

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 801

Short Title: N.C. Planned Community Act.

(Public)

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Sponsors: Senators Wellons; Hartsell and Miller.

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Referred to: Commerce.

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April 10, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE NORTH CAROLINA PLANNED COMMUNITY  
3 ACT.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter to read:

6 **"CHAPTER 47E.**

7 **"NORTH CAROLINA PLANNED COMMUNITY ACT.**

8 **"ARTICLE 1.**

9 **"GENERAL PROVISIONS.**

10 **"§ 47E-1-101. Short title.**

11 This act shall be known and may be cited as the North Carolina Planned Community  
12 Act.

13 **"§ 47E-1-102. Applicability.**

14 (a) This act applies to all planned communities created within this State on or after  
15 October 1, 1997.

16 (b) This act does not apply to a planned community created within this State on or  
17 after October 1, 1997:

18 (1) Which contains no more than 12 lots (including all lots which may be  
19 added or created by the exercise of development rights) unless the

1           declaration provides or is amended as permitted in subsection (e) of this  
2           section to provide that this act does apply to that planned community; or

3           (2) In which all lots are restricted exclusively to nonresidential purposes  
4           and the declaration provides that this act does not apply to that planned  
5           community.

6           (c) Except as provided in subsection (d) of this section, G.S. 47E-1-106  
7           (Applicability of local ordinances, regulations, and building codes), G.S. 47E-1-107  
8           (Eminent domain), G.S. 47E-2-103 (Construction and validity of declaration and  
9           bylaws), G.S. 47E-2-104 (Description of lots), G.S. 47E-3-102(a)(1) through (6) and  
10           (11) through (17) (Powers of owners' association), G.S. 47E-3-107 (Upkeep of planned  
11           community; responsibility and assessments for damages), G.S. 47E-3-107A (Procedures  
12           for fines and suspension of planned community privileges or services), G.S. 47E-3-111  
13           (Tort and contract liability), G.S. 47E-3-112 (Conveyance or encumbrance of common  
14           elements), G.S. 47E-3-115 (Assessments for common expenses), G.S. 47E-3-116 (Lien  
15           for assessments), G.S. 47E-3-118 (Association records), and G.S. 47E-4-117 (Effect of  
16           violation on rights of action; attorneys' fees) apply to all planned communities created in  
17           this State before October 1, 1997. These sections apply only with respect to events and  
18           circumstances occurring on or after October 1, 1997, and do not invalidate existing  
19           provisions of the declaration, bylaws, or plats and plans of those planned communities.  
20           G.S. 47E-1-103 (Definitions) applies to all planned communities created in this State  
21           before October 1, 1997, to the extent necessary in construing any of the preceding  
22           sections.

23           (d) A planned community created within this State before October 1, 1997, which  
24           contains no more than 12 lots (including all lots which may be added or created by the  
25           exercise of development rights) shall not be subject to this act.

26           (e) Notwithstanding the provisions of subsections (c) and (d) of this section, the  
27           declaration of any planned community created before October 1, 1997, may be amended  
28           to provide that this entire act does apply to that planned community. Such an amendment  
29           may be made under the provision of this act specifying procedures and requirements for  
30           amendment of declarations. To the extent the procedures and requirements for  
31           amendment in the declaration conflict with the provisions of this act, this act shall  
32           control.

33           (f) This act does not apply to planned communities or lots located outside this  
34           State.

35           **"§ 47E-1-103. Definitions.**

36           In the declaration and bylaws, unless specifically provided otherwise or the context  
37           otherwise requires, and in this act:

38           (1) 'Affiliate of a declarant' means any person who controls, is controlled  
39           by, or is under common control with a declarant. A person 'controls' a  
40           declarant if the person (i) is a general partner, officer, director, or  
41           employer of the declarant; (ii) directly or indirectly or acting in concert  
42           with one or more other persons, or through one or more subsidiaries,  
43           owns, controls, holds with power to vote, or holds proxies representing,

1 more than twenty percent (20%) of the voting interest in the declarant;  
2 (iii) controls in any manner the election of a majority of the directors of  
3 the declarant; or (iv) has contributed more than twenty percent (20%) of  
4 the capital of the declarant. A person 'is controlled by' a declarant if the  
5 declarant (i) is a general partner, officer, director, or employer of the  
6 person; (ii) directly or indirectly or acting in concert with one or more  
7 other persons, or through one or more subsidiaries, owns, controls,  
8 holds with power to vote, or holds proxies representing, more than  
9 twenty percent (20%) of the voting interest in the person; (iii) controls  
10 in any manner the election of a majority of the directors of the person;  
11 or (iv) has contributed more than twenty percent (20%) of the capital of  
12 the person. Control does not exist if the powers described in this  
13 subdivision are held solely as security for an obligation and are not  
14 exercised.

15 (2) 'Allocated interests' means the common expense liability and votes in  
16 the association allocated to each lot.

17 (3) 'Association' or 'owners' association' means the association organized  
18 under G.S. 47E-3-101.

19 (4) 'Common elements' means any real estate within a planned community  
20 owned or leased by the association, other than a lot.

21 (5) 'Common expenses' means expenditures made by or financial liabilities  
22 of the association, together with any allocations to reserves.

23 (6) 'Common expense liability' means the liability for common expenses  
24 allocated to each lot pursuant to G.S. 47E-2-107.

25 (7) 'Condominium' means real estate, portions of which are designated for  
26 separate ownership and the remainder of which is designated for  
27 common ownership solely by the owners of those portions. Real estate  
28 is not a condominium unless the undivided interests in the common  
29 elements are vested in the unit owners.

30 (8) 'Cooperative' means real estate owned by a corporation, trust, trustee,  
31 partnership, or unincorporated association, where the governing  
32 instruments of that organization provide that each of the organization's  
33 members, partners, stockholders, or beneficiaries is entitled to exclusive  
34 occupancy of a designated portion of that real estate.

35 (9) 'Declarant' means any person or group of persons acting in concert who  
36 (i) as part of a common promotional plan, offers to dispose of his or its  
37 interest in a lot not previously disposed of, or (ii) reserves or succeeds to  
38 any special declarant right.

39 (10) 'Declaration' means any instruments, however denominated, that create  
40 a planned community and any amendments to those instruments.

41 (11) 'Development rights' means any right or combination of rights reserved  
42 by a declarant in the declaration (i) to add real estate to a planned  
43 community; (ii) to create lots, common elements, or limited common

- 1                    elements within a planned community; (iii) to subdivide lots or convert  
2                    lots into common elements; or (iv) to withdraw real estate from a  
3                    planned community.
- 4                    (12) 'Dispose' or 'disposition' means a voluntary transfer to a purchaser of  
5                    any legal or equitable interest in a lot, but does not include the transfer  
6                    or release of a security interest.
- 7                    (13) 'Executive board' means the body, regardless of name, designated in the  
8                    declaration to act on behalf of the association.
- 9                    (14) 'Identifying number' means a symbol that identifies only one lot in a  
10                    planned community.
- 11                    (15) 'Initial seller' means the declarant, an affiliate of the declarant or any  
12                    person or entity that acquires a lot for any purpose other than to use the  
13                    lot for residential purposes.
- 14                    (16) 'Leasehold planned community' means a planned community in which  
15                    all or a portion of the real estate is subject to a lease, the expiration or  
16                    termination of which will terminate the planned community or reduce  
17                    its size.
- 18                    (17) 'Lessee' means the party entitled to present possession of a leased lot  
19                    whether lessee, sublessee, or assignee.
- 20                    (18) 'Limited common element' means a portion of the common elements  
21                    allocated by the declaration or by operation of G.S. 47E-2-104(b)(2) for  
22                    the exclusive use of one or more but fewer than all of the lots.
- 23                    (19) 'Lot' means a physical portion of the planned community designated for  
24                    separate ownership or occupancy, the boundaries of which are described  
25                    pursuant to G.S. 47E-2-105(a)(3).
- 26                    (20) 'Lot owner' means a declarant or other person who owns a lot, or a  
27                    lessee of a lot in a leasehold planned community whose lease expires  
28                    simultaneously with any lease the expiration or termination of which  
29                    will remove the lot from the planned community, but does not include a  
30                    person having an interest in a lot solely as security for an obligation.
- 31                    (21) 'Master association' means an organization described in G.S. 47E-2-120,  
32                    whether or not it is also an association described in G.S. 47E-3-101.
- 33                    (22) 'Person' means a natural person, corporation, business trust, estate, trust,  
34                    partnership, association, joint venture, government, governmental  
35                    subdivision or agency, or other legal or commercial entity.
- 36                    (23) 'Planned community' means real estate with respect to which any  
37                    person, by virtue of his ownership of a lot, is expressly obligated by a  
38                    declaration to pay real property taxes, insurance premiums, or other  
39                    expenses to maintain, improve, or benefit other lots or other real estate  
40                    described in the declaration. For purposes of this act, neither a  
41                    cooperative nor a condominium is a planned community, but real estate  
42                    comprising a condominium or cooperative may be part of a planned

1 community. 'Ownership of a lot' does not include holding a leasehold  
2 interest of less than 20 years in a lot, including renewal options.

3 (24) 'Purchaser' means any person, other than a declarant or a person in the  
4 business of selling real estate for his own account, who by means of a  
5 voluntary transfer acquires a legal or equitable interest in a lot, other  
6 than (i) a leasehold interest (including renewal options) of less than 20  
7 years, or (ii) as security for an obligation.

8 (25) 'Reasonable attorneys' fees' means attorneys' fees actually incurred  
9 without regard to any limitations on attorneys' fees which may be  
10 included in other statutes.

