

Article 1

Creation and Establishment of a Planned Community Act

The real property and improvements which comprise Fox Lair Crossings Subdivision, a Planned Community are hereby submitted to the provisions of the North Carolina Planned Community Act (*N.C. Gen. Stat. §§ 47F-1-101 et seq.*) (referred to hereafter and in the Bylaws as the "Planned Community Act") in accordance with the provisions of the Planned Community Act and for the purpose of creating and establishing a Planned Community.

Article 2

Description of Planned Community

Section 2.1 **Name.** The name of the Planned Community is Fox Lair Crossings Subdivision (sometimes referred to herein as "Fox Lair Crossing" or "Planned Community").

Section 2.2 **Location.** The Planned Community is located in Buncombe County, North Carolina. The Planned Community or Property is that real property submitted to and controlled by the Planned Community Act, as shown on Slide No. XXX, Buncombe County Registry of Deeds, and as described in Exhibit "A" attached hereto and by this reference incorporated herein.

Article 3

Definitions

In accordance with Section 47F-1-103 of the Planned Community Act and unless specifically provided otherwise or the context otherwise requires, the following terms as used in the Declaration and Bylaws for this Planned Community shall have the following meanings:

Section 3.1 **Allocated Interests** means the undivided interest in the common elements, the common expense liabilities, and votes in the Association allocated to each Lot.

Section 3.2 **Assessments** means any and all sums levied by the Association against any Lot and its Owner as common expenses or other charges to include but not be limited to common expense liabilities, special assessments, specific assessments, fines, late charges, interest and attorney's fees as set forth in the Declaration and Bylaws.

Section 3.3 **Homeowners Association or Planned Community Association** means Fox Lair Crossings Homeowners Association, Inc., a North Carolina non-profit corporation and its successors.

Section 3.4 **Board or Board of Directors** means the Board of Directors of Fox Lair Crossings Homeowners which is the governing body on behalf of and for the Association designated the Executive Board in *N. C. Gen. Stat. § 47F-1-103(13)*; **Director or Directors** means a member or members of the Board.

Section 3.5 **Bylaws** means the Bylaws of Fox Lair Crossings Homeowners Association, Inc.

Section 3.6 **Common Elements** means any and all real estate within the Planned Community owned or leased by the Association, other than a lot. This real estate and any improvements located thereon are often referred to as common areas.

Section 3.7 **Common Expenses** mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Planned Community. These include:

- (a) Expenses of administration, maintenance, repair or replacement of the common elements, including the private roads in the subdivision;
- (b) Expenses defined, referred to, or declared to be common expenses by the Documents or by the Planned Community Act;
- (c) Expenses agreed upon as common expenses by the Association;
- (d) Such reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for repair, replacement or addition to the common elements or any other real or personal property acquired or held by the Association; and
- (e) Expenses levied against or which may be allocated to any particular Lot and Lot Owner for fines, late charges, interests, costs of collection, and attorney's fees.

Section 3.8 **Common Expense Liability** means the liability for common expenses allocated to each lot as permitted by the Planned Community Act, the Declaration, Bylaws, or otherwise by law.

Section 3.9 **Declarant** shall mean West Coast Funding, Inc. and or its successors, and assigns as the developer and declarant of the subdivision known as Fox Lair Crossing.

Section 3.10 **Declaration** means this Declaration of Planned Community for Fox Lair Crossings Subdivision.

Section 3.11 **Documents** mean the Declaration, Plats and/or Deeds recorded and filed for real property making up the Planned Community, the Articles of Incorporation of Fox Lair Crossings Homeowners Association, Inc., the Bylaws, and the Rules and Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is part of that Document.

Section 3.12 **Limited Common Element** means a portion of the common elements allocated by the Declaration for the exclusive use of one or more but fewer than all of the Lots, including, but not limited to those areas so designated, if any, on any Plats filed or which may be filed in connection with this Planned Community.

Section 3.13 **Lot** means the physical portion of the planned Community designated for separate ownership or occupancy by a lot owner.

Section 3.14 **Lot Owner** means a person or legal entity who owns a lot, but does not include a person having an interest in a lot solely as security for an obligation. The Declarant is deemed not to be and shall not be considered a Lot Owner with respect to any duty to pay assessments.

Section 3.15 **Majority of the Total Votes** in the Association means fifty percent (50%) of the Lot Owners entitled to vote, plus one vote.

Section 3.16 **Mortgage** shall refer to any mortgage, deed of trust, deed to secure debt or other transfer, or conveyance for the purpose of securing the performance of an obligation.

Section 3.17 **Notice and Opportunity to be Heard** means the right of a Lot Owner to receive notice of an action proposed to be taken by or on behalf of the Association and the right for an opportunity to be heard thereon. The procedures for such notice and opportunity to be heard are set forth in Article 17, Article 18 and in the Bylaws of the Association.

Section 3.18 **Officer** shall mean those individuals who are elected by the Board to serve as officers of the Association to include President, Vice President, Secretary, Treasurer and such other support and offices as the Board may determine necessary.

Section 3.19 **Person** means a natural person, corporation, business, trust, estate trust, partnership, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity.

Section 3.20 **Planned Community** means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a Planned Community. "Ownership of a lot" does not include holding a leasehold interest of less than 20 years in a lot, including renewal options.

Section 3.21 **Reasonable Attorney's fees** means attorney's fees reasonably incurred without regard to any limitations on attorney's fees which otherwise may be allowed by law.

Section 3.22 **Real Estate** means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. Real estate includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

Section 3.23 **Resident** means and includes owners, their immediate family members, tenants, and lessees.

Section 3.24 **Residential Lot** means any unimproved parcel of land or lot, as recorded as part of the subdivision and described on the subdivision plat of Phase I.

Section 3.25 **Single Family Dwelling** means a residential structure standing alone to be occupied by one family on a single family lot as designated in Phase I by the Declarant.

Section 3.26 **Two Family Dwelling Villas** means two residential structures attached with one common wall that the Declarant reserves the right to construct in Phase II and Phase III.

Article 4

Special Declarant Rights

Section 4.1 **Declarant Control Period.** The Special Declarant rights and powers set forth in this Article 4 shall be exercised by the Declarant during the Declarant Control Period which shall terminate no later than the sale and closing of all of the lots and or villas in all three phases of this planned community. Declarant may terminate the Declarant Control Period any time prior to the sale and closing of all of the lots in all three phases of this planned community in its own discretion.

Section 4.2 **Declarant Developer Rights.** Declarant or its successors, and assigns reserves the right to construct Two Family Dwelling Villas in Phase II and Phase III in Fox Lair Crossings Subdivision, on the Property described in Exhibit "A". The Two Family Dwelling Villas may be configured and located in Declarant's sole discretion. Declarant shall also have the right to construct all streets, alleyways, driveways and any and all infrastructure and all utilities related to construction of the Two Family Dwelling Villas.

