

**MYERS CORNER COMMUNITY**

**DECLARATION OF COVENANTS, RESTRICTIONS, & CONDITIONS**

THIS DECLARATION OF COVENANTS, RESTRICTIONS, & CONDITIONS is made this 4<sup>th</sup> day of June, 2019, by **CRESCENT DEVELOPMENT GROUP, L.L.C.**, a Virginia limited liability company ("Declarant"), party of the first part, Grantor; **CRESCENT DEVELOPMENT HOMES INC.** ("Crescent Development Homes"), party of the second part, Grantor and Grantee; Christopher A. **SANDERS** and Nancy C. **SANDERS**, parties of the third part, Grantors and Grantees; Kevin **LLOYD** and Teal **LLOYD**, parties of the fourth part, Grantors and Grantees; **FIRST BANK**, party of the fifth part, Grantor; and Michael L. **BRYAN, TRUSTEE** and Angela V. **WHITESSELL, TRUSTEE**, parties of the sixth part, Grantors;

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of that certain tract of land situate in Wayne District of Augusta County, Virginia, more particularly described as containing 19.296 acres and shown on the plat entitled, "Plat Showing Boundary Line Adjustments Between Tax Maps #66-72, #66C-1-2, and #66C-1-2C Wayne District County of Augusta, Virginia," dated December 12, 2016, made by Balzer and Associates, Inc., of record in the Clerk's Office in Plat Book 1, Page 9448, less and except (i) that portion of the right-of-way (shown as Keppel Crossing and containing 0.201 acres) as shown on the plat entitled, "Myers Corner Phase 2, Section 1 Wayne District County of Augusta, Virginia," dated December 21, 2016, made by Balzer and Associates, Inc., of record in the Clerk's Office in Plat Book 1, Pages 9449-51, (ii) Lot AR1 containing 0.224 acre and Lot AR2 containing 0.228 acre, and that portion of the right-of-way (shown as Old Oaks Drive and containing 0.15 acre) all as shown on the plat entitled, "Myers Corner Phase 3, Section 1 Wayne District County of Augusta, Virginia,"

dated March 28, 2017, made by Balzer and Associates, Inc., of record in the Clerk's Office in Plat Book 1, Page 9566, and (iii) an unplatted parcel containing 1.510, more or less, zoned by Augusta County as general business and bounded by Keppel Crossing to east and Lot AR1 and other property zoned residential to the west/southwest, leaving a residue parcel zoned SF and AR residential, which parcel shall be subject to this Declaration as hereinafter set forth and as shown and identified on the exhibit attached hereto and made a part hereof entitled, "Exhibit to Accompany Covenants, Restrictions, & Conditions, Myers Corner Community Wayne District County of Augusta, Virginia" dated April 8, 2018, made by Balzer and Associates, Inc. (the "Exhibit");

**WHEREAS**, Declarant is the owner of that certain tract of land situate in Wayne District of Augusta County, Virginia, more particularly described as containing 39.040 acres and shown on the plat entitled, "Plat Showing Boundary Line Adjustments Between Tax Maps #66-72, #66C-1-2, and #66C-1-2C Wayne District County of Augusta, Virginia," dated December 12, 2016, made by Balzer and Associates, Inc., of record in the Clerk's Office in Plat Book 1, Page 9448, less and except (i) Lot 8, Lot 18, Tract 1 and that portion of the right-of-way (shown as Myers Corner Drive, Old Oaks Drive, and Keppel Crossing and containing 1.662 acres) as shown on the plat entitled, "Myers Corner Phase 2, Section 1 Wayne District County of Augusta, Virginia," dated December 21, 2016, made by Balzer and Associates, Inc., of record in the Clerk's Office in Plat Book 1, Pages 9449-51, (ii) that portion of the right-of-way (shown as Old Oaks Drive and containing 0.145 acre) shown on the plat entitled, "Myers Corner Phase 3, Section 1 Wayne District County of Augusta, Virginia," dated March 28, 2017, made by Balzer and Associates, Inc., of record in the Clerk's Office in Plat Book 1, Page 9566, and (iii) the residue of such 39.040 acre parcel zoned by Augusta County as general business and located generally to the east and northeast of that portion of the parcel zoned residential,

leaving a residential parcel zoned SF and AR residential which shall be subject to this Declaration as hereinafter set forth and as shown and identified on the Exhibit (hereinafter, the residential portions of the original 18.493 acre parcel and the original 26.130 acre parcel identified on the Exhibit as "PHASE 1 VILLAS NEIGHBORHOOD and +-29 ACRES", collectively, the "Declarant Parcels");

**WHEREAS**, Crescent Development Homes is the owner of those two (2) certain tracts of land with all improvements thereon situate in Wayne District of Augusta County, Virginia, identified as (i) current Augusta County Tax Map Parcel # 66c1-(9)-1, containing 0.224 acre (9,749 square feet) ("Lot AR1"), more particularly described and shown on the plat entitled, "Myers Corner Phase 3, Section 1 Wayne District, County of Augusta, Virginia," dated March 28, 2017, made by Balzer and Associates, Inc., of record in the Clerk's Office in Plat Book 1, Page 9566; and (ii) current Augusta County Tax Map Parcel # 66c1-(9)-2, containing 0.228 acre (9,923 square feet) ("Lot AR2"), more particularly described and shown on the foregoing March 28, 2017, plat, of record in the Clerk's Office in Plat Book 1, Page 9566 (hereinafter, both parcels collectively, the "Villa Parcels", and the Declarant Parcels and the Villa Parcels, collectively, the "Property");

**WHEREAS**, the Property will be developed for residential purposes and the Declarant wishes to provide for the protection and enhancement of the Property, to protect the owner of each residential lot or parcel and any common or open space hereinafter subdivided and developed, and to this end the Declarant desires to subject the Property, together with such additions thereto as may be made in the manner hereinafter provided, to the covenants, restrictions, conditions, charges, and liens hereinafter set forth, all of which are for the benefit of the Property and the owners of all lots or parcels hereinafter developed within the Property;

**WHEREAS**, Crescent Development Homes wishes to provide for the protection and

enhancement of the Villa Parcels and the Property and to protect the owner of each residential lot or parcel and any common or open space hereinafter subdivided and developed therein, and to this end joins in this Declaration to evidence its consent to subject the Villa Parcels, together with such additions thereto as may be made in the manner hereinafter provided, to the covenants, restrictions, conditions, charges, and liens hereinafter set forth, all of which are for the benefit of the Property and the owners of all lots or parcels hereinafter developed within the Property;

**WHEREAS**, Christopher A. Sanders and Nancy C. Sanders, parties of the third part, are the contract purchasers of Lot AR2, pursuant to the terms of that certain Virginia Realtors Residential Contract of Purchase dated March 2, 2019, by and between Crescent Development Homes and Christopher A. Sanders and Nancy C. Sanders;

**WHEREAS**, Kevin Lloyd and Teal Lloyd, parties of the fourth part, are the contract purchasers of a portion of the Property to be subdivided and known as Lot AR4, pursuant to the terms of that certain Virginia Realtors Residential Contract of Purchase dated March 15, 2019, by and between Crescent Development Homes and Kevin Lloyd and Teal Lloyd;

**WHEREAS**, the Declarant and Crescent Development Homes are obligated on a Note in the original principal sum of \$1,300,000.00 payable to First Bank, party of the fifth part, which Note is secured by liens on the Declarant's parcels containing 18.493 acres and 26.130 acres, which include the Declarant Parcels, and Lot AR2 of the Villa Parcels by that certain Credit Line Deed of Trust dated August 16, 2017, of record in the Clerk's Office as Instrument Number 170006514, by and between the Declarant, Crescent Development Homes and Michael L. Bryan and Angela V. Whitesell, Trustees, parties of the sixth part;

**WHEREAS**, Crescent Development Homes is obligated on a Note in the original principal sum of \$250,000.00 payable to First Bank, party of the fifth part, which Note is secured

by a lien on Lot AR1 of the Villa Parcels by that certain Credit Line Deed of Trust dated August 16, 2017, of record in the Clerk's Office as Instrument Number 170006516, by and between the Declarant and Michael L. Bryan and Angela V. Whitesell, Trustees, parties of the sixth part;

**NOW, THEREFORE,** the Declarant declares that the Property and such additions thereto as may be made hereafter pursuant to the terms of this Declaration, shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, conditions, charges and liens hereinafter set forth, as the same may be amended, modified, supplemented or restated from time to time. These covenants, restrictions and conditions shall run with the land and shall be binding upon any and all parties who have or acquire title to all or any part of the Property, and any additions thereto, and shall inure to the benefit of all present and future owners thereof.

#### **ARTICLE I DEFINITIONS**

1.1 Definitions. As used in this Declaration, the following terms shall have the meaning ascribed to them herein:

1.2 "Additional Area" shall mean such other real property owned or subsequently acquired by Declarant, its successors and assigns, to which Declarant may extend this Declaration and on which the terms and conditions of this Declaration shall be binding.

1.3 "Architectural Review Committee" shall have the meaning set forth in Article V of this Declaration.

1.4 "Articles" shall mean the Articles of Incorporation of the Myers Corner Community Association, Inc., as the same may be amended from time to time.

1.5 "Association" or "Master Association" shall refer to the Myers Corner Community Association, Inc., a Virginia nonstock corporation, its successors and assigns.

1.6 "Board of Directors" shall mean the Board of Directors of the Association.

1.7 "Builder" shall mean a person or entity engaged in constructing or repairing Homes or Improvements on a Lot or Lots or the Common Areas.

1.8 "Bylaws" shall mean the Bylaws of the Association.

1.9 "Clerk's Office" shall mean the Clerk's Office of the Circuit Court of Augusta County, Virginia.

1.10 "Common Area" and "Common Areas" shall mean all land within or related to the Property, not individually owned or dedicated to public use and ownership, that is owned or leased by the Association, or required by this Declaration to be maintained or operated by the Association or any Neighborhood Association, for the non-exclusive use and enjoyment of the Owners of Lots in the Property and their family members and guests, their tenants, tenants' family members and guests, and shall include all regional storm water management and water quality facilities and may include such complementary structures and improvements as are necessary and appropriate.

1.11 "Declarant" shall mean Crescent Development Group, L.L.C., its successors and assigns.

1.12 "Declaration" shall mean this Declaration of Covenants, Restrictions, & Conditions, as the same may be amended, modified, supplemented, or restated from time to time.

1.13 The "Exhibit" shall mean that certain plat or drawing attached hereto and made a part hereof, entitled, "Exhibit to Accompany Covenants, Restrictions, & Conditions, Myers Corner Community Wayne District County of Augusta, Virginia" dated April 8, 2018, made by Balzer and Associates, Inc.

1.14 "Exterior Improvements" shall mean the roofs, gutters, downspouts, and exterior siding (excluding doors, windows, and related hardware) on all Homes located on the Lots.

1.15 "Home" shall mean the improvement constructed upon a Lot for use as a single or one (1) family occupancy, whether owner occupied or not.

1.16 "Improvement" shall mean all existing and future Homes, buildings, structures, walls, facilities, additions, exterior fixtures, Exterior Improvements, landscaping, fences, lawn or garden statuary and ornamentation, play sets and goals, animal enclosures, exterior lighting, signs, mailboxes or mailbox supports, or any other exterior structure or improvement, replacements, and any other and all construction of any kind or description on a Lot or the Common Areas, and any alteration, enlargement, demolition, or removal of any of the foregoing or any portion thereof which alters the exterior appearance of an Improvement or Home (including paint color) or the Lot on which such Improvement is located, and any site work in preparation therefor.