11 (26) 'Real estate' means any leasehold or other estate or interest in, over, or  
12 under land, including structures, fixtures, and other improvements and  
13 interests which by custom, usage, or law pass with a conveyance of land  
14 though not described in the contract of sale or instrument of  
15 conveyance. 'Real estate' includes parcels with or without upper or  
16 lower boundaries, and spaces that may be filled with air or water.

17 (27) 'Residential purposes' means use for dwelling or recreational purposes,  
18 or both.

19 (28) 'Special declarant rights' means rights reserved for the benefit of a  
20 declarant (i) to complete improvements indicated on plats and plans  
21 filed with the declaration (G.S. 47E-2-109); (ii) to exercise any  
22 development right (G.S. 47E-2-110); (iii) to maintain sales offices,  
23 management offices, signs advertising the planned community, and  
24 models (G.S. 47E-2-115); (iv) to use easements through the common  
25 elements for the purpose of making improvements within the planned  
26 community or within real estate which may be added to the planned  
27 community (G.S. 47E-2-116); (v) to make the planned community part  
28 of a larger planned community or group of planned communities (G.S.  
29 47E-2-121); (vi) to make the planned community subject to a master  
30 association (G.S. 47E-2-120); or (vii) to appoint or remove any officer  
31 or executive board member of the association or any master association  
32 during any period of declarant control (G.S. 47E-3-103(d)).

33 (29) 'Time share' means a time share as defined in Chapter 93A of the  
34 General Statutes.

35 **"§ 47E-1-104. Variation.**

36 (a) Except as specifically provided in specific sections of this Chapter, the  
37 provisions of this Chapter may not be varied by the declaration or bylaws.

38 (b) The provisions of this Chapter may not be varied by agreement; however, after  
39 breach of a provision of this Chapter, rights created hereunder may be knowingly waived  
40 in writing.

41 (c) Notwithstanding any of the provisions of this Chapter, a declarant may not act  
42 under a power of attorney or proxy or use any other device to evade the limitations or  
43 prohibitions of this Chapter, the declaration, or the bylaws.

1 "§ 47E-1-105: Reserved.

2 "§ 47E-1-106. Applicability of local ordinances, regulations, and building codes.

3 A zoning, subdivision, or building code or other real estate use law, ordinance, or  
4 regulation may not prohibit a planned community or impose any requirement upon a  
5 planned community which it would not impose upon a substantially similar development  
6 under a different form of ownership or administration. Otherwise, no provision of this  
7 Chapter invalidates or modifies any provision of any zoning, subdivision, or building  
8 code or any other real estate use law, ordinance, or regulation. No local ordinance or  
9 regulation may require the recordation of a declaration prior to the date required by this  
10 Chapter.

11 "§ 47E-1-107. Eminent domain.

12 (a) If a lot is acquired by eminent domain, or if part of a lot is acquired by eminent  
13 domain leaving the lot owner with a remnant which may not practically or lawfully be  
14 used for any purpose permitted by the declaration, the award shall compensate the lot  
15 owner for his lot and its interest in the common element. Upon acquisition, unless the  
16 decree otherwise provides, the lot's allocated interests are automatically reallocated to the  
17 remaining lots in proportion to the respective allocated interests of those lots before the  
18 taking, exclusive of the lot taken.

19 (b) Except as provided in subsection (a) of this section, if part of a lot is acquired  
20 by eminent domain, the award shall compensate the lot owner for the reduction in value  
21 of the lot. Upon acquisition, unless the decree otherwise provides, (i) that lot's allocated  
22 interests are reduced in proportion to the reduction in the size of the lot, or on any other  
23 basis specified in the declaration, and (ii) the portion of the allocated interests divested  
24 from the partially acquired lot are automatically reallocated to that lot and the remaining  
25 lots in proportion to the respective allocated interests of those lots before the taking, with  
26 the partially acquired lot participating in the reallocation on the basis of its reduced  
27 allocated interests.

28 (c) If there is any reallocation under subsection (a) or (b) of this section, the  
29 association shall promptly prepare, execute, and record an amendment to the declaration  
30 reflecting the reallocations. Any remnant of a lot remaining after part of a lot is taken  
31 under this subsection is thereafter a common element.

32 (d) If part of the common elements is acquired by eminent domain, the portion of  
33 the award attributable to the common elements taken shall be paid to the association.  
34 Unless the declaration provides otherwise, any portion of the award attributable to the  
35 acquisition of a limited common element shall be apportioned among the owners of the  
36 lots to which that limited common element was allocated at the time of acquisition based  
37 on their allocated interest in the common elements before the taking.

38 (e) The court decree shall be recorded in every county in which any portion of the  
39 planned community is located.

40 "§ 47E-1-108. Supplemental general principles of law applicable.

41 The principles of law and equity supplement the provisions of this act, except to the  
42 extent inconsistent with this act.

43 "§§ 47E-1-109 through 47E-1-115: Reserved.

**"ARTICLE 2.**  
**"CREATION, ALTERATION, AND TERMINATION OF PLANNED**  
**COMMUNITIES.**

**"§ 47E-2-101. Creation of the planned community.**

A declaration creating a planned community shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the planned community is located, and shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the declaration.

**"§ 47E-2-102: Reserved.**

**"§ 47E-2-103. Construction and validity of declaration and bylaws.**

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to G.S. 47E-3-102(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this act.

(d) Title to a lot and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this act. Whether a substantial failure to comply with this act impairs marketability shall be determined by the law of this State relating to marketability.

**"§ 47E-2-104. Description of lots.**

(a) A description of a lot which sets forth the name of the planned community, the recording data for the declaration or a plat on which the lot is identified, and the identifying number of the lot, or which otherwise complies with the general requirements of the laws of this State concerning description of real property, is a sufficient legal description of that lot and all rights, obligations, and interests appurtenant to that lot which are created by the declaration, the bylaws, or this act.

(b) Except as provided by the declaration:

(1) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a lot, any portion thereof serving only that lot is a limited common element allocated solely to that lot, and any portion thereof serving more than one lot or any portion of the common elements is a part of the common elements.

(2) All fixtures, improvements, attachments, and systems designed to serve a single lot, but located outside the lot's boundaries, are limited common elements allocated exclusively to that lot.

**"§ 47E-2-105. Contents of declaration.**

(a) The declaration for a planned community shall contain:

(1) The name of the planned community and the name of the association;

(2) The name of every county in which any part of the planned community is situated;

- 1           (3) A description by reference to the plat(s) described in G.S. 47E-2-109 of  
2 the boundaries of each lot, including the lot's identifying number, and  
3 the common elements created by the declaration;
- 4           (4) A description of any real estate which is or must become common  
5 elements or limited common elements, other than those specified in G.S.  
6 47E-2-104(b), as provided in G.S. 47E-2-109(b)(9);
- 7           (5) A description of any real estate (except real estate subject to  
8 development rights) which may be allocated subsequently as limited  
9 common elements, other than limited common elements specified in  
10 G.S. 47E-2-104(b), together with a statement that they may be so  
11 allocated;
- 12           (6) A description of any development rights and other special declarant  
13 rights reserved by the declarant, together with a legally sufficient  
14 description of the real estate to which each of those rights applies, a  
15 statement of the maximum number of lots which the declarant reserves  
16 the right to create, and a time limit within which each of those rights  
17 must be exercised;
- 18           (7) If any development right may be exercised with respect to different  
19 parcels of the real estate at different times, a statement to that effect  
20 together with (i) either a statement fixing the boundaries of those  
21 portions and regulating the order in which those portions may be  
22 subjected to the exercise of each development right, or a statement that  
23 no assurances are made in those regards; and (ii) a statement as to  
24 whether, if any development right is exercised in any portion of the real  
25 estate subject to that development right, that development right must be  
26 exercised in all or in any other portion of the remainder of that real  
27 estate;
- 28           (8) Any other conditions or limitations under which the rights described in  
29 subdivision (6) of this subsection may be exercised or will lapse;
- 30           (9) An allocation to each lot of the allocated interests in the manner  
31 described in G.S. 47E-2-107;
- 32           (10) Any restrictions on use, occupancy, and alienation of the lots;
- 33           (11) The recording data for recorded easements and licenses appurtenant to  
34 or included in the planned community or to which any portion of the  
35 planned community is or may become subject by virtue of a reservation  
36 in the declaration; and
- 37           (12) All matters required by G.S. 47E-2-106, 47E-2-107, 47E-2-108, 47E-2-  
38 109, 47E-2-115, 47E-2-116, and 47E-3-103(d).
- 39           (b) The declaration may contain any other matters the declarant deems  
40 appropriate.
- 41 **"§ 47E-2-106. Leasehold planned communities.**



1       (a) Any lease the expiration or termination of which may terminate the planned  
2 community or reduce its size, or a memorandum thereof, shall be recorded. Every lessor  
3 of those leases shall sign the declaration, and the declaration shall state:

4           (1) Where the complete lease may be inspected;

5           (2) The date on which the lease is scheduled to expire;

6           (3) A legally sufficient description of the real estate subject to the lease;

7           (4) Any right of the lot owners to redeem the reversion and the manner  
8 whereby those rights may be exercised, or a statement that they do not  
9 have those rights;

10          (5) Any right of the lot owners to remove any improvements after the  
11 expiration or termination of the lease, or a statement that they do not  
12 have those rights; and

13          (6) Any rights of the lot owners to renew the lease and the conditions of any  
14 renewal, or a statement that they do not have those rights.