Section 4.3 **Model/Sales Office.** Declarant or its successors, and assigns shall have the right during the Declarant Control Period to have a model and/or sales and management office. Declarant shall also have the right to erect and maintain signs for advertising and marketing of the lots or villas.

Section 4.4 **Easements Reserved By Declarant.** Declarant reserves easements for the installation and maintenance of water lines, telephone and electric power lines, cable television lines, gas lines, sanitary sewer and storm drainage facilities, pumping and lift stations,

drainage ditches and for other utility installations over the Properties and the Common Elements as indicated in the recorded plat.

Each owner, by his acceptance of a deed to a Lot, and the Association by its acceptance of a deed to the Common Elements, acknowledges such reservations and the rights of Declarant to transfer such easements to the Association or to such utility companies as Declarant may choose.

The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development. Each Lot owner shall be responsible to maintain all utilities from the point of attachment to said dwelling.

The Declarant reserves a five (5) foot utility easement surrounding the entire perimeter of the development as depicted on the recorded plat. No utilities or roads may be constructed over the five (5) foot utility easement without the Declarant's prior written approval. Declarant reserves the right to use as a utility easement the ten (10) foot setback surrounding each lot. Within the ten (10) foot setback, no structure, planting or other material shall be placed which may interfere, obstruct, retard or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, the Declarant and the Association shall have the continuing right and easement to maintain all sewer and water lines located on the common elements and right of ways.

Section 4.5 Declarant's Rights to Protect Land. The Declarant shall have the right to protect the Common Elements from erosion by planting trees, plants and shrubs where and to the extent necessary or by such mechanical means as bulk heading, or other means deemed expedient or necessary by Declarant. The right is likewise reserved to the Declarant to take necessary steps to provide and insure adequate drainage ways in the Common Elements.

Section 4.6 Declarant's Right of Entry. The Declarant reserves unto itself, its successors and assigns the right to go on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities in the Common Elements. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonable necessary to provide economical and safe utility installation and to maintain standards of health, safety and appearance. The Declarant further reserves the right to locate wells, pumping stations and tanks within the Common Elements. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

Section 4.7 Declarant Exemption from Assessments. Declarant shall be exempt from the payment of any Assessments and shall have no obligation to pay Assessments on any Lot or Villa owned by the Declarant during the Declarant Control Period. Declarant may, but is under no obligation, subsidize the management and operation of the Association.

Section 4.8 **Declarant Right to Appoint and Remove Board of Directors and Officers.** Notwithstanding any thing in the Declaration or Bylaws to the contrary, the Declarant reserves the right to appoint and remove the members of the Board of Directors and the Officers of the Association. The right to appoint and remove the members of the Board of Directors and Officers of the Association shall terminate on the sale and closing of all of the lots in all three phases of this planned community.

Section 4.9 **Declarant Rights Regarding Amendment of Declaration.** During the Declarant Control period, the Declarant reserves the right to amend the Declaration in its sole discretion. Additionally, during the Declarant Control Period, the Declarant has the right to approve, to disapprove, to revise, to veto or to revoke any amendment made by the owners in accordance with Article 15.

Section 4.10 **Declarant Rights.** The Declarant reserves all rights pursuant to *N. C. Gen. Stat. § 47F-1-103(28)*.

Articles 5

Lots

Section 5.1 **Lots.** There will be forty-six (46) separate Lots in Phase I of Fox Lair Crossings Subdivision.

Section 5.2 **Lot Descriptions.** The forty-six (46) separate Lots will be designated on recorded plats.

Section 5.3 **Allocated Interests.** The allocated interest in the common expense liability of and votes in the Planned Community Association for each Lot is equal. There will be forty-six (46) Lots in Phase I, so the allocated interest of each Lot is 2.174 percent. Common expenses shall be shared by the Owners on the basis of the allocated interest of each Lot. Each Lot shall have one (1) vote on every matter for which a vote of the membership of the Planned Community Association is required by the Documents. The allocated interest will be adjusted when Phase II and Phase III are developed.

Article 6

Common Elements

Section 6.1 **Common Elements.** Common Elements include all parts of the Planned Community located outside the boundaries of the respective Lots and include any real estate, both improved and unimproved, within the planned Community owned or leased by the Association. By way of illustration but not limitation, Common Elements include real property often called common areas, facilities and amenities.

Section 6.2 **Conveyance or Encumbrance.** The Common Elements shall be neither encumbered nor conveyed except as provided in the Planned Community Act, this Declaration, and the Bylaws.

Section 6.3 **Use of Common Elements.** Each lot owner shall have the right to use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other lot owners. The Board shall, if any question arises, determine the purpose for which a part of the Common Elements is intended for use. The Board shall have the right to promulgate rules and regulations limiting the use of some or all of the Common Elements to lot owners and their guests and to promulgate rules and regulations to provide for the exclusive use of a part of the Common Elements by a lot owner and his or her guests for special occasions, which exclusive use may be conditioned upon, among other things, payment of a fee. Any lot owner may delegate, in accordance with the provisions of this Declaration and the Bylaws and reasonable Rules and Regulations of the Board, the right to use the Common Elements to immediate family members living on the Lot, to a limited number of guests, or to tenants who reside on the Lot.

Article 7

Limited Common Elements

No limited common elements are anticipated in Phase I of Fox Lair Crossing Subdivision. This section will be amended if necessary as the development of Phase I, Phase II and Phase III progresses.

Article 8

Use Restrictions and Purpose

Section 8.1 **Residential.** Each of the Residential Lots in the Planned Community of Phase I shall be, and the same hereby are, restricted exclusively to single-family residential use and shall be occupied only by a single family, its nurses, aides, servants, or caretakers, and guests.

Section 8.2 **Restrictions in General.** The Lots and common elements of the Planned Community are subject to the restrictions contained in this Declaration and as may be set forth in the Bylaws and Rules and Regulations of the Association. All Owners and other persons are subject to these restrictions and subject to the enforcement sanctions as are set forth in the Planned Community Act, this Declaration, and Bylaws.

Section 8.3 **Business Activities.** No business activities shall be conducted on any portion of the Planned Community, provided, however, private offices may be maintained in residences constructed on Lots so long as such use is incidental to the primary residential use of the Lot and is approved by the Board of Directors. The property shall not be used in any way or for any

purpose which may endanger the health of or unreasonably disturb the Owner of any Lot or any resident thereof. The Board of Directors of the Association shall, in its sole discretion, determine what constitutes business activity, health hazard, or unreasonable disturbance. No Owner shall make any use of a Lot or store or keep anything on a Lot which will increase the insurance rates for the Association or for other Lot Owners.

Section 8.4 Alterations Attachments, Construction and Planting by Lot Owner. No Lot Owner shall construct on, make structural alterations or modifications to any of the Common Elements, or Limited Common Elements, without the written approval of the Board of Directors. The Board of Directors shall not approve of any alterations, decorations, or modifications which would jeopardize or impair the soundness, safety, or overall appearance of the Planned Community.

