessments levied against lot owners and their corresponding lots shall, except as otherwise provided herein, be made by the Association based upon the percentage of Common Expenses allocated to each lot by this Declaration, which allocation is set forth on Exhibit A attached hereto.

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6.4. Assessments Against Lot Owners. All lot owners shall be obligated to pay (i) annual assessments for Common Expenses assessed by the Board pursuant to the Act, this Declaration and the Bylaws; (ii) special assessments to be established and collected as provided for in the Act, this Declaration and the Bylaws, and (iii) specific assessments against any lot which are established pursuant to the terms of this Declaration, the Act or the Bylaws.

The total amount of the estimated funds required for the operation of the Subdivision set forth in the budget for the fiscal year adopted by the Board of Directors of the Association shall be assessed against each lot owner in proportion to the percentage of Common Expenses allocated to his lot in this Declaration. Such assessment shall be stated as an annual assessment and shall be a lien against each lot as provided in the Act, this Declaration and the Bylaws. Such assessment shall be payable annually on or before the first day of each fiscal year, or in such installments, no less frequently than quarterly, as the Association shall determine provided that the payment of all assessments, whether annually, quarterly or monthly, shall be in advance on the first day of the first month of each appropriate time period (annual, quarterly or monthly). A late payment charge shall be assessed for any assessment or installment of an assessment not paid within ten (10) days of its due date in the amount of the greater of (i) \$20.00, (ii) ten percent (10%) of the assessment or assessment installment unpaid or (iii) such greater amount as may then be permitted by the Act. In addition, any assessment or installment of an assessment not paid within ten (10) days of its due date shall accrue interest at the rate of twelve percent (12%) per annum until paid.

6.5. Common Expenses Benefiting Less Than All Lots. The Association may assess any item or portion of the Common Expenses benefiting less than all the lots against the lots benefited in proportion to their Common Expense Liability.

6.6. Initial Budget. Upon taking office, the initial Board of Directors shall prepare and adopt a budget for the Subdivision which budget shall pertain to the time period from the day of conveyance of the first lot by Declarant to someone other than a Declarant to the end of the calendar year in which such conveyance is made. Such budget shall be effective upon adoption by the Board for such time period and assessments shall be levied and become a lien against the lots and lot owners during such time period as provided for in this Article.

6.7. Personal Liability for Assessments. All lot owners of each lot shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against his lot while such person or persons are the owner or owners of such lot. In the event that any lot owner is in default in payment of any assessment or installment of an assessment owed to the Association, all owners of such lot shall be personally liable, jointly and severally, for payment of any late charge and interest on such delinquent assessment or installment of assessment as above provided for, and for all costs of collecting such amounts including, but not limited to, reasonable attorney's fees in the amount of fifteen percent (15%) of the total amount due, whether suit be brought or not.

6.8. Liability for Assessments in Event of a Sale. No lot owner shall be liable for the payment of any part of the Common Expense assessments falling due subsequent to a sale, transfer or other conveyance by him of his lot. As provided in Section 6.12. of this Article, a purchaser of a lot shall be jointly and severally liable with the seller for the payment of assessments due prior to any such sale, transfer or other conveyance only if such purchaser

expressly assumes such obligation in writing, provided however, that the lien against any such lot for such unpaid assessments shall remain in full force and effect.

6.9. No Exemption from Liability. No lot owner may exempt himself from liability for any assessment levied against him or his lot by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of his lot or in any other way.

6.10. Lien for Assessments and Enforcement of Lien. As provided in Section 47F-3-116 of the Act, all assessments (including, without limitation, any monthly or quarterly installment of any assessment) provided for in this Article, together with late payment charges, interest and expenses, including reasonable attorney's fees (as permitted by law), relating to such assessment, shall be a charge on and a continuing lien upon the lot against which the assessment is made when a notice of such lien has been filed of record in the Office of the Clerk of Superior Court for Buncombe County, North Carolina in the manner provided therefor by Section 47F-3-116 of the Act, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of thirty (30) days after the same shall become due. Said notice of lien shall also secure all assessments against the lot becoming due thereafter until the lien has been satisfied. Said lien may be foreclosed in the manner of a deed of trust on real property under a power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. The lien granted the Association for unpaid assessments by this Article shall further secure advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, including interest at the rate of twelve percent (12%) per annum on any such advances.

