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Instr# 20080000888
Rutherford County, NC
Faye H. Huskey Register of Deeds
BK 964 PG 657-702

Prepared by: Van Winkle Law Firm – Craig D. Justus

Exhibits later added by: Sheryl H. Williams, Roberts & Stevens, P.A.

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**DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS,
TERMS, RESERVATIONS AND CONDTIONS FOR FIREFLY LODGE,
A CONDOMINIUM**

by

**FIREFLY COVE DEVELOPMENT, LLC, a North
Carolina limited liability company ("Declarant")**

Dated: July 23, 2008

STATE OF NORTH CAROLINA

COUNTY OF RUTHERFORD

**DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, TERMS,
RESERVATIONS AND CONDITIONS FOR FIREFLY LODGE, A CONDOMINIUM**

THIS DECLARATION made this 23rd day of July, 2008, by and between **FIREFLY COVE DEVELOPMENT, LLC**, a North Carolina limited liability company ("Declarant") whose address is P. O. Box 25427, Sarasota FL 34277, pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes ("the Act").

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real estate situated in the County of Rutherford, and State of North Carolina, and legally described on Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate ("Property"); and

WHEREAS, Declarant intends to develop on all of the Property Condominium Units and Common Elements as hereinafter set forth; and

WHEREAS, the hereinafter described condominium is part of a master planned community known as Firefly Cove as described in the Master Declaration referenced below and is considered a Neighborhood as that term is used in said Master Declaration; and

WHEREAS, Declarant desires to supplement the Master Declaration and submit all of the Property to the Act in accordance with the following terms of this Declaration and subject to the Special Declarant Rights described below.

NOW THEREFORE, Declarant, as the owner of said Property, hereby declares as follows:

ARTICLE I
Definitions

Definitions. Undefined terms used in this Declaration shall have their plain and ordinary meaning as determined by reference to standard dictionary definitions. As used herein, the following words and terms shall have the following meanings:

1.1. **Act.** The North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

1.2. Association. Firefly Lodge Condominium Owners Association, Inc., an incorporated association under the laws of the State of North Carolina. The Articles of Incorporation of the Association shall be registered with the North Carolina Secretary of State's Office and kept on file with the Secretary of the Association.

1.3. Board. The Board of Directors of the Association.

1.4. Bylaws. The Bylaws of the Association as shown on Exhibit D which are hereby incorporated herein and made a part hereof by this reference. Amendments to the Bylaws are not required to be recorded in the County Registry. The Bylaws and any amendments thereto shall be on file with the Secretary of the Association.

1.5. Common Elements. All portions of the Condominium except the Units, including any easements appurtenant to the Condominium Property as referred to below. Limited Common Elements as defined below are Common Elements.

1.6. Common Expenses. Expenditures made or financial liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.7. Condominium-Wide Standard. The standards of conduct, maintenance, or other activity generally prevailing in the Condominium. Such standards may be more specifically determined and established by the Board or any committees delegated such responsibility by the Board.

1.8. Condominium. The condominium created by this Declaration.

1.9. Declarant. Firefly Cove Development, LLC and (i) any other person who has executed this Declaration, or who hereafter executes an amendment to this Declaration to add Additional Real Estate, except Security Holders and except persons whose interests in the Property will not be conveyed to Unit Owners, and (ii) any person who succeeds to any Special Declarant Rights pursuant to Section 47C-3-104 of the Act.

1.10. Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) 120 days after conveyance of seventy-five percent (75%) of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than Declarant; (ii) two years after all Declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any development right to add new Units was last exercised. For purposes of this section, the number of Units to measure the seventy-five percent (75%) fraction includes the maximum number of Units that can be built on the Property as set forth in Section 3.2 below.

1.11. Eligible First Mortgagee. The holder or holders of a first mortgage or deed of trust lien on a Unit which has been recorded so as to give record notice thereof and who has notified the Association, in writing, of the holder or holders' names and addresses as noted in Article XIII below.

1.12. Firefly Cove. The master planned community of which this Condominium is a part as defined in the Master Declaration referenced below and amendments thereto, which document and any amendments thereto are incorporated herein by reference.

1.13. Firefly Cove Property Owners Association, Inc.. The Master Association within Firefly Cove of which each Owner of a Unit is a member as set forth in the Master Declaration.

1.14. Floor Plans. The floor plans of the Condominium recorded with, and by the Act made a part of, this Declaration as the same may hereafter be amended.

1.15. Limited Common Elements. Those portions of the Common Elements allocated by operation of Sections 47C-2-102(2) or (4) of the Act for the exclusive use of one or more but fewer than all of the Units and those Limited Common Elements which are specifically allocated to Units on Exhibit B. Limited Common Elements may include patio terraces and HVAC units. During the Declarant Control Period, parking spaces, if any, within the Condominium may be allocated by the Declarant as Limited Common Elements for specified Units. In lieu of such designation as Limited Common Elements, parking space assignments may also be allocated by the Board and governed by Rules and Regulations promulgated by the Association pursuant to Sections 47C-3-102(6) and (10) of the Act; provided, however, during the Declarant Control Period, such use assignment is subject to the written consent of the Declarant. For property owned by the Master Association and available for parking, parking space assignments to individual Units may also be made by the Master Association.

1.16. Master Association. Firefly Cove Property Owners Association, Inc. referenced above.

1.17. Master Declaration. The Declaration of Covenants, Restrictions, Easements, Reservations, Terms and Conditions Governing Firefly Cove as a master planned community recorded in Deed Book 919, at Page 836, Rutherford County Registry.

1.18. Occupant. Any person or persons in possession of a Unit, including Unit Owners, the family members, lessees, guests and invitees of such person or persons, and family members, guests and invitees of such lessees.

1.19. Person. A natural person, corporation, business trust, estate, partnership, trust, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity, or any combination thereof.

1.20. Property. The real estate described on Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.21. Rules and Regulations. The procedural and substantive requirements adopted by the Board in accordance with the Bylaws and imposed upon Members of the Association, concerning the use and/or enjoyment of any Unit, Limited Common Element or Common Element. Unless provided otherwise in writing, the Declarant reserves, during the Declarant Control Period, the right to consent

in writing to the Rules and Regulations prior to the application of such restrictions on Unit Owners. Further, the written consent of the Master Association is required for the imposition of Rules and Regulations on Unit 100 referenced in Section 5.3(f) below. A copy of the Rules and Regulations shall be kept on file with the Secretary of the Association.

1.22. Security for an Obligation. The vendor's interest in a purchase money deed of trust, mortgagee's interest in a mortgage, trustee's interest in a deed of trust, or the holder's interest in a lien.

1.23. Security Holder. Any person owning a Security for an Obligation in a Unit.

1.24. Special Declarant Rights. The rights reserved herein and in the Bylaws for the benefit of a Declarant, as follows: to complete the improvements indicated on the Plats and Floor Plans submitted in accordance with Section 47C-2-109 of the Act; to maintain sales offices, management offices, models and signs advertising the Condominium or any portion of Firefly Cove; to subdivide Units; to grant and/or use road and/or utility easements through the Common Elements for the benefit of the Condominium or as an appurtenance to property outside the Condominium regardless of the beneficial use of said land; to make the Condominium part of a larger condominium or planned community; and to elect, appoint or remove members of the Board during the Declarant Control Period subject to Section 47C-3-103(e) of the Act. The Special Declarant Rights reserved herein shall be exercised within one (1) year from the time of Declarant's conveyance of one hundred percent (100%) of the Units to Unit Owners other than a Declarant. The Special Declarant Rights described herein apply to the property described on Exhibit A. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Declarant Control Period, but in that event, Declarant reserves the right for the duration of the period of declarant control to specify in a recorded instrument that specified actions of the Association or Board be approved by Declarant before they become effective.

1.25. Unit. A physical portion of the Condominium designated for separate ownership or occupancy, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit C. Each Unit is designated for separate ownership or occupancy at the time that: (i) such Unit is designated and delineated on the recorded Floor Plans; and (ii) a Certificate of Occupancy for such Unit is issued by the applicable local governmental entity.

1.26. Unit Boundaries. The boundaries of each Unit, both as to vertical and horizontal planes, as shown on the Floor Plans, are the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit, the undecorated surfaces of the ceiling facing the interior of the Unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior and topmost surfaces, including, without limitation, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated surfaces thereof, and also includes all spaces, interior partitions and other fixtures and improvements within such boundaries. Reference is hereby made to Section 47C-2-102 of the Act for aid in defining unit boundaries and the delineation of Limited Common Elements such as fixtures that lie partially within and partially outside the designated boundaries of a Unit.

