

WAKE COUNTY, NC 162  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
01/20/2017 15:26:26

BOOK:016673 PAGE:01527 - 01605

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR FALLS RESERVE SUBDIVISION**

**PREPARED BY AND HOLD FOR:  
MICHAEL G. SANDMAN ATTORNEY AT LAW #169**

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

THIS DECLARATION is made this 19<sup>th</sup> day of January, 2017, by FALLS LAKE DEVELOPERS, LLC, a North Carolina limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the Owner of that certain real property located in Wake County, North Carolina, commonly known as "Falls Reserve Subdivision", and as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Declarant wishes to subject the Property, together with any Additional Property, to the protective covenants, conditions and restrictions set forth herein for the purpose of insuring the best use and most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the construction of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of the Property; to encourage and secure the construction of attractive structures with appropriate locations on the Lots; to secure and maintain proper set backs from streets and adequate free spaces between structures; to provide for the continued maintenance (including irrigation, if applicable) and repair of any Common Area, including the landscaped entrance to the Subdivision and any landscape easements or landscaped islands provided for herein; and in general to provide adequately for a high type and quality of Improvements on the Property and thereby enhance the values of the investments made by the Owners; and

WHEREAS, Declarant has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, FALLS RESERVE HOMEOWNERS ASSOCIATION, INC., for purposes of exercising the functions aforesaid and more fully described hereinbelow.

NOW, THEREFORE, Declarant hereby declares that the Property, and such additions and annexations thereto as may hereafter be made pursuant to Article III hereof, is and shall be held, used, transferred, sold, conveyed and occupied subject to these Covenants.

## **ARTICLES I DEFINITIONS**

1.1 "Act" means the North Carolina Planned Community Act, currently contained in Chapter 47F of the North Carolina General Statutes, and including all amendments, supplements and replacements thereof as enacted from time to time.

1.2 "Additional Association" means any association now in existence or hereinafter contemplated having jurisdiction over any property within the Community concurrent with (but subject to) the jurisdiction of the Association. Nothing in this Declaration shall require the creation of an Additional Association for any property within the Community.

1.3 "Additional Property" means all real property allowed by this Declaration to be annexed or subjected to this Declaration subsequent to the recording of this Declaration (the words "annex" and "subject" being used interchangeably in the context of adding Additional Property to this Declaration). No such Additional Property shall be subject to the terms of this Declaration until it has been annexed or subjected to this Declaration in one of the ways allowed herein, and, except as required by Legal Requirements, neither the Declarant nor any other Person is required to annex any Additional Property to this Declaration.

1.4 "Approved Plans" means Plans that have been approved by the Architectural Review Committee.

1.5 "Architectural Guidelines" means the guidelines and standards from time to time adopted and in effect with respect to Dwellings and other improvements in the Properties.

1.6 "Articles" means the Association's Articles of Incorporation.

1.7 "Association" means FALLS RESERVE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation.

1.8 "Builder" means a Person, other than the Declarant, who regularly is in the business of constructing Dwellings for resale to other Persons, and who purchases or becomes the Owner of one or more Lots within the Community for the purpose of constructing thereon

one or more Dwellings for resale to other Persons. "Builders" refers to all such persons or entities collectively.

1.9 "Board" or "Board of Directors" means the Board of Directors for the Association, and is the "Executive Board" as defined in the Act. The Board is responsible for the management and administration of the Association as provided for herein and in the Act.

1.10 "Bylaws" means the Association's Bylaws.

1.11 "Code" means the Wake County ordinances, as they exist from time to time, including all rules, regulations and policies lawfully adopted pursuant thereto, and including all amendments, supplements and replacements thereof as enacted from time to time.

1.12 "Common Elements", or "Common Property", or "Common Area" means real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Properties, regardless of how such real property is described in a Governing Document. Common Elements may consist of real property or rights in real property owned or leased by the Association or real property owned by or dedicated to another Person with the Association having a right or easement therein (for example, part or all of Stormwater Control Facilities located either on a Lot or on real property that is not part of the Properties, or a right of the Association to use or maintain a portion of a public street right-of-way). Common Elements may include all of the following:

(1) All of the items included in the definition of common areas (or other word or term used to describe common areas - for example, common open space) in the applicable Section of the Code; and

(2) All other items included in the definition of Common Elements, Common Area or Common Property in any Governing Document; and

(3) All Common Areas shown on any map or plat of the Properties or any part thereof recorded by Declarant in the Registry.