No Lot Owner shall build or construct any temporary structures on a Lot without the express written permission of the Board of Directors or its designee.

No Lot Owner shall plant or cultivate flowers, bushes, shrubs, trees or any kind of plant or do any landscaping on the common elements or on the limited common elements without the express written permission of the Board of Directors or in accordance with such plantings as may be allowed by rules, regulations and specifications promulgated by the Board of Directors.

No Lot Owner shall build or construct any permanent structure on a Lot except in accordance with the Architectural Control provisions and standards set out in Article 16 of this Declaration and in accordance with any such rules, regulations, and specifications promulgated by the Board of Directors.

Section 8.5 Motor Vehicles. No motor vehicles (other than private passenger vehicles), boat, boat trailer, mobile home, motor home, trailer, or any similar items shall be stored in or upon the Common Elements, or Limited Common Elements, unless the Board of Directors dedicates a portion of the Common Elements or Limited Common Elements for such purpose.

Section 8.6 Temporary Shelter. No mobile homes, temporary shelters, recreational vehicles, tents, or trailers will be allowed at any time for temporary shelters during construction of a home. Only work trailers that are owned by the contractor and used to store materials are permitted. All contractors trailers used for storage shall have prior approval by the Architectural Committee.

Section 8.7 Construction. No used or existing building shall be moved onto a lot. Any and all structures are to be constructed on a lot. The Architectural Committee may make an exception if an approved type of modular buildings conforms to Article 16 and conforms aesthetically to the rest of the development.

Section 8.8 Signs. No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted or affixed by any Owner on any portion of the exterior of any residence, garage or any other building constructed on any lot or on any portion of the common elements without written

permission from the Board of Directors. In its sole discretion, the Board may have signs erected on the common elements for identification or for such other purposes as the Board finds necessary.

Section 8.9 Prohibitions in Use of Common Elements. Except when specifically approved by the Board of Directors, the Common Elements, including Limited Common Elements, shall not be used for temporary or permanent storage of supplies, personal property, trash, or refuse of any kind, except in common trash receptacles placed at the discretion of the Board, nor shall they be used in any way for the drying or airing of clothing, rugs, or other fabrics. In general, no activities shall be carried on nor condition maintained by any lot owner either on his/her lot or upon the Common Elements, if such activities should despoil, or tend to despoil, the appearance of the Planned Community. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all owners in the Planned Community and is necessary for the protection of the lot owners and is enforceable by the Board of Directors.

Section 8.10 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot. Dogs, cats or other household pets shall be permitted as long as the pets are ordinarily kept in homes. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions, or other nuisance. No savage or dangerous animal shall be kept or permitted on the Planned Community. In that connection and for the safety of all Owners, the following breeds of dogs are specifically prohibited: Rotweiler, Doberman Pinscher, and Pitbull Terrier. No more than two household pets may be kept on a lot without written permission of the Board of Directors. No pets may be permitted to run loose upon the Common Elements, and any lot owner who causes or permits any animal to be brought or kept upon the Planned Community shall indemnify and hold the Association harmless for and from any loss, damage, or liability which it sustains as a result of the presence of such animal on the Planned Community, regardless of whether the Association or the Board of Directors has given its permission therefor. Whenever such pet is allowed outside the lot, then the pet must be on a leash and any animal droppings which occur during such time as the pet is outside the lot must be immediately collected by the owner.

Section 8.11 Access to Lots. The Association or its agent shall have access to each lot from time to time during reasonable working hours, upon oral or written notice to its owner, as may be necessary for the maintenance, repair, or replacement of any of the Common Elements, including Limited Common Elements. The Association or its agent shall also have access to each lot at all times without notice as may be necessary to make emergency repairs to prevent damage to Common Elements, to another lot, or to the lot itself.

Section 8.12 Nuisances. No nuisances shall be allowed upon the Planned Community and no person shall engage in any use, practice, or activity upon such property which is noxious, offensive, or a source of annoyance to lot owners or which reasonably interferes with the peaceful possession and proper use of the property by any lot owner. The Board of Directors, in its sole discretion, shall have the power and authority to decide what acts or actions constitute a nuisance. All parts of the planned community shall be kept in a clean and sanitary condition. No rubbish,

refuse, or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist. There shall be no outside clothes lines, no above ground swimming pools, no window air conditioning units, no fires or burning of trash or rubbish, no hunting or discharge of any firearms. Any lot owner (or his family, tenants, guests or agents) who shall dump or place any trash or debris upon any portion of the Planned Community shall be liable to the Association for the actual cost of removal thereof and the same shall be added to and become a part of the assessment next coming due to which the lot owner is subject; or alternatively the Association may impose a fine against the Lot Owner for violation of this section.

Section 8.13 **Antenna.** There shall be no exterior antenna for television, radio, citizen band, ham radio, nor any other exterior fixture or appliance for electronic devices or for transmission or receipt of communication signals on a lot, whether attached to a building or free standing, except as allowed by FCC Regulations but with the express written permission of the Board of Directors. Antennas may be placed within attic areas.

Section 8.14 **Satellite dishes.** A Lot Owner must receive prior approval from the Board of Directors before installing a satellite dish. If a Lot Owner receives approval from the Board of Directors, the satellite dish may be a maximum of eighteen (18) inches in diameter and installed in the rear of the residence or lot and shall not be visible from the street.

Section 8.15 **Vehicle Storage.** Recreational vehicles, motorcycles, boats, motor homes and campers must be stored in an enclosed area and hidden from view of the street or other lot owners. No disabled or abandoned vehicles shall be permitted on any lot. Any vehicles that are stored must be stored in the garage and out of view of the street or other lot owners.

Section 8.16 **Trash Receptacles.** All trash receptacles shall be hidden from the view of the public except the day of trash pick up.

Section 8.17 **Mailboxes.** It is preferred that mailboxes be constructed of the same materials as the residence. Other mailboxes may be used but only with the written permission of the Architectural Committee.

Section 8.18 **Fences.** No fences shall run from the front of the dwelling forward to any lot line. Fences shall only run from the back of the dwelling to the rear lot line. Fences must be constructed of a decorative type of block, brick, wrought iron, wood, stone or masonry and the fence must have prior approval from the Architectural Committee. No allied type metal or barbed wire or electric fences will be allowed. Some lots may have unusual circumstances that may require front fences to protect high drop offs. If a front fence is necessary, the Lot Owner must seek prior approval from the Architectural Committee.

Section 8.19 **Lawful Use.** No immoral, improper, or unlawful use shall be made of the Planned Community nor any part thereof. All valid laws, zoning ordinances, and regulations of governmental bodies having jurisdiction thereof shall be observed.

Section 8.20 **Restriction on Transfer of Common Elements** The Association shall not seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Elements, without the written approval of owners of lots totaling eighty percent (80%) of the members of the Association, and one hundred percent (100%) of those lot owners having use of Limited Common Elements thereby affected. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this paragraph.