15       (b) After the declaration for a leasehold planned community is recorded, neither  
16 the lessor nor his successor in interest may terminate the leasehold interest of a lot owner  
17 who, after demand, makes timely payment of his share of the rent determined in  
18 proportion to his common expense liability and otherwise complies with all covenants  
19 which, if violated, would entitle the lessor to terminate the lease. A lot owner's leasehold  
20 interest is not affected by failure of any other person to pay rent or fulfill any other  
21 covenant.

22       (c) Acquisition of the leasehold interest of any lot owner by the owner of the  
23 reversion or remainder does not merge the leasehold and fee simple interests unless the  
24 leasehold interests of all lot owners subject to that reversion or remainder are acquired.

25       (d) If the expiration or termination of a lease decreases the number of lots in a  
26 planned community, the allocated interests shall be reallocated in accordance with G.S.  
27 47E-1-107(a) as though those lots had been taken by eminent domain. Reallocations  
28 shall be confirmed by an amendment to the declaration prepared, executed, and recorded  
29 by the association.

30 **"§ 47E-2-107. Allocation of votes and common expense liabilities.**

31       (a) The declaration shall allocate a fraction or percentage of the common expenses  
32 of the association and a portion of the votes in the association to each lot in the planned  
33 community and state the formulas used to establish those allocations. Unless otherwise  
34 stated in the declaration, votes and common expenses shall be allocated equally among  
35 all lots. No allocation may discriminate in favor of lots owned by the declarant or an  
36 affiliate of the declarant.

37       (b) If lots may be added to or withdrawn from the planned community, the  
38 declaration shall state the formulas to be used to reallocate the allocated interests among  
39 all lots included in the planned community after the addition or withdrawal.

40       (c) The declaration may provide: (i) that different allocations of votes shall be  
41 made to the lots on particular matters specified in the declaration; (ii) for cumulative  
42 voting only for the purpose of electing members of the executive board; and (iii) for class  
43 voting on specified issues affecting the class if necessary to protect valid interests of the

1 class. No declarant or affiliate of the declarant may utilize cumulative or class voting for  
2 the purpose of evading any limitation imposed on declarants or affiliates of declarants by  
3 this act, nor may lots constitute a class because they are owned by a declarant or an  
4 affiliate of the declarant.

5 (d) Except for minor variations due to rounding, the sum of the common expense  
6 liabilities allocated at any time to all the lots shall equal one if stated as a fraction or one  
7 hundred percent (100%) if stated as a percentage. In the event of a discrepancy between  
8 an allocated interest and the result derived from application of the pertinent formula, the  
9 allocated interest prevails.

10 **"§ 47E-2-108. Limited common elements.**

11 (a) Except for the limited common elements described in G.S. 47E-2-104(b), the  
12 declaration shall specify to which lot or lots each limited common element is allocated.  
13 That allocation may not be altered without the unanimous consent of the lot owners  
14 whose lots are affected.

15 (b) Except as the declaration otherwise provides, a limited common element may  
16 be reallocated by an amendment to the declaration executed by all the lot owners between  
17 or among whose lots the reallocation is made. The lot owners executing the amendment  
18 shall provide an original in recordable form with sufficient recording fees to the  
19 association, which shall record it. The amendment shall be recorded in the names of the  
20 parties and the planned community.

21 (c) A common element not previously allocated as a limited common element may  
22 not be so allocated except by unanimous consent or pursuant to provisions in the  
23 declaration made in accordance with G.S. 47E-2-105(a)(5). All such allocations shall be  
24 made by amendments to the declaration and shall become effective in accordance with  
25 G.S. 47E-2-117(c).

26 **"§ 47E-2-109. Plats.**

27 (a) Plats are a part of the declaration and shall be recorded by the declarant. Each  
28 plat shall be clear and legible and contain a certification by a land surveyor or engineer  
29 registered under the provisions of Chapter 89C of the General Statutes that the plat  
30 contains all information required by this section.

31 (b) Each plat shall show:

32 (1) The name and a survey or general schematic map of the entire planned  
33 community;

34 (2) The location and dimensions of all real estate not subject to  
35 development rights, or subject only to the development right to  
36 withdraw, and the location and dimensions of all existing improvements  
37 within that real estate;

38 (3) The location and dimensions of any real estate subject to development  
39 rights, labeled to identify the rights applicable to each parcel;

40 (4) The extent of any encroachments by or upon any portion of the planned  
41 community;

1           (5)    The location and dimensions of all easements having specific location  
2           and dimensions and serving and burdening any portion of the planned  
3           community;

4           (6)    The location and dimensions of any lot boundaries and that lot's  
5           identifying number;

6           (7)    A legally sufficient description of any real estate in which the lot  
7           owners will own only an estate for years, labeled as 'leasehold real  
8           estate';

9           (8)    The distance between noncontiguous parcels of real estate comprising  
10          the planned community; and

11          (9)    The location and dimensions of limited common elements provided for  
12          in the declaration pursuant to G.S. 47E-2-105(a)(4) and (5) but not  
13          including parking spaces or the other limited common elements  
14          described in G.S. 47E-2-104(b).

15          (c)    A plat may also show the intended location and dimensions of any  
16          contemplated improvement to be constructed anywhere within the planned community.  
17          Any contemplated improvement shown shall be labeled either 'MUST BE BUILT' or  
18          'NEED NOT BE BUILT'.

19          (d)    Upon exercising any development right, the declarant shall record new plats  
20          necessary to conform to the requirements of subsections (a), (b), and (c) of this section.

21          **§ 47E-2-110. Development rights.**

22          (a)    To exercise any development right reserved under G.S. 47E-2-105(a)(6), the  
23          declarant shall record an amendment to the declaration (G.S. 47E-2-117) and comply  
24          with G.S. 47E-2-109. The declarant is the owner of any lots thereby created. The  
25          amendment to the declaration shall assign an identifying number to each new lot created,  
26          and except in the case of subdivision or conversion of lots described in subsection (c) of  
27          this section, reallocate the allocated interests among all lots. The amendment shall  
28          describe any common elements and any limited common elements thereby created and, in  
29          the case of limited common elements, designate the lots to which each is allocated to the  
30          extent required by G.S. 47E-2-108 (Limited common elements).

31          (b)    Development rights may be reserved within any real estate added to the  
32          planned community if the amendment adding that real estate includes all matters required  
33          by, and is in compliance with, G.S. 47E-2-105 and also if the plats include all matters  
34          required by G.S. 47E-2-109. This provision does not extend the time limit on the  
35          exercise of development rights imposed by the declaration pursuant to G.S. 47E-2-  
36          105(a)(6).

37          (c)    Whenever a declarant exercises a development right to subdivide or convert a  
38          lot previously created into additional lots, common elements, or both:

39               (1)    If the declarant converts the lot entirely to common elements, the  
40               amendment to the declaration shall reallocate all the allocated interests  
41               of that lot among the other lots as if that lot had been taken by eminent  
42               domain; or

- 1           (2)    If the declarant subdivides the lot into two or more lots, whether or not  
2           any part of the lot is converted into common elements, the amendments  
3           to the declaration shall reallocate all the allocated interests of the lot  
4           among the lots created by the subdivision in any reasonable manner  
5           prescribed by the declarant.
- 6           (d)    If the declaration provides, pursuant to G.S. 47E-2-105(a)(6), that all or a  
7           portion of the real estate is subject to the development right of withdrawal:
- 8           (1)    If all the real estate is subject to withdrawal, and the declaration does  
9           not describe separate portions of real estate subject to that right, none of  
10           the real estate may be withdrawn after a lot has been conveyed to a  
11           purchaser; and
- 12           (2)    If a portion or portions are subject to withdrawal, no portion may be  
13           withdrawn after a lot in that portion has been conveyed to a purchaser.
- 14           (e)    Any portion of the common elements for which the declarant has reserved any  
15           development rights shall be separately taxed and assessed against the declarant, and the  
16           declarant alone is liable for payment of those taxes.

17    **"§ 47E-2-111. Alterations of lots.**

18           Subject to the provisions of the declaration and other provisions of law, a lot owner:

- 19           (1)    May make any improvements or alterations to his lot that do not impair  
20           the structural integrity or mechanical systems or lessen the support of  
21           any other portion of the planned community;
- 22           (2)    May not change the appearance of the common elements, without  
23           permission of the association; and
- 24           (3)    After acquiring an adjoining lot or an adjoining part of an adjoining lot,  
25           may remove or alter any intervening partition or create apertures therein  
26           if those acts do not impair the structural integrity or mechanical systems  
27           or lessen the support of any other portion of the planned community.  
28           Removal of partitions or creation of apertures under this subdivision is  
29           not an alteration of boundaries.

30    **"§ 47E-2-112: Reserved.**

31    **"§ 47E-2-113. Subdivision of lots.**

32           (a)    If the declaration expressly so permits, a lot may be subdivided. Subject to the  
33           provisions of the declaration and other provisions of law, upon application of a lot owner  
34           to subdivide a lot, the association shall prepare, execute, and record an amendment to the  
35           declaration, including the plats, subdividing that lot. All expenses incurred in connection  
36           with the subdivision of a lot shall be paid in advance to the association by the lot owner  
37           requesting that the lot be subdivided.

38           (b)    The amendment to the declaration shall be executed by the owner of the lot to  
39           be subdivided, shall assign an identifying number to each lot created, and shall reallocate  
40           the allocated interests formerly allocated to the subdivided lot to the new lots in any  
41           reasonable manner prescribed by the owner of the subdivided lot.