Common Elements also shall consist of all retaining walls designated as Common Elements as provided herein. All Common Elements shall be maintained by the Association as provided herein and the costs of such maintenance are Common Expenses. The foregoing definition of Common Elements in this Declaration is broader than the definition of "common elements" in the Act. Common Property also includes all other property and improvements, if any, required to be included as such by the Code or other Legal Requirements and by this Declaration and other Governing Documents, and all other property and improvements, if any, declared to be Common Property by the Declaration.

1.13 "Common Expenses" means any one or more of the following: (i) expenses of maintenance of Common Property, including repair, restoration and replacement thereof; (ii) ad valorem taxes and public assessments, if any, levied against the Common Property or other

assets of the Association (but specifically excluding ad valorem taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained therein by the Association result in additional ad valorem taxes on such real property that would not be assessed in the absence of such improvements); (iii) premiums for hazard, liability and other insurance insuring the Common property, assets of the Association, or the Association, its officers, directors and employees, if any; (iv) fees and expenses of attorneys, accountants, and other persons and entities employed by the Association for Association business; (v) expenses declared to be or described as Common Expenses by the Act or the Code; (vi) expenses declared to be or described as Common Expenses by the provisions of the Governing Documents, including all expenses for Stormwater Control Measures; (vii) utility charges in connection with the Common Property, except to the extent that such charges are paid by users of Common Property or are part of any use fees or charges imposed by the Governing Documents for use of the Common Property (for example, paying a meter box attached to lights that light a tennis court); (viii) expenses required to be paid by the Association pursuant to any Stormwater Agreement, encroachment agreement, or other agreement with the Town; (ix) expenses determined by the Board or by the Members to be Common Expenses; (x) reserve funds maintained by the Association pursuant to the Declaration or any Legal Requirement; (xi) expenses in connection with the construction and ongoing maintenance of a centralized cluster mailbox kiosk, the concrete or paved areas surrounding the kiosk, any parking areas required in connection therewith, and the surrounding landscaping; and (xii) all other expenses incurred by the Association in performing its functions and providing services under the Governing Documents and Legal Requirements, including operating, management and administrative expenses.

1.14 "Community Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing in the Subdivision, or the minimum standards established by the Declarant or pursuant to the Architectural Guidelines, Restrictions and Rules, or Board resolutions, whichever is the highest standard. The Community Wide Standard and it may contain both objective and subjective elements. The Community Wide Standard may change at any time and from time to time as development of the Subdivision progresses and as the needs and desires within the Subdivision change.

1.15 "Declarant" means FALLS LAKE DEVELOPERS, LLC, a North Carolina limited liability company, and its successors and assigns to whom the rights of Declarant hereunder may be transferred in whole or in part, and subject to such conditions as Declarant may impose, if such successors or assigns acquire more than one undeveloped Lot. The development of a Lot shall mean and refer to the construction of Improvements thereon.

1.16 "Declarant Control Period" means the period of time between the date of recording of the Declaration and ending on the date on which the first of the following occurs: (1) the date on which more than 90% of the total number of Lots permitted by the Subdivision Plan (i) have Dwellings thereon for which certificates of occupancy have been issued and (ii) have been conveyed to Class A Members other than Builders. Provided, until such time as the Declarant Control Period ends under any other subparagraph of this definition, without the

possibility of any reinstatement, the Declarant Control Period shall be reinstated automatically from time to time as the Subdivision Plan is revised such that the foregoing requirements for termination of the Declarant Control Period no longer are met; or (2) voluntary termination of the Declarant Control Period by a written instrument executed by Declarant and recorded in the Registry; or (3) termination of the Declarant Control Period required by any Legal Requirement. Declarant has the sole authority to resolve any issues or disputes regarding the date on which the Declarant Control Period ends or is reinstated.

1.17 "Declaration" means this Declaration of Covenants, Conditions and Restrictions applicable to the Property, and any amendments thereto which are recorded in the Office of the Register of Deeds, Wake County, North Carolina (sometimes referred to herein as the "Covenants").

1.18 "Declaration of Annexation" means a declaration filed supplemental to this Declaration which, upon its filing with the office of the Wake County Register of Deeds, subjects additional property to the scheme of this Declaration.