6.11. Priority of Assessment Lien. The lien for assessments provided for in this Article shall be prior and superior to all other liens except (i) liens for ad valorem taxes, and (ii) liens for all sums unpaid on deeds of trust, mortgages or other encumbrances against the lot recorded prior to the docketing of the assessment lien in the Office of the Clerk of Superior Court for Buncombe County, North Carolina. The sale or transfer of any lot shall not affect the assessment lien against such lot or the ability to record, perfect, and enforce such lien pursuant to the provisions of this Article and the Act. Provided, however, the sale of a lot pursuant to a foreclosure sale or execution sale instituted by a superior lien holder or the conveyance to a First Mortgagee of a deed in lieu of foreclosure shall extinguish the inferior assessment lien against the subject lot but no such sale or transfer shall relieve any lot owner from liability for any assessment thereafter becoming due or for any future lien in connection therewith. Such extinguishment of the lien shall not in any way do away with the personal liability for such assessment of the owner(s) of the lot when such assessment was made. The Association shall share in the excess, if any, realized by the sale of any lot pursuant to a foreclosure or action instituted by a superior lien holder, to the extent of its lien.

6.12. Personal Liability of Transferees, Statement, Liability of Mortgagees.

(a) The personal obligation for assessments which are delinquent at the time of transfer of a lot shall not pass to the transferee of such lot unless said delinquent assessments are expressly assumed by said transferee. However, there shall be a lien upon such lot for the amount of any such delinquent assessments which lien shall continue and remain in place notwithstanding the conveyance of such lot.

(b) Any transferee referred to in (a) above shall be entitled to request and obtain from the Association a statement setting out the total of all unpaid assessments levied against a lot. Such statement shall be executed by an officer of the Association or any other duly authorized person, and the Association shall be bound by such statement. Such transferees' lot shall not be subject to a lien for any unpaid assessments in excess of the amount set forth on such statement.

(c) Where a mortgagee, or other person claiming through such mortgagee, pursuant to the remedies provided in a deed of trust, or by foreclosure, or by deed in lieu of foreclosure, obtains title to a lot, the liability of such mortgagee or such other person for assessments shall be only for the assessments or installments thereof that will become delinquent, if not paid, after acquisition of title.

(d) Without releasing the transferor from any liability therefor, any unpaid portion of assessments which is not a lien because of the operation of (b) above or resulting, as provided in (c) above, from the exercise of remedies in a deed of trust, or by foreclosure thereof, or by deed in lieu of such foreclosure, shall be a Common Expense collectible from all lot owners, including the transferee under (b) above and the mortgagee or such other person who acquires ownership as described in (c) above.

6.13. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all lots on the first day of January, 2008, provided that Declarant shall not be liable for payment of assessments on any lots it owns until Declarant begins construction of a dwelling on such lot. Until January 1, 2008, Declarant shall pay all the common expenses of the Association.

ARTICLE VII

Insurance

7.1. Public Liability Insurance. To the extent reasonably available, the Association shall maintain public liability insurance for the benefit of the lot owners, residents, the Association, the Board, the members of the Association, the managing agent, if any, the Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million and no/100 Dollars (\$1,000,000.00) per occurrence for death, bodily injury and property damage. Said insurance shall (i) comply in all respects with the requirements of the Act and shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured, (ii) insure all insureds against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks, walkways and public spaces adjoining the Subdivision.

7.2. Fidelity Coverage. Fidelity coverage may be maintained by the Association in commercial blanket form covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association. Any fidelity coverage shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or

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similar expression and shall contain an appropriate endorsement to cover persons who serve without compensation. The premiums on said policy shall be a Common Expense.

7.3. Other Insurance. The Association may procure such other insurance, including, without limitation, casualty insurance on any property owned by the Association or worker's compensation insurance, as it may from time to time deem appropriate to protect the Association or the lot owners and the premiums thereof shall be a Common Expense.

7.4. Insurance Unavailable. If the insurance described in Sections 7.1. is not reasonably available, the Association shall promptly cause notice of such fact to be hand-delivered or sent prepaid by United States mail to all lot owners.

7.5. Premiums. The premiums for all insurance policies obtained and maintained by the Association, and all other expenses in connection with such insurance, shall be paid by the Association as a part of the Common Expenses assessed against all lot owners.

7.6. Association as Agent. The Association is hereby irrevocably appointed Agent for each lot owner and for each owner or holder or a security interest, deed of trust or other lien upon any lot or any part of the Subdivision, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

7.7. Notice of Action In Excess of Coverage. In any legal action in which the Association or the lot owners may be exposed to liability in excess of insurance coverage, the Association shall give notice of such exposure within a reasonable time to all lot owners who may be exposed to liability and such lot owners shall have the right to intervene and defend.