42    **"§ 47E-2-114: Reserved.**

43    **"§ 47E-2-115. Use for sale purposes.**

1 A declarant may maintain sales offices, management offices, and models on lots or on  
2 common elements in the planned community only if the declaration so provides and  
3 specifies the rights of a declarant with regard to the number, size, location, and relation  
4 thereof. Subject to any limitations in the declaration, a declarant may maintain signs on  
5 the common elements advertising the planned community. The provisions of this section  
6 are subject to the provisions of other State law, and to local ordinances.

7 **"§ 47E-2-116. Easement rights.**

8 (a) Subject to the provisions of G.S. 47E-3-112, (Alienation of common elements)  
9 the unit owners have an easement (i) in the common elements for purposes of access to  
10 their lots and (ii) to use the common elements and all real estate which must become  
11 common elements (G.S. 47E-2-105(a)(4)) for all other purposes, except as otherwise  
12 provided in this act.

13 (b) Subject to the provisions of the declaration, a declarant has an easement  
14 through the common elements as may be reasonably necessary for the purpose of  
15 discharging a declarant's obligations or exercising special declarant rights, whether  
16 arising under this act or reserved in the declaration.

17 **"§ 47E-2-117. Amendment of declaration.**

18 (a) Except in cases of amendments that may be executed by a declarant under G.S.  
19 47E-2-109(d) or G.S. 47E-2-110; by the association under G.S. 47E-1-107, 47E-2-  
20 106(d), 47E-2-108(c), or 47E-2-113(a); or by certain lot owners under G.S. 47E-2-  
21 108(b), 47E-2-113(b), or 47E-2-118(b), and except as limited by subsection (d) of this  
22 section, the declaration may be amended only by affirmative vote or written agreement  
23 signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in  
24 the association are allocated, or any larger majority the declaration specifies. The  
25 declaration may specify a smaller number only if all of the lots are restricted exclusively  
26 to nonresidential use.

27 (b) No action to challenge the validity of an amendment adopted pursuant to this  
28 section may be brought more than one year after the amendment is recorded.

29 (c) Every amendment to the declaration shall be recorded in every county in which  
30 any portion of the planned community is located and is effective only upon recordation.  
31 An amendment shall be indexed in the Grantee index in the name of the planned  
32 community and the association and in the Grantor index in the name of each person  
33 executing the amendment.

34 (d) Except to the extent expressly permitted or required by other provisions of this  
35 act, no amendment may create or increase the special declarant rights, increase the  
36 number of lots, change the boundaries of any lot, the allocated interests of a lot, or the  
37 uses to which any lot is restricted, in the absence of unanimous consent of the lot owners.

38 (e) Amendments to the declaration required by this act to be recorded by the  
39 association shall be prepared, executed, recorded, and certified on behalf of the  
40 association by any officer of the association designated for that purpose or, in the absence  
41 of designation, by the president of the association.

42 **"§ 47E-2-118. Termination of planned community.**

1       (a) Except in the case of taking of all the lots by eminent domain (G.S. 47E-1-  
2 107), a planned community may be terminated only by agreement of lot owners of lots to  
3 which at least eighty percent (80%) of the votes in the association are allocated, or any  
4 larger percentage the declaration specifies. The declaration may specify a smaller  
5 percentage only if all of the lots in the planned community are restricted exclusively to  
6 nonresidential uses.

7       (b) An agreement to terminate shall be evidenced by the execution of a termination  
8 agreement, or ratifications thereof, in the same manner as a deed, by the requisite number  
9 of lot owners. The termination agreement shall specify a date after which the agreement  
10 will be void unless it is recorded before that date. A termination agreement and all  
11 ratifications thereof shall be recorded in every county in which a portion of the planned  
12 community is situated and is effective only upon recordation.

13       (c) A termination agreement may provide for sale of the common elements, but  
14 may not require that the lots be sold following termination, unless the declaration as  
15 originally recorded provided otherwise or unless all the lot owners consent to the sale. If,  
16 pursuant to the agreement, any real estate in the planned community is to be sold  
17 following termination, the termination agreement shall set forth the minimum terms of  
18 the sale.

19       (d) The association, on behalf of the lot owners, may contract for the sale of real  
20 estate in the planned community, but the contract is not binding until approved pursuant  
21 to subsections (a) and (b) of this section. Until the sale has been concluded and the  
22 proceeds thereof distributed, the association continues in existence with all powers it had  
23 before termination. Proceeds of the sale shall be distributed to lot owners and lien  
24 holders as their interests may appear, as provided in the termination agreement.

25       (e) If the real estate constituting the planned community is not to be sold following  
26 termination, title to the common elements vests in the lot owners upon termination as  
27 tenants in common in proportion to their respective interests as provided in the  
28 termination agreement.

29       (f) Following termination of the planned community, the proceeds of any sale of  
30 real estate, together with the assets of the association, are held by the association as  
31 trustee for lot owners and holders of liens on the lots as their interests may appear. All  
32 other creditors of the association are to be treated as if they had perfected liens on the  
33 common elements immediately before termination.

34       (g) If the termination agreement does not provide for the distribution of sales  
35 proceeds pursuant to subsection (d) of this section or the vesting of title pursuant to  
36 subsection (e) of this section, sales proceeds shall be distributed and title shall vest in  
37 accordance with each lot owner's allocated share of common expense liability.

38       (h) Except as provided in subsection (i) of this section, foreclosure or enforcement  
39 of a lien or encumbrance against the common elements does not of itself terminate the  
40 planned community, and foreclosure or enforcement of a lien or encumbrance against a  
41 portion of the common elements other than withdrawable real estate does not withdraw  
42 that portion from the planned community. Foreclosure or enforcement of a lien or  
43 encumbrance against withdrawable real estate does not of itself withdraw that real estate

1 from the planned community, but the person taking title thereto has the right to require  
2 from the association, upon request, an amendment excluding the real estate from the  
3 planned community.

4 (i) If a lien or encumbrance against a portion of the real estate comprising the  
5 planned community has priority over the declaration and the lien or encumbrance has not  
6 been partially released, the parties foreclosing the lien or encumbrance may, upon  
7 foreclosure, record an instrument excluding the real estate subject to that lien or  
8 encumbrance from the planned community.

9 **"§ 47E-2-119: Reserved.**

10 **"§ 47E-2-120. Master associations.**

11 (a) If the declaration for a planned community provides that any of the powers  
12 described in G.S. 47E-3-102 are to be exercised by or may be delegated to a profit or  
13 nonprofit corporation which exercises those or other powers on behalf of one or more  
14 other planned communities or for the benefit of the lot owners of one or more other  
15 planned communities, all provisions of this act applicable to lot owners' associations  
16 apply to any such corporation, except as modified by this section.

17 (b) Unless a master association is acting in the capacity of an association described  
18 in G.S. 47E-3-101, it may exercise the powers set forth in G.S. 47E-3-102(a)(2) only to  
19 the extent expressly permitted in the declarations of the planned communities which are  
20 part of the master association or expressly described in the delegations of power from  
21 those planned communities to the master association.

22 (c) If the declaration of any planned community provides that the executive board  
23 may delegate certain powers to a master association, the members of the executive board  
24 have no liability for the acts or omissions of the master association with respect to those  
25 powers following delegation.

26 (d) The rights and responsibilities of lot owners with respect to the lot owners'  
27 association set forth in G.S. 47E-3-103, 47E-3-108, 47E-3-109, 47E-3-110, and 47E-3-  
28 112, apply in the conduct of the affairs of a master association only to those persons who  
29 elect the board of a master association, whether or not those persons are otherwise lot  
30 owners within the meaning of this act.

31 (e) Notwithstanding the provisions of G.S. 47E-3-103(f) with respect to the  
32 election of the executive board of an association by all lot owners after the period of  
33 declarant control ends, and even if a master association is also an association described in  
34 G.S. 47E-3-101, the articles of incorporation of the master association and the declaration  
35 of each planned community, the powers of which are assigned by the declaration or  
36 delegated to the master association, may provide that the executive board of the master  
37 association shall be elected after the period of declarant control in any of the following  
38 ways:

39 (1) All lot owners of all planned communities subject to the master  
40 association may elect all members of that executive board.

41 (2) All members of the executive boards of all planned communities subject  
42 to the master association may elect all members of that executive board.

1           (3) All lot owners of each planned community subject to the master  
2 association may elect specified members of that executive board.

3           (4) All members of the executive board of each planned community subject  
4 to the master association may elect specified members of that executive  
5 board.

6 **"§ 47E-2-121. Merger of consolidation of planned communities.**

7           (a) Any two or more planned communities, by agreement of the lot owners as  
8 provided in subsection (b) of this section, may be merged or consolidated into a single  
9 planned community. In the event of a merger or consolidation, unless the agreement  
10 otherwise provides, the resultant planned community is, for all purposes, the legal  
11 successor of all of the preexisting planned communities, and the operations and activities  
12 of all associations of the preexisting planned communities shall be merged or  
13 consolidated into a single association which shall hold all powers, rights, obligations,  
14 assets, and liabilities of all preexisting associations.

15           (b) An agreement of two or more planned communities to merge or consolidate  
16 pursuant to subsection (a) of this section shall be evidenced by the president of the  
17 association of each of the preexisting planned communities following approval by owners  
18 of lots to which are allocated the percentage of votes in each planned community required  
19 to terminate that planned community. Any such agreement shall be recorded in every  
20 county in which a portion of the planned community is located and is not effective until  
21 recorded.