1.19 "Development Period" means the period of time from the date of recording of this Declaration in the Registry through and including 5:00 p.m. on the last of the following dates to occur:

- (1) December 31, 2040; or
- (2) the date that is ten (10) years after the date of recording of the most recent Supplemental Declaration executed by the Declarant subjecting real property to this Declaration; or
- (3) the date of release of the last bond (or letter of credit or other similar financial guarantee) posted by Declarant with any Governmental Authority in connection with Declarant's development of the Properties or any portion thereof; or
- (4) the date on which a certificate of occupancy is issued for initial construction of a Dwelling on the last Lot in the Properties remaining after certificates of occupancy have been issued for Dwellings on all other Lots in the Properties. For example, if there are 100 total Lots in the Properties, this is the date on which a certificate of occupancy is issued for the initial Dwelling, as applicable, on the 100th Lot.

Notwithstanding the foregoing, if Declarant is delayed in the development of any part or all of the Properties as a result of a sanitary sewer, water or building permit moratorium, or as the result of some other cause or event beyond Declarant's control, then the foregoing applicable time period shall be extended by the amount of time of the delay. Provided, however, Declarant may terminate the Development Period at any time by recording a termination instrument in the Registry. Except in the case of voluntary termination by the Declarant, the Development Period also shall include any periods of time after the applicable termination event during which Declarant is conducting any activity within the Properties that is required by Legal Requirements

or for Declarant to fulfill any obligation to the Town, the Association, a Builder or any Owner with respect to any portion of the Property. In the event of an assignment of Declarant rights, with respect to the rights assigned, the Development Period shall remain in full force and effect through the applicable periods of time as they relate to the assignee rather than the original Declarant hereunder, unless otherwise provided in the assignment document or earlier terminated by the assignee. Declarant has the sole authority to resolve any issues or disputes regarding the date on which the Development Period ends.

1.20 "Development Plan" or "Subdivision Plan" means the most current land use or development plan approved by the Town for the Property or any part thereof, whether the approval is preliminary or final, and regardless of any name other than "Subdivision Plan" or "Development Plan" under which it is approved by the Town (for example, site plan, cluster unit development plan, or master plan for a planned unit development). Declarant reserves the right, in its sole discretion, but subject to Legal Requirements, to modify any Subdivision Plan in whole or in part, including the addition or deletion of property and including the reconfiguration of Lots and Common Area. The fact that property is included on the Subdivision Plan does not obligate Declarant to subject it to the Declaration, nor shall Declarant be prohibited from subjecting to the Declaration any property that is not included on the Subdivision Plan.

1.21 "Dwelling" means any building or portion thereof within the Property which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one housekeeping unit, whether by the Owner thereof or by tenants or sub-tenants of the Owner.

1.22 "Force Majeure" means any one or more of the following: acts of God, earthquakes, blizzards, tornadoes, hurricanes, fire, flood, malicious mischief, insurrection, terrorism, riots, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, war (declared or undeclared), landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any court, tribunal or judicial authority of competent jurisdiction, inability to obtain materials or supplies after the exercise of all reasonable efforts, substantial interference in construction activities resulting from construction activities conducted simultaneously on adjacent lands by or under the direction of unrelated parties, and any other similar circumstances beyond the reasonable control of the Person responsible for complying with some provision of this Declaration.

1.23 "Governing Documents" means this Declaration, the Articles of Incorporation, the Bylaws, Restrictions and Rules, Board resolutions, Architectural Guidelines, all applicable Supplemental Declarations and Subdivision Declarations; plats (or maps, those terms being used interchangeably herein) of the Property or any portions thereof approved by a Governmental Authority and recorded in the Registry; other declarations of restrictive or protective covenants applicable to the Property or any portion thereof; documents withdrawing portions of the Property from this Declaration; and all duly adopted amendments and revisions to any of the foregoing documents or plats.

1.24 "Governmental Authority" or "Governmental Authorities" or "Governmental Entity" or "Governmental Entities" means the Town, the County of Wake, North Carolina, the

State of North Carolina, the United States of America, and all other governmental entities and quasi-governmental entities that have jurisdiction over the Property or any part thereof, and all applicable departments, divisions, sections, branches, agencies, and other subdivisions of such Governmental Authorities.