1.17 "Lot" shall mean any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision or re-subdivision plat of all or any part of the Property or a Neighborhood, or the boundaries of which are described in this Declaration or in a recorded instrument referred to or expressly contemplated by this Declaration, other than a Common Area, and which is created for the purpose of constructing a Home.

1.18 "Member" shall mean an Owner possessing an interest, including voting and all other rights associated therewith, in the Association, and a Neighborhood Association if applicable, in accordance with the provisions of this Declaration, the Articles of Incorporation or Bylaws, and the Articles of Incorporation or Bylaws of the Neighborhood Association.

1.19 "Neighborhood" shall mean an area or district within the Property established by the Declarant or the Association with similar Homes, Lots, or common characteristics that distinguish that area or district from the areas around it.

1.20 "Neighborhood Association" shall mean the property owners' governing body of a

nonstock corporation established for a Neighborhood.

1.21 "Neighborhood Common Area" and "Neighborhood Common Areas" shall mean any Common Area or Common Areas within or related to a Neighborhood, not individually owned or dedicated to public use and ownership, that is owned or leased by the Association or a Neighborhood Association, or required by this Declaration or the Association to be maintained and/or operated by the Neighborhood Association, for the non-exclusive use and enjoyment of only the Owners of Lots in the Neighborhood and their family members and guests, their tenants, their tenants' family members and guests, and not for Owners of Lots in the Property not located in that particular Neighborhood.

1.22 "Owner" shall mean the record owner, whether one or more persons or entities, of the title to a Lot, but excluding those having such interest merely as security for the performance of any obligation.

1.23 "Phase 1 Villas Neighborhood" shall mean that portion of the Property, the boundaries of which neighborhood are more particularly shown on the Exhibit, consisting of Lots AR1 and AR2 and Lots to be subdivided and known as Lots AR3 through Lots AR22, and any Common Areas within the Phase 1 Villas Neighborhood and/or any Neighborhood Common Areas within the Phase 1 Villas Neighborhood, the responsibility for which shall be as assigned by the Declarant, this Declaration and/or the Master Association to the Phase 1 Villas Neighborhood Association.

1.24 "Phase 1 Villas Neighborhood Association" shall mean the property owners' governing body of the nonstock corporation established for the Phase 1 Villas Neighborhood.

1.25 "Property" shall mean the Declarant Parcels and Villa Parcels, both of which as more particularly described and referenced hereinabove and as shown on the Exhibit.

1.26 "Restrictions" shall refer to the provisions of this Declaration.



1.27 "Single or One Family Occupancy" shall refer to the residential occupancy by an individual or by two (2) or more persons related by blood, adoption, guardianship, custodianship, marriage or domestic partnership, living and cooking together as a single housekeeping unit; or a number of persons, but not exceeding four (4), living and cooking together as a single housekeeping unit but not necessarily related by blood, adoption or marriage.

## **ARTICLE II PURPOSE**

The purpose of these Restrictions is to insure proper development and use of the Property, to protect the Owner of each Lot against such development and use of surrounding Lots as will depreciate the value of each other Owner's Lot, to prevent the building on the Property of structures built of improper design or materials, to encourage the construction of attractive Improvements at appropriate locations, to prevent haphazard and inharmonious Improvements, to secure and maintain proper setbacks from streets and adequate free spaces between structures where appropriate, and in general, to provide for the high quality of development of the Property in accordance with any general plan adopted by the Declarant consistent with this Declaration.

## **ARTICLE III CHANGES/ADDITIONS TO THE PROPERTY**

3.1 Additional Area. "Additional Area" shall mean such other real property owned or subsequently acquired by the Declarant, its successors and assigns, to which the Declarant may extend this Declaration and on which the terms and conditions of this Declaration shall be binding. The Additional Area currently contemplated to be added to this Declaration is as shown and identified as "Additional Area" on the Exhibit. While the Declarant contemplates extending this Declaration to the real property shown on the exhibit and possibly other real

property in the vicinity, the Declarant shall not be obligated to extend this Declaration to the real property shown on the Exhibit or any other real property, whether identified as "Additional Area" or not. Further, the existence of any master plan for all or any portion of the Property shall not be deemed to constitute a representation by the Declarant that the real property shown thereon shall be developed as shown thereon or any other scheme of development, and any such master plan or other scheme of development may be amended by the Declarant, in the Declarant's sole discretion, as the Declarant may determine.

3.2 Right to Subject Additional Area to Declaration. Declarant reserves the right, in its sole discretion, at such time or times as it shall determine, to subject the Additional Area to the provisions of this Declaration in whole or in part without the consent of the Association, any Neighborhood Association, or any Owner. Any addition authorized pursuant to this Section 3.2 shall be made by the recordation in the Clerk's Office of an appropriate instrument describing the Additional Area subjected to this Declaration. Each such instrument also may contain such additions, deletions, and modifications to the provisions of this Declaration as the Declarant may desire. As the discretionary right of the Declarant to subject the Additional Area to the provisions of this Declaration is not conditioned upon or subject to the approval of the other Owners of the Lots, the requirements set forth hereinafter in this Declaration for amendments to this Declaration shall be inapplicable to the provisions of this Article. Such Additional Area to be subjected to this Declaration may be one (1) or more parcels and/or one (1) or more Lots and may be done at different times in the Declarant's discretion. The additions of such Additional Property may increase the number of Lots and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association and/or a Neighborhood Association.

3.3 Development of Additional Area. The Additional Area which hereafter may be

subjected to the provisions of this Declaration may contain additional facilities and/or Common Areas to be owned and/or maintained by the Association or a Neighborhood Association.

3.4 Subtraction. The Declarant reserves the right to remove real property from the Property and any Additional Areas and upon removal, such removed real property shall be free and clear of all covenants, conditions, restrictions, liens, charges, and provisions of this Declaration. Any subtraction authorized pursuant to this Section 3.4 shall be made by the recordation in the Clerk's Office of an appropriate instrument describing the subtracted area no longer subjected to this Declaration.

3.5 Neighborhoods. The Declarant reserves the right to establish Neighborhoods within the Property which shall be governed by such Neighborhood Homeowner's Associations as may be formed for the benefit of the Lots and Owners within the Neighborhood. All Neighborhoods and all Lots and Owners within such Neighborhoods shall remain subject to this Declaration, the Master Association, the Board of the Master Association and the rules and regulations established thereby. This Declaration and any supplemental Declaration filed by the Declarant may authorize, and the Board of the Master Association shall be authorized, to delegate to a Neighborhood Association such authority as the Declarant or the Board, as the case may be, shall deem appropriate, including, but not limited to, the primary responsibility for maintaining Lots, Homes, Common Areas within a Neighborhood, and/or Neighborhood Common Areas, and the primary responsibility for collecting from Owners of Lots in the Neighborhood assessments due under this Declaration and paying over such assessments to the Master Association. Notwithstanding the foregoing, however, if the Neighborhood Association shall fail to carry out its assigned responsibilities, including, but not limited to, maintaining any Lot, Home, Improvement, or Common Area within a Neighborhood, or failing to collect any such assessments or the same shall become delinquent, the Master Association

shall have the right and authority to carry out the Neighborhood Association's assigned responsibilities, including, but not limited to, maintaining such neighborhood areas and collecting such assessments in the place and stead of the Neighborhood Association.

#### **ARTICLE IV** **RESTRICTIONS**

4.1 Residential Purposes. No Lot shall be used except for residential purposes. Neighborhoods may be established by the Declarant which may be restricted by neighborhood to single family dwellings, townhouses, duplexes, or multiple family dwellings, including condominiums. Notwithstanding the foregoing, however, no mobile home, double-wide manufactured home, modular home, or house trailer shall be constructed or placed on any Lot in any Neighborhood. No trailer, tent, shack, barn, or other outbuilding erected on any Lot shall be used at any time as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted.

4.2 Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Declaration is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

4.3 No Animals, Livestock or Poultry; Nuisance. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats, or other small household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose. All pets shall be kept in a manner that will not create a nuisance to the adjoining Lot owners or tenants due to noise or behavior.

4.4 Maintenance of Lots. All Lots shall be kept at all times in a sanitary, healthful, attractive, and safe condition and each Owner shall prevent the development of any unclean, unsightly, unkempt, unhealthy or unsafe conditions of Improvements or grounds on any Lot which shall tend to substantially decrease the beauty or safety of the Lot, Neighborhood and/or

Property.

4.5 Containment & Removal of Garbage. Garbage, trash, and other waste shall be kept in sanitary enclosed containers. All such enclosed containers shall be kept within an enclosed or screened area as approved by the Architectural Review Committee so as to not be visible from any other Lot or the public street. None of the Lots shall be used or maintained as a dumping ground for garbage, trash, and other waste. No incinerator or other device for the burning of garbage, trash, and other waste shall be permitted on any Lot. No individual sewage disposal system shall be constructed, maintained, or used on any Lot. As hereinafter provided, the Association shall negotiate with, award bids to, and/or approve a commercial waste removal company to remove and haul routine garbage, trash, and other waste from the Property. All Owners shall remove and haul all garbage, trash, and other waste from their Lots or shall be obligated, at each Owner's sole cost and expense, to utilize the services of the commercial waste removal company approved by the Association. Only that commercial waste removal company approved by the Association shall be allowed to remove and haul garbage, trash, and other waste from the Property or individual Lots.

4.6 Motor Vehicles. No motor vehicle shall be kept on any Lot unless it bears a valid state license plate and current inspection sticker unless the motor vehicle is garaged within a structural enclosure or parked on a driveway or paved parking area. Unless garaged, no Owner, tenant, visitor, or guest shall be permitted to park any mobile homes, motor homes, recreational vehicles, vans, travel trailers, campers, trailers, boats, or utility trailers except on a temporary basis or to load or unload the contents thereof. No commercial vehicles, road tractors, semi-tractors, tractor trailers, school buses, or similar vehicles shall be parked or kept on any Lot or street in the Property other than for the purpose of loading and unloading cargo or passengers. This restriction shall not apply to a passenger car or pickup

truck that is driven daily to and from work, provided such vehicle is not parked on any street.

4.7 Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by an Owner thereof other than the Declarant, provided that this shall not prohibit the vacating of boundaries between adjacent Lots to create a bigger Lot, deeds of correction, deeds to resolve boundary line disputes, and similar corrective instruments.

4.8 Destruction or Alteration. No destruction or alteration of the Property shall be allowed, except as otherwise specifically permitted in this Declaration and provided that any such destruction or alteration is in accordance with all applicable federal, state and local laws.

4.9 Improvements. No Improvement shall be constructed, installed, placed, reconstructed, erected upon or attached to, or maintained on the Property or any Lot, except as otherwise approved by the Architectural Review Committee and specifically permitted in this Declaration and provided that any such Improvement is constructed, installed, placed, reconstructed, and/or erected in accordance with all applicable federal, state and local laws and regulations. Notwithstanding any other provision herein, no above-ground swimming pool shall be allowed on any Lot.

4.10 Fire or Other Casualty Loss/Damage. Any Home or other Improvement damaged or destroyed by fire or other casualty shall be repaired, restored, or rebuilt in accordance with the original approved plans within twelve (12) months after such loss or damage, and all debris from such fire or other casualty shall be removed within ninety (90) days of the casualty.