1.27. Unit Owner. The person or persons, including Declarant, owning a Unit in fee simple, but excluding all Security Holders.

ARTICLE II

Submission of Property to the Act

2.1. Submission. Declarant hereby submits the Property to the Act for purpose of forming a Condominium.

2.2. Name. The Property shall hereafter be known as Firefly Lodge, a Condominium.

2.3. Division of Property into Separately Owned Units. Declarant, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into seven (7) Units and does hereby designate each Unit for separate ownership, subject, however, to the provisions of Section 2.4 below. Unless subdivided by Declarant pursuant to Section 2.5 below, the maximum number of Units that may be created on the Property is seven (7) Units. All of such Units will be restricted exclusively to residential use, except for Unit 100 which may be used for community lodge, recreational and/or social purposes as determined by the Declarant or the Master Association. Unit 100 shall not be used as a residential dwelling unit.

2.4. Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-111(1), (2) and (3) of the Act.

2.5. Subdivision of Units. During the Declarant Control Period, Declarant reserves the right to subdivide any Unit into two (2) or more units without Association or Unit owner consent. After a subdivision occurs, the Declarant shall record a revised set of Floor Plans as required by the Act as well as a reallocation of the allocated interests in the Common Elements in accordance with the formula provided in Section 2.7 below.

2.6. Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit. In addition to those defined in Section 1.15, Limited Common Elements include those set forth on Exhibit B and are hereby allocated to Units as shown on Exhibit B.

2.7. Unit Allocations. The allocations to each Unit of a percentage of undivided interest in the Common Elements, of votes in the Association, and of a percentage of the Common Expenses, are as stated on Exhibit C. The allocation of undivided interests in the Common Elements and of the Common Expenses is according to the approximate amount of heated living space of each Unit to the total heated living space of all Units. Except as provided in the Bylaws for certain changes, including amendments to the Declaration, Bylaws and Rules and Regulations, the votes in the Association are equally allocated to all Units.

2.8. Consent of Mortgagee. The Property is currently encumbered by a Deed of Trust to C. Allan Ducker, III, Trustee, for Community South Bank & Trust, recorded in Book 977 at Page 179, Rutherford County Registry. Each Unit will be released from the lien of said Deed of Trust

upon sale. The Consent of Mortgagee to the imposition of this Declaration on the Property is attached hereto as Exhibit E.

2.9. Condominium Ordinances. The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulation (i) prohibiting the condominium form of ownership, or (ii) imposing conditions or requirements upon a condominium which are not imposed upon physically similar developments under a different form of ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium.

2.10. Reservation of Special Declarant Rights. Pursuant to Section 47C-2-105(a)(8) and (9), Declarant hereby reserves all Special Declarant Rights as set forth in the Act, but specifically the rights as set forth in Section 47C-2-110(b)(c)(d), Section 47C-2-113, Section 47C-2-115 and Section 47C-2-116 of the Act are reserved.

ARTICLE III Easements

3.1. Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units so encroached upon.

3.2. Easements Through Walls. Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.

3.3. Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Unit Owner, the Association, the Board, or any other person, is required to enter upon a Unit or the Common Elements to repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.

3.4. Declarant's Easements. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Condominium, which easements shall exist as long as reasonably necessary for such purposes. Specifically, Declarant reserves to itself, its successors and/or assigns, a perpetual alienable right to provide ingress, egress and regress, utilities, and/or storm water drainage over, under and across the

Common Elements within the Condominium as an appurtenance to any parcels of land, whether within or outside the Condominium, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel. Declarant reserves within the Common Elements the right to grant an easement to the Master Association and its agents for the maintenance of landscaping features in and around the Condominium building.

3.5. Easements to Run with Land. All easements and rights described in this Article III are appurtenant easements running with the land, and except as otherwise expressly provided in this Article III shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, Security Holders and any other person having any interest in the Condominium or any part of any thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article III, whether or not specifically mentioned in any such conveyance or encumbrance.

ARTICLE IV

Association Membership and Assessments

4.1. Membership in the Association. Every Owner of a Unit shall be a member of the Association ("Member") and bound by this Declaration, the Articles of Incorporation of the Association and its Bylaws and Rules and Regulations as hereafter promulgated. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

4.2. Powers of the Association. The Association shall have such powers as are enumerated in its Articles of Incorporation, its Bylaws or as provided in the Act, including, but not limited to, Section 47C-3-102 and Section 47C-3-107.1 of the Act. The powers of the Association shall include, without limitation, the authority to levy fines for violations of this Declaration, Bylaws and the Rules and Regulations of the Association, and the power (but not the obligation) to contract for services to be provided to Unit Owners, including, without limitation, garbage pickup and satellite or cable.

4.3. Creation of the Lien and Personal Obligation Assessments. Each and every Owner of a Unit by acceptance of a deed therefore, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided and as stated in the Bylaws. All such annual and special assessments, together with interest, late penalties, costs and reasonable attorney's fees for the collection thereof shall be a charge and lien upon a Unit and its interest in the Common Elements. The amount owed shall be a continuing lien upon the applicable property against which such assessment is made, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the Unit and (ii) liens and encumbrances recorded before the recordation of the Declaration.

4.4. Purpose of Assessments. The assessments levied by the Board of the Association shall be used for the purposes in keeping with a nonprofit corporation as set forth in the Association's Articles of Incorporation. Specifically, the assessments shall be used to promote the health, safety and welfare of the Members, including the Owners and residents of the Condominium,

and for the improvements, maintenance and repair of the Common Elements, and easements appurtenant thereto, for the protection of the Condominium from pollution or erosion; for the enforcement of these covenants; the provision of reserve funds, the employment of attorneys, accountants, and other professionals to represent the Association, when necessary, and for payment of local taxes, insurance and special governmental assessments on or to the Common Elements together with payment of services, if any, provided to the residents by the Association.

4.5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of the Association may levy in accordance with its Bylaws, in any fiscal year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including, but not limited to, fixtures and personal property (such as road signs) related thereto and to pay special governmental assessments.

4.6. Rate of Assessment. The determination of the total amount of Common Expenses for any given fiscal year of the Association shall be within the sole discretion of the Board and in compliance with Sections 47C-2-107(a) and 47C-3-115 of the Act. The Board shall allocate assessments for Common Expenses in such amounts to be fixed from year to year as the Board determines necessary to adequately manage and operate the Condominium as provided in Section 47C-3-107, including the provision of reserves to address long term needs or emergency situations. **BY ACCEPTING A DEED FOR A UNIT, A PURCHASER ACKNOWLEDGES HIS OR HER UNDERSTANDING OF THE STANDARD IN THIS DECLARATION BY WHICH TO MEASURE A MEMBER'S ASSESSMENT LIABILITY AND THE PURPOSES FOR SAID ASSESSMENTS.**

4.7. Firefly Cove Property Owners Association, Inc.. Each Owner of a Unit shall automatically become a member of the Master Association for Firefly Cove, and subject to the Master Declaration, its bylaws and its rules and regulations and any amendments thereto. Any conflict between this Declaration and the Master Declaration shall be controlled by the Master Declaration.

4.8. Limited Common Element or Limited Benefit Allocations. Pursuant to Section 47-C-3-115(c) of the Act, the Board shall have the authority to allocate the cost of the maintenance, repair or replacement of Limited Common Elements solely to those Units to which said Limited Common Elements are assigned, or to assess common expenses or portion thereof benefiting fewer than all of the Unit against the Units benefited.

4.9. Effect of Nonpayment of Assessment. Any assessments which are not paid when due as determined by this Declaration and the Board shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring action at law against the Owner personally obligated to pay the same, or foreclose the lien against his property, and interest, late penalties, costs and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Unit, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges and liens

as a debt and to enforce the aforesaid charge and lien by methods available for the enforcement of such liens. The available enforcement remedies include, but are not limited to, those rights stated under the Act, including, without limitation, Section 47C-3-116. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all Members of the Association. The Association, acting on behalf of its Members, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient. In addition to the above, the Association shall have the right to suspend services, if any, being provided by the Association to delinquent Unit Owners. **IF SATELLITE OR CABLE IS PROVIDED TO THE MEMBERS AND PAID FOR WITH USE OF ASSOCIATION FEES, THE ASSOCIATION SHALL HAVE THE RIGHT TO STOP SERVICE FOR NON-PAYMENT OF ASSESSMENTS TO THE DELINQUENT UNIT OWNER.** Prior to the suspension of services as a result of non-payment of assessments, the Association shall afford the delinquent Unit Owner the notice and opportunity to be heard required by the Act, including Section 47C-3-102(a)(11). No owner of a Unit may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his or her Unit.