Section 8.21 **Rules and Regulations.** The Board of Directors may from time to time promulgate reasonable rules and regulations respecting the restrictive covenants set out in this Article, but such rules and regulations shall be consistent with these restrictions and not in derogation of or intended as an amendment thereof.

Section 8.22 **Prohibition of Time-Sharing.** Time-sharing and time shares as defined in the North Carolina Time Share Act (*N.C. Gen. Stat. § 93A-39 et seq.*) of any Lot in the Planned Community is prohibited.

Section 8.23 **Subdividing of Lots.** No Lot Owner may subdivide or change lot lines of any lot without the Declarant or if the Declarant control period has ended, the Association's written permission.

Section 8.24 **General.** The Board of Directors may, from time to time, without consent of the members, promulgate, modify, or delete rules and regulations applicable to the Lots, Common Elements, or Planned Community as a whole. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by the vote of Owners holding a majority of the total votes in the Association. Such rules and regulations may be enforced by the Association in accordance with the Planned Community Act, the Declaration and By-Laws, to include but not be limited to the imposition of monetary fines and penalties.

All Lot Owners, tenants, mortgagees, and occupants of Lots shall comply with the Declaration, Bylaws, and Rules and Regulations. The acceptance of a deed or the exercise of any incident of Ownership or the entering into of a lease or the entering into occupancy of a Lot constitutes agreement that the provisions of the Planned Community Act, the Declaration, Bylaws, and Rules and Regulations are accepted by, ratified by, and are binding on all Lot Owners, tenants, mortgagees, occupants and their guests and invitees.

Article 9

Insurance

Section 9.1 **Coverage.** To the extent reasonably available, the Board of Directors shall obtain and maintain insurance coverage, as a common expense in accordance with Section 47F-3-113 of the Planned Community Act and as set forth in this Article. If such insurance is not

reasonably available, and the Board of Directors determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners at their respective last known addresses.

Section 9.2 Property and Casualty Insurance. The Association shall procure and maintain property and casualty insurance on the Common Elements insuring against all risks of direct physical loss, including fire and extended coverage periods, for and in an amount equal to 100% of the replacement costs of all structures on the Common Elements.

Section 9.3 Liability Insurance. The Association shall maintain liability insurance in reasonable amounts covering all occurrences, commonly insured against for death, bodily injury, and property damage rising out of or in connection with the use, ownership, or maintenance of the common elements and covering the Association, the Board of Directors, Officers, and all agents and employees of the Association and all Lot Owners and persons entitled to occupy any Lot or other portion of the Planned Community.

Section 9.4 Policy Requirements. In accordance with Section 47F-3-113(c) of the Planned Community Act, the insurance policies carried in accordance with Section 8.2 and 8.3 above must provide that:

1. Each Lot Owner is an insured person under the policy to the extent of the lot owner's insurable interest;
2. The insurer waives its right of subrogation under the policy against any Lot Owner or members of the lot owner's household;
3. No act or omission by any Lot Owner, unless acting within the scope of his or her authority on behalf of the Association, will preclude recovery under the policy; and
4. If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 9.5 Association as Trustee. All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the mortgagees of Owners, if any. The proceeds from property and casualty insurance claims shall be payable to the Association as trustee for all Lot Owners and mortgagees of Owners. It shall be the duty of the Board of Directors at least annually to conduct an insurance review to determine that the policies in force are adequate to meet the risks of the Association. Such a responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify insurance policies in existence to meet the needs of the Association. All insurance shall run to the benefit of the Association, the respective Lot Owners, and their respective mortgagees as their interests may appear. Policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining the amount of coverage.

Section 9.6 **Other Insurance.** The Board of Directors shall obtain as a common expense:

1. Worker's Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law;
2. Officers and Directors Liability Insurance in such amount as the Board may determine. Such insurance shall contain a cross liability endorsement;
3. Such other insurance as the Board of Directors may determine to be necessary.

Article 10

Damage, Repair and Reconstruction

Section 10.1 **Duty to Repair.** In the event that all or any part of the Common Elements of the Planned Community shall be damaged or destroyed, such common elements shall be repaired or replaced and proceeds of insurance shall be used and applied in accordance with the provisions of Section 47F-3-113 of the Planned Community Act.

Section 10.2 **Repair and Reconstruction.** The Board of Directors or its duly authorized agents shall arrange for and supervise the prompt repair and restoration of the damage in accordance with the original plats and plans or reconstruction compatible with such plats and plans.

The procedure for repair and construction shall be as follows:

- (a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to the common elements, the Association shall obtain reliable and detailed estimates of the cost of repairing and restoring any structures to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.
- (b) **Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, assessments shall be made against all of the Lot Owners. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as decided by the Board of Directors.
- (c) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the Plans and specifications under which the common elements structure(s) of the Planned Community was originally constructed.

(d) **Construction Fund.** The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.

(e) **Method of Disbursement.** The construction fund shall be paid by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

Article 11

Easements and Additional Rights

Section 11.1 **Owners' Easement of Enjoyment.** Every Owner shall have a right and easement of enjoyment in, to and over the common elements, and the easement granted herein shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against that Owner's Lot remains unpaid for a period of thirty (30) days or more or for any infraction of its published rules and regulations;
- (b) the right of the Association to limit the number of guests of Owners;
- (b) the right of the Association to borrow money for the purpose of maintaining, improving, or repairing the common elements and facilities; and

If an Owner leases his/her resident lot, the Owner shall transfer and assign to the lessee for the term of the lease any and all rights and privileges that the Owner has to use the common elements and limited common elements in the Planned Community, to include, but not be limited to, the use of any and all recreational facilities or other amenities. Such Owner shall during the term of such lease have no rights to the use of any recreational facilities or the common elements.

Section 11.2 **Easements of Association.** There shall exist the following easements from each Lot Owner to the Association for the benefit of the Association and each other Lot Owner (as the case may be):

- (a) Easements through the common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of the Documents;
- (b) Easements through the Lots, and common elements for maintenance, repair, and replacement of the common elements including control of pests. Use of these easements,

however, for access to the Lots shall be limited to reasonable hours, except that access may be had at any time in case of emergency;

(c) Easements through the Lots and through the common elements for all facilities for the furnishing of utility services.

Section 11.3 Utility Easements. There is hereby created a blanket easement upon, across, over and under all of the Planned Community for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewers, storm drainage, gas, telephones, and electricity and a master television antenna system. An easement is further granted to all police, fire protection, ambulance, and all similar persons to enter upon the common elements in the performance of their duties. Further, an easement is hereby granted to the Association, its respective officers, agents and employees, and to any management company selected by the Association to enter in or to cross over the common elements provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, drains, electrical lines, water lines, or other utilities may be installed or relocated on said property except as approved by the Board of Directors. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this article shall in no way affect any other recorded easement on the Planned Community.

Section 11.4 Declarant Easements. Declarant shall have easements for development and marketing as set forth in Article 4.