4.11 Industrial or Commercial Activities. All industrial and/or commercial activities in, on and about the Property are prohibited. No outdoor communication facilities, including but

not limited to towers, cables, satellites, shall be erected or constructed upon the Property.

4.12 Signs. No signs, billboards or outdoor advertising structures shall be erected or placed on or about the Property, except for a reasonable number of regulatory signs, e.g. "No Trespassing" signs, and signs to identify and/or regulate the use of the Common Areas and amenities of the Property, and/or to identify the name and/or address of the Declarant or Crescent Development Homes while the Declarant or Crescent Development Homes still is the owner of any portion of the Property or the Association or any Neighborhood Association for the same purposes, signs to advertise the sale or lease of the Property or any Lot, and signs as the Declarant or Association may deem necessary for the protection of the Common Areas.

4.13 Dumping. All depositing, dumping, abandoning, and release of any solid waste, trash, or debris, including but not limited to pet waste, and/or any liquid wastes or chemical substances on the Property is prohibited, except as permitted in accordance with the requirements of all applicable federal, state, and local laws.

4.14 Disturbance of Land. The topography of a Lot may not be altered and no live trees in excess of six inches (6") in diameter at a point of least a foot above ground may be removed from a Lot without the prior approval of the Declarant, its successors and assigns, in its sole discretion, or hereafter approved by the Architectural Review Committee pursuant to the provisions hereof. No quarrying, surface or subsurface mining or removal of rocks, minerals, gravel, sand, soil, or other similar materials or drilling for oil or gas shall be permitted in, on, under, or about the Property.

4.15 Fencing. No fencing shall be allowed except as originally constructed by the Declarant or as otherwise approved by the Declarant, its successors and assigns, in its sole discretion, or hereafter approved by the Architectural Review Committee pursuant to the provisions hereof. Further, no fences shall be constructed or maintained in any front yard of a

Lot. No chain link fences will be permitted. Any such fencing may be repaired and/or replaced only by fencing of similar quality and appearance.

4.16 Leases. The Declarant reserves the right hereafter to impose restrictions and conditions on the leasing of any Lot, Home or Improvement thereon.

4.17 Hazardous or Noxious Use. No use will be made of the Property or any Lot, Home or Improvement thereon at any time, nor shall any materials or products be manufactured, processed, or stored thereon or therein, which shall, in the opinion of the Declarant, cause an undue fire or health hazard to adjoining Lots or the Common Areas, or which shall constitute a nuisance or cause the emission of noxious odors or gases or smoke, or cause noises or other conditions which might violate the purpose and intent of these restrictions which shall constitute a violation of any federal, state, and/or local laws, or any regulation or ordinance promulgated thereunder.

4.18 Utility Facilities. All utility lines, wires, and pipes in, on or about any Lot shall be underground. Except as otherwise approved by the Declarant, its successors and assigns, in its sole discretion, or hereafter approved by the Architectural Review Committee pursuant to the provisions hereof, all Improvements on or to a Lot requiring water and sanitary sewer service must be connected to the applicable Augusta County water and sanitary sewer systems serving the Lot.

4.19 Antenna or Satellite Dishes. No residential antennas, towers, satellite dishes in excess of twenty-four inches (24"), or similar communication receiving or sending equipment or apparatus, exclusive of buried communication cable only, shall be erected or installed upon any Lot or upon the exterior of any Home or Improvement, or upon any of the Common Areas.

4.20 Exceptions Reserved to Declarant & Certain Others. Notwithstanding any other provision herein to the contrary, it shall be expressly permissible for the Declarant, Crescent



Development Homes, and any Builder of a Home designated by the Declarant, to maintain during the period of construction and sale of a Home or Homes, upon such portion of a Lot or Lots as the Declarant deems necessary, such facilities as in the sole opinion of the Declarant reasonably may be required, convenient, or incidental to the construction and sale of such Home(s), including, but not limited to, a business office, storage areas, construction yards, signs, model units and sales offices.

4.21 Additional & Different Restrictions. The Declarant reserves the right to impose additional restrictions on each Neighborhood of the Property and reserves the right to impose different restrictions upon any such Neighborhood.

## **ARTICLE V** **ARCHITECTURAL REVIEW**

5.1 Architectural Review Committee. The Declarant hereby establishes an Architectural Review Committee whose purpose is to review, evaluate, and approve or disapprove, as the case may be, all plans submitted by an Owner or Builder for the construction of any Improvement to any Lot in accordance with this Article. The Architectural Review Committee shall consist of such number of persons as the Declarant or the Board (after delegation of such responsibility by the Declarant to the Board), from time to time, may appoint to the Committee. The members of the Architectural Review Committee shall serve for such terms as the Declarant or thereafter, the Board may determine. Notwithstanding the foregoing, however, for so long as the Declarant owns any portion of the Property, or having transferred all ownership of the Property, any Builder owns any Lot in the Property, and the Declarant shall not have otherwise transferred such right to the Architectural Review Committee, the Declarant shall retain the right to review, evaluate, and approve or disapprove, as the case may be, all plans submitted by an Owner or Builder for the construction of any Improvements to any Lot, including any Home built or constructed on such Lot. If the

Declarant retains such control, and until such time as the Declarant turns over such control to the Association, all references in this Declaration to the Architectural Review Committee shall be deemed to mean the Declarant for all purposes hereunder.

5.2 Plans Shall be Submitted to Architectural Review Committee. No Improvement, including, but not limited to any Home, building, structure, wall, exterior fixture, landscaping, fence, lawn or garden statuary and ornamentation, play sets and goals, animal enclosure, exterior lighting, sign, mailbox or mailbox support, or any other exterior structure or improvement, and any alteration, enlargement, demolition, or removal of any of the foregoing or any portion thereof which alters the exterior appearance of the Improvement or Home (including paint color) or the Lot on which such Improvement is located, and any site work in preparation therefor, shall be commenced, erected, placed, or altered on any Lot until the Owner or Neighborhood Association, as the case may be, submits plans and specifications showing the nature, kind, shape, dimensions, materials, exterior color scheme, and location of such Improvement, in such form and number as the Architectural Review Committee shall require, and such plans thereafter are approved in writing by the Committee. The Architectural Review Committee shall have the right, in its sole discretion, to approve any such plans, specifications or locations or to disapprove the same which are not suitable or desirable, in the sole discretion of the Architectural Review Committee, and in so passing upon such plans, specifications and locations, the Committee shall have the right to require as many as four (4) elevation drawings to scale together with topographic recordings of the site related to the street or road on which the Lot fronts and to take into consideration the suitability of the proposed Improvement, as planned, on the view of the adjacent or neighboring Lots and the Property in general. The Architectural Review Committee shall not be required to review any such plans unless and until all of the required information is submitted to the Committee.

5.3 Fees & Costs. The Architectural Review Committee shall have the right to employ and consult with such professionals, including, but not limited to, architects, engineers, surveyors, planners, etc., as the Committee may deem proper in the discharge of its duties imposed hereunder. The Owner or Neighborhood Association shall be responsible for the payment of the fees and costs of such professionals. The payment of such fees and costs shall be a condition of the completion of review and approval or disapproval of the plans. The Architectural Review Committee may condition commencement of its review upon the payment by the Owner, Builder, or Neighborhood Association of the estimated total of the costs in advance.

5.4 Completion of Improvements. All Improvements, and any and all work related thereto, approved by the Architectural Review Committee shall be completed in a timely and workmanlike manner and be carried on in a manner designed, to the extent practicable, so as to not unduly or unreasonably disturb any neighboring Owners. The Architectural Review Committee, in its sole discretion, may establish the date or dates by which an Improvement shall be completed and/or a timeline for the completion of such Improvements.

5.5 Guidelines. The Architectural Review Committee, in its sole discretion, may establish guidelines from time to time to be used by the Committee in its decision-making and to authorize in advance certain Improvements or portions of Improvements, which thereafter, and until and unless modified by the Committee, would not require the specific approval of the Committee.

5.6 Declarant Control. Notwithstanding anything herein to the contrary, the Declarant shall retain and have complete and unfettered discretion and control of the architectural review restrictions imposed in this Article, and the Declarant shall have full authority to waive, modify, or amend any requirement herein contained, if in the sole discretion

of the Declarant, such waiver, modification, or amendment would result in more desirable, attractive, and harmonious development of the Property.

5.7 No Liability for Review. Neither the Declarant nor its successors or assigns by its or their approval or disapproval of plans as hereinabove provided shall incur any liability to any Owner, Builder, Neighborhood Association, or any other person or entity for errors, mistakes, or for any other cause. Any Owner, Builder, Neighborhood Association, or any other person or entity submitting plans for approval, waives all claims against the Declarant, its successors or assigns, for any such claims, costs, damages, or liability sustained.

## **ARTICLE VI**

### **ARCHITECTURAL AND AESTHETIC STANDARDS**

6.1 Architectural & Aesthetic Standards. The Declarant hereby establishes the following architectural and aesthetic standards for the construction of any Improvement to any Lot in accordance with this Declaration.

6.2 Off-Street Parking. Unless otherwise permitted by the Declarant or the Master Association, no parking shall be permitted on the streets or roads in the Property and each Owner shall provide adequate off-street parking to accommodate all parking needs for the Owner and visitors and guests on the Owner's Lot. All parking facilities and private driveways must be approved by the Declarant or the Architectural Review Committee in accordance with Article V hereof. All driveways and parking shall be paved with asphalt or concrete. Alternative paving materials may be allowed subject to approval of the Declarant or the Architectural Review Committee.

6.3 Setbacks. All Lots and Improvements shall conform to the minimum setback requirements as specified in the Zoning Ordinance of Augusta County.

6.4 Building Height. Except as approved by the Declarant and allowed by local law, Improvements shall not exceed three (3) stories in height when measured from and including a basement or terrace level.

6.5 Exterior Construction. Any Improvement erected on a Lot shall conform to the following construction practices:

6.5.1 Exterior Walls. Exterior walls shall be finished on the exterior with the following: architectural masonry units (excluding natural or unfinished concrete block and cinderblock, but including parged and painted foundation walls), natural and cultured stone, glass materials, concrete fiber or wood siding. Alternative masonry units and siding material may be permitted subject to the approval of the Declarant or Architectural Review Committee.

6.5.2 Finishes. Where appropriate and required, finish building materials shall be applied to all sides of an Improvement which are visible to the general public, as well as from neighboring Lots, Common Areas, and streets. Colors shall be harmonious and compatible with the colors of the natural surroundings and other adjacent buildings. The Declarant or the Architectural Review Committee shall have the sole right to approve and disapprove materials and colors.

6.5.3 Landscaping & Grassed Areas. Every Lot on which an Improvement is placed or erected shall be landscaped to plans approved as specified hereinabove and thereafter maintained in an attractive and well-kempt condition. Except to the extent that responsibility for such is assigned to or specifically assumed by the Association or a Neighborhood Association, each Owner shall landscape and maintain unpaved areas between the property lines and the Improvements and keep the landscaping in good order and condition at all times. Landscaping as approved by the Declarant or the Architectural Review Committee shall be installed within ninety (90) days of occupancy or completion of a Home, whichever occurs first,

or as soon thereafter as weather permits. Should any Owner, tenant or occupant of any Lot fail to remedy any deficiency in the maintenance of the landscaping which is the responsibility of the Owner within ten (10) days after written notification thereof, the Declarant, Association, and/or any Neighborhood Association, as the case may be, hereby expressly reserves the right to make such repairs, corrections, or improvements in landscape maintenance as the Declarant, Association or Neighborhood Association deems appropriate at the sole cost and expense of the Owner. The cost of any such repairs, corrections, or improvements shall become a special assessment on the Lot of such Owner to the extent not reimbursed by the Owner and shall constitute a lien on such Owner's Lot and be collectible in the same manner as other assessments set forth herein.