After notice and opportunity to be heard, pursuant to Section 47C-3-102(a)(11) of the Act, the Association may restrict the voting rights and/or use of Common Elements or Limited Common Elements (not including rights of access to a Unit) by a Unit Owner who is delinquent in paying assessments for a period of 30 days or longer.

The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of the Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement.

4.10. Personal Liability of Transferees; Statement; Liability of Eligible First Mortgagee.

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee. Although the personal obligation for assessments may not pass to a transferee, the lien for the applicable Unit shall continue to be enforceable against said Unit as provided in Section 4.3 above.

(b) Any transferee referred to in (a) above shall be entitled to a statement of assessments owing on the applicable Unit from the Board, pursuant to Section 8.8 of the Bylaws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth. All Owners of Units acknowledge that the reporting of any delinquent assessments to the members of the Association or to anyone pursuant to this section shall not constitute a violation of any state or federal unfair debt collection laws.

(c) Where an Eligible First Mortgagee or other person claiming through such First Mortgagee, pursuant to the remedies provided in the applicable mortgage or deed of trust, or by

foreclosure, obtains title to a Unit, the liability of such Eligible First Mortgagee or its heirs, successors and assigns by purchase for assessments shall be only for the assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title.

(d) Without releasing the transferor from any liability therefore, any unpaid portion of assessments which is not a lien under (b) above or resulting as provided under (c) above shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the Eligible First Mortgagee or such other person under (c) above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

4.11. Association Responsibility of Maintenance/Repair/Improvement of Common Elements. Except as provided in Section 6.1(a) below for Limited Common Elements, the Association and its Members shall be pursuant to Section 47C-3-107 of the Act responsible for the maintenance, repair and improvement of all Common Elements in accordance with the Condominium-Wide Standard that may be established by the Board every fiscal year; provided, however, in any given fiscal year, the Board shall have the discretion to vary from such Condominium-Wide Standard based on the availability of Association funds, including any reserve funds or for any other reason of the Board exercising reasonable business judgment. During the Declarant Control Period, the Declarant has the right, at Declarant's expense, to build improvements on the Common Elements without Association consent or to maintain, repair or improve the Common Elements over and above the standards referred to in this Section 4.11.

4.12. Reserve Funds, Operating Expense Surplus and Surplus Funds. The Board shall have the right, but not the obligation, within its sole discretion, to impose assessments on Unit Owners for the maintenance of reserve funds or operating expense surpluses. The Association, within its sole discretion, may apply surplus funds to any purpose of a non-profit corporation or may credit such funds to its Members as provided for in Section 47C-3-114 of the Act.

4.13. Usage Fees; Architectural Review. The Board shall have the right, but not the obligation, within its sole discretion, to impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for services provided to Unit Owners, if any. The Board may adopt schedule of fees to be applied to any Owner of a Unit at the time that Owner applies for approval to alter, modify or improve any Limited Common Element; provided, however, that the receipt of such fees shall in no way bind the Board's discretion in approving or rejecting the request.

4.14. Authorization to Charge Service, Collection, Consulting or Administration Fees. In the management of the Common Elements and the levying and collection of Common Expenses, the Board may establish a uniform schedule of service charges, collection charges, consulting fees or administrative fees pursuant to Section 47C-3-116(a2) of the Act.

4.15. Agreements with Master Association or other associations. The Board of Directors of the Association or Declarant, on behalf of the Association during the Declarant Control Period, shall be authorized to enter into binding agreements with the Firefly Cove Property Owners Association, Inc. or any other association, regarding shared services or the use of and/or maintenance, repair and/or improvement of common facilities, including, but not limited to, parking, utilities, storm water drainage and/or recreational amenities. Any costs associated with the agreements

contemplated by this Section 4.15 may be allocated to the Members of the Association as part of Common Expenses referenced in Section 4.6 above.

ARTICLE V
Restrictions, Conditions and Covenants

5.1. Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, Bylaws, the Articles of Incorporation of the Association, and Condominium Rules and Regulations promulgated by the Board or the Association, as amended. Failure to comply shall be grounds for an action by the Association, an aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief.

5.2. Administration of Condominium; Compliance with Master Declaration for Firefly Cove Planned Community. The Condominium shall be administered in accordance with the provisions of the Act, this Declaration and the Bylaws and to the extent permitted by law. Furthermore, the ownership, use, enjoyment and encumbering of interests for each Unit and Common Element in this Condominium is subject to the Master Declaration for Firefly Cove and any amendments thereto.

5.3. Use Restricted; Use by Declarant; Unit 100 Limitations.

(a) Except for Unit 100 as more fully described below, the Units shall be occupied and used by Unit Owners and Occupants for single-family residential purposes only. Time share or cooperative uses of a Condominium Unit are expressly prohibited. Single-family residential use shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption or having a guardian/ward relationship created by decree of a Court of competent jurisdiction, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

(b) No "For Sale" or "For Rent" signs or other window displays or advertising shall be maintained or permitted by any Unit Owner or Occupant on any part of the Condominium without the prior written consent of the Board.

(c) The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, Declarant may maintain sales offices for sales of Units in the Condominium. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, until all of the Units have been conveyed to a Unit Owner other than a Declarant, any one or more of such offices or models. For purposes of this section, the number of Units includes the maximum number of Units that can be built on the Property as set forth in Section 2.3 above.

(d) Declarant also may maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than a Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Units have been conveyed to Unit Owners other than Declarant and shall repair or pay for the repair of all damage

done by removal of such signs. For purposes of this section, the number of Units includes the maximum number of Units that can be built on the Property as set forth in paragraph 3.2 below.

(e) The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, the Association may maintain an office in the Condominium for management of the Condominium.

(f) Declarant reserves Unit 100 as shown on the Floor Plans within the Condominium as the community lodge, recreational and/or social space for the Firefly Cove planned community. The use and governance of said space shall be determined by the Rules and Regulations of Firefly Cove as established by the Master Association pursuant to its authority in the Master Declaration. Notwithstanding, the hours of operation of the Unit 100 space for community lodge, recreational and/or social use shall be 8:00 a.m. to midnight and no music shall be played in said space before 9:00 a.m. or after 10:30 p.m. Any changes to said hours of operation or music hours must receive the consent of a majority of Unit Owners, including the Owner of Unit 100, which consent can take the form of a vote (in person or by ballot or proxy) or in writing.

5.4. No Improvement to Exterior, Limited Common Elements or Common Elements. No Unit owner shall cause or perform any alteration, work or improvement to the exterior of a Unit, the Limited Common Elements or Common Elements contrary to the Condominium Rules and Regulations and without the written approval of the Board.

5.5. Hazardous Use and Waste. Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done to or kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse or destruction) to or in his Unit or the Common Elements.

5.6. Alterations of Common Elements. No Unit Owner or Occupant, except Declarant during the Declarant Control Period, shall alter, construct anything upon, or remove anything from, the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board.

5.7. Limitations on Renting. A Unit Owner shall not have the right to rent his Unit for transient or hotel purposes. The renting of a Unit shall not be less than two (2) nights minimum and shall otherwise conform to the Rules and Regulations and be subject to this Declaration and the Bylaws. Any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Any Unit Owner who enters into a lease of his Unit shall promptly notify the Association of the name and address of each lessee, the Unit rented, and the term of the lease. Each Owner shall be deemed to have appointed the Association as his agent for purposes of enforcing against a tenant any default arising under the lease from a violation of the Declaration, Bylaws or Rules and Regulations.

5.8. Pets. No pet shall be allowed in the Condominium, except as may be provided by the Rules and Regulations promulgated from time to time by the Board or the Association or in the Bylaws. Renters of any Units shall not be allowed to have pets.

5.9. Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable Rules and Regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board or the Association, as more fully provided in the Bylaws.