1.25 "Improvement" means any structure and all appurtenances thereto of every kind and type and any other physical change upon, over, across, above or under any part of the Property, including any clearing of trees or other vegetation and including grading and any other site preparation; and including any other improvement of, to, or on any Lot, including, but not limited to, Dwellings and other buildings and structures (specifically including exterior materials, colors, size, location and architectural style), decks, patios, porches, outdoor fireplaces and/or chimneys, driveways, motor vehicle and other parking areas, storage areas located outside of a Dwelling, recreational areas, equipment and facilities located outside of a Dwelling, mailboxes, exterior antennae, dishes, towers, and other apparatus to receive or transmit radio, television, or microwave or other signals, fences, walls, hedges, other landscaping (including planted areas, grassed areas, natural areas and the plants and other materials therein), poles, flags, decorative features and items attached to or on the exterior of a Dwelling or in the yard, ponds, lakes, water features, clearing, grading and other site preparation, swimming pools, lights and signs located on or outside of a Dwelling or visible inside a Dwelling from a street or adjoining portion of the Property, and all other items used or maintained on a Lot outside of the Dwelling. The definition of Improvements includes both initial improvements and all subsequent alterations, changes and additions to same. The term "initial improvements" means all of the improvements constructed or placed or located on any Lot in accordance with Approved Plans or Architectural Guidelines not requiring Approved Plans at the time of issuance of a certificate of occupancy for the Dwelling on the Lot (or the time of issuance of the certificate of occupancy for the last Dwelling on a Lot on which more than one Dwelling is to be located). The examples of improvements stated for the purposes of this definition do not imply that all such improvements will be allowed on the Property, and all improvements are subject to the architectural approval provisions of this Declaration.

1.26 "Legal Requirement" means any duly adopted and applicable law, ordinance, regulation or requirement, including the Code, of any Governmental Authority or quasi-Governmental Authority or agency having jurisdiction over the Property or any portion thereof, including any branch, department or division, section, branch, agency, or other subdivision of any of the foregoing Governmental Authorities or quasi-governmental authorities or agencies. Legal Requirements apply to the exercise of all rights or the taking of all actions under this Declaration by Declarant, the Association, or any other Person, whether or not this Declaration states that a specific right or action is subject to Legal Requirements or must be exercised or taken in accordance with Legal Requirements.

1.27 "Lot" means any portion of the Property with delineated boundary lines, whether improved or unimproved, that is intended for independent ownership and either has a Dwelling constructed thereon or is intended for construction of a Dwelling thereon, and is shown on a plat recorded in the Registry. A "Proposed Lot" means any portion of the Property with delineated boundary lines, whether improved or unimproved, that is intended for independent ownership

and either has a Dwelling constructed thereon or is intended for construction of a Dwelling thereon, and is shown on the Subdivision Plan but not shown on a plat recorded in the Registry. A Proposed Lot becomes a Lot from and after the date on which a plat thereof is recorded in the Registry. The definition of Lot also includes Unsubdivided Land as described in the definition of Unsubdivided Land. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new or revised plat, the newly platted lot thereafter shall constitute a Lot under this Declaration, except as otherwise may be provided herein with respect to allocation of votes and assessments applicable to the newly platted Lot. With respect to the Class B membership in the Association, Unsubdivided Land also constitutes one (1) Lot.

1.28 "Lot in Use" means any Lot for which a certificate of occupancy has been issued for Improvements thereto. A Lot shall also be deemed a "Lot in Use" under the following circumstances: (a) twelve (12) months after the Lot is conveyed by Declarant to an Owner who is a licensed general contractor or builder (a "Builder"), whether or not a certificate of occupancy has been issued for Improvements thereto; and (b) immediately upon the conveyance of a Lot by Declarant or a Builder to an Owner who is not a Builder. In no event shall a "Lot in Use" include a Lot owned by Declarant.

1.29 "Member" means every Person who holds membership in the Association, including each Person who owns a Lot in the Property and, with respect to the Class B Member, means the "Declarant".

1.30 "Owner" means the record owner, whether one or more Persons, of a fee simple title to any Lot, except those having an interest merely as security for the performance of an obligation.

1.31 "Person" means any natural person, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, an unincorporated association, joint venture, Governmental Authority or other legal or commercial entity.

1.32 "Plans" means the plans and specifications for a proposed improvement on a Lot, showing (where applicable) the size, shape, dimensions, materials, exterior finishes and colors, location on the Lot, driveway, parking areas, provisions for handling stormwater, decorative landscape planting and other decorative landscaping features, floor plans and elevations, and other items specified from time to time in any applicable Architectural Guidelines or required by the Person from whom approval of the Plans must be obtained in accordance with the Declaration.

1.33 "Property", "Properties", "Community", and "Subdivision" mean the Property as defined above, together with all Additional Property annexed to this Declaration pursuant to Article III hereof, less and except all real property that is withdrawn from this Declaration as allowed herein. References to the Properties includes any part or all of the Properties, as applicable, in accordance with the context of such reference herein, whether or not the reference specifically states that it is referring to any part or all of the Properties.