6.5.4 Exterior Lighting. All exterior lighting for any Improvement shall be controlled and directed. Exterior lighting shall not be directed in a manner that adversely impacts an adjoining Home or neighboring Lot. The location and type of exterior lighting and the time of day the lighting is to be illuminated shall be approved by the Declarant or the Architectural Review Committee, as the case may be.

6.5.5 Outdoor Storage. Unless specifically approved by the Declarant in writing, no materials, supplies, or equipment, including but not limited to trash and garbage receptacles and fuel storage tanks, shall be stored in any area on a Lot except inside a closed structure, or behind a visual barrier screening such areas from the view of adjoining Lots, Common Areas, and/or public streets; provided, in addition, that any such fuel storage tank also may be buried underground on the Lot in a location as approved by the Declarant or Association and in accordance with all applicable laws and regulations.

6.5.6 Screening of Service Containers. Garbage and refuse containers shall be concealed by means of a screening wall of materials similar to and compatible with that of the

Home on the Lot. These elements shall be integral with the concept of the Home and Lot plans, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible.

6.5.7 Repair of Buildings. No Improvement shall be permitted to fall into disrepair and at all times shall be kept in good condition, order, and repair, and adequately painted or otherwise finished in accordance with specifications established by the Declarant and/or the Architectural Review Committee. Each Owner hereby grants to the Declarant, Association, or Neighborhood Association as the case may be, the right, power, and authority to make any necessary, in the sole discretion of the Declarant, Association, or Neighborhood Association alterations, repairs, or maintenance to carry out the intent of this paragraph and each Owner further agrees to reimburse the Declarant, Association, or Neighborhood Association for any expenses actually incurred in carrying out the foregoing. The cost of any such repairs, corrections, or improvements shall become a special assessment on the Lot of such Owner to the extent not reimbursed by the Owner and shall constitute a lien on such Owner's Lot and be collectible in the same manner as other assessments set forth herein.

**ARTICLE VII**  
**MYERS CORNER COMMUNITY ASSOCIATION**

7.1 Membership. Every Owner of a Lot shall be a Member of the Myers Corner Community Association. The Declarant shall be a Member of the Association and any creditor who has acquired title to a Lot or the Property or any portion thereof pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Upon the recordation of a deed to a Lot, the membership of the selling owner shall cease and the purchasing owner shall become a Member of the Association.

7.2. Classes of Membership. The Association shall have two (2) classes of voting

membership:

7.2.1 Class A. All Owners of a Lot, including the Declarant, shall be Class A Members.

7.2.2 Class B. The Declarant shall be the Class B Member. The Class B membership shall terminate on the earlier of (i) the date on which the Declarant no longer owns any portion of the Property and the Additional Area, (ii) the date on which the Declarant executes and records in the Clerk's Office an amendment to this Declaration terminating the Class B membership, or (iii) if not sooner terminated, on April 1, 2035.

7.3 Voting Rights.

7.3.1 Class A. Each Class A Member, including the Declarant, shall be entitled to cast one (1) vote for each Lot owned. If any Member owns more than one Lot, such Member, subject to the provisions of this Article, shall be entitled to cast his or her votes for each Lot owned. When any Lot is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, tenants by the entirety, joint tenants, tenants in common, tenants in partnership, or any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same Lot, then unless the instrument or order appointing them or creating the tenancy otherwise directs and a copy thereof is filed with the secretary of the Association, such co-Owners' acts with respect to voting shall have the following effect: (a) if only one Owner votes, in person or by proxy, his act shall bind all co-Owners; (b) if more than one Owner votes, in person or by proxy, the act of the majority of co-Owners so voting shall bind all; (c) if more than one co-Owner votes, in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled to its proportionate share of the vote or votes.

7.3.2 Class B. In addition to any votes the Declarant may be entitled to cast as a Class A Member, the Declarant as the Class B Member shall be entitled to cast five (5) votes



for each Lot owned by the Declarant.

7.4 Suspension of Voting Rights. The voting rights of any Member subject to assessment under this Declaration shall be suspended automatically when any such assessment or any installment thereof shall remain unpaid for more than thirty (30) days after the date due, but upon payment in full of such assessment, the voting rights of such Member shall be restored automatically.

7.5 Articles & Bylaws. Except to the extent expressly provided in this Declaration, all the rights, powers and duties of the Association and the Members, including the Members' voting rights, shall be governed by the Articles of Incorporation and Bylaws of the Association. The Articles provide, among other things, that the Declarant shall appoint the members of the Board of Directors until the Class B membership terminates. Thereafter, elections shall be held as contained in the Bylaws. So long as the Declarant shall have the right to appoint the Directors, the Directors need not be Members of the Association; thereafter, all Directors shall be Members of the Association. The Declarant shall appoint three (3) Directors to hold office at the pleasure of the Declarant until elections of Directors as set forth above and in the Bylaws shall occur. Similarly, except to the extent expressly provided in this Declaration, all the rights, powers and duties of any Neighborhood Association and the members of the same, including the neighborhood members' voting rights, shall be governed by the Articles of Incorporation and Bylaws of the Neighborhood Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the provisions of the Articles or Bylaws or the Articles of Incorporation and Bylaws of any Neighborhood Association, this Declaration shall control. In addition to all of the rights, powers and duties of the Association provided in this Declaration, the Association shall have all of the rights, powers and duties provided in the Virginia Property Owners' Association Act, §§ 55-508 *et seq.* of the Code of

Virginia, 1950, as amended.

**ARTICLE VIII**  
**COMMON AREAS**

8.1 Rights in Common Areas. Every Owner, members of the Owner's household, and the Owner's guests when accompanied by the Owner or a member of the Owner's household, shall have the right of enjoyment in and to the Common Areas, which shall be appurtenant to and pass with title to each Lot. An Owner's right of enjoyment in the Common Areas also shall extend to the Owner's tenants, members of the tenants' household, and the tenants' guests when accompanied by the tenant or a member of the tenant's household. Notwithstanding the foregoing, however, the right of enjoyment in and to any Neighborhood Common Areas may be restricted by the Declarant or the Master Association to the Owners (and others as set forth above, *i.e.*, members of the Owner's household, and the Owner's guests when accompanied by the Owner or a member of the Owner's household, or the Owner's tenants, members of the tenants' household, and the tenants' guests when accompanied by the tenant or a member of the tenant's household) of Lots located in the Neighborhood within which the Neighborhood Common Area is or Neighborhood Common Areas are located.

8.2 Rights Subject to Limitations & Restrictions. The foregoing rights of enjoyment in and use of the Common Areas and Neighborhood Common Areas shall be subject to this Declaration; such rules and regulations for the use thereof and the regulation of the personal conduct of the Members, household members, tenants, tenants' household members, and their respective guests, and the establishment of penalties for the infraction thereof, as may be established by the Board or the Board of any Neighborhood Association, if such rights are delegated or assigned to the Neighborhood Association; the right of the Board, or the Board of any Neighborhood Association, if such rights are delegated or assigned to the Neighborhood

Association, to suspend an Owner's rights to use any Common Area and/or Neighborhood Common Areas and/or the Owner's voting rights for any period during which an Owner is delinquent in the payment of any assessment or dues or has been notified by the Board or the Board of any Neighborhood Association that the Owner is in violation of any provision of this Declaration or the rules and regulations and the Owner has failed to cure such violation; the right of the Declarant and/or the Association to grant permits, licenses, and easements across the Common Areas and Neighborhood Common Areas for utilities, roads, and other purposes as the Declarant and/or the Association may deem proper; the rights of the Declarant and/or the Association to dedicate or transfer any part of the Common Areas and Neighborhood Common Areas to any public authority or utility for such purposes as the Declarant and/or the Association may deem proper; the right of the Association to borrow money for the purpose of improving the Common Areas and/or Neighborhood Common Areas; and the right of the Declarant and/or the Association, which by this reference is reserved specifically, to grant easements for the use of the Common Areas and/or Neighborhood Common Areas by third parties not subject to this Declaration.

8.3 Additional Rights Reserved by Declarant. For so long as the Declarant retains rights hereunder and has not conveyed the Common Areas, or any portion thereof, to the Association, the Declarant shall retain the right to construct Improvements on the Common Areas not so conveyed for the use and enjoyment of the Owners and for any other purposes not inconsistent with this Declaration as the Declarant, in the Declarant's sole discretion, may deem appropriate and proper.

8.4 Care and Maintenance of Grounds & Improvements. The initial grading, seeding, and landscaping of Common Areas shall be provided and paid for by the Declarant. After conveyance of the Common Areas to the Association and except as

may be provided hereinafter, the Association shall be responsible for the maintenance of all grounds of and Improvements located in, on, or about the Common Areas. Maintenance shall include mowing of grass and care of shrubbery on the Common Areas.

8.5 Signs. The Association shall be responsible for the cost of the maintenance and replacement of any sign constructed by the Declarant to identify the Property. The Association may delegate and assign, in its sole discretion, the obligation for maintenance and replacement of any signs constructed by the Declarant or the Association to identify the Neighborhood or which is located within a Neighborhood to a Neighborhood Association.

8.6 Other Obligations of the Association. The Association shall be responsible for the ongoing maintenance, management, operation and control of the Common Areas and all Improvements thereon, including but not limited to regional storm water management and water quality facilities, and shall keep the same in good condition, order, and repair in accordance with the requirements of this Declaration and all federal, state, and local laws and ordinances. The Association also shall be responsible for the maintenance, management, operation and control of any additional common areas in the Additional Areas which it may acquire hereafter and to which this Declaration applies. The Association shall be responsible for selecting and approving, which may include, but not be limited to, negotiating with and awarding bids to, a commercial waste removal company for the removal and hauling away of routine garbage, trash, and other waste from the Property, including all Lots, Common Areas, and Neighborhood Common Areas, and, as hereinabove provided, may regulate the location and type of outdoor trash receptacles to facilitate such removal. The Association's performance of its obligations under this Article shall be for the benefit of all of its Members.

8.7 Obligations Which May be Assigned to Neighborhood Associations. This

Declaration may delegate and assign and, upon a reasonable determination by the Declarant or the Master Association that any Improvements within a Neighborhood and/or Lots within a Neighborhood are maintainable, the Declarant or the Master Association may delegate and assign, to a Neighborhood Association within which Neighborhood Improvements and/or Lots are located the responsibility for maintenance of the Improvements and grounds, including, trees, shrubs, and grass, on any such Lot, including, but may include but not be limited to the necessary repair and replacement of roofing and siding and repainting, necessary veneer repair and replacement, and care (including, without limitation, fertilizing and mulching, as appropriate), cutting and necessary replacement of all trees, shrubs, and grass with the exception that the Neighborhood Association shall not be obligated to maintain or replace individual gardens and shrubs planted by the Owner. Notwithstanding the foregoing, however, all glass breakage and window replacement shall be the responsibility and at the cost of each Owner and the Neighborhood Association shall not be obligated to maintain any area located behind a Home that may be fenced in by the Owner. The Declarant or the Master Association also may delegate and assign to a Neighborhood Association maintenance of private roads in the Neighborhood, driveways on the Lots in the Neighborhood, and/or sidewalks located on Lots in the Neighborhood (but not any sidewalks located within the Neighborhood that are dedicated to public use), so as to keep the same at all times in a safe and passable state of repair, free of debris, snow and standing water as the Declarant or Master Association may determine. In addition, as and when such responsibility may be delegated and assigned to the Neighborhood Association by the Declarant and/or the Master Association, the Neighborhood Association shall be responsible for the ongoing maintenance, management, operation and control of the Neighborhood Common Areas and all Improvements thereon and shall keep the same in good condition, order, and repair in accordance with the

requirements of this Declaration and all federal, state, and local laws and ordinances.

