

Common Area and delegation of the right to use the Common Area, or the marketing and sale of Lots by the Declarant and Builder, whether or not such activities are enumerated in the preceding paragraphs, without the express prior written consent of Declarant.

In exercising any of the rights provided or granted under this Article IX, neither Declarant, nor the Association shall revoke, modify or amend this Declaration in a manner that reduces the size of the Common Area to less than, the area required by the appropriate governmental authority as of the date of this Declaration.

ARTICLE X USE RESTRICTIONS

Section 1. Business Use Prohibited. No trade, business, profession, garage sale, moving sale, rummage sale or other type of commercial activity shall be carried on within any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the properties; and, (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

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

Notwithstanding the foregoing, the Declarant and the agents and employees of Declarant shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain fluorescent-lighted or spot-lighted model homes which may be open to the public for inspection 7 days per week for such hours as the Declarant or Builder deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales efforts; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

Section 2. Use of Accessory Structures. No accessory structure or other building, other than a Dwelling and its garage, shall be erected on a Lot without written permission from the Declarant. Notwithstanding the foregoing, the Declarant and, with the approval of the Declarant, a Builder, may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of Units.

Section 3. Maintenance of Improvements. Each Owner shall maintain in good condition and repair all improvements constructed upon such Owner's Lot, including, without limitation, the Dwelling. No Owner shall change the landscaping, exterior design or color of the Dwelling on such Owner's Lot, including the roof thereof, except in compliance with Article VIII hereof.

Section 4. Storage: Clothes Hanging. No Lot or Common Area shall be used for the storage of rubbish. Outside clothes hanging devices shall not be permitted.

Section 5. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No automobile or other vehicle mechanical repairs or like activity shall be conducted within the Properties other than in a garage and concealed from public view.

Section 6. Lawns. Each Lot shall be maintained in a neat condition by the Owner thereof or, as appropriate, by the Association. In this context, the word "Lot" shall include that portion of the property from the outside of the structure on the applicable Lot to the adjacent paved road surface. All Lots upon which a Unit or Dwelling has been constructed ("Improved Lots") must have grass lawns; no gravel or similar type lawns are permitted. For Improved Lots, "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized and that mulched areas be regularly re-mulched and kept weeded so that its appearance is in harmony with the neighborhood. No Owner shall allow the grass on an Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground. For unimproved Lots, "Neat" shall require that the Lot is maintained in a slightly condition, free of debris, rubbish, weeds and high grass and in a prudent and reasonable manner harmonious with that of other Lots within the Subdivision.

Section 7. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of cats, dogs, and other household pets may be kept provided they are kept within the residence and are not kept, bred, or maintained for any commercial purposes or become a nuisance to the neighborhood. No person owning or having custody of an animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. The Owner shall be responsible for cleaning all droppings from their animals. The Board of Directors of the Association shall have the right to expel animals from the community for the Owners continuing violation(s) of the governing documents. The Board shall also have the right to expel dogs from the community for excessive barking which in the Board's opinion is a nuisance to other Owners.

Section 8. Signs. No signs shall be displayed on any Lot or on or within any improvement so as to be visible from the exterior of the improvement with the exception of one sign with the maximum dimensions of 24 inches by 24 inches expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than forty-five (45) days before such election and shall be removed within seven (7) days after such election. The Association may develop uniform sign standards and specifications to which all Owners must adhere. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant and, with the consent of and upon such conditions as Declarant, in its sole discretion, might impose, a Builder shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area, in connection with the development and sale of the Properties.

Section 9. Water Retention Areas. The Association shall be responsible for maintaining the portions of the storm water drainage system, if any, which are within the Common Area, including the water quality and quantity standards of the approved plans, to the extent required by law. A drainage easement is hereby dedicated to the Association for the purpose of maintaining the storm water system to meet water quality and quantity design standards of the approved plans and any future governmental laws, rules or regulations.

Each Owner of a Lot which borders a water retention area shall maintain any portion of that Owner's Lot lying within a retention area free of debris but shall not remove any wetlands species or do anything that would affect adversely water quality within the water retention area.

Swimming and bathing in water retention areas are prohibited. Docks or other structures shall not be erected in water retention areas without the prior written consent of the Association. All other uses of water retention areas shall be subject to the prior written approval of the Association and such rules and regulations as the Association may adopt from time to time.

Section 10. Vehicles, Boats and Trailers. No vehicle of any kind shall be parked on any Lot except on a paved parking surface or driveway or within a garage. No Boat or trailer of any kind shall be parked on any Lot except within a garage or behind a fence in the back yard of a Lot concealed from public view. The back yard is defined as that portion of the Lot from the rear corner of a house to the rear lot line placed where it will not be seen from the roadway. No truck or vehicle used primarily for commercial purposes (other than those temporarily present on business), no vehicle in inoperable condition, no unlicensed vehicle, no recreational vehicle, no camper, no boat and no trailer may be parked within the Properties, unless kept inside a garage and concealed from public view. No parked vehicle shall be covered by a "car cover" or other similar covering unless kept inside a garage and concealed from public view. For the purpose of the preceding sentence, the term "kept" shall mean present for either a period of more than ten (10) hours or overnight, whichever is less. The Association shall have the right to tow or remove any boat, trailer, or vehicle of any type which is parked within the Premises or kept on any Lot in violation of this section, at the owner's expense, and the owner of each Lot, by acceptance of their deed, does grant to the Association such an easement on, across, and upon their Lot as may be necessary to enforce the provisions set out in this section.