1.34 "Recreational Amenities" means those portions of the Common Property on which active or passive recreational equipment, facilities, or areas, including associated parking and other improvements, have been constructed or placed, or designated for use, subject to the Governing Documents, by the Declarant, by Lot Owners and their family members, tenants and guests. Provided, however, nothing herein shall be construed as imposing any obligation on the Declarant or any other Person to construct or provide for any Recreational Amenities, except to the extent, if any, that Declarant or such other Person is so obligated under Legal Requirements.

1.35 "Registry" means the office of the Register of Deeds for Wake County, North Carolina, or any successor office in which deeds, plats, easements, mortgages and deeds of trust for the Properties are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Properties is situated.

1.36 "Restrictions and Rules" or "Rules and Regulations", the terms being used interchangeably herein with respect to matters adopted by the Declarant or the Association, as applicable, means rules, regulations, requirements, prohibitions, and/or conditions for any one or more of the following as are adopted, amended, or repealed by the Declarant or the Association from time to time: (i) matters governing use of the Properties or any part thereof, including the Common Property, or (ii) matters governing conduct of Persons while in or on the Properties or any part thereof, including the Common Property, or (iii) providing for the implementation and enforcement of the Governing Documents, or (iv) any other matters that the Declarant or Board, as applicable, determines to adopt as part of the Association's Restrictions and Rules. In addition to any other provisions of this Declaration authorizing the Association to adopt rules and regulations, the Association, separate and apart from the Restrictions and Rules, may adopt, amend, modify, and enforce reasonable rules and regulations for the use and operation of the Common Property and/or for the implementation and enforcement of the Governing Documents.

1.37 "Special Declarant Rights" means all development and other rights granted to, or reserved by, or established for the benefit of, Declarant in the Act or in this Declaration or other Governing Documents, whether or not such rights are referred to as Special Declarant Rights or development rights in the Act, this Declaration, or other Governing Documents. As long as a Special Declarant Right exists under the Declaration or other Governing Document, Declarant may exercise it at any time and from time to time, whether or not the right to do so is stated specifically in connection with such Special Declarant Right. Declarant may assign Special Declarant rights, in whole or in part, temporarily or permanently, at any time and from time to time, subject to such terms and conditions as Declarant specifies in the assignment document. Unless this Declaration or other Governing Documents specify that Special Declarant Rights may be exercised by any Person other than the Declarant or that they become rights exercisable in whole or in part by the Association at any time, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, and the assignment becomes effective only upon the recording of the document in the Registry or any later date specified therein.

1.38 "Stormwater Agreement" or "Stormwater Replacement Agreement", which terms

include any agreement under Legal Requirements, by whatever name denominated therein, relating to Stormwater Control Facilities, means any agreement required by the Code or other Legal Requirement between the Town and the Declarant or between the Town and the Association, or among the Town, Declarant and Association, or between or among any combination of the Town and the Declarant, the Association and one or more Owners, relating to maintenance of Stormwater Control Facilities.

1.39 “Stormwater Control Facilities” or “Stormwater Control Measures” means any one or more of the following that serves or benefits any part or all of the Properties or is required by Legal Requirements in connection with any part or all of the Properties, whether located in the Properties or outside of the Properties: (i) “stormwater drainage easements” (also referred to herein as “stormwater easements” or “drainage easements”) that are shown on plats of the Properties recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Property or benefit or serve more than one (1) Lot; and (ii) all “stormwater management facilities” for the Properties, including ponds, man-made or natural areas and/or planted or landscaped areas into which stormwater drains, or in which stormwater is collected, or from which it is discharged, as well as drains, pipes, conduits, inlets, creeks, streams, channels, dams, ditches, filters, buffers, bio-retention areas, level spreaders, constructed wetlands, and other equipment, facilities and stormwater management measures used for inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging and/or managing stormwater. Except as otherwise provided herein, Stormwater Control Facilities are part of the Common Property, and maintenance of Stormwater Control Facilities is a Common Expense. References in this Declaration to stormwater management include all applicable Stormwater Control Facilities, Stormwater Agreements and Stormwater Maintenance Manuals.

1.40 “Supplemental Declaration” means any document, recorded subsequent to this Declaration and as allowed by this Declaration, that annexes Additional Property to this Declaration, withdraws any portion of the Properties from this Declaration, or is recorded for any other purpose for which this Declaration allows a Supplemental Declaration to be recorded. A document that annexes Additional Property to this Declaration also may be referred to herein or in that document as an “Annexation Declaration” and a document that withdraws any portion of the Properties from this Declaration also may be referred to herein or in that document as a “Withdrawal Declaration”.