8.8 Easements for Utilities. The Declarant and the Association shall have the right to dedicate or transfer to any public or private utility, or to any third party, utility or drainage easements on any part of the Common Areas and/or Neighborhood Common Areas, provided, however, that no such easement shall in any way unreasonably restrict use of the Common Areas and/or Neighborhood Common Areas for their intended purposes. The Declarant further reserves the right to convey such easements to any Owner, the Association, any Neighborhood Association, governmental authorities, and utility companies.

8.9 Damage to or Destruction of Common Areas. In the event any part of the Common Areas, Neighborhood Common Areas, or Improvements thereon or thereto, is damaged or destroyed by an Owner, members of his family, his tenants, members of his family, or any guests, licensees, agents, or members of his family or tenants, the Association may repair such damage at the Owner's expense. The cost of such repairs shall become a special assessment on the Lot of such Owner and shall constitute a lien on such Owner's Lot and be collectible in the same manner as other assessments set forth herein.

## **ARTICLE IX**

### **ASSESSMENTS**

9.1 Creation of Lien & Personal Obligation for Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association and the Neighborhood Association, as applicable, assessments as set forth in this Declaration and in the Bylaws and the Bylaws of the Neighborhood Association. The assessments, together with interest thereon, late charges and costs of collection including reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment is made in order to secure payment thereof and shall

also be the personal obligation of the party who was the owner of the Lot at the time the assessment fell due. In the case of co-ownership, all of such co-Owners shall be jointly and severally liable for the entire amount of the assessment. No Owner may waive or avoid liability for any assessment by nonuse of any Common Area, Neighborhood Common Area, or abandonment of any Lot or Home. Each assessment not paid when due shall bear interest at the rate established by the Association or Neighborhood Association, which rate shall not exceed the maximum rate permitted by applicable law. In addition to bearing interest, each assessment that is not paid within ten (10) days of its due date shall incur a late charge of Twenty Dollars (\$20.00) or such greater amount as may be established from time to time by the Board or the Board of Directors of the Neighborhood Association, as the case may be. If paid in installments, as the Board or the Board of Directors of the Neighborhood Association may decide, in the event an installment of the annual assessment is not paid within thirty (30) days of its due date, all remaining installments of such annual assessment shall be accelerated automatically and the entire amount of such annual assessment shall be due and payable in full thirty (30) days after such installment became due.

9.2 Purpose of Assessments. The assessments levied by the Association shall be used for the management, maintenance, improvement, enhancement, care, operation, renovation, repair and replacement of the Common Areas and any future facilities and/or common areas, and improvements thereon, and any other property owned or acquired by the Association of whatsoever nature, for the discharge of all taxes and other levies and assessments against the same, for the procurement of insurance by the Association in accordance with the Bylaws, for the establishment of reserves, as reasonably determined by the Board, to cover the anticipated replacement costs of capital assets (including roofs, gutters, downspouts, exterior siding, roads, and parking areas), for the discharge of the

Association's contractual and legal obligations, for the performance of services by the Association, its contractors, employees, and agents, as authorized in this Declaration and/or in the Articles or Bylaws, for the discharge of such other obligations as may be imposed upon or assumed by the Association pursuant to the Articles or Bylaws or this Declaration, and for all such other purposes as may be authorized by or pursuant to the Articles or Bylaws.

9.3 General & Special Assessments. "General Assessments" shall mean those assessments used for the purposes set forth in Section 9.2 above. General Assessments shall be established and increased or decreased from time to time by the Board pursuant to the Bylaws. In addition to the General Assessments, the Board may levy a periodic special assessment ("Special Assessment") if the purpose in doing so is found by the Board to be in the best interests of the Association and the proceeds of the Special Assessment are used for the maintenance and upkeep, including capital expenditures, of the Common Areas, or future additional facilities and/or common areas; the discharge of taxes; the procurement of insurance; the establishment of reserves; the advancement of the cost of any payment, repair, and/or replacement of any item which is the responsibility of an Owner until such time as the additional assessment attributable thereto can be levied and collected from the Owner responsible therefor; and the discharge of such services and other obligations as may be assumed by the Association pursuant to the Articles, Bylaws, this Declaration, and for such other purposes as authorized by or pursuant to the Articles or Bylaws.

9.4 Basis and Maximum of Annual Assessments. General Assessments shall be made by the payment of annual assessments ("Annual Assessments") on a fiscal year basis of January 1 to December 31 of each calendar year. Until January 1, 2022, the maximum Annual Assessment on each Lot on which a completed Home for which a



certificate of occupancy permit has been issued by Augusta County shall be \$60.00 per year payable in a single installment on or before January 31<sup>st</sup> of each year. There shall be no assessment for any other portion of the Property or for any lots that may be drawn or shown on any master plan or plan of subdivision but not created by the recordation of a subdivision plat. For each fiscal year after January 1, 2022, the maximum Annual Assessment may be increased by up to ten percent (10%) per year of the prior year's Annual Assessment by the Board, without a vote of the Owners, which may fix such annual increase after due consideration of current and anticipated costs, appropriate depletion allowances, reserve funds, and other needs of the Association. Any increase requested by the Board in the Annual Assessment that exceeds the annual ten percent (10%) increase over the prior fiscal year's assessment must be approved by a majority of a quorum of Owners at a meeting of the Association duly called for that purpose.

9.5 Commencement of Annual Assessments. Annual Assessments shall commence as to each Lot on the first day of the month following the issuance by Augusta County of a certificate of occupancy with respect to a Home located on a Lot and the recordation of the deed to such Lot to an Owner other than Declarant, Crescent Development Homes, or a Builder who purchases the same, whichever occurs later. The first Annual Assessment on a Lot shall be pro-rated according to the number of months remaining in the calendar year and shall be paid by the Owner (other than the Declarant, Crescent Development Homes, or a Builder) to the Declarant or Association at closing of the purchase of the Lot.

9.6 Capitalization of Association. Upon the acquisition of title to a Lot by the first purchaser thereof (other than Declarant, Crescent Development Homes, or a Builder), in addition to the pro-rated Annual Assessment then due as provided in Section 9.5 above, a

capital contribution shall be made by the Builder of the Lot to the working capital of the Association in the amount of \$50.00. 9.7 Uniform Rate of Assessment. Both Annual and Special Assessments for the Association shall be fixed at a uniform rate for all improved Lots as a class.

9.8 Exceptions to Assessments. Notwithstanding anything herein to the contrary, however, the Board or any Neighborhood Association Board of Directors shall not impose or levy upon any Lot owned by the Declarant, Crescent Development Homes, or a Builder General or Special Assessments, capital assessments, or any neighborhood assessment. Moreover, when all Lots within the Property are sold or otherwise conveyed to Owners, the Declarant shall have no further liability of any kind to the Association or any Neighborhood Association for any assessment, deficit, or contribution for the same.

9.9 Neighborhood Assessments. In addition to the General and Special Assessments, the Board of the Master Association or a Neighborhood Association Board of Directors may assess or levy a neighborhood assessment for the obligations of the Neighborhood Association as set out in this Declaration and/or the Bylaws of the Neighborhood Association, and for those obligations which hereafter may be delegated and assigned by the Declarant or Master Association to the Neighborhood Association.

9.10 Third Party Assessments. If the Declarant grants to third parties any easements for the use of the Common Areas and/or Neighborhood Common Areas, the Declarant, as a condition to granting such easement, may subject such third parties to such assessment obligations as the Declarant may deem appropriate, which may or may not be the same assessments imposed against any Lot hereunder.

9.11 Nonpayment of Assessments & Remedies of Association. The lien of the assessments provided for in this Declaration may be perfected and enforced in the manner

provided in the Virginia Property Owners' Association Act. A statement from the Association or Neighborhood Association showing the balance due on any assessment shall be *prima facie* evidence of the current amount due and the delinquency, if any, then due on a particular Lot. The Association or Neighborhood Association may bring an action at law against any Owner personally obligated to pay the same, either in the first instance or for deficiency following foreclosure, and interest, late charges and costs of collection including reasonable attorney's fees shall be added to the amount of such assessment and secured by the assessment lien. The Association or Neighborhood Association may accelerate all remaining installments due for the year, if any, if any installment is not paid within thirty (30) days of the due date thereof.

9.12 Mortgages. The lien upon each Lot securing the payment of any assessments shall have the priority set forth in § 55-516 of the Virginia Property Owners' Association Act. Moreover, upon receipt of a written request from the holder of a first mortgage on any Lot, the Association or Neighborhood Association shall notify such mortgagee in writing of any default in performance by the Owner of such Lot of any obligation under this Declaration that is not cured within sixty (60) days.

9.13 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments and liens created herein: any portion of the Property or Lot owned by the Declarant and Crescent Development Homes; all properties dedicated and accepted by a public authority; any storm water detention facilities; and all future facilities, Common Areas and Neighborhood Common Areas.

## **ARTICLE X** **ENFORCEMENT**

10.1 Enforcement. The result of every action of omission whereby any covenant, restriction, condition, or provision herein contained is violated in whole or part is hereby

declared to be and to constitute a nuisance. Enforcement of the provisions of this Declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant, restriction, condition, or provision hereof to restrain a violation hereof and/or to recover damages, and to enforce any lien created by this Declaration. Any failure by the Declarant, the Association, or any Neighborhood Association to enforce any covenant, restriction, condition, or provision hereof for any period of time shall not be deemed a waiver or estoppel of the right to enforce the same thereafter.

10.2 Entry for Enforcement. The Declarant, Association, and/or Neighborhood Association, and its agents, shall have the right to enter upon any Lot for the purpose of correcting any such conditions as contemplated by Section 10.1 above and the cost of such corrective action shall be paid by the Owner of such Lot. Such entry shall not be made until thirty (30) days after the Owner has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within such thirty (30) day period; provided, however, that should such condition constitute, in the discretion of the Declarant, Association, or Neighborhood Association, a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provision of the paragraph shall not create any obligation on the part of the Declarant, Association, or Neighborhood Association to take any such corrective action.

## **ARTICLE XI** **PARTY WALLS**

11.1 General Rules of Law to Apply. Each wall which is built as a part of the construction of any Home upon any Lot and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence

or willful acts or omissions shall apply thereto.

11.2 Sharing of Party Wall and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

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

11.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

## **ARTICLE XII** **INSURANCE**

12.1 Insurance. Each Owner shall maintain fire and extended coverage insurance on the Improvements on any Lot to their full insurable value. A certificate of insurance shall be furnished by the Owner to the Association upon request. If an Owner does not comply with this covenant, the Association may obtain such insurance and include the amount of premium in the Owner's Annual Assessment payable and enforceable as provided in this Declaration.

12.2 Public Liability Insurance. The Association shall obtain broad form public liability insurance covering the Common Areas and all of the Lots, excluding, nevertheless,

liability coverage for the interior of any Home, in a single limit amount as approved by the Board, but in no event less than Two Million Dollars (\$2,000,000.00), covering all claims for property damage arising out of any one occurrence. Premiums for public liability insurance shall be part of the common expense payable out of Annual Assessments provided under Article IX hereof.