5.10. Restrictions, Conditions and Covenants to Run With Land. Each Unit Owner and Occupant shall be subject to all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be covenants running with the land, and shall bind every person having any interest in the Property, and shall inure to the benefit of every Unit Owner.

ARTICLE VI

Management, Maintenance, Repairs, Replacements, Alterations and Improvements

6.1. Common Elements.

(a) By the Association. The management, replacement, maintenance, repair, alteration and improvement of the Common Elements shall be the responsibility of the Association, and, subject to the provisions of Section 6.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to Section 6.1(b) hereof. All damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense. Notwithstanding the above, the Association, by and through the Board, may unilaterally assign the responsibility to maintain, repair and/or insure any Limited Common Element to the Unit or Units to whom said property is appurtenant. Should the Board determine that any Owner has neglected properly to maintain or to repair any Limited Common Element appurtenant to his Unit, the Board may provide maintenance to such Limited Common Element and assess the cost plus interests thereof against the Owner.

(b) By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his acts or omissions or the acts or omissions of any Occupant of his Unit. Such payment shall be made upon demand by the Association.

6.2. Units. Each Unit Owner shall maintain his Unit at all times in a good and clean condition, and repair and replace, at his expense, all portions of his Unit; shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its designee, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to insurance carried by the Association. Each Unit Owner shall pay all costs to repair and replace any portion of another Unit that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his

Unit. Such payment shall be made upon demand by the Unit Owners of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

6.3. Waiver of Claims. Except only as provided in Section 6.4(a) and (b), the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Condominium, or to a Unit or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided, that this waiver shall not apply to any such loss or damage due to intentional acts.

6.4. Right of Entry.

(a) By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous condition or situation originating in or threatening that Unit or any of the Limited Common Elements. Except for emergencies or dangerous conditions or situations, the Association, and any person authorized by the Association, after forty-eight (48) hours written notice delivered to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purposes of performing any of the Association's duties or obligations or exercising any of the Association's powers under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

(b) By Unit Owners. Each Unit Owner and Occupant shall allow other Unit Owners and Occupants, and their representatives, to enter his Unit, or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Unit of, or performing the duties and obligations under the Act, this Declaration or the Bylaws of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance, the 48-hour notice provision in subparagraph (a) is complied with, and that such entry is at a time convenient to the Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of an emergency or dangerous condition or situation, such right of entry shall be immediate. Notwithstanding Section 7.4, the person making such entry shall be responsible for repair of any damage caused by such person to the entered Unit or Limited Common Element.

ARTICLE VII

Insurance

7.1. Casualty Insurance. The Association shall maintain casualty insurance upon the Condominium in the name of, and the proceeds thereof shall be payable to, the Association, as trustee for all Unit Owners and Security Holders as their interests may appear, and be disbursed

pursuant to the Act. Such insurance shall be in an amount equal to not less than the full insurable value of the Condominium on a replacement cost basis and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but at a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-113(h) of the Act.

7.2. Public Liability Insurance. The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants, the Association, the Board, the manager, if any, Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million Dollars (\$1,000,000) per occurrence for death, bodily injury and property damage. Said insurance shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the Condominium; and insure the Association, the Board, the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

7.3. Fidelity Coverage. Fidelity coverage shall be maintained by the Association in commercial blanket form covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association in the face amount of at least the greater of (i) one and one-half (1-1/2) times the estimated annual operating expenses and reserves of the Association, or (ii) the sum of three months' aggregate assessments on all Units plus the Association's reserve funds. Such bonds shall contain an appropriate endorsement to cover persons who serve without compensation. The premiums on such bonds shall be a Common Expense.

7.4. Other Insurance. The Association may procure such other insurance, including worker's compensation insurance and Officers and Directors Liability Insurance, as it may from time to time deem appropriate to protect the Association or the Unit Owners.

7.5. Insurance Trustee. The Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent with the provisions of the Act and this Declaration.

7.6. Individual Policy for Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording personal property, additional living expense, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interests; provided that any such insurance shall contain waivers pursuant to Section 6.3 and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to

the proration of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

7.7. Incorporation of Act Provisions. Section 47C-3-113 of the Act is specifically incorporated herein by reference as if set forth herein verbatim, and any inconsistency shall be resolved in favor of said Section 47C-3-113.

ARTICLE VIII Casualty Damage

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced, and the proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-113 (e) and (h) of the Act.

ARTICLE IX Condemnation

In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the same shall be repaired or restored, and the awards paid on account thereof shall be used and applied in accordance with Section 47C-1-107 of the Act.

ARTICLE X Termination

The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act.

ARTICLE XI Amendment

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of Declarant.

ARTICLE XII Rights of Eligible First Mortgagees; VA, FNMA and FHLMC Provisions

12.1. Amendments During Declarant Control Period. Any amendments to this Declaration or to the Bylaws during the Declarant Control Period, including those necessitated by Special Declarant Rights, may be subject to the prior approval of the appropriate Administrator of the VA, FNMA and FHLMC, provided, however, that if said Administrator fails to respond to a written request for approval within thirty (30) days of said request, approval shall be deemed to have been given.

12.2. Availability of Condominium Documents, Books, Records and Financial Statements. The Association shall, upon request and during normal business hours, make available for inspection by Unit Owners and Eligible First Mortgagees on any Unit, current copies of the Declaration, the Bylaws, Rules and Regulations governing the Condominium and the books, records and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by an Eligible First Mortgagee. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of Units, current copies of the Declaration, Bylaws, Rules and Regulations governing the Condominium, and the most recent annual audited financial statement (if one is prepared).

12.3. Successors' Personal Obligation for Delinquent Assessments. The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the successors in title or interest to said Unit unless said delinquent assessments are expressly assumed by them.

12.4. Management and Other Agreements. Any management agreement between Declarant or the Association and a professional manager or any other agreement providing for services of Declarant, sponsor, or builder shall be terminable by either party thereto without cause and without payment of a termination fee upon not more than thirty (30) days' prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

12.5. Consent of Eligible First Mortgagees. This Section 12.5 shall be effective only if, at the time this Section would apply, at least one Unit is subject to First Mortgagee financing. Any decision to terminate the Condominium for reasons other than substantial destruction or condemnation of the Property shall require the prior written consent of Eligible First Mortgagees, as defined in Section 1.11 above, representing at least 67% of the votes allocated to Units subject to liens held by said Eligible First Mortgagees, or such greater requirements specified by the Act. Any amendment to the Declaration or Bylaws which changes any of the following shall require the prior written consent of Unit Owners holding at least 67% of the total votes in the Association and of Eligible First Mortgagees representing at least 51% of the votes allocated to Units subject to liens held by Eligible First Mortgagees, or such greater requirements specified by the Act or hereunder:

- (a) voting rights;
- (b) lien rights;
- (c) reserves for maintenance, repair and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) the formula by which interests in the Common Elements or Limited Common Elements or rights to their use are determined;
- (f) boundaries of any Unit;
- (g) convertibility of Units into Common Elements or Common Elements into Units;

- (h) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;
- (i) insurance or fidelity bonds;
- (j) imposition of any restrictions on a Unit Owner's right to sell, transfer or otherwise convey his Unit;
- (k) a decision by the Association to establish self-management when professional management had been required previously by any Eligible First Mortgagee;
- (l) restoration or repair of the Condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this Declaration or the Bylaws;
- (m) any action to terminate the legal status of the Condominium after substantial damage or destruction or condemnation; or
- (n) any provisions that expressly benefit Eligible First Mortgagees.

12.6. Notice. Each Eligible First Mortgagee, upon written request stating its name and address and describing the Unit encumbered by the applicable lien, shall be entitled to timely written notification by the Association of (i) any proposed action which requires consent of a specified percentage of Eligible First Mortgagees; (ii) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its first lien; (iii) any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of the Unit on which the Eligible First Mortgagee held its lien or in the performance of any obligation under this Declaration or the Bylaws by said Unit Owner; or under this Declaration or the Bylaws by said Unit Owner; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Any Eligible First Mortgagee who receives a written request by the Association, or any Unit Owner, to approve an addition or amendment to the Declaration or Bylaws who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

12.7. Rights of First Lien Holders; Insurance Proceeds or Condemnation Awards. With respect to any first mortgage or deed of trust lien held by or for the benefit of VA, FNMA or FHLMC or Eligible First Mortgagee, no provision of this Declaration or the Bylaws shall be deemed to give a Unit Owner, or any other party, priority over any rights of said lien holders on said Unit Owner's Unit, in the case of a distribution to said Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

12.8. Enforceability of Consent Provisions. Notwithstanding anything in this Declaration to the contrary, no Unit Owner may use the failure to obtain the appropriate consent of the Eligible First Mortgagees or VA, FNMA and/or FHLMC as provided above as a defense to the applicability or enforceability of any actions or changes referenced above.