22           (c) Every merger or consolidation agreement shall provide for the reallocation of  
23 the allocated interests in the new association among the lots of the resultant planned  
24 community either (i) by stating the reallocations or the formulas upon which they are  
25 based or (ii) by stating the percentage of overall common expense liabilities and votes in  
26 the new association which are allocated to all of the lots comprising each of the  
27 preexisting planned communities, and providing that the portion of the percentages  
28 allocated to each lot formerly comprising a part of the preexisting planned community  
29 shall be equal to the percentages of common expense liabilities and votes in the  
30 association allocated to that lot by the declaration of the preexisting planned community.

31 **"§ 47E-2-122. Addition of unspecified real estate.**

32           If the right is originally reserved in the declaration, the declarant may, in addition to  
33 any other development right, amend the declaration at any time during as many years as  
34 are specified in the declaration to add additional real estate to the planned community  
35 without describing the location of that real estate in the original declaration; provided,  
36 that the amount of real estate added to the planned community pursuant to this section  
37 may not exceed ten percent (10%) of the real estate described in G.S. 47E-2-105(a)(3),  
38 and provided further, that the declarant may not in any event increase the number of lots  
39 in the planned community beyond the number stated in the original declaration pursuant  
40 to G.S. 47E-2-105(a)(5).

41 **"ARTICLE 3.**

42 **"MANAGEMENT OF PLANNED COMMUNITY.**

43 **"§ 47E-3-101. Organization of owners' association.**



1 A lot owners' association shall be incorporated no later than the date the first lot in the  
2 planned community is conveyed. The membership of the association at all times shall  
3 consist exclusively of all the lot owners or, following termination of the planned  
4 community, of all persons entitled to distributions of proceeds under G.S. 47E-2-118.  
5 The association shall be organized as a profit or nonprofit corporation.

6 **"§ 47E-3-102. Powers of owners' association.**

7 (a) Subject to the provisions of the declaration, the association may:

8 (1) Adopt and amend bylaws and rules and regulations;

9 (2) Adopt and amend budgets for revenues, expenditures, and reserves and  
10 collect assessments for common expenses from lot owners;

11 (3) Hire and discharge managing agents and other employees, agents, and  
12 independent contractors;

13 (4) Institute, defend, or intervene in litigation or administrative proceedings  
14 on matters affecting the planned community;

15 (5) Make contracts and incur liabilities;

16 (6) Regulate the use, maintenance, repair, replacement, and modification of  
17 common elements;

18 (7) Cause additional improvements to be made as a part of the common  
19 elements;

20 (8) Acquire, hold, encumber, and convey in its own name any right, title, or  
21 interest to real or personal property, provided that common elements  
22 may be conveyed or subjected to a security interest only pursuant to  
23 G.S. 47E-3-112;

24 (9) Grant easements, leases, licenses, and concessions through or over the  
25 common elements;

26 (10) Impose and receive any payments, fees, or charges for the use, rental, or  
27 operation of the common elements other than the limited common  
28 elements described in G.S. 47E-2-104(b) and for services provided to  
29 lot owners;

30 (11) Impose reasonable charges for late payment of assessments and, after  
31 notice and an opportunity to be heard, suspend privileges or services  
32 provided by the association (except rights of access to lots including  
33 those provided for in G.S. 47E-2-116(a)(i)) during any period that  
34 assessments or other amounts due and owing to the association remain  
35 unpaid for a period of 30 days or longer;

36 (12) After notice and an opportunity to be heard, impose reasonable fines or  
37 suspend privileges or services provided by the association (except rights  
38 of access to lots including those provided for in G.S. 47E-2-116(a)(i))  
39 for reasonable periods for violations of the declaration, bylaws, and  
40 rules and regulations of the association;

41 (13) Impose reasonable charges in connection with the preparation and  
42 recordation of amendments to the declaration, initial sale certificates

1                   required by G.S. 47E-4-102, resale statements required by G.S. 47E-4-  
2                   109, or statements of unpaid assessments;

3           (14) Provide for the indemnification of and maintain liability insurance for  
4           its officers, executive board, directors, employees, and agents;

5           (15) Assign its right to future income, including the right to receive common  
6           expense assessments;

7           (16) Exercise all other powers that may be exercised in this State by legal  
8           entities of the same type as the association; and

9           (17) Exercise any other powers necessary and proper for the governance and  
10           operation of the association.

11           (b) Notwithstanding subsection (a) of this section, the declaration may not impose  
12 limitations on the power of the association to deal with a declarant which are more  
13 restrictive than the limitations imposed on the power of the association to deal with other  
14 persons.

15 **"§ 47E-3-103. Executive board members and officers.**

16           (a) Except as provided in the declaration, in the bylaws, in subsection (b) of this  
17 section, or in other provisions of this act, the executive board may act in all instances on  
18 behalf of the association. In the performance of their duties, officers and members of the  
19 executive board shall be deemed to stand in a fiduciary relationship to the association and  
20 the lot owners and shall discharge their duties in good faith, and with that diligence and  
21 care which ordinarily prudent men would exercise under similar circumstances in like  
22 positions.

23           (b) The executive board may not act on behalf of the association to amend the  
24 declaration (G.S. 47E-2-117), to terminate the planned community (G.S. 47E-2-118), or  
25 to elect members of the executive board or determine the qualifications, powers and  
26 duties, or terms of office of executive board members (G.S. 47E-3-103(f)), but the  
27 executive board may fill vacancies in its membership for the unexpired portion of any  
28 term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot  
29 owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at  
30 any meeting of the lot owners at which a quorum is present, may remove any member of  
31 the executive board with or without cause, other than a member appointed by the  
32 declarant.

33           (c) Within 30 days after adoption of any proposed budget for the planned  
34 community, the executive board shall provide a summary of the budget to all the lot  
35 owners and shall set a date for a meeting of the lot owners to consider ratification of the  
36 budget not less than 14 nor more than 30 days after mailing of the summary. There shall  
37 be no requirement that a quorum be present at the meeting. The budget is ratified unless  
38 at that meeting a majority of all the lot owners in the association or any larger vote  
39 specified in the declaration rejects the budget. In the event the proposed budget is  
40 rejected, the periodic budget last ratified by the lot owners shall be continued until such  
41 time as the lot owners ratify a subsequent budget proposed by the executive board.

42           (d) Subject to subsection (e) of this section, the declaration may provide for a  
43 period of declarant control of the association, during which period a declarant, or persons

1 designated by him, may appoint and remove the officers and members of the executive  
2 board. Regardless of the period provided in the declaration, a period of declarant control  
3 terminates no later than the earlier of: (i) 120 days after conveyance of seventy-five  
4 percent (75%) of the lots (including lots which may be created pursuant to special  
5 declarant rights) to lot owners other than a declarant; (ii) two years after all declarants  
6 have ceased to offer lots for sale in the ordinary course of business; or (iii) two years after  
7 any development right to add new lots was last exercised. A declarant may voluntarily  
8 surrender the right to appoint and remove officers and members of the executive board  
9 before termination of that period, but in that event he may require, for the duration of the  
10 period of declarant control, that specified actions of the association or executive board, as  
11 described in a recorded instrument executed by the declarant, be approved by the  
12 declarant before they become effective.

13 (e) Not later than 60 days after conveyance of twenty-five percent (25%) of the  
14 lots (including lots which may be created pursuant to special declarant rights) to lot  
15 owners other than a declarant, at least one member and not less than twenty-five percent  
16 (25%) of the members of the executive board shall be elected by lot owners other than the  
17 declarant. Not later than 60 days after conveyance of fifty percent (50%) of the lots  
18 (including lots which may be created pursuant to special declarant rights) to lot owners  
19 other than a declarant, not less than thirty-three percent (33%) of the members of the  
20 executive board shall be elected by lot owners other than the declarant.

21 (f) Not later than the termination of any period of declarant control, the lot owners  
22 shall elect an executive board of at least three members, at least a majority of whom shall  
23 be lot owners. The executive board shall elect the officers. The executive board  
24 members and officers shall take office upon election.

25 **"§ 47E-3-104. Transfer of special declarant rights.**

26 (a) No special declarant right (G.S. 47E-1-103(28)) created or reserved under this  
27 act may be transferred except by an instrument evidencing the transfer recorded in every  
28 county in which any portion of the planned community is located. The instrument is not  
29 effective unless executed by the transferee.

30 (b) Upon transfer of any special declarant right, the liability of a transferor  
31 declarant is as follows:

32 (1) A transferor is not relieved of any obligation or liability arising before  
33 the transfer, including, but not limited to, liability as to obligations  
34 related to warranties. Lack of privity does not deprive any lot owner of  
35 standing to maintain an action to enforce any obligation of the  
36 transferor.

37 (2) If a successor to any special declarant right is an affiliate of a declarant  
38 (G.S. 47E-1-103(1)), the transferor is jointly and severally liable with  
39 the successor for any obligation or liability of the successor which  
40 relates to the planned community.

41 (3) If a transferor retains any special declarant right, but transfers other  
42 special declarant rights to a successor who is not an affiliate of the  
43 declarant, the transferor is liable for any obligations or liabilities

1 imposed on a declarant by this act or by the declaration relating to the  
2 retained special declarant rights and arising after the transfer.

3 (4) A transferor has no liability for any act or omission or any breach of a  
4 contractual or warranty obligation arising from the exercise of a special  
5 declarant right by a successor declarant who is not an affiliate of the  
6 transferor.

7 (c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of  
8 foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or  
9 sale under Bankruptcy Code or receivership proceedings, of any lots owned by a  
10 declarant or real estate in a planned community subject to development rights, a person  
11 acquiring title to all the real estate being foreclosed or sold, but only upon his request,  
12 succeeds to all special declarant, or only to any rights reserved in the declaration and held  
13 by that declarant to maintain models, sales offices, and signs. The judgment or  
14 instrument conveying title shall provide for transfer of only the special declarant rights  
15 requested.