12.3 Other Insurance. The Association may secure such other forms of insurance coverage as the Board may direct from time to time to be paid as a common expense.

### **ARTICLE XIII DECLARANT'S RESERVED RIGHTS**

13.1 Reserved Rights. Declarant hereby expressly reserves unto itself and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Declaration of Covenants, Restrictions, & Conditions.

13.2 Assignment. The Declarant may assign to the Association all or part of any approvals, etc., reserved by it in the Declaration from time to time. The Association is obligated hereby to accept such assignments.

### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

14.1 Managing Agent. The Association may employ and pay a managing agent, who may be the Declarant or an affiliate of Declarant, to manage the affairs of the Association. Such managing agent shall be employed and compensated for its services and costs pursuant to a written contract with a term not to exceed one (1) year, which contract shall provide for termination by either party without consent of the other party or payment of a termination fee on ninety (90) days' written notice.

14.2 Amendment. The Declarant reserves the right to amend this Declaration any time within two (2) years after recordation of this Declaration without the consent of any other owner. At any time thereafter and except as otherwise set forth in this Declaration, the Owners of two-thirds (2/3) of all Lots may amend this Declaration; provided, however, and notwithstanding the foregoing, for so long as the Declarant is a Class B Member, no Amendment to this Declaration shall be made without the written consent of the Declarant.

14.3 Duration & Successors In Interest. The covenants, restrictions, conditions and terms contained in this Declaration are binding upon, and shall inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an Owner of any Lot under this Declaration shall terminate upon proper transfer of such Owner's entire interest in the Lot, except that liability for acts or omissions occurring prior to transfer and any unpaid assessments and fees and costs imposed therewith shall survive transfer.

14.4 Interpretation. The Board shall have the right to construe and interpret the provisions of this Declaration, and in the absence of any adjudication by a court of competent jurisdiction to the contrary, the Board's construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of the Board or any other person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation of the Board. In all cases, the provision of this Declaration shall be given that interpretation or construction that will best support the general plan of development intended by this Declaration.

14.5 Incorporation of Declaration. This Declaration shall be incorporated by reference into any deed or other legal instrument by which the Declarant or Crescent Development Homes divests itself, respectively, by sale, exchange, transfer or gift of all or any part of the Property.

14.6 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when delivered personally, or sent by mail, with the proper postage affixed, to the address appearing on the Association's membership list, or sent by a form of electronic transmission consented to by the Owner to whom the notice is given. Notice to one (1) of two (2) or more co-Owners shall constitute notice to all co-Owners. It shall be the obligation of every Owner to immediately notify the Secretary of the Association and any Neighborhood Association in writing of any change of address. Any person who becomes an Owner following the first day in the calendar month in which said notice is delivered or mailed shall be deemed to have been given notice if notice was given to his or her predecessor in title.

14.7 Rule of Construction. Any general rule of construction to the contrary notwithstanding, this Declaration shall be liberally construed in favor of the grant to effect the purposes of this Declaration. If any provision of this Declaration is found to be ambiguous, an interpretation consistent with the purpose of this Declaration that would render the provision valid shall be favored over any interpretation that would render it invalid.

14.8 Rules & Regulations. The Master Board and the Board of Directors of any Neighborhood Association may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Board and the Board of Directors of any Neighborhood Association, as the case may be, shall take into consideration the best interests of the Owners, Lots, Common Areas, Neighborhood Common Areas, and the Property as a whole, to the end that the Property shall be preserved and



maintained as a high quality community. In pursuance thereof, in granting any permit, authorization or approval, as herein provided, the Board or the Board of Directors of any Neighborhood Association may impose any conditions or limitations thereon as it shall deem advisable under the circumstances in each case in light of the considerations set forth herein.

14.9 Successor Declarant. The Declarant may appoint a successor Declarant by an instrument recorded in the Clerk's Office evidencing the same.

14.10 Severability. If any part of any provision of this Declaration is found to be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions of this Declaration.

14.11 No Waiver. The failure on the part of the Declarant, the Association, any Neighborhood Association or any Owner to enforce any restriction contained in this Declaration shall not be deemed a waiver of the right to do so.

14.12 Mutuality & Reciprocity Runs with Land. All covenants, restrictions, conditions and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every Lot and part and parcel of the Property in favor of every other Lot and part and parcel of the Property; shall create reciprocal rights and obligations between the respective Owners of all Lots and privity of contract and estate between all grantees of such Lots, their heirs, successors and assigns; and shall, as to the Owner of each Lot, his heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Lots.

14.13 Consent of Crescent Development Homes. Crescent Development Homes, party of the second part, joins in this Declaration to evidence its consent to this Declaration and its agreement to bound by the terms hereof.

14.14 Contract Purchaser Consent. Christopher A. Sanders and Nancy C. Sanders, parties of the third part, and Kevin Lloyd and Teal Lloyd, parties of the fourth part, contract purchasers as hereinabove described, join in this Declaration to evidence their consent to this Declaration and their agreement to bound by the terms hereof.

14.15 Lender Consent & Subordination. Lender hereby consents to the terms, conditions, and restrictions of this Declaration, agrees that the lien represented by the Deed of Trusts binding and affecting the Property or any portion thereof shall be held subject to this Declaration, and joins in this Declaration to reflect its direction to the Trustees to execute this Declaration to give effect to the subordination of the Deed of Trusts to this Declaration. The Trustees join in the execution of this Declaration to confirm that in the event of foreclosure under either or both of the hereinabove referenced Deeds of Trust or other sale of the property described in the Deeds of Trust under judicial or non-judicial proceedings, the Property or any such portion thereof will be sold subject to this Declaration.

**ARTICLE XV**  
**PHASE 1 VILLAS NEIGHBORHOOD ASSOCIATION**

15.1 Establishment. Concurrent with the execution of this Declaration, the Declarant shall cause to be established a Neighborhood Association to be known as the Phase 1 Villas Neighborhood Association by filing Articles of Incorporation of such Neighborhood Association with the Virginia State Corporation Commission. As provided in this Declaration, the Phase 1 Villas Neighborhood Association and its members shall be subject to the covenants, restrictions, conditions, assessments, and liens set forth hereinabove or hereafter promulgated as permitted by this Declaration.

15.2 Membership. Every Owner of a Lot in the Phase 1 Villa Neighborhood shall be a member of the Phase 1 Villas Neighborhood Association. The Declarant shall be a member of such Neighborhood Association and any creditor who has acquired title to a Lot or the Property

or any portion thereof pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure in such Neighborhood shall be a member of such Neighborhood Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot in such Neighborhood. Upon the recordation of a deed to a Lot in such Neighborhood, the membership of the selling owner shall cease and the purchasing owner shall become a Member of the Neighborhood Association.

15.3 Classes of Membership. The Phase 1 Villas Neighborhood Association shall have two (2) classes of voting membership:

15.3.1 Class A. All Owners of a Lot in the Phase 1 Villas Neighborhood, including the Declarant, shall be Class A Members.

15.3.2 Class B. The Declarant shall be the Class B Member. The Class B membership shall terminate on the earlier of (i) the date on which the Declarant no longer owns any portion of the Property and the Additional Area, (ii) the date on which the Declarant executes and records in the Clerk's Office an amendment to this Declaration terminating the Class B membership, or (iii) if not sooner terminated, on April 1, 2035.

15.4 Voting Rights.

15.4.1 Class A. Each Class A Member of the Phase 1 Villas Neighborhood Association, including the Declarant, shall be entitled to cast one (1) vote for each Lot owned in the Phase 1 Villas Neighborhood. If any Member owns more than one such Lot, such Member, subject to the provisions of this Article, shall be entitled to cast his or her votes for each such Lot owned. When any such Lot is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, tenants by the entirety, joint tenants, tenants in common, tenants in partnership, or any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same such

Lot, then unless the instrument or order appointing them or creating the tenancy otherwise directs and a copy thereof is filed with the secretary of the Phase 1 Villas Neighborhood Association, such co-Owners' acts with respect to voting shall have the following effect: (a) if only one Owner votes, in person or by proxy, his act shall bind all co-Owners; (b) if more than one Owner votes, in person or by proxy, the act of the majority of co-Owners so voting shall bind all; (c) if more than one co-Owner votes, in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled to its proportionate share of the vote or votes.

15.4.2 Class B. In addition to any votes the Declarant may be entitled to cast as a Class A Member of the Phase 1 Villas Neighborhood Association, the Declarant as the Class B Member shall be entitled to cast five (5) votes for each Lot in the Phase 1 Villas Neighborhood owned by the Declarant.

15.5 Suspension of Voting Rights. The voting rights of any member of the Phase 1 Villas Neighborhood Association subject to assessment under this Declaration, whether by the Master Association or the Phase 1 Villas Neighborhood Association, shall be suspended automatically when any such assessment or any installment thereof shall remain unpaid for more than thirty (30) days after the date due, but upon payment in full of such assessment, the voting rights of such member in the Phase 1 Villas Neighborhood Association shall be restored automatically.

15.6 Articles & Bylaws. Except to the extent expressly provided in this Declaration, all the rights, powers and duties of the Phase 1 Villas Neighborhood Association and the members thereof, including the members' voting rights therein, shall be governed by the Articles of Incorporation and Bylaws of the Phase 1 Villas Neighborhood Association. The Articles provide, among other things, that the Declarant shall appoint the members of the

Board of Directors of the Phase 1 Villas Neighborhood Association until the Class B membership terminates. Thereafter, elections shall be held as contained in the Bylaws. So long as the Declarant shall have the right to appoint the Directors, the Directors need not be members of the Phase 1 Villas Neighborhood Association; thereafter, all Directors shall be members of the Phase 1 Villas Neighborhood Association. The Declarant shall appoint three (3) Directors to hold office at the pleasure of the Declarant until elections of Directors as set forth above and in the Bylaws shall occur. In the event of any conflict or inconsistency between the provisions of this Declaration and the provisions of the Articles of Incorporation and Bylaws of the Phase 1 Villas Neighborhood Association, this Declaration shall control. In addition to all of the rights, powers and duties of the Phase 1 Villas Neighborhood Association provided in this Declaration, the Phase 1 Villas Neighborhood Association shall have all of the rights, powers and duties provided in the Virginia Property Owners' Association Act, §§ 55-508 *et seq.* of the Code of Virginia, 1950, as amended.

15.7 Obligations of Phase 1 Villas Neighborhood Association. Upon issuance by Augusta County of a certificate of occupancy with respect to a Home located on a Lot in the Phase 1 Villas Neighborhood, and upon a reasonable determination by the Declarant or the Master Association that the Exterior Improvements and grounds located on such Lot are maintainable, the Phase 1 Villas Neighborhood Association immediately shall become responsible for all maintenance of the Exterior Improvements and grounds, including, trees, shrubs, and grass, on such Lot, including, but not limited to the necessary repair and replacement of roofing and siding and repainting, necessary veneer repair and replacement, and care (including, without limitation, fertilizing and mulching, as appropriate), cutting and necessary replacement of all trees, shrubs, and grass with the exception that the Phase 1 Villas Neighborhood Association shall not maintain or replace

individual gardens and shrubs planted by the Owner of such Lot. Notwithstanding the foregoing, however, all glass breakage and window replacement shall be the responsibility and at the cost of each Owner and the Phase 1 Villas Neighborhood Association shall not maintain any area located behind a Home in the Phase 1 Villas Neighborhood that may be fenced in by the Owner. The Phase 1 Villas Neighborhood Association also shall maintain all private roads in the Phase 1 Villas Neighborhood at all times in a safe and passable state of repair, free of debris, snow and standing water, and shall be responsible for removal of snow from all driveways on the Lots in the Phase 1 Villas Neighborhood and all sidewalks located on a Lot in the Phase 1 Villas Neighborhood (but not any sidewalks located within the Phase 1 Villas Neighborhood that are dedicated to public use), when, in the discretion of the Neighborhood Association such snow removal is necessary and appropriate to maintain the foregoing in a passable manner.