Article 12

Assessment and Collection of Common Expenses

Section 12.1 Purpose of Assessments. The assessments for common expenses as described in Section 47F-3-115 of the Planned Community Act and as otherwise provided for in the Documents shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots in the Planned Community as may be more specifically authorized from time to time by the Board.

Section 12.2 Apportionment of Common Expenses. Except as set forth in this Article, common expenses shall be assessed against all Lots in accordance with the allocated interests in the common expenses as set forth in this Declaration.

Section 12.3 Common Expenses Attributable to Fewer than All Lots.

(a) If a common expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.

- (b) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the lots to which that limited common element is assigned, equally, or in any other proportion that the declaration provides.
- (c) Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefited.
- (d) The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage. The Board of Directors in its sole discretion may determine that the activities of one or more Lot Owners causes more risk and thus higher insurance premiums for the Association. In such event, the Lot Owners will be responsible for paying any increase in premium caused by their activities.
- (e) Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Lot Owner pursuant to the Planned Community Act, the Declaration, Bylaws and Rules and Regulations are enforceable as common expense assessments.

Section 12.4 **Lien for Assessments.**

- (a) Any assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of Buncombe County in the manner provided in Section 47F-3-116. The Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of foreclosing a lien, the Association is the "mortgagee" and "trustee", as defined by N.C. Gen. Stat. §45-21.1, of said lien with a power of sale. As the owner of the indebtedness secured by the lien, the Association, acting through the Board may, in its discretion, substitute a trustee in accordance with N.C. Gen. Stat. § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the North Carolina Statutes. Fees, charges, late charges, fines, collection costs, reasonable attorneys fees, and interest charged pursuant to Sections 47F-3-102(10), (11), and (12), 47F-3-107(d), 47F-3-107.1, and 47F-3-115, the Declaration, Bylaws, and Rules and Regulations, are enforceable as assessments under this Section.
- (b) The lien under this Section is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens.
- (c) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court; provided, that if an Owner of a Lot subject to a lien under this

Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(d) This Section does not prohibit separate collection actions to recover sums which are personal obligations of Owners and for which subsection (a) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

(e) A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

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

Section 12.5 Computation of Operating Budget and Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Planned Community during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board shall cause the budget and the annual assessments to be levied against each Lot for the coming fiscal year. Within 30 days after adoption of any proposed budget for the planned community, the Board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) not more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget and the assessment established therefrom is ratified unless at the meeting sixty-seven percent (67%) of all the lot owners in the Association vote to reject the budget. Notwithstanding the foregoing, however, in the event that the membership rejects the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

Section 12.6 Personal Liability of Lot Owners. The Owner of a Lot at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described in Section 12.4 above, the Association has the right to bring a separate collection action to enforce the personal liability of Lot owners to pay assessments.

The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in its discretion. Unless otherwise provided, the annual assessment installment payments shall be late and the Lot Owner in default if not paid on or before the tenth (10th) day such installment becomes due.

Section 12.7 Acceleration. If a Lot Owner is in default in payment of any assessment or charge, including, but not limited to, the regular installments of the annual assessment based on the budget, the Board of Directors may accelerate the remaining balance of the annual assessment, including regular installments based on the budget, special assessments, and specific assessments, upon ten (10) days written notice to such Lot Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

Section 12.8 No Waiver of Liability for Common Expenses. No Lot Owner may exempt himself or herself from liability for payment of the common expenses by waiver of the use or enjoyment of the common elements or by abandonment of the Lot against which the assessments are made.

Section 12.9 Special Assessments.

(a) If the annual assessment proves inadequate for any year or in the event of an emergency, the Board may at any time levy a special assessment against all Owners.

(b) The Board of Directors may levy special assessments for capital improvements upon the common elements and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such special assessment shall be approved by the affirmative vote of a majority of all the lot owners at a special meeting of the Association duly called for that purpose.

Section 12.10 Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required may be fixed by the Board and included within the budget and assessment as provided in Section 12.5 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Section 12.11 **Assessment Obligations.** If a Lot owner purchases a Lot from the Declarant or its successors, and assigns, the Lot owner's obligation to pay assessments to the Association begins six (6) months after their closing date. If a Lot owner purchases a Lot from any person or entity besides the Declarant or its successors, and assigns, the Lot owner's assessment obligation to the Association will begin immediately after closing.

Section 12.12 **Interest, Late Charges and Payments.** In accordance with N.C. Gen. Stat. 47F-3-115(b), the Association hereby establishes that any past due common expense assessment or installment thereof, past due special assessments, fines, or other past due charges shall bear interest at 18% per annum.

The Board shall set a late charge to be assessed against Lot Owners for late payment of any common expense assessments or installment thereof, special assessments, fines, or any other charges.

Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to the oldest balance due.

Section 12.13 **Surplus Funds.** Any surplus funds of the Association remaining after payment of or provisions for common expenses and any prepayment shall be retained in the general operating funds or long range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Lot Owners nor shall such surplus funds be used as a credit to reduce future common expense assessments.

Article 13

Association of Lot Owners

Section 13.1 **Association Authority.** The Association shall manage and administer the Planned Community and shall have all powers and duties granted to it in the Planned Community Act and the Documents.

Section 13.2 **Association Membership.** All Lot Owners by virtue of their ownership of a Lot in the Planned Community are members of the Lot Owners' Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Bylaws. Subject to the provisions of the Planned Community Act and the Documents, such Owners shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

Section 13.3 **Powers and Duties.** Acting by and through its Board of Directors and/or its membership in accordance with the provisions of the Documents, the Association shall have the powers and duties necessary for the administration of the affairs of the Planned Community which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws and Rules and Regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves;
- (c) Collect assessments for common expenses for Lot Owners;
- (d) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (e) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Planned Community;
- (f) Make contracts and incur liabilities;
- (g) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (h) Cause additional improvements to be made as a part of the common elements subject to the provisions of Section 12.6 of this Article;
- (i) 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 Section 47F-3-112 of the Planned Community Act;
- (j) Grant easements, leases, licenses, and concessions through or over the common elements;
- (k) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in Subsections 47F-2-102(2) and (4) of the Planned Community Act and for services provided to Lot Owners;
- (l) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Dollars (\$100.00) per violation or per day for a continuing violation of the Declaration, Bylaws, and Rules and Regulations of the Association pursuant to Section 47F-3-107.1 of the Planned Community Act;
- (m) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or Bylaws;
- (n) Provide for the indemnification of and maintain liability insurance for its officers, directors, employees and agents;

- (o) Assign its right to future income, including the right to receive common expense assessments;
- (p) Exercise all other powers that may be exercised in this State by non-profit corporations; and
- (q) Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 13.4 **Right to Assign Future Income.** The Association may assign its future income, including its right to receive and collect common expense assessments, only by the affirmative vote of Owners of Lots to which at least a majority of the votes in the Association are allocated at a meeting called for that purpose.