16 (d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust,  
17 or sale under Bankruptcy Code or receivership proceedings, of all lots and other real  
18 estate in a planned community owned by a declarant, the declarant ceases to have any  
19 special declarant rights.

20 (e) The liabilities and obligations of a person who succeeds to special declarant  
21 rights are as follows:

22 (1) A successor to any special declarant right who is an affiliate of a  
23 declarant is subject to all obligations and liabilities imposed on the  
24 transferor related to the planned community.

25 (2) A successor to any special declarant right, other than a successor  
26 described in subdivision (3) or (4) of this subsection, who is not an  
27 affiliate of a declarant, is subject to all obligations and liabilities  
28 imposed:

29 a. On a declarant which relate to his exercise or nonexercise of  
30 special declarant rights; or

31 b. On his transferor, other than:

32 1. Misrepresentations by any prior declarant;

33 2. Warranty obligations on improvements made by any  
34 previous declarant, or made before the planned  
35 community was created;

36 3. Breach of any fiduciary obligation by any previous  
37 declarant or his appointees to the executive board; or

38 4. Any liability or obligation imposed on the transferor as a  
39 result of the transferor's acts or omissions after the  
40 transfer.

41 (3) A successor to only a right reserved in the declaration to maintain  
42 models, sales offices, and signs (G.S. 47E-2-115), if he is not an affiliate  
43 of a declarant, may not exercise any other special declarant right, and is

1           not subject to any liability or obligation as a declarant, except the  
2           obligation to provide an initial sale certificate, and any liability arising  
3           as a result thereof.

- 4           (4) A successor to all special declarant rights held by his transferor who is  
5           not an affiliate of that declarant and who succeeded to those rights  
6           pursuant to a deed in lieu of foreclosure or a judgment or instrument  
7           conveying title to lots under subsection (c) of this section, may declare  
8           his intention in a recorded instrument to hold those rights solely for  
9           transfer to another person. Thereafter, until transferring all special  
10           declarant rights to any person acquiring title to any lot owned by the  
11           successor, or until recording an instrument permitting exercise of all of  
12           those rights, other than any right held by his transferor to control the  
13           executive board in accordance with the provisions of G.S. 47E-3-103(d)  
14           for the duration of any period of declarant control, any attempted  
15           exercise of those rights is void. So long as a successor declarant may  
16           not exercise special declarant rights under this subsection, he is not  
17           subject to any liability or obligation as a declarant other than liability for  
18           his acts and omissions under G.S. 47E-3-103(d).

19 **"§ 47E-3-105. Termination of contracts and leases of declarant.**

20           If entered into before the executive board elected by the lot owners pursuant to G.S.  
21           47E-3-103(f) takes office, (i) any management contract, employment contract, or lease of  
22           recreational or parking areas or facilities affecting or related to the planned community,  
23           (ii) any other contract or lease between the association and a declarant or an affiliate of a  
24           declarant, or (iii) any contract or lease affecting or related to the planned community that  
25           is not bona fide or was unconscionable to the lot owners at the time entered into under the  
26           circumstances then prevailing, may be terminated without penalty by the association at  
27           any time after the executive board elected by the lot owners pursuant to G.S. 47E-3-  
28           103(f) takes office upon not less than 90 days notice to the other party. Notice of the  
29           substance of the provisions of this section shall be set out in each contract entered into by  
30           or on behalf of the association before the executive board elected by the lot owners  
31           pursuant to G.S. 47E-3-103(f) takes office. Failure of the contract to contain such a  
32           provision shall not affect the rights of the association under this section. This section  
33           does not apply to any lease, the termination of which would terminate the planned  
34           community or reduce its size, unless the real estate subject to that lease was included in  
35           the planned community for the purpose of avoiding the right of the association to  
36           terminate a lease under this section.

37 **"§ 47E-3-106. Bylaws.**

- 38           (a) The bylaws of the association shall provide for:  
39               (1) The number of members of the executive board and the titles of the  
40               officers of the association;  
41               (2) Election by the executive board of officers of the association;

1           (3) The qualifications, powers and duties, terms of office, and manner of  
2           electing and removing executive board members and officers and filling  
3           vacancies;

4           (4) Which, if any, of its powers the executive board or officers may  
5           delegate to other persons or to a managing agent;

6           (5) Which of its officers may prepare, execute, certify, and record  
7           amendments to the declaration on behalf of the association; and

8           (6) The method of amending the bylaws.

9           (b) The bylaws may provide for any other matters the association deems necessary  
10          and appropriate.

11          **"§ 47E-3-107. Upkeep of planned community; responsibility and assessments for**  
12          **damages.**

13          (a) Except as otherwise provided in the declaration, G.S. 47E-3-113(h) or  
14          subsection (b) of this section, the association is responsible for causing the common  
15          elements to be maintained, repaired, and replaced when necessary and to assess the lot  
16          owners as necessary to recover the costs of such maintenance, repair, or replacement  
17          except that the costs of maintenance, repair or replacement of a limited common element  
18          shall be assessed as provided in G.S. 47E-3-115(c)(1). Except as otherwise provided in  
19          the declaration, each lot owner is responsible for the maintenance and repair of his lot and  
20          any improvements thereon. Each lot owner shall afford to the association and when  
21          necessary to another lot owner access through his lot reasonably necessary for any such  
22          maintenance, repair or replacement activity.

23          (b) If a lot owner is legally responsible for damage inflicted on any common  
24          element, the association may direct such lot owner to repair such damage or the  
25          association may itself cause the repairs to be made and recover damages from the  
26          responsible lot owner.

27          (c) If damage is inflicted on any lot by an agent of the association in the scope of  
28          his activities as such agent, the association is liable to repair such damage or to reimburse  
29          the lot owner for the cost of repairing such damages. The association shall also be liable  
30          for any losses to the lot owner.

31          (d) When the claim under subsection (b) or (c) of this section is less than or equal  
32          to the jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved  
33          party may request that a hearing be held before an adjudicatory panel appointed by the  
34          executive board to determine if a lot owner is responsible for damages to any common  
35          element or the association is responsible for damages to any lot. If the executive board  
36          fails to appoint an adjudicatory panel to hear such matters, hearings under this section  
37          shall be held before the executive board. Such panel shall accord to the party charged  
38          with causing damages notice of the charge, opportunity to be heard and to present  
39          evidence, and notice of the decision. This panel may assess liability for each damage  
40          incident against each lot owner charged or against the association not in excess of the  
41          jurisdictional amount established for small claims by G.S. 7A-210. When the claim  
42          under subsection (b) or (c) of this section exceeds the jurisdictional amount established  
43          for small claims by G.S. 7A-210, liability of any lot owner charged or the association

1 shall be determined as otherwise provided by law. Liabilities of lot owners determined  
2 by adjudicatory hearing or as otherwise provided by law shall be assessments secured by  
3 lien under G.S. 47E-3-166. Liabilities of the association determined by adjudicatory  
4 hearing or as otherwise provided by law may be offset by the lot owner against sums  
5 owing to the association and if so offset, shall reduce the amount of any lien of the  
6 association against the lot at issue.

7 (e) The declarant alone is liable for maintenance, repair, and all other expenses in  
8 connection with real estate subject to development rights.

9 **"§ 47E-3-107A. Procedures for fines and suspension of planned community**  
10 **privileges or services.**

11 Unless a specific procedure for the imposition of fines or suspension of planned  
12 community privileges or services is provided for in the declaration, a hearing shall be  
13 held before an adjudicatory panel appointed by the executive board to determine if any  
14 lot owner should be fined or if planned community privileges or services should be  
15 suspended pursuant to the powers granted to the association in G.S. 47E-3-102(11)and  
16 (12). If the executive board fails to appoint an adjudicatory panel to hear such matters,  
17 hearings under this section shall be held before the executive board. The lot owner  
18 charged shall be given notice of the charge, opportunity to be heard and to present  
19 evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine  
20 not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and  
21 without further hearing, for each day after the decision that the violation occurs. Such  
22 fines shall be assessments secured by liens under G.S. 47E-3-116. If it is decided that a  
23 suspension of planned community privileges or services should be imposed, the  
24 suspension may be continued without further hearing until the violation or delinquency is  
25 cured.

26 **"§ 47E-3-108. Meetings.**

27 A meeting of the association shall be held at least once each year. Special meetings  
28 of the association may be called by the president, a majority of the executive board, or by  
29 lot owners having twenty percent (20%), or any lower percentage specified in the bylaws,  
30 of the votes in the association. Not less than 10 nor more than 50 days in advance of any  
31 meeting, the secretary or other officer specified in the bylaws shall cause notice to be  
32 hand-delivered or sent prepaid by United States mail to the mailing address of each lot or  
33 to any other mailing address designated in writing by the lot owner. The notice of any  
34 meeting shall state the time and place of the meeting and the items on the agenda,  
35 including the general nature of any proposed amendment to the declaration or bylaws,  
36 any budget changes, and any proposal to remove a director or officer.

37 **"§ 47E-3-109. Quorums.**

38 (a) Unless the bylaws provide otherwise , a quorum is present throughout any  
39 meeting of the association if persons entitled to cast twenty percent (20%) of the votes  
40 which may be cast for election of the executive board are present in person or by proxy at  
41 the beginning of the meeting.

1 (b) Unless the bylaws specify a larger percentage, a quorum is deemed present  
2 throughout any meeting of the executive board if persons entitled to cast fifty percent  
3 (50%) of the votes on that board are present at the beginning of the meeting.