1.41 “Stormwater Maintenance Manual” (which term includes any other instrument or document under Legal Requirements, by whatever name denominated therein, addressing the same or similar matters) means the specific requirements for maintenance of the Stormwater Control Measures as required by the Town.

1.42 “Town” or “governmental entity” means the County of Wake, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, whichever governmental entity or entities is/are applicable.

1.43 “Unsubdivided Land” means all portions of the Properties owned by the Declarant, other than Lots. With respect to the Class B membership in the Association, all Unsubdivided Land owned by the Declarant together constitutes one (1) Lot. Unsubdivided Land owned by Declarant is not subject to assessment under this Declaration.

1.44 “utility” or “public utility” means any one or more of the following used in any part or all of the Properties: electricity; telephone; Internet service; water; sanitary sewer; stormwater drainage, detention, and discharge; natural gas; propane gas; television; refuse collection; collection of materials for recycling; and any other service or facility generally recognized as a public utility or determined to be a public utility by the Declarant (during the Development Period, and thereafter, by the Board); “utility provider” or “public utility provider” means the Person who provides a utility to any part or all of the Properties.

## ARTICLE II MERGERS AND DEVELOPMENT REQUIREMENTS

2.1 Mergers. Upon a merger or consolidation of the Association with another organization, as provided for in its Bylaws, the Association’s properties, rights and obligations may be transferred to another surviving or consolidated homeowners association or, alternatively, the properties, rights and obligations of another homeowners association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated homeowners association may administer these Covenants, together with the covenants and restrictions established for any other properties as one scheme. No such merger or consolidation shall, however, affect any revocations, changes or additions to these Covenants, as the same may be amended, except as hereinafter provided.

2.2 Development Requirements. The Property shall be developed in accordance with a plan that complies with the applicable governmental zoning regulations and requirements described in the Wake County Subdivision Regulations in effect at the time of initial development of the Property.

## ARTICLE III ANNEXATION; WITHDRAWAL

3.1 Annexation by Declarant. Prior to the end of the Development Period, Declarant, in its sole discretion and without the consent, approval or joinder of the Association or any Owner or other Person except the owner (if not Declarant) of the Additional Property being annexed, may annex Additional Property to this Declaration by recording a “Supplemental Declaration” extending the operation and effect of this Declaration thereto. If the Additional Property being annexed is not owned by Declarant, the Supplemental Declaration also must be executed by all owners of the Additional Property. Except to the extent, if any, required by Legal Requirements, nothing herein shall be deemed to require the Declarant to annex any Additional Property to this Declaration or to develop it in any manner whatsoever.

3.2 Other Annexation. If the Declarant desires to annex Additional Property to this Declaration other than as allowed in the immediately preceding subsection (a), or if a Person other than the Declarant desires at any time to annex Additional Property to this Declaration, such Additional Property may be annexed to this Declaration only upon obtaining the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association for which the notice of the meeting includes notice of the proposal to annex such Additional Property, and the recording in the Registry of a Supplemental Declaration signed by the owner of such Additional Property and by the appropriate officers of the Association certifying the required meeting and vote. In addition to the foregoing, at any time during the Development Period that a Person other than Declarant desires to annex Additional Property to this Declaration, to be effective such annexation must have the written consent of Declarant, as evidenced by Declarant's execution of the Supplemental Declaration or another instrument specifically consenting to the annexation.

3.3 Conveyance of Common Area. Common Property, if any, located within any Additional Property or the applicable phase or portion thereof, shall be conveyed to the Association pursuant to the requirements of this Declaration for conveyance of other Common Property to the Association.

3.4 Order of Development and Annexation. Declarant contemplates that it may develop the portion of the Properties it owns in accordance with a Development Plan, as modified from time to time. Provided, however, but subject to Legal Requirements that provide otherwise, no Development Plan shall obligate the Declarant to develop any particular portion of the Properties now or in the future, whether for the purposes shown therein or for any other purpose, the Declarant shall not be required to follow any particular sequence or order of development of the Properties, and the Declarant may annex or consent to annex Additional Property to this Declaration whether or not development of all of the Properties previously subjected to this Declaration has been completed.