7.8. Declarant's Interest. All insurance purchased by the Association on behalf of the Association and the lot owners shall include Declarant as its interest may appear, and the Declarant shall share in the proceeds of any insurance payments as its interest may appear.

7.9. Inspection of Insurance Policy. A copy of each insurance policy obtained by the Association shall be made available for inspection by lot owners or their mortgagees of record at reasonable times.

7.10. Individual Policy for Lot Owners. The Association shall not be responsible for procurement or maintenance of any insurance covering any lot, or any residential dwelling or accessory building located upon any lot, or the contents of any residential dwelling or accessory building, or the liability of any lot owner for injuries, death or property damage. Each lot owner shall, at his or her own expense, obtain fire, homeowners or other casualty insurance on his lot, residential dwelling and accessory building, if any, and the contents thereof.

ARTICLE VIII

Amendment

8.1. Amendment. As provided in Section 3.24 of this Declaration, during the Declarant Control Period this Declaration may be amended by Declarant acting alone, without the consent or joinder of any other lot owner. Any such amendment by Declarant shall be

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effective upon the recording of such amendment executed and acknowledged by Declarant during the Declarant Control Period when recorded in the Office of the Register of Deeds for Buncombe County, North Carolina.

In addition to amendment of this Declaration by Declarant during the Declarant Control Period as provided for above, this Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the prior express written consent of Declarant. In addition, no amendments of any easements created or reserved herein by Declarant may be made without the prior express written consent of Declarant. Any amendment of this Declaration other than an amendment made solely by Declarant during the Declarant Control Period shall be executed in the name of the Association and may be signed by the President or any Vice President of the Association and shall be effective only upon the recording thereof in the Office of the Register of Deeds for Buncombe County, North Carolina.

ARTICLE IX

Rights of First Mortgagees

The following provisions shall take precedence over all other provisions of this

Declaration and Bylaws:

9.1. Availability of Subdivision Documents, Books, Records and Financial Statements. The Association shall, upon request and during normal business hours, make available for inspection by lot owners, First Mortgagees and the insurers and guarantors of a First Mortgage on any lot, current copies of this Declaration, the Bylaws, and the books, records and financial statements of the Association. The Association shall provide a financial statement for the preceding fiscal year if requested in writing by a First Mortgagee or insurer or guarantor of a First Mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of lots, current copies of the Declaration, the Bylaws, and the most recent annual financial statement of the Association. The Association may require anyone requesting copies of any documents to pay a reasonable copying charge for such copies.

9.2. Notice. Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request to the Association, stating its name and address and describing the lot encumbered by the First Mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any condemnation or casualty loss that affects either a material portion of the Subdivision or the lot(s) securing its First Mortgages; (ii) any 60-day delinquency in the payment of assessments or charges owed by the lot owner of the lot on which the First Mortgagee held its First Mortgage or in the performance of any obligation under this Declaration or the Bylaws by said lot owner; or (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

9.3. Assessments. Assessments shall be due and payable in quarterly installments, payable in advance, as provided in this Declaration, the Bylaws and as required by Section 47F-3-115 of the Act, or at such other intervals as the Association shall determine. The lien for

unpaid assessments shall be subordinate to any First Mortgage recorded prior to the docketing of any assessment lien in accordance with Section 47F-3-116 of the Act.

ARTICLE X

Special Declarant Rights; Transfer

10.1. Special Declarant Rights. Special Declarant Rights are hereby reserved to the full extent permitted by the Act for the benefit of Declarant, and include, without limitation, the following rights (i) to complete improvements indicated on the Plat or set out in this Declaration; (ii) to maintain signs advertising the Subdivision anywhere on the Property; (iii) to use easements through the Common Elements for the purposes of making improvements to any part of the Property; and (iv) to appoint or remove any officer or director of the Association during the Declarant Control Period.

10.2. Transfer of Special Declarant's Rights. To the full extent permitted by the Act, Declarant may transfer Special Declarant Rights.

ARTICLE XI

Compliance, Default and Remedies

11.1. Compliance. Each lot owner and any resident of any lot shall be governed by and shall comply with the terms, conditions, restrictions, obligations and provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association, as the same may be amended from time to time.