15.8 Common Areas & Neighborhood Common Areas. In addition, as and when such responsibility may be delegated and assigned to the Phase 1 Villas Neighborhood Association by the Declarant and/or the Master Association, the Phase 1 Villas Neighborhood Association shall be responsible for the on-going maintenance, management, operation and control of the Common Areas located in the Phase 1 Villas Neighborhood and/or the Phase 1 Villas Neighborhood Common Areas and all Improvements thereon and shall keep the same in good condition, order, and repair in accordance with the requirements of this Declaration and all federal, state, and local laws and ordinances.

15.9 Phase 1 Villas Neighborhood Assessments.

15.9.1 Creation of Lien & Personal Obligation for Assessments. The Declarant, for each Lot owned within the Phase 1 Villas Neighborhood, hereby covenants, and each Owner of any Lot in the Phase 1 Villas Neighborhood by acceptance of a deed

therefor, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Phase 1 Villas Neighborhood Association neighborhood assessments as set forth in this Declaration and in the Bylaws of the Phase 1 Villas Neighborhood Association. The neighborhood assessments, together with interest thereon, late charges and costs of collection including reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such neighborhood assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the owner of the Lot at the time the neighborhood assessment fell due. In the case of co-ownership, all of such co-Owners shall be jointly and severally liable for the entire amount of the neighborhood assessment. No Owner of a Lot in the Phase 1 Villas Neighborhood may waive or avoid liability for any assessment by nonuse of any Common Area, Phase 1 Villas Neighborhood Common Area, or abandonment of any Lot or Home in the Phase 1 Villas Neighborhood. Each neighborhood assessment not paid when due shall bear interest at the rate established by the Phase 1 Villas Neighborhood Association, which rate shall not exceed the maximum rate permitted by applicable law. In addition to bearing interest, each neighborhood assessment that is not paid within ten (10) days of its due date shall incur a late charge of Twenty Dollars (\$20.00) or such greater amount as may be established from time to time by the Board of Directors of the Phase 1 Villas Neighborhood Association. In the event an installment of the neighborhood assessment is not paid within thirty (30) days of its due date, all remaining installments of such neighborhood assessment shall be accelerated automatically and the entire amount of such neighborhood assessment shall be due and payable in full thirty (30) days after such installment became due.

15.9.2 Purpose of Assessments. The neighborhood assessments levied by the Phase 1 Villas Neighborhood Association shall be used for the obligations of the

Neighborhood Association as set forth herein and in the Bylaws of the Association, for the establishment of reserves, as reasonably determined by the Board of the Neighborhood Association, to cover the anticipated replacement costs of capital assets for which the Neighborhood Association may be responsible, for the performance of services by the Neighborhood Association, its contractors, employees, and agents, as authorized in this Declaration and/or in the Articles or Bylaws of the Neighborhood Association, and for all such other purposes as may be authorized by or pursuant to the Articles or Bylaws of the Neighborhood Association.

15.9.3 General & Special Assessments. "Phase 1 Villas Neighborhood General Assessments" shall mean those assessments used for the purposes set forth in Section 15.9.2 above. Phase 1 Villas Neighborhood General Assessments shall be established and increased or decreased from time to time by the Phase 1 Villas Neighborhood Association Board pursuant to its Bylaws. In addition to the General Assessments, the Phase 1 Villas Neighborhood Association Board may levy a periodic special assessment ("Phase 1 Villas Neighborhood Special Assessment") if the purpose in doing so is found by the Phase 1 Villas Neighborhood Association Board to be in the best interests of the Association and the proceeds of the Phase 1 Villas Neighborhood Special Assessment are used for the maintenance and upkeep, including capital expenditures, of the Neighborhood Common Areas, or future additional facilities and/or common areas for which the Phase 1 Villas Neighborhood Association is responsible; the establishment of reserves; the advancement of the cost of any payment, repair, and/or replacement of any item which is the responsibility of an Owner of a Lot in the Phase 1 Villas Neighborhood until such time as the additional assessment attributable thereto can be levied and collected from the Owner responsible therefor; and the discharge of such services and other obligations



as may be assigned to or assumed by the Phase 1 Villas Neighborhood Association pursuant to its Articles and/or Bylaws, this Declaration, and for such other purposes as authorized by or pursuant to this Declaration, and the Phase 1 Villas Neighborhood Association's Articles and Bylaws.

15.9.4 Basis and Maximum of Annual Assessments.

15.9.4(1) Phase 1 Villas Neighborhood General Assessments. Phase 1 Villas Neighborhood General Assessments shall be made by the payment of an annual assessment ("Phase 1 Villas Neighborhood Annual Assessment") on a fiscal year basis of January 1 to December 31 of each calendar year. Until January 1, 2022, the maximum Phase 1 Villas Neighborhood Annual Assessment on each Lot on which a completed Home located in the Phase 1 Villas Neighborhood for which a certificate of occupancy permit has been issued by Augusta County shall be \$1,800.00 per year payable in twelve (12) equal monthly installments of \$150.00 each, due on the first day of each month. There shall be no assessment for any portion of the Property or for any lots that may be drawn or shown on any master plan or plan of subdivision located in the Phase 1 Villas Neighborhood but not created by the recordation of a subdivision plat. For each fiscal year after January 1, 2022, the maximum Phase 1 Villas Neighborhood Annual Assessment may be increased by up to ten percent (10%) per year of the prior year's Phase 1 Villas Neighborhood Annual Assessment by the Phase 1 Villas Neighborhood Association Board, without a vote of the Owners in the Phase 1 Villas Neighborhood, which may fix such annual increase after due consideration of current and anticipated costs, appropriate depletion allowances, reserve funds, and other needs of the Phase 1 Villas Neighborhood Association. Any increase requested by the Phase 1 Villas Neighborhood Association Board in the Phase 1 Villas Neighborhood Annual Assessment that exceeds the annual ten percent (10%) increase

over the prior fiscal year's assessment must be approved by a majority of a quorum of Owners in the Phase 1 Villas Neighborhood Association at a meeting of the Phase 1 Villas Neighborhood Association duly called for that purpose.

15.9.4(2) Phase 1 Villas Neighborhood Private Roads Assessments. In addition to the Phase 1 Villas Neighborhood General Assessments, the Phase 1 Villas Neighborhood Association may impose an additional assessment for the maintenance and repair of any private roads located in the Phase 1 Villas Neighborhood, the amount of which additional assessment shall be added to, paid, collected, and enforced as a part of the Phase 1 Villas Neighborhood Annual Assessment set forth above. The additional assessment for maintenance and repair of private roads shall be assessed against the Owners of Lots in the Phase 1 Villas Neighborhood located on, adjoining or abutting such private road(s) which use the private road(s) for access to a public road.

15.9.5 Commencement of Phase 1 Villas Neighborhood Annual Assessments. Phase 1 Villas Neighborhood Annual Assessments shall commence as to each Lot located in the Phase 1 Villas Neighborhood on the first day of the month following the issuance by Augusta County of a certificate of occupancy with respect to a Home located on such Lot and the recordation of the deed to such Lot to an Owner other than Declarant, Crescent Development Homes, or a Builder who purchases the same, whichever occurs later. The first Phase 1 Villas Neighborhood Association Annual Assessment on a Lot shall be pro-rated according to the number of months remaining in the calendar year.

15.9.6 Capitalization of Phase 1 Villas Neighborhood Association. Upon the acquisition of title to a Lot in the Phase 1 Villas Neighborhood by the first purchaser thereof (other than Declarant, Crescent Development Homes, or a Builder), in addition to the pro-rated Phase 1 Villas Neighborhood Annual Assessment then due as provided in Section 15.9.5 above, a

capital contribution shall be made by the Builder of the Home on such Lot to the working capital of the Phase 1 Villas Neighborhood Association in the amount of \$200.00.

15.10 Uniform Rate of Assessment. Both Phase 1 Villas Neighborhood Annual and Special Assessments for the Phase 1 Villas Neighborhood Association shall be fixed at a uniform rate for all improved Lots in the Phase 1 Villas Neighborhood as a class, except that portion of the Annual Assessment which may be attributable to the maintenance of private roads as set forth in Section 15.9.4(2) above.

15.11 Exceptions to Neighborhood Assessments. Notwithstanding anything herein to the contrary, however, the Phase 1 Villas Neighborhood Association Board of Directors shall not impose or levy upon any Lot located in the Phase 1 Villas Neighborhood owned by the Declarant, Crescent Development Homes, or a Builder Phase 1 Villas Neighborhood General or Special Assessments, or capital assessments (except as set forth in Section 15.9.6 above as to a Builder). Moreover, when all Lots within the Phase 1 Villas Neighborhood are sold or otherwise conveyed to Owners, Declarant shall have no further liability of any kind to the Phase 1 Villas Neighborhood Association for any assessment, deficit, or contribution for the same.

15.12 Nonpayment of Neighborhood Assessments & Remedies of Neighborhood Association. The lien of the Phase 1 Villas Neighborhood assessments provided for hereinabove may be perfected and enforced in the manner provided in the Virginia Property Owners' Association Act. A statement from the Phase 1 Villas Neighborhood Association showing the balance due on any neighborhood assessment shall be *prima facie* evidence of the current amount due and the delinquency, if any, then due on a particular Lot in the Phase 1 Villas Neighborhood. The Association or the Phase 1 Villas Neighborhood Association may bring an action at law against any Owner of a Lot located in the Phase 1

Villas Neighborhood personally obligated to pay the same, either in the first instance or for deficiency following foreclosure, and interest, late charges and costs of collection including reasonable attorney's fees shall be added to the amount of such neighborhood assessment and secured by the assessment lien. The Phase 1 Villas Neighborhood Association may accelerate all remaining installments due for the year, if any, if any installment is not paid within thirty (30) days of the due date thereof.

15.13 Mortgages. The lien upon each Lot in the Phase 1 Villas Neighborhood securing the payment of any neighborhood assessments shall have the priority set forth in § 55-516 of the Virginia Property Owners' Association Act. Moreover, upon receipt of a written request from the holder of a first mortgage on any Lot in the Phase 1 Villas Neighborhood, the Association or Neighborhood Association shall notify such mortgagee in writing of any default in performance by the Owner of such Lot in the Phase 1 Villas Neighborhood of any obligation under this Declaration that is not cured within sixty (60) days.

15.14 Exempt Property. The following property subject to this Declaration shall be exempt from the Phase 1 Villas Neighborhood Association assessments and liens created hereinabove: any portion of the Property or Lot located in the Phase 1 Villas Neighborhood owned by the Declarant or Crescent Development Homes; all properties located in the Phase 1 Villas Neighborhood dedicated and accepted by a public authority; any storm water detention facilities located in the Phase 1 Villas Neighborhood; and all future facilities, Common Areas and Neighborhood Common Areas located in the Phase 1 Villas Neighborhood.