Section 11. Walls, Fences, and Hedges. All walls, fences, planters and hedges shall be controlled strictly for compliance with this Declaration and architectural standards established by the Declarant or the ARC. The design, materials and placement of all walls, fences and hedges shall be approved by the ARC prior to construction pursuant to the approval requirements of Article VIII, Section 1, of this Declaration.

Section 12. Antennae and Roof Structures. No radio or other electrical towers, aerials, antennae, or other devices of any type for the reception or transmission of radio broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.04000 (or any successor provision) promulgated under the Telecommunication Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. An antenna permissible pursuant to rules adopted by the Association may be installed only if it is approved by the Association pursuant to Article VIII hereof. This provision shall not restrict the use of one satellite dish or comparable communication device per Lot having a size larger than eighteen (18) inches in diameter, however, any such satellite dish or comparable communication device must be located in the back yard of the Lot as defined herein.

Section 13. Visual Obstructions at the Intersections of Streets. No object or thing which obstructs sight limits above the roadways within the triangular area formed by the junction of street curb lines shall be placed, planted or permitted to remain on any corner lots in violation of the NC DOT sight triangle requirements.

Section 14. Leased Units. An Owner may lease or sublet his Unit; provided, however, that any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions and Restrictions for the Brandy Creek South Community, recorded in the

applicable public registry for Pitt County, North Carolina. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Owner shall furnish the Association a copy of any leases or subleases of his Unit.

Section 15. Minimum Size of Dwellings. All Dwellings constructed on any Lot shall have a minimum of One Thousand Six Hundred (1600) square feet of enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling, provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided, further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

Section 16. Attached Garages. All homes shall have a minimum two (2) car garage.

Section 17. Seasonal or Holiday Decorations. Holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be removed from each Lot or residential dwelling within a reasonable period of time after such holiday passes. The ARC has the sole discretion to determine what is a reasonable period of time for seasonal or holiday decorations to exist after the holiday passes and its determination shall be final.

Section 18. Deviations. Declarant at its sole discretion, is hereby permitted to approve deviations to restrictions in Article XI in instances where in its judgment, such deviation will not adversely affect the development of the Property as a whole. Such approvals must be granted in writing and when given will automatically amend these restrictions for that certain Lot only.

Section 19. Window Coverings. All drapes, curtains or other similar materials hung at windows so as to be visible from outside the home shall be of a white or neutral background material.

Section 20. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Sites shall be clear, white or non-frosted lights or bulbs. Light wattage and placement shall be approved by the ARC.

Section 21. Service Utilities, Fuel Tanks, Wood Piles, Trash. All service utilities, fuel tanks, wood piles and trash and garbage containers are to be enclosed within a fence, wall or plant screen of a type and size approved by the Declarant or the ARC, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision.

Section 22. Flags. Subject to Section 47F-3-121, the design, materials and location of all flags, flag poles, flag staffs, shall be approved by the ARC prior to installation or display pursuant to the approval requirements of Article VIII, Section 1, of this Declaration.

Section 23. Right of ways. Owners shall not place anything within the right-of-way except an Association approved mailbox. If any Owner places any improvement or structure in the right-of-way, then if requested by the North Carolina Department of Transportation or the Declarant or the Association or any governmental regulatory agency, the Declarant or the Association shall have the right to remove such improvement or structure even if ARC had approved installation of such improvement or structure.

**ARTICLE XI
GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Further, the Board of Directors shall have the right to record in the appropriate land records a notice of violation of this Declaration or the Bylaws of the Association, or any rules, regulations, use restrictions, or design guidelines promulgated by the Association and to assess the cost of recording and removing such notice against the Owner in violation of the Declaration.

Section 2. Severability. Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. Amendment. For so long as Declarant owns any Lot or Unit within the Subdivision, this Declaration may be amended by the Declarant, without the consent or joinder of any other Owner or the Association. Any such amendment shall be effective upon recording of same in the applicable public registry for Pitt County, North Carolina. No amendment shall be binding upon any Lot or Owner until fifteen (15) days after a copy of such amendment has been provided to such Owner.

The covenants and restrictions of this Declaration, and any amendments thereto, are appurtenant to and shall run with and be binding upon the Properties and the Owners thereof for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of the Owners as set forth below.

Subject to the provisions of Section 8(e) hereof and after Class B Lots cease to exist, this Declaration may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots and terminated during the first twenty-five year period only in strict compliance with §47F-2-118 of the Act by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter amended by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots or terminated by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, provided, however, that so long as there is Class B membership, no amendment adopted by the Owners shall be effective unless and until such amendment is approved in writing by the Declarant. Amendment or termination shall be by written instrument signed by the appropriate persons or entities and recorded in the applicable public registry for Pitt County, North Carolina, and upon recordation, shall be binding on all Lots and Units within the Properties and the Owners thereof, without regard to whether the Owner of such Lot voted for or against or signed or did not sign the amendment.

Section 4. Interpretation. Headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing any provision hereof. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa: the use of one gender shall include all genders; and the use of the word "including" shall mean "including, without limitation". This Declaration and the provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina.

Section 5. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded plat, except by or with the consent of the Declarant and, if required, by the appropriate governmental authority.