ARTICLE XIII
Claims or Disputes

13.1 Declarant's Right to Cure Alleged Defects. It is Declarant's intent that all improvements constructed or made by it in the Condominium, including Common Elements, be built or made in compliance with all applicable laws. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating quality, disputes may arise as to whether a defect exists and the Declarant's responsibility therefore. It is the Declarant's intent to resolve all disputes and claims regarding Alleged Defects (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, the Board and all Owners shall be bound by the following claims resolution procedure to the extent allowed by law:

(a) If the Association, the Board or any Owner (collectively, "Claimant") claims, contends or alleges that any portion of the Condominium including, without limitation, any Unit, Common Element, or any improvements constructed on the Property, is defective or that the Declarant or its agents, consultants, contractors or subcontractors was negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), the Declarant hereby reserves the right to inspect, repair and/or replace the Alleged Defect as set forth herein.

(b) In the event that a Claimant discovers any Alleged Defect within one year of purchase of a Unit, the Claimant shall, within a reasonable time after discovery, notify the Declarant in writing, at the address specified for notices in this Declaration (or such other address at which the Declarant maintains its principal place of business) of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) Within a reasonable time after the receipt by the Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by the Declarant, as part of the Declarant's reservation of right, the Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit and any improvements or other portion of the Property for the purposes of inspecting and, if deemed necessary by the Declarant, repairing or replacing the Alleged Defect. In conducting such inspection, repairs and/or replacement, the Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) No Claimant shall initiate any legal action, cause of action, proceeding or arbitration against the Declarant alleging damages (i) for the costs of repairing or the replacement of any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from the Alleged Defect, or (iii) for any consequential damages resulting from the Alleged Defect, unless and until (1) the Claimant has delivered to Declarant a Notice of Alleged Defect, and (2) the Declarant has, within 90 days after its receipt of the Notice of Alleged Defect, either (x) failed to repair or replace the Alleged Defect or (y) if the Alleged Defect cannot reasonably be repaired or replaced within the 90-day period, failed to commence repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion. The period of

limitation on actions for breach of any obligations in connection with an Alleged Defect shall be two (2) years with respect to all claims.

(e) Nothing set forth in this Section shall be construed to impose any obligation on the Declarant to inspect, repair or replace any item or Alleged Defect for which the Declarant is not otherwise obligated to do under applicable law. The right of the Declarant to enter, inspect, repair, and replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Declarant in the Rutherford County Registry.

(f) Notwithstanding anything to the contrary in this Section, and to the extent allowed by law, the Declarant disclaims any representations and warranties in respect of, shall have no continuing liability to any Owner for, any design or construction defects (whether known or unknown) relating to the Condominium, including latent defects.

13.2. Mediation; Arbitration. Any and all claims and disputes against the Declarant arising out of the design and/or construction of Units or Common Elements or the administration of the Association shall be initially subject to mediation in accordance with the N.C. Rules of Mediated Settlement Conferences as a condition precedent to the institution of further proceedings. Thereafter, any and all claims arising out of the design and construction of Units or Common Elements or the administration of the Association shall be subject to arbitration in accordance with the North Carolina Arbitration Act. Venue for arbitration shall be in Rutherford County, North Carolina.

13.3. Pre-condition to Suits Against Declarant. The affirmative vote of no less than two thirds (2/3) of all votes entitled to be cast by the Association shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Condominium or any part thereof; or (2) assert a claim against or sue Declarant as provided in Section 14.1 above.

ARTICLE XIV General Provisions

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

14.2. Interpretation of Declaration. Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

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

14.4 Use of New Technology. To the extent permitted by law and not prohibited by the Board: (1) any notice required to be sent or received under this Declaration or the Bylaws; (2) any signature, vote, consent or approval required to be obtained under this Declaration or the Bylaws; or (3) any payment required to be made to the Association may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice. The use of technology in implementing the provisions of this Declaration dealing with notices, payments, signatures, votes, consents or approvals shall be governed by the Bylaws or the Rules and Regulations. To the extent of a conflict, the more liberal provision shall control.

14.5. Exhibits. Exhibits A, B, C, D, E, F and G attached hereto, are hereby made a part hereof.

IN WITNESS WHEREOF, FIREFLY COVE DEVELOPMENT, LLC, a North Carolina limited liability company, as Declarant, has caused these presents to be signed, sealed and delivered as of this 23rd day of July, 2008.

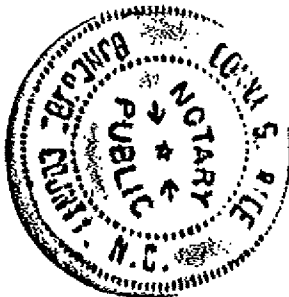
FIREFLY COVE DEVELOPMENT, LLC

BY: John V. Cloud III
JOHN V. CLOUD, III, Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, DONNA G. RICE, a Notary Public of the State and County set forth above, certify that John V. Cloud, III personally came before me this day and acknowledged that he is Member/Manager of Firefly Cove Development, LLC, a North Carolina limited liability company, and that he, as Member/Manager, being authorized to do so, executed the foregoing on behalf of said company.

Witness my hand and official seal, this the 23rd day of July, 2008.



Donna G. Rice
Notary Public

DONNA G. RICE
(Notary, print or type name)
My commission expires: 9/26/2010

EXHIBIT A
Condominium Property Subject to the Act

The Property hereby submitted to this Declaration and the Act ("Condominium Property") is that area shown as Lodge Foundation As-Built, consisting of .28 acres, more or less, on a Plat recorded in Plat Book 29 at Page 118. The perimeter of said Condominium Property is described in that table on the Plat labeled Condominium Boundary with Lines TL1 through TL20.

Together with a non-exclusive easement for ingress, egress and regress over and upon those areas shown on the Plat as Easement Area A, Easement Area B, Easement Area C and Easement Area D.

And together with a non-exclusive easement for parking on Easement Area E as shown on said Plat, said parking to be subject to those Rules and Regulations established by the Firefly Cove Property Owners Association, Inc.

Said Condominium Property being a portion of Lot 16 as shown on a plat recorded in Plat Book 28 at Page 284.

Except for the .28 acre area shown as Lodge Foundation As-Built on said Plat, the remainder of said Lot 16 is NOT part of the Condominium Property. Certain amenities, such as a swimming pool, have been or will be located on the remainder of said Lot 16 that is not part of the Condominium Property, and such amenities are not to be considered part of the Condominium Property.

EXHIBIT B

The plans and graphic description of the units comprising Firefly Lodge, A Condominium (Units 100, 101, 102, 201, 202, 203, and 204) as well as Common Elements and Limited Common Elements as defined in the Declaration are all shown on Plans recorded in ~~the~~ ²⁹ Plot Book of the Rutherford County, North Carolina Register's Office.

Pages 123-129

EXHIBIT C

| <u>UNIT</u> | <u>PERCENTAGE OF UNDIVIDED INTEREST</u> |
|-------------|---|
| 100 | 25% |
| 101 | 11% |
| 102 | 8% |
| 201 | 17% |
| 202 | 8% |
| 203 | 14% |
| 204 | <u>17%</u> |
| TOTAL | 100% |

EXHIBIT D
BYLAWS OF
FIREFLY LODGE CONDOMINIUM OWNERS ASSOCIATION, INC.
A NORTH CAROLINA NON-PROFIT CORPORATION

ARTICLE I

Identity

These are the Bylaws of the FIREFLY LODGE CONDOMINIUM OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association").

For purposes of these Bylaws, terms specifically defined either in the Declaration of Covenants, Restrictions, et al. (the "Declaration") for the residential Condominium to be known as "Firefly Lodge, A Condominium" and located in Rutherford County, North Carolina (herein "Condominium"), or the North Carolina Nonprofit Corporation Act, Chapter 55A, North Carolina General Statutes (herein "the Corporation Act"), or the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes (herein "the Condominium Act") shall have the same meaning herein. In case of a conflict with defined terms, the Declaration shall control to the extent allowed by law. Unless the Declaration or Bylaws expressly provide otherwise, the procedures and substantive matters governing the Association can be determined by reference to the Corporation Act or the Condominium Act. In the event of any conflict between the Corporation Act and the Condominium Act, the Condominium Act shall control.