WITNESS the following signatures.

**DECLARANT:**

**CRESCENT DEVELOPMENT GROUP, L.L.C.,**  
a Virginia limited liability company

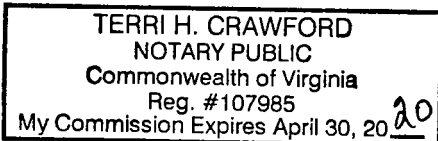
By: Scott A. Williams  
Scott A. Williams, Manager

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Staunton, to-wit:

The foregoing Declaration was acknowledged before me this 4<sup>th</sup> day of June, 2019, by Scott A. Williams, Manager of Crescent Development Group, L.L.C., acting on behalf of said company.

TERRI H. CRAWFORD  
Notary Public



**CRESCENT DEVELOPMENT HOMES, INC.,**  
a Virginia corporation

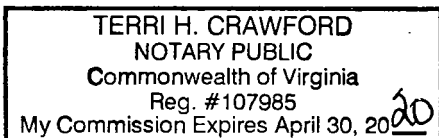
By: Scott A. Williams  
Scott A. Williams  
Its: President

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Staunton, to-wit:

The foregoing Declaration was acknowledged before me this 4<sup>th</sup> day of June, 2019, by Scott A. Williams, President of Crescent Development Homes, Inc., acting on behalf of said corporation

TERRI H. CRAWFORD  
Notary Public



CONTRACT PURCHASERS:

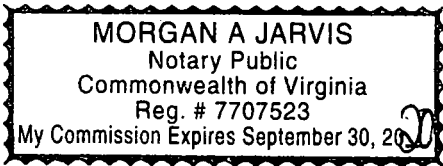
Christopher A. Sanders  
Christopher A. Sanders

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Staunton, to wit:

The foregoing Declaration was acknowledged before me this 24th day of June, 2019, by Christopher A. Sanders.

Morgan A. Jarvis  
Notary Public



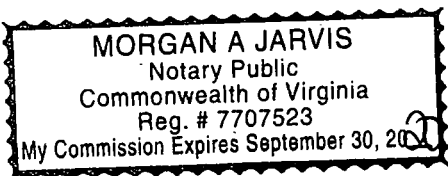
Nancy C. Sanders  
Nancy C. Sanders

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Staunton, to wit:

The foregoing Declaration was acknowledged before me this 24th day of June, 2019, by Nancy C. Sanders.

Morgan A. Jarvis  
Notary Public



[SIGNATURES CONTINUED ON FOLLOWING PAGES]

[Signature]  
Kevin Lloyd

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Staunton, to wit:

The foregoing Declaration was acknowledged before me this 14<sup>th</sup> day of June, 2019, by Kevin Lloyd.

[Signature]  
Notary Public

TERRI H. CRAWFORD  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #107985  
My Commission Expires April 30, 2020

[Signature]  
Teal Lloyd

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF Staunton, to wit:

The foregoing Declaration was acknowledged before me this 14<sup>th</sup> day of June, 2019, by Teal Lloyd.

TERRI H. CRAWFORD  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #107985  
My Commission Expires April 30, 2020

[Signature]  
Notary Public

[SIGNATURES CONTINUED ON FOLLOWING PAGES]

LENDER:

FIRST BANK

By:

Paul K. Martin

Its:

COMMONWEALTH OF VIRGINIA,

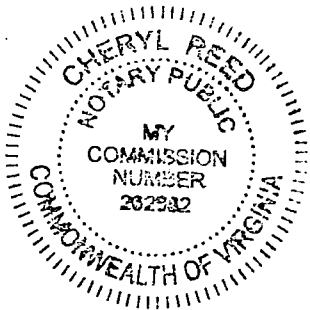
CITY/COUNTY OF Staunton, to-wit:

The foregoing Declaration was acknowledged before me this 10 day of

June, 2019, by Paul K. Martin,

SVP of First Bank, acting on behalf of said company

[Signature]  
Notary Public



[SIGNATURES CONTINUED ON FOLLOWING PAGES]

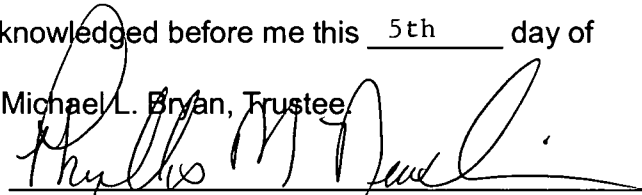


  
Michael L. Bryan, Trustee

COMMONWEALTH OF VIRGINIA,

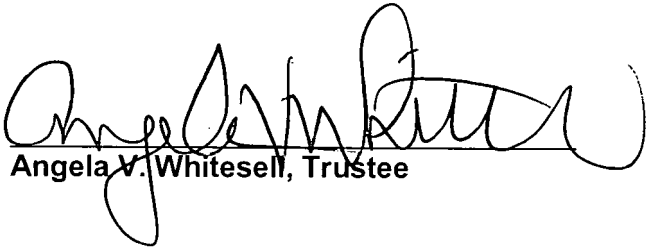
CITY/COUNTY OF Winchester, to wit:

The foregoing Declaration was acknowledged before me this 5th day of  
June, 2019, by Michael L. Bryan, Trustee.

  
Notary Public

PHYLLIS M. NEWLIN  
NOTARY PUBLIC  
Commonwealth of Virginia  
Registration No. 138448  
Commission Expires 7/31/22

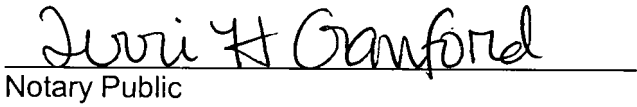
[SIGNATURES CONTINUED ON FOLLOWING PAGE]

  
Angela V. Whitesell, Trustee

COMMONWEALTH OF VIRGINIA,

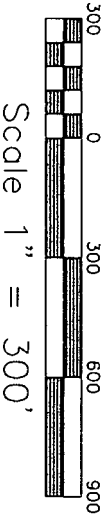
CITY/COUNTY OF Staunton, to wit:

The foregoing Declaration was acknowledged before me this 10<sup>th</sup> day of June, 2019, by Angela V. Whitesell, Trustee.

  
Notary Public

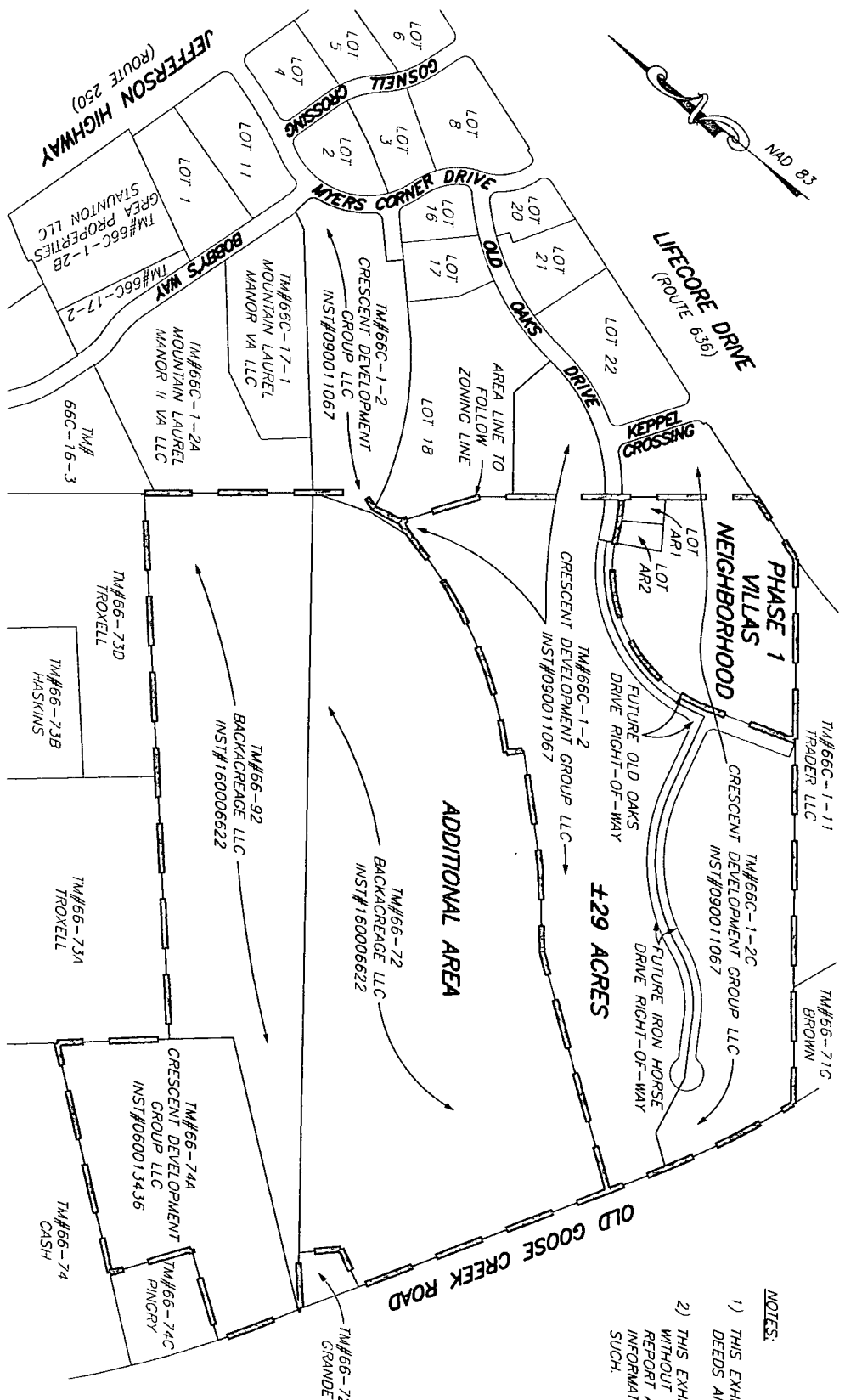
TERRI H. CRAWFORD  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #107985  
My Commission Expires April 30, 2020

DATE: 04-08-2019  
 SCALE: 1" = 300'  
 JOB: 35160028.01  
 DRAWN BY: ATE



**EXHIBIT TO ACCOMPANY  
 COVENANTS, RESTRICTIONS, & CONDITIONS,  
 MYERS CORNER COMMUNITY**

WAYNE DISTRICT  
 COUNTY OF AUGUSTA, VIRGINIA  
 PLANNERS / ARCHITECTS / ENGINEERS / SURVEYORS  
 ROANOKE / RICHMOND / NEW RIVER VALLEY / ST. ALUTION / HARRISONBURG / LYNCHBURG  
 1561 Commerce Road, Suite 401 / Verona, Virginia 24482 / Phone (540) 248-2220 / www.lutzler.com



- NOTES:
- 1) THIS EXHIBIT COMPILED FROM DEEDS AND PLATS OF RECORD.
  - 2) THIS EXHIBIT WAS COMPILED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO INFORMATION DISCLOSED BY SUCH.

LAND SURVEYOR  
 Daniel E. Hansh  
 Lic. No. 3217  
 04-08-2018

INSTRUMENT # 190004621  
 RECORDED AUGUSTA CO CIRCUIT COURT CLERK'S OFFICE  
 Jun 27, 2019 AT 11:01 am  
 GINA R. COFFEY, CLERK by SAH