Section 13.5 **Additions and Alterations by the Board of Directors.** Whenever, in the judgment of the Board of Directors, the Common Elements shall require additions, alterations, or improvements costing in excess of two thousand five hundred dollars (\$2,500.00) during any period of twelve (12) consecutive months, and the making of such additions, alterations, or improvements shall have been approved by a majority of the total votes in the Association at a special or annual meeting or by written consent, the Board of Directors shall proceed with such additions, alteration, or improvements and shall assess all Owners for the cost thereof as a Common Expense. Any additions, alterations or improvements costing one thousand dollars (\$1,000.00) or less on a cumulative basis during any period of twelve (12) consecutive months may be made by the Board of Directors without approval of the Owners and the cost thereof shall constitute part of the Common Expense. Notwithstanding the foregoing, if, in the opinion of a majority of the members of the Board of Directors, such additions, alterations, or improvements are exclusively or substantially exclusively for the benefit of the Owner or Owners requesting the same, such requesting Owners shall be assessed and pay therefore in such proportion as they jointly approve or, if they are unable to agree thereon, in such proportions as may be determined by the Board of Directors.

Article 14

Leases and Sales

In order to assure a Community of congenial resident Owners and thus protect the value of the Lots, the sale or leasing of a Resident Lot by an Owner shall be subject to the following provisions so long as the Planned Community shall be owned in accordance with the terms and conditions of the Documents and the Planned Community Act:

Section 14.1 **Renting or Leasing of Resident Dwellings.** Residential dwellings may be rented only in their entirety; no fraction or portion may be rented. No transient tenants shall be permitted. All leases must be for a term of not less than six (6) months except by written permission of the Board of Directors in its sole discretion. Before leasing any Single Family Dwelling, the Lot

Owner must receive the approval of the Association through its Board of Directors. This requirement is necessary because of the restrictions on leasing including the percentage of dwellings leased at any one time as set forth below.

No more that twenty-five percent (25%) of the dwellings in Fox Lair Crossings Subdivision of Phase I are permitted to be leased at any time. Upon presentation of a proposed lease for approval, the Board of Directors shall determine the number of dwellings leased at that time and shall not approve any lease which causes the number of dwellings leased to exceed the maximum percentage allowed. The Board, however, shall have the option in its sole discretion to allow leasing of more than 25% of the dwellings at any time to avoid undue hardship. The Owner of a dwelling who believes that leasing is necessary to avoid undue hardship shall make written application to the Board setting forth the pertinent circumstances and giving other notice as required herein. Circumstances which the Board may determine to impose undue hardship may include, for example, (i) where a Unit Owner must relocate and cannot, within ninety (90) days from the date the unit was placed on the market, sell the unit for the current appraised market value, having made reasonable efforts to do so; (ii) the death of the Owner; and (iii) where the Owner is required by his or her employer to relocate temporarily, and intends to return to reside in the unit.

All leases and lessees are subject to the provisions of the Declaration, Bylaws, and Rules and Regulations. The Lot Owner must make available to the tenant copies of the Declaration, Bylaws, and Rules and Regulations. The Board shall not discriminate against any prospective tenant on the basis of race, religion, national origin, age, disability, familial status or for any other unlawful purpose.

"Leasing" for purposes of this Declaration is defined as regular occupancy of a Resident Lot by any person other than the Owner for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

Any lease for a Resident in the Planned Community shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not incorporated into a lease such covenants nevertheless apply to the Resident Lot through the existence of this covenant. Any lessee, by occupancy in a Resident Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee agrees to abide by and comply with all provisions of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto. Owner agrees to cause all occupants of his or her Resident Lot to comply with the Declaration, Bylaws, and the Rules and Regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Residence are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto. In the event that the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or Rules and Regulations for which a fine is imposed, such fine shall be assessed against the lessee; provided, however, if the fine is not paid by

the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines constitute a lien against the Lot in accordance with the Planned Community Act and Declaration. Any lessee charged with a violation of the Declaration or Bylaws, or Rules and Regulations adopted pursuant thereto, is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction as set forth in the Bylaws.

Any violation of the Declaration or Bylaws, or Rules and Regulations adopted pursuant thereto, is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law.

Article 15

Amendments

With the exception of the Declarant's rights regarding Amendment of the Declaration provided for in Article 4, section 4.9, this Declaration of Planned Community may be amended only by affirmative vote of or written agreement signed by Lot Owners of Lots to which at least Sixty Seven Percent (67%) of the votes in the Association are allocated. The procedure for amendment shall follow the procedure set forth in Section 47F-2-117 of the Planned Community Act. No amendment shall become effective until recorded in the office of the Register of Deeds of Buncombe County, North Carolina.

Article 16

Architectural Control

Section 16.1 Architectural Committee. For purpose of this Article 16, the Declarant shall serve as the Architectural Committee until such time as Declarant shall turn over control of the Association to the owners at which time the Committee shall be the Board of Directors of the Association. In no event shall the Board or the Architectural Committee have any authority to affect or to have any control or structures built by the Declarant or its assigns.

Section 16.2 Improvements. No building, fence, wall or other structure or planting or landscaping shall be commenced, erected or maintained upon the Lots, nor shall any exterior addition to or change or alteration therein, including, without limitation, any planting or landscaping, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved the Association. All proposed plans and specifications shall be submitted first to the Declarant/Board of Directors or such committee approved by the Board of Directors who shall disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it by the Owner, or approval will not be required and this Article will be deemed to have been fully complied with. In passing upon such plans, the Declarant/Board of Directors/Committee may take into consideration the suitability and desirability of the proposed construction and the

proposed materials to the Lot involved. Refusal to approve the proposed plans may be based by the Declarant/Board of Directors/Committee on any grounds, including purely aesthetic considerations. No alterations in the external appearance of any structure shall be made without approval by the Association as provided herein; provided, however, that no approval by the Declarant/Board of Directors/Committee granted hereunder shall constitute or be construed as approval by Declarant or any other person of the structural suitability or quality of any structure or material.

Section 16.3 Architectural Review Process for Construction Projects. All Lot Owners must comply with Fox Lair Crossings Architectural Review Process which includes the following:

1. Construction Process

(a) Prior to any improvement or construction on any lot, plans and specifications shall be submitted to the Architectural Committee for review and written approval. A review fee of one hundred and fifty dollars (\$150.00) shall be submitted with the plans.

(b) The plans and specifications submitted by the Lot Owner shall be to scale with a topographic map and shall include the following: location of home, size with square footage of living area and total size of living area. The plans and specification shall also include all elevations, front, rear, and sides and height of the home and the exterior finish and colors. The plans shall also show the locations of driveways, drainage culverts, erosion control, and silt fencing and landscape plan. The plans and specifications shall also include the information on the building materials intended to be used in constructing the driveway.

(c) The Architectural Committee will approve the plans and specifications based solely upon the Architectural Committee's discretion. The Architectural Committee will take into consideration the aesthetic value of the proposed construction and its impact on the surrounding homes.