ARTICLE II

Qualifications and Responsibilities
of Members

2.1. Membership; Voting Member. Every Owner of a Unit in the Condominium shall be a member of the Association, and shall remain a member until he ceases to be an Owner of a Unit. When there is more than one Owner of a Unit, all such persons shall be members of the Association; provided, however, that in such a case, said Owners shall designate in writing with the Secretary of the Association a Voting Member for purposes of casting the one (1) vote per Unit on matters requiring a vote of the Association, including, but not limited to, any amendments to the Declaration or election of persons for the Association Board of Directors ("Board"). For the purpose of sufficient receipt of notice of violations or for any other notices required by the Declaration or these Bylaws, notice to the Voting Member shall be binding on all other Owners of the Unit.

2.2. Registration. It shall be the duty of each Owner of a Unit to register his/her name and his/her mailing address with the Secretary of the Association. If an Owner of a Unit does not so register, the Association shall be under no obligation to recognize his privileges of being a member. In no event shall an Owner of a Unit avoid personal responsibility for the obligations of being a member, including the payment of assessments, from his or her failure to register.

2.3. Prohibition of Assignment. The interest of a member in the Association assets or obligations cannot be transferred or encumbered except as an appurtenance to his Unit.

ARTICLE III

Members' Meetings and Voting

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

3.2. Annual Meeting. The members shall meet at least once each year in November the day being specified in the notice of such meeting given pursuant to Section 3.4 below. At each annual meeting the members may transact any business properly coming before them. This provision may be altered for any given fiscal year by fifty-one percent (51%) of Qualified Voting Members of the Association who appear in person or by proxy at a duly called meeting with a quorum.

3.3. Special Meetings. Special meetings of the members may be called at any time by the President or by a majority of the Board, and shall be called and held within sixty (60) days after written request thereof signed by Qualified Voting Members of the Association as defined below entitled to cast at least fifty-one percent (51%) of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4. Notices. Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent prepaid by United States mail to the members at the addresses of their respective Units and to other addresses as any member may have designated to the President or Secretary as it appears on the records of the Association, at least thirty (30) days in advance of any annual or special meeting. Notice shall be deemed delivered when deposited in the United States mail addressed to the member at his address for the respective Unit and/or as it appears on the records of the Association. The Association may vote or transact business on any matter at an annual meeting whether or not specific notice of said item had been given in the notice of the annual meeting. However, for special meetings, only items which were included in the meeting's notice to members can be voted on. Notwithstanding the above, notice to the Qualified Voting Member shall be sufficient notice for any Unit under the Declaration or the Bylaws and such notice shall be imputed to any remaining owners of the applicable Unit.

3.5. Quorum; Adjournment if no Quorum. A quorum shall consist of Qualified Voting Members present, in person or by proxy, entitled to cast at least fifty-one percent (51%) of the total votes in the Association. If a quorum is not present, the meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement for the next meeting called due to the lack of a quorum shall be twenty-six (26%) percent of the total votes in the Association.

3.6. Vote. Except for Units owned by the Declarant and for actions involving those matters in subsection 3.6.1 below, each Unit is entitled to one (1) vote. Prior to the expiration of the Declarant Control Period, Declarant is entitled to cast two (2) votes for every Unit that Declarant owns. The reference in the Bylaws and the Condominium Act to the number of votes allocated in the Association shall include the votes the Declarant is entitled to vote as provided above.

3.6.1 Supermajority Allocation to Master Association. The consent of the Master Association as owner of Unit 100 is required prior to any changes to the:

- (a) Declaration;
- (b) Bylaws;
- (c) Rules and Regulations; and/or
- (d) Dedicated Reserve funds, if any.

Consent shall be evidenced by the affirmative vote of the Board member appointed or elected by the Master Association as provided in Section 4.4. below.

3.7. Manner of Casting Votes. Votes may be cast in person, by proxy or by ballot. A proxy must be in writing, be signed by all owners of the Unit, the votes of which are subject to the proxy, be given only to another member, and be filed with the Secretary on or before the meeting. A proxy shall be valid until revoked in writing by all Owners of such Unit or by the attendance and announcement to the person presiding over the Association meeting of all Owners of such Unit. A proxy should denote the vote desired on a specific issue and/or general authorization to the proxy holder to vote according to his discretion. A proxy is void if not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term. A ballot, if applicable, shall be on a form proscribed by the Board. A proxy or ballot shall only be valid for Qualified Voting Members, i.e. members in good standing.

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

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

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

3.11. Declarant Control Period. "Declarant Control Period" shall mean the time specified in the Declaration related to Declarant Control and ability to exercise special rights.

3.12. Qualified Voting Member. For purposes of these Bylaws, "Qualified Voting Member" shall mean a member who is authorized to vote for a Unit or is otherwise designated as the Voting Member for a Unit as set forth in 2.1 above and whose Unit is not disqualified from voting as provided in Article III, Section 1(e) of the Declaration for delinquent assessments or other violations of the Declaration.

3.13. Majority Defined. For purposes of these Bylaws, the term "majority" shall mean those votes totaling more than fifty percent (50%) of the votes cast by Qualified Voting Members or of the Directors.

3.14. Pre-condition to Suits Against Declarant. The affirmative vote of no less than two-thirds (2/3) of all votes by Qualified Voting Members entitled to be cast by the Association shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Condominium development or any part thereof; or (2) assert a claim against or sue Declarant.

ARTICLE IV

Directors

4.1. First Board. The first Board shall consist of three (3) persons, whose names are set forth as follows:

4.2. Number and Qualifications of Directors. The Board shall consist of a minimum of three (3) natural persons, as determined by Declarant during the Declarant Control Period (subject to Section 4.3 below), and thereafter at any annual meeting by the Members. Each Director shall be a Unit Owner or the individual nominee of a Unit Owner which is other than an individual.

4.3. Transition of Declarant Control. Pursuant to Section 47C-3-103(e) of the Act, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Unit (including Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Board shall be elected by Units Owners other than Declarant. After the expiration of the Declarant Control Period, the Unit Owners shall elect all the members of the Board.

4.4. Election of Directors. For each Board member to be elected by the Members as provided in Section 4.3 above, such election shall take place at the annual meeting of the Association. The Members shall elect the Directors by a majority of the votes cast in the election. Notwithstanding anything in these Bylaws to the contrary, after the expiration of the Declarant Control Period, the Master Association, by and through its Board of Directors, shall appoint one (1) member on the Board of the Condominium Association.

4.5. Term. After the expiration of the Declarant Control Period, the terms of the Directors shall be staggered so that at least one (1) but not more than three (3) Directors are elected at any one meeting and so that no Director's term is less than neither one (1) year nor more than three (3) years. The Directors shall establish rules to implement the provisions of this section. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

4.6. Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least sixty percent (60%) of the total votes in the Association, at a special meeting called for such purpose, and a successor may then be elected by the members to serve for the balance of the removed Director's term.

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

4.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, email, facsimile, or telegraph, at least seventy-two (72) hours prior to the meeting.

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

4.10. Quorum; Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

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

4.12. Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

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

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

(a) To prepare and provide to members annually, a report containing at least the following:

- (i) A statement of any capital expenditures in excess of two percent (2%) of the current budget or Five Thousand Dollars (\$5,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.
- (ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.
- (iii) A statement of the financial condition of the Association for the last fiscal year.
- (iv) A statement of the status of any pending suits or judgments in which the Association is a party.
- (v) A statement of the insurance coverage provided by the Association.
- (vi) A statement of any unpaid assessments payable to the Association, identifying the Unit and the amount of the unpaid assessment.

(b) To adopt and amend budgets and to determine, and collect assessments to pay the Common Expenses.

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

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

(e) To enforce the provisions of the Declaration, the Articles, these Bylaws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these Bylaws, or the Act, to be done by the Board or the members. Notwithstanding the foregoing, the Property, including each Unit, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a Unit without the approval of the Unit Owner.

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

(h) To institute, defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Condominium, the Common Elements, or more than one Unit.

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

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

(k) To buy Units, in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in Units from time to time owned by the Association.