3.5 Withdrawal of Portions of the Properties from this Declaration.

(a) Subject to Legal Requirements, during the Development Period the Declarant, in its sole discretion, without the consent, approval or joinder of the Association or any Owner or other Person except the owner (if not Declarant) of the portion of the Properties being withdrawn, may record in the Registry a "withdrawal declaration" to withdraw one or more portions of the Properties from this Declaration, except that Declarant may not withdraw from this Declaration Lots on which there are Dwellings at the time of the withdrawal without the written consent of the Owner of such Lot. All portions of the Properties withdrawn from the Declaration shall be identified in the withdrawal declaration either by a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the withdrawal declaration is recorded in the Registry, or on such later date specified therein. All such withdrawals also must be approved by Wake County, if required by the Code.

(b) After the end of the Development Period, and subject to Legal Requirements, at any time and from time to time one or more portions of the Properties may be withdrawn from

this Declaration only upon obtaining the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association for which the notice of the meeting includes notice of the proposal to withdraw such portion of the Properties, and the recording in the Registry of a withdrawal declaration signed by the owner of such portion of the Properties and by the appropriate officers of the Association certifying the required meeting and vote. Provided, however, the required percentage vote of the Members for withdrawal of any Lot on which there is a Dwelling at the time of the proposed withdrawal is eighty percent (80%) or more. In addition to the foregoing, at any time during the Development Period that a Person other than Declarant desires to withdraw a portion of the Properties from this Declaration, to be effective such withdrawal must have the written consent of Declarant, as evidenced by Declarant's execution of the withdrawal declaration or other document specifically consenting to the withdrawal from the Declaration.

3.6 Effect of Annexation or Withdrawal. Other than as specifically limited by the Governing Documents or any Legal Requirement, the Declarant shall have full power to add to, subtract from, or make changes in, any Subdivision Plan, and annex real property to and withdraw real property from this Declaration, regardless of the fact that such actions may affect the relative voting strength of any Member or class of membership in the Association or increase or reduce the number of Owners subject to assessment under this Declaration. Any portion of the Properties that is withdrawn from this Declaration may be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed in any manner allowed under Legal Requirements, and shall be released from the terms and provisions of this Declaration on the date the withdrawal becomes effective as provided herein, subject to any terms of the withdrawal declaration and except that all easements specifically affecting such withdrawn portions of the Properties, as shown on plats recorded in the Registry or as described in documents recorded in the Registry, shall remain in force and effect unless released or terminated by all Persons having rights to exercise such easements.

3.7 Subdivision Declaration. Within the Properties there could be two or more separate and distinct phases, sections, or subdivisions. Because such phases, sections or subdivisions may have varying commercial or residential uses, Lot sizes, types of Dwellings, marketing considerations and other differences, it may be necessary or desirable to impose additional and different covenants and restrictions on such phases, sections or subdivisions which are applicable solely to such phase, section or subdivision (the foregoing being referred to herein as a "Subdivision Declaration"). Accordingly, the Declarant or other Person who owns any such phase, section or subdivision of the Properties may subject such phase, section or subdivision to such Subdivision Declarations as the Declarant or such other Person, in his, her or its sole discretion, may from time to time determine. Provided, however, during the Development Period no Person other than the Declarant may subject any phase, section or subdivision of the Properties to any Subdivision Declaration unless the Declarant consents in writing thereto. More than one phase, section or subdivision may be subjected to the same Subdivision Declaration. Any Subdivision Declaration may do any one or more of the following: (i) establish minimum building setback distances and minimum Dwelling square footage requirements for such phase, section or subdivision that are more or less than the minimum building setback distances and minimum Dwelling square footage requirements, if any, that are

specified in the Declaration or in any Architectural Guidelines; and (ii) specify such use restrictions and contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not in conflict with the Declaration, as the Declarant or other Person subjecting such real property to the Subdivision Declaration may determine. Except for the foregoing matters that may be different in a Subdivision Declaration from the requirements in the Declaration, the Declaration shall control over any provision of any Subdivision Declaration that conflicts with the Declaration.

3.8 Restrictions on Subdivision Declaration and Supplemental Declarations. Notwithstanding anything to the contrary herein, a Subdivision Declaration or a Supplemental Declaration may create a new or different class of membership from those then existing under the Declaration, either with the same or different assessment obligations as the classes of membership then existing under the Declaration, only in the following circumstances: (i) the Subdivision Declaration or Supplemental Declaration is executed by Declarant with respect to a portion of the Properties or any Additional Property owned by Declarant; or (ii) during the Development Period, the Declarant gives its written consent to the Subdivision Declaration or Supplemental Declaration with respect to any portion of the Properties or any Additional Property that is owned by a Person other than Declarant; or (iii) following the end of the Development Period, the Subdivision Declaration or Supplemental Declaration with respect to any portion of the Properties or any Additional Property owned by a Person other than Declarant is approved by the affirmative vote of sixty-seven percent (67%) or more of the total vote of the membership of the Association.