(d) The Lot Owner must strictly comply with Buncombe County Erosion Control measures while the residence is under construction. Silt fences shall be installed prior to any land disturbance and construction. No silt may run off the lot unprotected. If the Architectural Committee is notified by of any violation of Buncombe County Erosion regulations, the Architectural Committee may order that construction of the residence cease until the violation is corrected. The Lot Owner will pay for all cost and repairs and or fines.

(e) The Lot Owner is responsible for repairing any damage to the Association's roads or curbs during the construction process. The Association shall be authorized to perform, after ten (10) days notice to a Lot Owner, any maintenance or repair on to the road or curbs for which the Owner is responsible and to charge the Owner, as provided for assessments herein, with the actual costs of maintenance. The Lot Owner is also responsible for keeping the Lot clean and maintained prior to building and during the construction process.

2. Completion Approval:

(a) The Architectural Committee will conduct a final inspection of the completed construction or improvement and if the construction or improvement satisfactorily complies with the submitted plans and specifications, the Architectural Committee will issue the Lot Owner approval in writing. If a new home is constructed, the Lot Owner must obtain written approval from the Architectural Committee and a Certificate of Occupancy by the city or county inspection department prior to anyone residing in the new home.

(b) The residence as approved by the Architectural Committee and the appropriate governmental agency must be completed twelve (12) months from the time the construction commences on site.

(c) Any secondary structure erected shall be made out of the same material and shall conform architecturally to the primary structure. All secondary structures shall be approved by the Architectural Committee prior to construction and shall be completed within six (6) months.

3. Single Family Dwelling Size:

(a) All single family dwellings shall have minimum a living area of 2,400 square feet for one-story dwellings and a minimum of 2,800 square feet for two-story dwellings. The living area shall include the air conditioned and heated space. Patios, porches, garages, basements and cellars shall not be included in calculating the minimum living area square feet required.

(b) Log Homes are permitted but the minimum living area shall be 3000 square feet for one-story dwellings and a minimum of 3600 square feet for two-story dwellings. The living area shall include the air conditioned or heated space. Patios, porches, garages, basements and cellars shall not be included in calculating the minimum living area square feet required. All logs shall be a minimum of ten (10) inches in size.

4. Architectural Design for Single Family Dwellings

(a) No dwelling shall exceed three (3) stories in height above the basement. All dwellings will have a minimum of two (2) car garages or more.

(b) All driveways shall be made either of asphalt paving material, concrete, brick, decorative brick pavers or other material approved by the Architectural Committee.

(c) The minimum roof pitch shall be a 6 inch 12 inch pitch. Roof vents, vent stacks, ventilators and other roof protrusions should be located away from the public view and on the backside of the roof.

(d) Roof materials shall be architecturally designed thirty (30) year dimensional fiberglass shingles, GAF, Georgia-Pacific or one of comparative value. Barrel tile, slate or shake type roofs are acceptable but receive prior approval from the Architectural Committee. No flat asphalt or fiberglass shingles shall be allowed.

(e) Front elevation shall consist of a minimum of at least fifty (50) percent decorative brick, stone, wood, wood lap siding or cedar shingles. The Architectural Committee may approve the use of hardi-plank siding but the Architectural Committee will not permit hardi-plank siding to be used as the fifty (50) percent decorative front elevation. Concrete block will be allowed for the sides and rear of the home but shall have a sand or decorative type stucco style finish. No brick or stone veneer shall be allowed unless approved by the Architectural Committee. No T-111 type plywood siding shall be allowed. Lot Owner shall submit samples of other proposed types of siding to the Architectural Committee for approval.

(g) Exterior colors of the dwelling shall be earth tones, pastels, and colors that blend with the surrounding environment. No fluorescent or loud offensive colors shall be used. Any proposed painting color charts shall be submitted to the Architectural Committee for approval.

(h) All dwellings shall be subject to city and county code setbacks. No building shall be erected closer than thirty (30) feet from the front lot line of each lot and ten (10) feet from the rear lot line and ten (10) feet from the side lot lines.

(i) In extraordinary circumstances, which may include unusual trees and topography, the Architectural Committee may determine that the Lot Owner has the option to amend these building requirement and setbacks. The Architectural Committee may permit a Lot Owner to amend these building requirements to ensure the Lot Owner can obtain the fullest view and enjoyment of its lot. The Lot Owner would still be required to meet city and county requirements.

(j) Water, sewer, electric, gas, telephone and TV cable will be supplied by said local utilities companies and all the utilities shall be installed underground. No exception will be permitted. It shall be the responsibility of each Lot Owner to install the utilities from each utility's point of attachment to the residence.

(j) Parking shall be on the subject lot and no parking shall be allowed on the neighborhood streets.

(k) All storage tanks, air conditioning units and other equipment shall be screened with an enclosure, shrubs or buried. They shall not be visible from the street or other lots.

(l) The construction of impervious surfaces on any lot over fifty-five hundred (5,500) square feet, including driveways, is allowed but will require prior approval from the Architectural Committee.

(m) Conservation areas and streams are depicted on the referenced plats. A Lot Owner must seek prior approval from the Architectural Committee and the North Carolina Division of Water Quality prior to making any changes to the conservation areas and streams. Areas designated as conservation areas and streams on the plats are for the full use and enjoyment of said Lot Owner, however, no plants, shrubs and trees shall be cleared that provide erosion control of conservation areas. No filling or excavation of any kind will be permitted in the conservation areas.

Section 16.4 **Limitation of the Committee's Liability.** Neither the Board of Directors, the Association nor any representative(s) thereof, nor its or their successors or assigns, shall be liable in damages to anyone submitting specifications for approval, or to any Owner, by reason of any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications. Every person, corporation, partnership or organization which submits plans and specifications to the Board of Directors or the Association for approval agrees, by such act, and every Owner agrees by acquiring title to any Site or an interest therein, that it will not bring any action, proceeding or suit against the Board of Directors, the Association or any representative to recover any such damages. The Board of Director's and Association's approval of any plans, specifications, landscaping or elevations or any other approvals or consents are given solely to protect and preserve the appearance of the Property, and shall not be deemed a warranty, representation or covenant that the proposed work complies with any applicable laws, rules or regulations or any standard of due care regarding structural design.

Article 17

Maintenance Responsibility

Section 17.1. **By the Association.** The Association shall maintain and keep in good repair, as a common expense, all of the Common Elements, including all of the private roads in Fox Lair Crossing Subdivision.

The Association shall maintain the overflow structure on Lot 39, which entails inspecting the structure every month for debris and trash and cleaning the structure every three months or as needed.

The Association shall be authorized to perform, after ten (10) days notice to a Lot Owner, any maintenance upon a Lot for which the Owner is responsible and to charge the Owner, as provided for assessments herein, with the actual costs of maintenance.