(l) To impose and receive payments, fees and charges for the use, rental or operation of the Common Elements other than the Limited Common Elements, except for elevators, stairways, hallways and other portions of the Common Elements which provide access to the Units.

(m) To grant leases, licenses, concessions and easements through and over the Common Elements.

(n) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration, resale certificates required by Section 47C-4-109 of the Act, or certificates of unpaid assessments.

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

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

ARTICLE V

Officers

5.1. Designation of Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. During the Declarant Control Period, officers do not have to be members or residents of North Carolina. Officers may include the Declarant or a representative of Declarant. After the Declarant Control Period, each officer shall be an Owner of a Unit or the individual nominee of an Owner of a Unit which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

5.2. Election of Officers. Officers of the Association shall be elected by the Board. Elections shall be held every two (2) years at the first meeting of the Board held after the annual meeting of the members. The first Board shall elect officers as soon as practicable after filing of the Declaration.

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

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

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

5.6. Powers and Duties of Officers.

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

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

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

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all monies and other valuable effects in

depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

5.7. Execution of Agreements, Etc. All agreements, deeds, mortgages, or other instruments shall be executed by the President or Vice President with an attest by the Secretary (or Assistant Secretary if appointed), or by such other person or persons as may be designated by the Board.

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

ARTICLE VI

Indemnification of Directors and Officers

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

ARTICLE VII

Fiscal Management

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

7.2. Fiscal Year. The Fiscal Year of the Association shall run from January 1st until December 31st of any given calendar year, provided that the Board, from time to time, by resolution, may change the Fiscal Year to some other designated period.

ARTICLE VIII

Assessments

8.1. Obligation of Members to Pay Assessments; Amount of Levy. Each Owner of a Unit as defined in the Declaration shall be personally and severally liable for an assessment as provided in Article V of the Declaration.

8.2. Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Unit in accordance with its percentage of the share of assessments, and, if allocated, may be paid to the Owner of a Unit or credited against that Unit's share of Common Expenses subsequently assessed. Notwithstanding the above, the Board shall retain the authority to apply said surpluses to any current Fiscal Year expenditures in order to

satisfy the exempt function income qualification for nonprofit corporations under Section 528 of the Internal Revenue Code.

8.3. Preparation of Budget and Levying of Assessment. For each Fiscal Year, beginning with the Fiscal Year commencing January 1st, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. Within 30 days after adoption of any proposed budget, the Board shall provide the members of the Association with a summary of the budget and a notice of the meeting to consider ratification by the membership of the budget, including a statement that the budget may be ratified without a quorum. There shall be no requirement that a quorum be present at the meeting, annual or special, when the budget is considered for ratification. The budget shall be ratified unless at that meeting a majority of all the members of the Association entitled to vote rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the members shall be continued until such time as the members ratify a subsequent budget proposed by the Board. After the ratification of the budget by the membership as provided above, the Board shall give each member notice of the assessment made against that member's Unit based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after filing of the Declaration and the conveyance of the first Unit within Condominium shall be prepared and adopted by the Board only for the balance of the then Fiscal Year of the Association.

8.4. Assessment A Lien. Every assessment shall constitute a lien upon each Unit assessed from the date the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against that Unit and (ii) liens and encumbrances recorded before the recordation of the Declaration.

8.5. Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association, or as the Board may from time to time otherwise direct. Unless the notice states contrary, annual Assessments are typically due and payable within thirty (30) days of the date of the Assessment.

8.6. Special Assessments. In addition to the assessments levied pursuant to Section 8.3., the Board may levy special assessments at such other and additional times as in its judgment are required for:

- (a) Alterations, restoration and reconstruction of Common Elements and its facilities.
- (b) Improvements, acquisitions and additions to the Common Elements.
- (c) Payment of costs and expenses incurred in curing defaults pursuant to Sections 9.1. and 9.3. hereof.

The Board shall provide to its members a summary of the proposed special assessment and notice of a meeting to ratify the special assessment at least 30 days after mailing of the

summary and notice. There shall be no requirement that a quorum be present at a meeting where the special assessment is to be considered by the members. The special assessment shall be deemed ratified unless at the meeting a majority of all the members entitled to vote rejects the special assessment. Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.7. Failure to Prepare Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.3, each member shall continue to pay the assessment then previously levied pursuant to Section 8.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.8. Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the Units which shall be available in the office of the Association for inspection at all reasonable times by members and Eligible First Mortgagees, and their duly authorized representatives. Such roll shall include, for each Unit, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit Owner, or an authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against the Unit. The certificate shall be furnished within fourteen (14) business days after receipt of the request and shall be binding upon the Association and all Unit Owners. For such certificate a reasonable fee may be charged by the Board. All Owners of Units acknowledge that such notice provided in an assessment roll or certificate shall not constitute a violation of any state or federal unfair debt collection laws.

8.9. Default and Enforcement. If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Unit, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided in the Condominium Act. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees.

The Association also shall be entitled to suspend the right of a defaulting Unit Owner to use the Common Elements (except access to the Unit) and its facilities until the delinquency is cured.

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

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

8.11. Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Common Elements; costs associated with the maintenance, repair and improvement of the Common Elements; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 4.13(g) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements by, or incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements, or any part of either thereof, is or may be subject including, but not limited to amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VI hereof.

ARTICLE IX

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

9.1. Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Unit Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Unit Owner, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Act, the Declaration, these Bylaws, the Articles or such rules and regulations as hereinafter promulgated, then the Association may, but is not obligated to, perform the same for the member's account,

and for such purpose may enter upon his Unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Unit owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Unit Owner to use the Common Elements and its facilities until the default is cured. In addition to the above, the Association shall have the right to suspend services, if any, being provided by the Association to a defaulting Unit Owner. **IF SATELLITE OR CABLE IS PROVIDED TO THE MEMBERS AND PAID FOR WITH USE OF ASSOCIATION FEES, THE ASSOCIATION SHALL HAVE THE RIGHT TO STOP SERVICE TO THE DEFAULTING UNIT OWNER.** Prior to the suspension of services, the Association shall afford the delinquent Unit Owner the notice and opportunity to be heard required by the Act, including Section 47C-3-102(a)(11).

9.2. Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, a written notice specifying the nature of the default or failure, the cure thereof, and the time within which the cure shall be affected. Within the time limit specified in the notice, the defaulting member may cure the default or failures specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and Board has made its determination and served upon or mailed the same to the defaulting member. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member a copy of its determination. A violating party shall have thirty (30) days to appeal a decision of the Board to a court of law and failure to file said appeal within thirty (30) days after receipt of the determination shall bar any challenges or any causes of action brought afterwards by said party. The Board's finding of default shall be conclusive in a case of a party's failure to appeal within the above prescribed time. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief. In accordance with N.C.G.S. §47C-3-107.1 of the Condominium Act, the Board may appoint an adjudicatory panel to hear and decide the matters referenced to in this subsection and in doing so, the Board may reserve unto itself the role of an appellate body.

9.3. Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in Section 9.2. hereof, where the default is a structure, thing, or condition existing in or on the premises of the member's Unit, the Board, or its duly authorized representative, shall have the right to enter upon the

premises of the member's Unit in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefore as provided in Section 9.1. hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

9.4. Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 9.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

9.5. Recovery of Attorneys' Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court with interest thereon at the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

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

ARTICLE X

Amendment

During the Declarant Control Period, the power to alter, amend, or repeal the Bylaws or adopt new Bylaws shall be vested in the Board with Declarant approval being necessary for any particular change. After the Declarant Control Period has expired, the amendment of Bylaws or adoption of new Bylaws can only occur at a regular meeting of the members and shall require an affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the Qualified Voting Members present in person or by proxy at said meeting to such changes. Changes to the Bylaws are not required to be recorded in the Rutherford County Registry. A copy of any amendments to the Bylaws shall be kept on file with the Secretary of the Association.

ARTICLE XI

General Provisions

11.1. Rules and Regulations.

(a) By the Board; Effective Date. The Board, including the first Board, may promulgate from time to time such Rules and Regulations as it deems reasonable and necessary governing the administration, management, operation and use of the Common Elements so as to promote the common use and enjoyment thereof by Unit Owners and Occupants and for the

protection and preservation thereof. In addition, the Board may adopt such Rules and Regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all Unit Owners and Occupants, including, without limitation, the right to adopt such restrictions with reference to tenants and leases. In the case of a conflict between the Declaration, the Bylaws or the Rules and Regulations, the more restrictive provision controls. Any Rule and Regulation that applies to the use of a Unit shall not become effective until after thirty (30) days has expired from the date of posting of notice of the Rule and Regulation in a conspicuous location at the offices of the Association or the date that notice of such Rule and Regulation has been placed in the mail to all Qualified Voting Members to the addresses on file with the Association as provided in Article II above. This effective date requirement for Unit restrictions shall; not apply to any emergency rule making as determined in the Board's discretion. In case of emergencies or for regulations pertaining to Common Elements, the applicable Rule and Regulation shall apply on the date of adoption.