4 **"§ 47E-3-110. Voting; proxies.**

5 (a) If only one of the multiple owners of a lot is present at a meeting of the  
6 association, he is entitled to cast all the votes allocated to that lot. If more than one of the  
7 multiple owners are present, the votes allocated to that lot may be cast only in accordance  
8 with the agreement of a majority in interest of the multiple owners, unless the declaration  
9 or bylaws expressly provides otherwise. Majority agreement is conclusively presumed if  
10 any one of the multiple owners casts the votes allocated to that lot without protest being  
11 made promptly to the person presiding over the meeting by any of the other owners of the  
12 lot.

13 (b) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot  
14 owner. If a lot is owned by more than one person, each owner of the lot may vote or  
15 register protest to the casting of votes by the other owners of the lot through a duly  
16 executed proxy. A lot owner may not revoke a proxy given pursuant to this section  
17 except by actual notice of revocation to the person presiding over a meeting of the  
18 association. A proxy is void if it is not dated. A proxy terminates one year after its date,  
19 unless it specifies a shorter term.

20 (c) If the declaration requires that votes on specified matters affecting the planned  
21 community be cast by lessees rather than lot owners of leased lots, (i) the provisions of  
22 subsections (a) and (b) of this section apply to lessees as if they were lot owners; (ii) lot  
23 owners who have leased their lots to other persons may not cast votes on those specified  
24 matters; and (iii) lessees are entitled to notice of meetings, access to records, and other  
25 rights respecting those matters as if they were lot owners. Lot owners shall also be given  
26 notice, in the manner provided in G.S. 47E-3-108, of all meetings at which lessees may  
27 be entitled to vote.

28 (d) No votes allocated to a lot owned by the association may be cast.

29 (e) The declaration may provide that on specified issues only a defined subgroup  
30 of lot owners may vote provided:

31 (1) The issue being voted is of special interest solely to the members of the  
32 subgroup; and

33 (2) All except de minimis cost that will be incurred based on the vote taken  
34 will be assessed solely against those lot owners entitled to vote.

35 (f) For purposes of subdivision(e)(1) above, an issue to be voted on is not a  
36 special interest solely to a subgroup if it substantially affects the overall appearance of the  
37 planned community or substantially affects living conditions of lot owners not included  
38 in the voting subgroup.

39 **"§ 47E-3-111. Tort and contract liability.**

40 (a) Neither the association nor any lot owner except the declarant is liable for that  
41 declarant's torts in connection with any part of the planned community which that  
42 declarant has the responsibility to maintain.



1       (b) An action alleging a wrong done by the association shall be brought against the  
2 association and not against a lot owner.

3       (c) If an action is brought against the association for a wrong which occurred  
4 during any period of declarant control, and if the association gives the declarant who then  
5 controlled the association reasonable notice of and an opportunity to defend against the  
6 action, such declarant is liable to the association:

7           (1) For all tort losses suffered by the association or that lot owner, and

8           (2) For all losses which the association would not have incurred but for  
9 breach of contract.

10 Nothing in this subsection shall be construed to impose strict or absolute liability upon  
11 the declarant for wrongs or actions which occurred during the period of declarant control.

12       (d) In any case where the declarant is liable to the association under this section,  
13 the declarant is also liable for all litigation expenses, including reasonable attorneys' fees,  
14 incurred by the association. Any statute of limitation affecting the association's right of  
15 action under this section is tolled until the period of declarant control terminates. A lot  
16 owner is not precluded from bringing an action contemplated by this section because he  
17 is a lot owner or a member or officer of the association.

18 **"§ 47E-3-112. Conveyance or encumbrance of common elements.**

19       (a) Portions of the common elements may be conveyed or subjected to a security  
20 interest by the association if persons entitled to cast at least eighty percent (80%) of the  
21 votes in the association, including eighty percent (80%) of the votes allocated to lots not  
22 owned by a declarant, or any larger percentage the declaration specifies, agree in writing  
23 to that action; provided that all the owners of lots to which any limited common element  
24 is allocated shall agree in order to convey that limited common element or subject it to a  
25 security interest. The declaration may specify a smaller percentage only if all the lots are  
26 restricted exclusively to nonresidential uses. Distribution of proceeds of the sale of a  
27 limited common element shall be as provided by agreement between the lot owners to  
28 which it is allocated and the association. Proceeds of the sale or financing of a common  
29 element (other than a limited common element) shall be an asset of the association.

30       (b) The association, on behalf of the lot owners, may contract to convey common  
31 elements or subject them to a security interest, but the contract is not enforceable against  
32 the association until approved pursuant to subsection (a) of this section. Thereafter, the  
33 association has all powers necessary and appropriate to effect the conveyance or  
34 encumbrance, free and clear of any interest of any lot owner or the association in or to the  
35 common element conveyed or encumbered, including the power to execute deeds or other  
36 instruments.

37       (c) Any purported conveyance, encumbrance, or other voluntary transfer of  
38 common elements, unless made pursuant to this section is void.

39       (d) No conveyance or encumbrance of common elements pursuant to this section  
40 may deprive any lot of its rights of access and support.

41 **"§ 47E-3-113. Insurance.**

42       (a) Commencing not later than the time of the first conveyance of a lot to a person  
43 other than a declarant, the association shall maintain, to the extent reasonably available:

1           (1) Property insurance on the common elements insuring against all risks of  
2 direct physical loss commonly insured against including fire and  
3 extended coverage perils. The total amount of insurance after  
4 application of any deductibles shall be not less than eighty percent  
5 (80%) of the replacement cost of the insured property at the time the  
6 insurance is purchased and at each renewal date, exclusive of land,  
7 excavations, foundations, and other items normally excluded from  
8 property policies; and

9           (2) Liability insurance in reasonable amounts, covering all occurrences  
10 commonly insured against for death, bodily injury, and property damage  
11 arising out of or in connection with the use, ownership, or maintenance  
12 of the common elements.

13       (b) If the insurance described in subsection (a) of this section is not reasonably  
14 available, the association promptly shall cause notice of that fact to be hand-delivered or  
15 sent prepaid by United States mail to all lot owners. The declaration may require the  
16 association to carry any other insurance, and the association in any event may carry any  
17 other insurance it deems appropriate to protect the association or the lot owners.

18       (c) Insurance policies carried pursuant to subsection (a) of this section shall  
19 provide that:

20           (1) Each lot owner is an insured person under the policy to the extent of his  
21 insurable interest;

22           (2) The insurer waives its right to subrogation under the policy against any  
23 lot owner or member of his household;

24           (3) No act or omission by any lot owner, unless acting within the scope of  
25 his authority on behalf of the association, will preclude recovery under  
26 the policy; and

27           (4) If, at the time of a loss under the policy, there is other insurance in the  
28 name of a lot owner covering the same risk covered by the policy, the  
29 association's policy provides primary insurance.

30       (d) Any loss covered by the property policy under subdivision (a)(1) of this section  
31 shall be adjusted with the association, but the insurance proceeds for that loss are payable  
32 to any insurance trustee designated for that purpose, or otherwise to the association, and  
33 not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the  
34 association shall hold any insurance proceeds in trust for lot owners and lien holders as  
35 their interests may appear. Subject to the provisions of subsection (h) of this section, the  
36 proceeds shall be disbursed first for the repair or restoration of the damaged property, and  
37 lot owners and lien holders are not entitled to receive payment of any portion of the  
38 proceeds unless there is a surplus of proceeds after the property has been completely  
39 repaired or restored, or the planned community is terminated.

40       (e) An insurance policy issued to the association does not prevent a lot owner from  
41 obtaining insurance for his own benefit.

42       (f) An insurer that has issued an insurance policy under this section shall issue  
43 certificates or memoranda of insurance to the association and, upon written request, to

1 any lot owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the  
2 policy may not cancel or refuse to renew it until 30 days after notice of the proposed  
3 cancellation or nonrenewal has been mailed to the association, each lot owner and each  
4 mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of  
5 insurance have been issued at their respective last known addresses.

6 (g) Any portion of the planned community for which insurance is required under  
7 subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or  
8 replaced promptly by the association unless (i) the planned community is terminated, (ii)  
9 repair or replacement would be illegal under any State or local health or safety statute or  
10 ordinance, or (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote,  
11 including one hundred percent (100%) approval of owners assigned to the limited  
12 common elements not to be rebuilt. The cost of repair or replacement in excess of  
13 insurance proceeds and reserves is a common expense. If the entire planned community  
14 is not repaired or replaced, (i) the insurance proceeds attributable to the damaged  
15 common elements shall be used to restore the damaged area to a condition compatible  
16 with the remainder of the planned community, (ii) the insurance proceeds attributable to  
17 limited common elements which are not rebuilt shall be distributed to the owners of the  
18 lots to which those limited common elements were allocated, or to lienholders, as their  
19 interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the  
20 lot owners or lienholders, as their interests may appear, in proportion to the common  
21 expense liabilities of all the lots. Notwithstanding the provisions of this subsection, G.S.  
22 47E-2-118 (termination of the planned community) governs the distribution of insurance  
23 proceeds if the planned community is terminated.

24 (h) The provisions of this section may be varied or waived in the case of a planned  
25 community all of whose lots are restricted to nonresidential use.

26 **"§ 47E-3-114. Surplus funds.**

27 Unless otherwise provided in the declaration, any surplus funds of the association  
28 remaining after payment of or provision for common expenses and any prepayment of  
29 reserves shall be paid to the lot owners in proportion to their common expense liabilities  
30 or credited to them to reduce their future common expense assessments.