Section 17.2. **By the Owner.** Each lot owner shall maintain, repair, and replace, when necessary, all damage to his residence and any other permanent structures located on the lot unless the Association or its insurance coverage is responsible for remedying any such damage. Each lot owner shall be responsible for the maintenance and upkeep of his lot. All damages to the Common Elements intentionally or negligently caused by a lot owner, his family, guests, invitees, agents,

servants, lessees, employees, or contractors shall be repaired promptly by such lot owner, except to the extent such damage is covered by hazard insurance required to be maintained by the Association, in which case the Association waives its right of indemnity to the extent of funds received and paid pursuant to said insurance policy. If the lot owner defaults in his obligations herein and if any such default is not cured by him within fifteen (15) days from written demand by the Association, the same may be cured by the Association and the cost thereof shall be assessed against the subject lot owner. The Owners shall be responsible for maintenance and repair to all utilities and services to the Lots.

Section 17.3. Restrictions on Lot Owners. No lot owner shall perform or cause to be performed any maintenance, repair, or replacement work upon his lot which disturbs the rights of the other lot owners or jeopardizes the soundness or the safety of the common elements. If the lot owner shall cause any work so performed on the lot, which in the sole opinion of the Board violates the terms of this paragraph, it shall be immediately corrected and he shall refrain from recommencing or continuing any such work without written consent of the Board. A lot owner shall not repair, alter, replace, or move any of the Common Elements or Limited Common Elements without the prior written consent of the Board.

Section 17.4. Alterations to Common Elements. The Board of Directors is authorized to make minor improvements or alterations to the structures located on the Common Elements as a common expense; however, no major or structural improvements to or alterations of the Common Elements or Limited Common Elements, or improvements or alterations in excess of Five Thousand Dollars (\$5,000.00) shall not be made by the Association without first obtaining the prior approval of the membership by a majority vote of the total Association membership.

Section 17.5. Responsibility for Damages. In accordance with Section 47F-3-107 of the Planned Community Act, if damage for which a Lot Owner is legally responsible and which is not covered by insurance provided by the Association is inflicted on any common element or limited common element, or the property of another Lot Owner, the Association may direct such Lot Owner to repair such damage or the Association may itself cause the repairs to be made and recover the costs thereof from the responsible Lot Owner.

If, on the other hand, damage is inflicted on any Lot by an agent of the Association in the scope of his/her activities as such agent, the Association is liable to repair such damage or to reimburse the Lot Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Lot Owner.

In both such above-described instances, when the claim involved is five hundred dollars (\$500.00) or less, the Board of Directors, or its designee, shall determine if a Lot Owner is responsible for damages to any common element or whether the Association is responsible for damages to any Lot. The Board, or its designee, shall accord the party charged with causing the damage with notice, an opportunity to be heard, presentation of evidence and notice of decision in accordance with those procedures set forth in Article 18 of this Declaration. The Board, or its designee, may assess a liability for each damage incident not in excess of five hundred dollars

(\$500.00) against each Lot Owner charged or against the Association. Liabilities of Unit Owners shall be assessments in accordance with Section 47F-3-107 of the Planned Community Act and the Declaration. Liability of the Association may be used by the Lot Owner as an offset against amounts owed to the Association.

Section 17.6. **Insurance Deductibles.** If maintenance is required as a result of an insured loss, the amount of the deductible shall be paid by the Association. If such maintenance is caused by the act or omission of a Lot Owner, or his or her immediate family member(s), guest(s), tenant(s) or lessee(s), then the lot Owner will be assessed and shall pay the amount of the deductible.

Article 18

Enforcement Powers

Section 18.1 **Rules Making Authority.** The Planned Community shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board of Directors shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the common elements, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed by the affirmative vote or written agreement of a majority of the total Association vote at an annual or special meeting. No rule or regulation shall be in conflict with either the Declaration or the Bylaws.

Section 18.2 **Fining Powers.** Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the Planned Community Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Fifty Dollars (\$150.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Planned Community Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Owners or occupants, which fine(s) shall constitute an assessment against the Lot in accordance with Article 11 hereof, and become a personal obligation of the Lot Owner, and a lien upon the property; to suspend an Owner's or occupant's right to use the common elements; and to suspend an Owner's right to vote. In the event that any occupant of a Resident Lot violates the Planned Community Act, Declaration, Bylaws, or the Rules and Regulations and a fine is imposed, the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Resident Lot Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Planned Community Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Lot Owners waive and release any defense that enforcement is or may be selective. Charges for late payments of assessments under Article 11 of the Declaration are not to be regarded as fines that warrant a hearing under this section.

Section 18.3 **Abatement and Enjoinment of Violations.** In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the common elements to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise such abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Additionally, the Association through the Board shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, Bylaws, or Rules and Regulations. All costs of any such legal action, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Article 19

Enforcement Procedures

In accordance with Section 47F-3-107.1 of the Planned Community Act, the Board of Directors or its designated representatives or committee shall not impose a fine or charge for damages against a Lot Owner unless and until the following procedure is followed:

Section 19.1. **Demand.** Written demand to cease and desist from an alleged violation of the Declaration, Bylaws, or Rules and Regulations shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction if such violation is continuing one or a statement that any further occurrence of the same violation may result in the imposition of sanction, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's sole determination, pose a danger or nuisance to safety or property. Charges for late payments under Article 11 of the Declaration are not to be regarded as fines that warrant a hearing under this section.

Section 19.2. **Notice.** Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may impose a fine by giving the violator written notice. This notice shall state: (i) the nature of the alleged violation; (ii) the amount of the fine; (iii) that the violator will have the opportunity to be heard by requesting within ten (10) days from the date of such notice, a hearing before the Board of Directors or its designated committee to contest the fine; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (v) that all rights to be heard or to have a fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

Section 19.3. **Hearing.** If the hearing is requested, it shall be held before the Board of Directors or a committee designated by the Board and the violator shall be given a reasonable opportunity to be heard. The Board or designated committee shall render its final decision regarding imposition of the fine no later than five (5) days after the hearing. The Board or its designated committee shall issue a written statement of the results of the hearing.

Article 20

Condemnation

If part or all of the Planned Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47F-1-107 of the Planned Community Act.

Article 21

Termination

Termination of the Planned Community shall be accomplished only in accordance with Section 47F-2-118 of the Planned Community Act.

Article 22

Miscellaneous Provisions

Section 22.1 **Captions.** The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents nor the intent of any provision thereof.

Section 22.2 **Gender.** The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

Section 22.3 **Waiver.** No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 22.4 **Invalidity.** The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

Section 22.5 **Conflict.** The Documents are intended to comply with the requirements of the Planned Community Act and Chapter 55-A of the North Carolina General Statutes. In the event

of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

Section 22.6 **Preparer.** This Declaration was prepared by Dungan & Associates, P.A., One Rankin Avenue, Third Floor, Asheville, North Carolina 28801.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its President.

This the _____ day of _____, 2005.

Declarant: West Coast Funding, Inc.

President (SEAL)

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify _____, President of West Coast Funding, Inc., a Florida Corporation authorized to do business in North Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Notary Public

Witness my hand and official seal this the _____ day of _____, _____.