11.2. Default and Remedies. A default or failure by a lot owner or occupant of any lot to comply with the terms, conditions, provisions, restrictions and obligations of the Act, this Declaration, the Articles of Incorporation or the Bylaws of the Association shall entitle the Association or other lot owners to the following relief:

(a) Failure to comply with any of the terms, conditions, obligations, restrictions and provisions of the Act, this Declaration, the Articles of Incorporation or the Bylaws of the Association, shall be grounds for relief including, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any other relief provided for in the Act, this Declaration or the Bylaws, all of which relief may be sought by the Association, the Board of Directors of the Association or by any aggrieved lot owner.

(b) Each lot owner shall be liable for the expense of any maintenance, repair or replacement of any of the Common Elements including, without limitation, the road located within the right of way of Herron View Lane, rendered necessary by his intentional act, negligence or carelessness or the intentional act, negligence or carelessness of his family members, guests, invitees, agents, contractors or lessees, including, but not limited to, any repairs necessary which result from damage caused by pets or vehicles owned by the lot owner, or owned or operated by any guest, invitee, lessee, agent or contractor of lot owner. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

(c) The violation or failure to abide by any terms, obligations, conditions, restrictions or provisions of the Bylaws, this Declaration or the Act, shall give the Board of Directors the right, in addition to any other rights set forth in the Act, this Declaration or the Bylaws, to enter the lot on which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting lot owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of the Act, this Declaration or Bylaws, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; to use self-help to remove or cure any violation of this Declaration or the Bylaws in the Common Elements or on any lot; or to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

(d) If any lot owner fails to perform any obligation under the Act, this Declaration, the Articles of Incorporation of the Association or the Bylaws, then the Association may, but is not obligated to, perform the same for such lot owners account, and for such purpose may enter such lot owner's lot, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expense and costs incurred in so doing, may levy a special assessment against the lot owned by such defaulting lot owner.

(e) Pursuant to the provisions of Section 47F-3-107.1 of the Act, the Board of Directors of the Association may issue a fine not to exceed ONE HUNDRED and 00/100 (\$100.00) DOLLARS against any lot owner or resident of a lot for a violation of this Declaration, or the Bylaws of the Association. In levying such fine the Board shall accord the party charged with the violation notice of the charge, an opportunity to be heard and to present evidence to the Board and notice of the Board's decision. Each day a violation continues after the fifth (5th) day following notice of the violation is given to the lot owner or resident of such lot shall be considered a separate violation. Any such fine shall be a special assessment against such lot owner's lot and shall be collectible as such.

11.3. No Waiver of Rights or Elections of Remedies. The failure of the Association, any lot owner, Declarant or any mortgagee, to enforce any right, provision, obligation, covenant, restriction or condition which may be granted by the Act, this Declaration or the Bylaws shall not constitute a waiver of the right of the Association, the lot owner, Declarant, or mortgagee, to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted to the Association or the lot owners pursuant to any terms, provisions, covenants or conditions of the Act, this Declaration or the Bylaws shall be cumulative, and the exercise of any one or more shall not constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

11.4. Cost and Fees. Any cost including, without limitation, reasonable legal fees, incurred as a result of a failure by any lot owner or occupant of a lot to comply with the Act, this Declaration or the Bylaws, may be assessed against such lot owner's lot. In any action or proceeding arising because of an alleged default by a lot owner or occupant of a lot, the Association or other person bringing such action or proceeding shall be entitled to recover the costs of such action or proceeding, including, but not limited to, reasonable attorneys' fees.

ARTICLE XII

General Provisions

12.1. Conflict With the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event this Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

12.2. Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of subdivision ownership. Whenever appropriate the singular may be read as plural, the plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

12.3. Restrictions Run With the Land. The restrictions and burdens imposed by the covenants of this Declaration shall constitute covenants running with the land, and shall constitute an equitable servitude upon each lot. This Declaration shall be binding upon Declarant, its successors and assigns, and upon all persons who may become lot owners or occupants of the lots in the Subdivision, and their respective heirs, legal representatives, successors and assigns.

12.4. Captions. The captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

12.5. Rights of Action. The Association and any aggrieved lot owner shall have a right of action against lot owners and any aggrieved lot owner shall have a right of action against the Association for failure to comply with the provisions of the Act, this Declaration or the Bylaws of the Association, and decisions of the Association made pursuant to authority granted to the Association in this Declaration and the Bylaws.

12.6. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity or enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

12.7. Waiver. No provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

12.8. Law Controlling. This Declaration shall be interpreted, construed and enforced in accordance with, and under the laws of, the State of North Carolina.

In Witness Whereof, Declarant has hereunto set his hand and seal the day and year first above written.