(b) By the Association. After the Declarant Control Period has expired, any such Rule or Regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted, by a majority of the members represented in person or by proxy at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

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

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

11.2. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceeding when not in conflict with the Declaration, these Bylaws, the Articles, the Corporation Act, the Condominium Act or any statutes of the State of North Carolina applicable thereto. The President of the Association shall have the authority to appoint a parliamentarian.

11.3. Conflict; Severability. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control unless otherwise stated above. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

EXHIBIT E


CONSENT OF MORTGAGEE

CommunitySouth Bank and Trust being the Beneficiary under that certain Real Estate Deed of Trust from Declarant to C. Allan Ducker, III, Trustee, recorded in Book 977 at Page 179 of the Rutherford County, North Carolina Public Registry, hereby: (a) consents to the recordation of this Declaration and the imposition of the provisions hereof and the provisions of the North Carolina Condominium Act to the real property described in Exhibit A; and (b) subordinates the lien and operation of the Deed of Trust to this Declaration and the provisions contained herein. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the Property in lieu of foreclosure, Beneficiary and Trustee agree that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the Property together with and subject to all of the terms and conditions of this Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of the Declarant under this Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.

TRUSTEE:


C. ALLAN DUCKER, III

BENEFICIARY: CommunitySouth Bank and Trust

By: 
Print Name: C. Allan Ducker
CEO President

STATE OF S.C.
COUNTY OF Pickens

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purposes therein stated and in the capacity indicated: C. Allan Ducker, III
Name of Principal

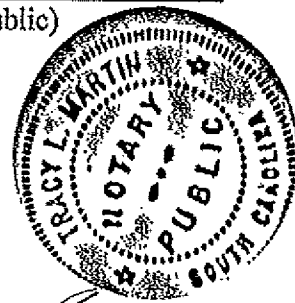
WITNESS my hand and official stamp or seal, this 17 day of July, 2008.

Tracy Martin
Signature of Notary Public
Tracy Martin
(Type or Print Name of Notary Public)

My commission expires:

6/26/2017

[NOTARIAL SEAL]



STATE OF _____
COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purposes therein stated and in the capacity indicated: _____

Name of Principal

WITNESS my hand and official stamp or seal, this ____ day of July, 2008.

Signature of Notary Public

(Type or Print Name of Notary Public)

My commission expires:

[NOTARIAL SEAL]

STATE OF _____

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purposes therein stated and in the capacity indicated: C. Allan Ducker, III
Name of Principal

WITNESS my hand and official stamp or seal, this ____ day of July, 2008.

Signature of Notary Public

(Type or Print Name of Notary Public)

My commission expires:

[NOTARIAL SEAL]

STATE OF South Carolina

COUNTY OF Pickens

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purposes therein stated and in the capacity indicated: C. Allan Ducker, III
Name of Principal

WITNESS my hand and official stamp or seal, this 22nd day of July, 2008.

Tracy L. Martin
Signature of Notary Public

Tracy Lynn Martin
(Type or Print Name of Notary Public)

My commission expires:
6/26/2017

[NOTARIAL SEAL]

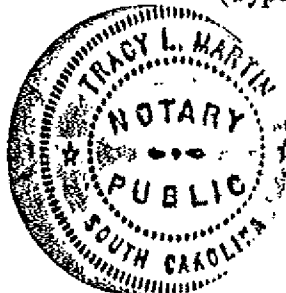


EXHIBIT F

STATE OF NORTH CAROLINA

CONTY OF RUTHERFORD

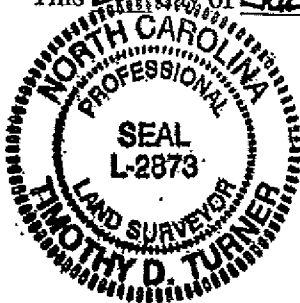
CERTIFICATE OF SURVEYOR

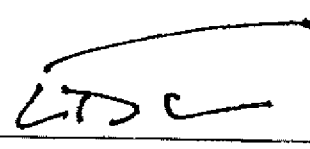
TIMOTHY D. TURNER, being duly sworn, deposes and says:

That he is a Professional Land Surveyor licensed under the provisions of Chapter 89C of the General Statutes of North Carolina and that as such he prepared the Plat of the Property of Firefly Cove Development, LLC, a North Carolina limited liability company, of Firefly Lodge, a Condominium, said Plat being recorded in Plat Book 29, at Page 118, in the Office of the Register of Deeds for Rutherford County, North Carolina; that said Plat, which is incorporated by reference to a Declaration of Condominium by Firefly Cove Development, LLC, filed in the Office of the Register of Deeds for Rutherford County, North Carolina, accurately depicts the legal boundaries and the physical location of the exterior of the Building of said Condominium (said Units being located in the Building as shown on said Plat and as more particularly shown on the Plans for the Property as prepared by Jeff Dalton, Licensed Architect) and other improvements relative to those boundaries as located on the property described in said Declaration and shown on said Plat.

This Certificate is given under and in accordance and compliance with Chapter 47C-2-109(b)(6a) of the General Statutes of North Carolina, and the plat contains the surveyor information required by NCGS 47C-2-109.

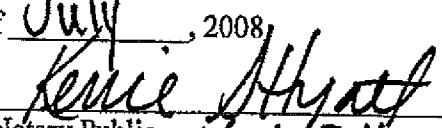
This 22 day of July, 2008.




Timothy D. Turner
Professional Land Surveyor

Sworn to and subscribed before me this 22 day of July, 2008.


Notary Public


Kerrie S. Hyatt

My Commission Expires:

November 25, 2012
(NOTARIAL SEAL)

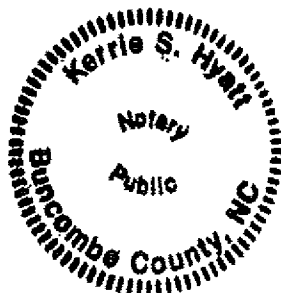


EXHIBIT G

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

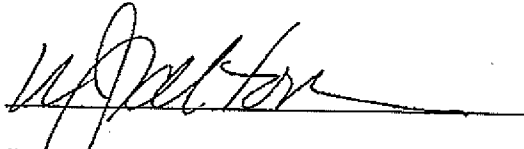
CERTIFICATE OF ARCHITECT

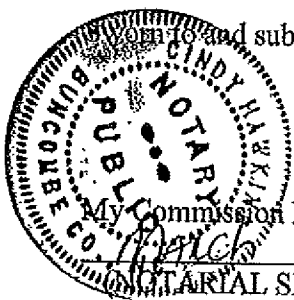
JEFF DALTON, being duly sworn, deposes and says:

That he is an architect licensed under the provisions of Chapter 83 of the General Statutes of North Carolina and that as such he prepared the Plans for Firefly Lodge, a Condominium, for Firefly Cove Development, LLC, a North Carolina limited liability company; that said Plans are hereby made a part hereof and incorporated in that Declaration of Condominium by Firefly Cove Development, LLC, dated the 15 day of JULY, 2008, and filed in the Office of the Register of Deeds for Rutherford County, North Carolina, simultaneously with such Declaration; that said Plans fully and accurately depict the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units as built and as located on the property described in said Declaration, and that all structural components and mechanical systems of the Building are substantially complete in accordance with the plans.

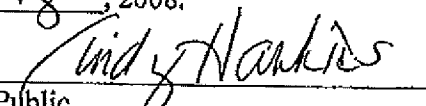
This Certificate is given under and in accordance and compliance with Chapter 47C-2-109(b)(6) and 47C-2-101(b) of the General Statutes of North Carolina, and the plans contains the architectural information required by NCGS 47C-2-109.

This 15 day of JULY, 2008.


Jeff Dalton
Licensed Architect



and subscribed before me this 15th day of July, 2008.


Notary Public

State of NC
County of Buncombe