31 **"§ 47E-3-115. Assessments for common expenses.**

32 (a) Until the association makes a common expense assessment, the declarant shall  
33 pay all common expenses. After any assessment has been made by the association,  
34 assessments thereafter shall be made at least annually.

35 (b) Except for assessments under subsections (c), (d), and (e) of this section, all  
36 common expenses shall be assessed against all the lots in accordance with the allocations  
37 set forth in the declaration pursuant to G.S. 47E-2-107(a). Any past due common  
38 expense assessment or installment thereof bears interest at the rate established by the  
39 association not exceeding eighteen percent (18%) per year.

40 (c) To the extent required by the declaration:

41 (1) Any common expense associated with the maintenance, repair, or  
42 replacement of a limited common element shall be assessed against the

1           lots to which that limited common element is assigned, equally, or in  
2           any other proportion that the declaration provides;

3           (2) Any common expense or portion thereof benefiting fewer than all of the  
4           lots shall be assessed exclusively against the lots benefitted; and

5           (3) The costs of insurance shall be assessed in proportion to risk and the  
6           costs of utilities shall be assessed in proportion to usage.

7           (d) Assessments to pay a judgment against the association may be made only  
8 against the lots in the planned community at the time the judgment was entered, in  
9 proportion to their common expense liabilities.

10          (e) If any common expense is caused by the negligence or misconduct of any lot  
11 owner or occupant, the association may assess that expense exclusively against his lot.

12          (f) If common expense liabilities are reallocated, common expense assessments  
13 and any installment thereof not yet due shall be recalculated in accordance with the  
14 reallocated common expense liabilities.

15 **"§ 47E-3-116. Lien for assessments.**

16          (a) Any assessment levied against a lot remaining unpaid for a period of 30 days  
17 or longer shall constitute a lien on that lot when a claim of lien is filed of record in the  
18 office of the clerk of superior court of the county in which the lot is located in the manner  
19 provided herein. The association may foreclose the claim of lien in like manner as a  
20 mortgage on real estate under power of sale under Article 2A of Chapter 45 of the  
21 General Statutes. Unless the declaration otherwise provides, fees, charges, late charges,  
22 finances, interest, and other charges imposed pursuant to G.S. 47E-3-102, 47E-3-107, 47E-3-  
23 107A, and 47E-3-115 are enforceable as assessments under this section.

24          (b) The lien under this section is prior to all liens and encumbrances on a lot  
25 except (i) liens and encumbrances (specifically including but not limited to, a mortgage  
26 or deed of trust on the lot) recorded before the docketing of the claim of lien in the office  
27 of the clerk of superior court, and (ii) liens for real estate taxes and other governmental  
28 assessments and charges against the lot. This subsection does not affect the priority of  
29 mechanics' or materialmen's liens.

30          (c) A lien for unpaid assessments is extinguished unless proceedings to enforce the  
31 lien are instituted within three years after the docketing of the claim of lien in the office  
32 of the clerk of superior court.

33          (d) This section does not prohibit other actions to recover the sums for which  
34 subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu  
35 of foreclosure.

36          (e) A judgment, decree, or order in any action brought under this section shall  
37 include costs and reasonable attorneys' fees for the prevailing party.

38          (f) Where the holder of a first mortgage or first deed of trust of record, or other  
39 purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or  
40 first deed of trust, such purchaser and its heirs, successors and assigns, shall not be liable  
41 for the assessments against such lot which became due prior to the acquisition of title to  
42 such lot by such purchaser. Such unpaid assessments shall be deemed to be common

1 expenses collectible from all the lot owners including such purchaser, its heirs, successors  
2 and assigns.

3 (g) A claim of lien shall set forth the name and address of the association, the  
4 name of the record owner of the lot at the time the claim of lien is filed, a description of  
5 the lot and the amount of the lien claimed.

6 "§ 47E-3-117: Reserved.

7 "§ 47E-3-118. Association records.

8 (a) The association shall keep financial records sufficiently detailed to enable the  
9 association to comply with this act. All financial and other records shall be made  
10 reasonably available for examination by any lot owner and his authorized agents.

11 (b) The association, upon written request, shall furnish to a lot owner or his  
12 authorized agents a statement setting forth the amount of unpaid assessments and other  
13 charges against a lot. The statement shall be furnished within 10 business days after  
14 receipt of the request and is binding on the association, the executive board, and every lot  
15 owner.

16 "§ 47E-3-119. Association as trustee.

17 With respect to a third person dealing with the association in the association's capacity  
18 as a trustee under G.S. 47E-2-118 following termination or G.S. 47E-3-113 for insurance  
19 proceeds, the existence of trust powers and their proper exercise by the association may  
20 be assumed without inquiry. A third person is not bound to inquire whether the  
21 association has power to act as trustee or is properly exercising trust powers, and a third  
22 person, without actual knowledge that the association is exceeding or improperly  
23 exercising its powers, is fully protected in dealing with the association as if it possessed  
24 and properly exercised the powers it purports to exercise. A third person is not bound to  
25 assure the proper application of trust assets paid or delivered to the association in its  
26 capacity as trustee.

#### 27 "ARTICLE 4.

#### 28 "PROTECTION OF PURCHASERS.

29 "§ 47E-4-101. Applicability and waiver.

30 (a) This Article applies to all lots subject to this act, except as provided in  
31 subsection (b) of this section or as modified or waived by agreement of purchasers of lots  
32 in a planned community in which all lots are restricted to nonresidential use.

33 (b) Neither an initial sale certificate nor a resale statement need be prepared or  
34 delivered in the case of a disposition which is:

35 (1) Gratuitous;

36 (2) Pursuant to court order;

37 (3) By government or governmental agency;

38 (4) By foreclosure or deed in lieu of foreclosure;

39 (5) To a person in the business of selling real estate who intends to offer the  
40 lot or lots to purchasers; or

41 (6) Subject to cancellation at any time for any reason by the purchasers  
42 without penalty.

43 "§ 47E-4-102. Initial seller disclosure requirements.

1 Any initial seller shall furnish to a purchaser before execution of any contract for sale  
2 of a lot, or otherwise before conveyance, a copy of the declaration (other than the plats),  
3 the bylaws, the rules or regulations of the association, and an initial sale certificate  
4 containing and fully and accurately disclosing:

- 5 (1) A statement setting forth the amount and frequency of common expense  
6 assessments, other fees or charges payable by lot owners;
- 7 (2) A statement setting forth any unpaid common expense assessments,  
8 other fees or charges currently due and payable from the initial seller;
- 9 (3) A statement of any capital expenditures anticipated by the association  
10 for the current and two next succeeding fiscal years;
- 11 (4) A statement of the amount of any reserves for capital expenditures and  
12 of any portions of those reserves designated by the association for any  
13 specified projects;
- 14 (5) The most recent regularly prepared balance sheet and income and  
15 expense statement, if any, of the association;
- 16 (6) The current operating budget of the association; and
- 17 (7) Any services not reflected in the budget that the declarant provides, or  
18 expenses that he pays and that he expects may become at any  
19 subsequent time a common expense of the association and the projected  
20 common expense assessment attributable to each of those services or  
21 expenses for the association and for each type of lot.

22 The failure of an initial seller to comply with the requirements of this section shall not  
23 affect title to any lot transferred.

24  **§§ 47E-4-103 to 47E-4-108: Reserved.**

25  **§ 47E-4-109. Resales of lots.**

26 Except in the case of a sale subject to G.S. 47E-4-102 or unless exempt under G.S.  
27 47E-4-101(b), a lot owner shall furnish to a prospective purchaser before conveyance a  
28 statement setting forth the common expense assessment and any other fees payable by lot  
29 owners.

30  **§ 47E-4-110: Reserved.**

31  **§ 47E-4-111. Conveyances to the association.**

32 Before conveying real estate to the association, the declarant shall have that real estate  
33 released from all liens. Further, improvements on the real estate shall be substantially  
34 complete before the real estate is conveyed to the association or the declarant shall  
35 provide reasonable assurances and security for the completion of the improvements,  
36 independent of the declarant.

37  **§§ 47E-4-112 to 47E-4-116: Reserved.**

38  **§ 47E-4-117. Effect of violations on rights of action; attorneys' fees.**

39 If a declarant or any other person subject to this act fails to comply with any provision  
40 hereof or any provision of the declaration or bylaws, any person or class of persons  
41 adversely affected by the failure to comply has a claim for appropriate relief. The court  
42 may award reasonable attorneys' fees to the prevailing party.

43  **§ 47E-4-118. Labeling of promotional material.**

1        If any improvement contemplated in a planned community is labeled 'NEED NOT BE  
2 BUILT' on a plat, or is to be located within a portion of the planned community with  
3 respect to which the declarant has reserved a development right, no promotional material  
4 may be displayed or delivered to prospective purchasers which describes or portrays that  
5 improvement unless the description or portrayal of the improvement in the promotional  
6 material is conspicuously labeled or identified as 'NEED NOT BE BUILT'.

7 **"§ 47E-4-119. Declarant's obligation to complete and restore.**

8        (a) The declarant shall complete all improvements labeled 'MUST BE BUILT' on  
9 plats prepared pursuant to G.S. 47E-2-109.

10        (b) The declarant is subject to liability for the prompt repair and restoration, to a  
11 condition compatible with the remainder of the planned community, of any portion of the  
12 planned community affected by the exercise of rights reserved pursuant to or created by  
13 G.S. 47E-2-110, 47E-2-111, 47E-2-113, 47E-2-115, or 47E-2-116.

14 **"§ 47E-4-120: Reserved."**

15        Section 2. This act becomes effective October 1, 1997.