HERRON COVE ASSOCIATES, LLC

By: Louis S. Accornero
Louis S. Accornero,
Member/Manager

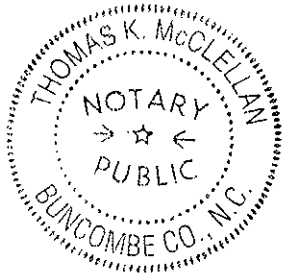
STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of the County and state aforesaid, certify that LOUIS S. ACCORNERO Member/Manager of HERRON COVE ASSOCIATES, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the execution and sealing of the foregoing instrument as Member/Manager on behalf of and as the act of said limited liability company.

Witness my hand and official stamp or seal this the 18th day of June, 2007.

My Commission Expires:
9/23/2007

Thomas K. McClellan
Notary Public



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Exhibit A

Allocation of Percentage of Common Expenses and Votes in the Association

<u>Lot Number</u>	<u>Percentage of Common Expenses (Common Expense Liability)</u>	<u>Votes in Association</u>
Lot 1	6 2/3%	1
Lot 2	6 2/3%	1
Lot 3	6 2/3%	1
Lot 4	6 2/3%	1
Lot 5	6 2/3%	1
Lot 6	6 2/3%	1
Lot 7	6 2/3%	1
Lot 8	6 2/3%	1
Lot 9	6 2/3%	1
Lot 10	6 2/3%	1
Lot 11	6 2/3%	1
Lot 12	6 2/3%	1
Lot 13	6 2/3%	1
Lot 14	6 2/3%	1
Lot 15	6 2/3%	1



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1310 Hendersonville Road
Asheville, NC 28803

CAPITAL BANK

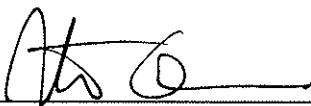
Phone (828) 277-5001
Fax (828) 277-4525

CONSENT OF MORTGAGEE

Capital Bank, the Beneficiary under that certain Deed of Trust from Louis S. Accornero and wife, Brenda G. Accornero to CB Trustee, LLC, Trustee recorded in Book 4309 at Page 66 in the Office of the Register of Deeds for Buncombe County, North Carolina (the "Deed of Trust"), which Deed of Trust conveys the Property subject to the Declaration of Covenants, Conditions and Restrictions to which this Consent is attached, hereby: (a) consents to the recordation of this Declaration and the imposition of the provisions of the North Carolina Planned Community Act to the real property described in said Deed of Trust (the "Property"); and (b) subordinates the lien and operation of said Deed of Trust to this Declaration and the provisions contained herein. In the event of foreclosure of the Deed of Trust, or the transfer of any portion of the Property in lieu of foreclosure, Beneficiary and Trustee agree that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Property together with and subject to all of the terms of this Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of the Declarant under the Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent of Mortgagee at the request of Beneficiary, strictly for the purposes set forth above.

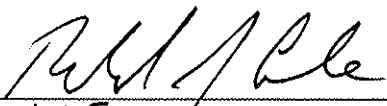
TRUSTEE:

CB Trustee, LLC

By: 
Member/Manager

BENEFICIARY:

Capital Bank

By: 
VICE President

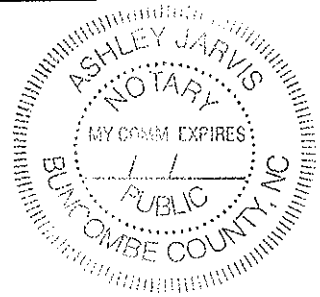
STATE OF NC

COUNTY OF Buncombe

I, a Notary Public of said County and State certify that Scott Querin personally came before me this day and acknowledged that he/she is Member/Manager of **CB TRUSTEE, LLC**, a limited liability company, and that he/she, as Member/Manager, being authorized to do so, executed the foregoing for and on behalf of the limited liability company.

Witness my hand and official seal, this the 18 day of June, 2007.

Ashley Jarvis
Notary Public
My Commission Expires: 4-24-10



STATE OF NC

COUNTY OF Buncombe

I, a Notary Public of said County and State certify that Ronald Cole personally came before me this day and acknowledged that he/she is vice President of **CAPITAL BANK**, a corporation, and that he/she, as Vice President, being authorized to do so, executed the foregoing for and on behalf of the corporation.

Witness my hand and official seal, this the 18 day of June, 2007

Ashley Jarvis
Notary Public
My Commission Expires: 4-24-10