#### **ARTICLE IV MEMBERSHIP**

Each and every Owner of a Lot is a Member of the Association, with classes of membership as provided herein, and, by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association and to be subject to the terms of the Governing Documents, and Declarant shall be the Class B Member at all times that Declarant owns at least one (1) Lot (which may consist of the Unsubdivided Land owned by Declarant if Declarant owns no other Lots in the Properties). Membership shall be appurtenant to and may not be separated from ownership of the Lot owned by such Owner. An Owner's membership in the Association automatically terminates whenever such Person ceases to be an Owner (except that the Declarant's Class B Membership shall terminate only as provided herein). Termination of membership shall not release or relieve any such Owner from any liability or obligation incurred under this Declaration during the period of such Owner's ownership, nor impair any rights or remedies which the Association or any other Owner has with respect to such former Owner.

#### **ARTICLE V VOTING RIGHTS**

The Association shall have the following two (2) classes of voting membership:

(a) Class A Members shall be all Owners with the exception of the Declarant. Declarant shall, however, be a Class A member upon the termination of Class B membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members; provided that the vote of that Lot shall be exercised as the majority of such Persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to each Lot. Fractional voting is prohibited. At any meeting of the Members, a representation by any of such Persons that a majority of such Persons have agreed as to the vote for such Lot shall be conclusive unless another of such Persons contests such representation at such meeting prior to the casting of such vote.

(b) The Class B Member shall be the Declarant. During all times that the Class B membership exists, the Class B Member is the only Member eligible to vote on Association matters, unless a Legal Requirement requires that all Members have a right to vote. With respect to each Association matter on which all Members are eligible to vote, the Class B Member has ten (10) votes for each Lot owned by Declarant. Any one or more times that the Class B membership terminates because Declarant owns no Lots, and Declarant later acquires ownership of one or more Lots, the Class B membership shall be reinstated until such time as Declarant again owns no Lots.

(c) The exercise of voting rights shall be governed by the Articles and/or Bylaws of the Association, as applicable, including quorum requirements and exercise of voting rights by written consent or other method allowed in the Articles and/or Bylaws instead of a vote at a meeting of the Association, or by any combination of voting at a meeting and other method of voting as allowed in the Articles and/or Bylaws. Any provision of this Declaration or other Governing Documents that refers to a vote of the membership of the Association shall not preclude the exercise of voting rights by such other methods.

(d) During the Development Period, the Declarant shall be entitled to appoint, remove, and replace all of directors of the Board, and, with respect to quorum requirements at any meeting of the Association, Declarant's right to appoint directors is also Declarant's right to elect directors under the Act.

## ARTICLE VI ASSOCIATION

6.1 Board Acts for Association. Unless reserved by or for the Declarant in this Declaration, other Governing Documents or Legal Requirements, or unless otherwise required by Legal Requirements, all rights, powers, easements, functions, services, obligations and duties of the Association may be performed, exercised, directed, or contracted for by the Board on behalf of the Association. The officers of the Association may act on behalf of the Association as authorized in the Governing Documents and/or as directed by the Board.

6.2 Powers and Obligations. Subject to Legal Requirements and the Governing Documents, the Association has the following powers and obligations (the matters addressed in

this Section may not constitute a complete list of the powers and obligations of the Association, as other powers and obligations may be addressed in other Sections of this Declaration, other provisions of Governing Documents, and in Legal Requirements):

(a) The Association shall satisfy or perform the obligations required of the Association by Legal Requirements and the Governing Documents, and the Association shall have all powers conferred upon the Association by the Governing Documents and Legal Requirements.

(b) The Association may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property.

(c) The Association has the sole and exclusive power and authority to regulate use of the Common Elements by Owners and other Persons, including establishment of rules and regulations for use and user fees or charges.

(d) The Association has the power and authority to enter into such Stormwater Agreements, encroachment agreements and other agreements with Governmental Authorities, utility providers, and other Persons as are reasonably necessary to enable the Association to maintain Common Property and to perform its obligations under this Declaration. During the Development Period, the Declarant has the power and authority to enter into Stormwater Agreements, encroachment agreements and other agreements with Governmental Authorities, utility providers, and other Persons as Declarant, in its sole discretion, determines, each of which agreements may be binding on the Association and all Owners, unless otherwise provided therein.

(e) The Association shall accept transfer of ownership from Declarant of any and all Common Property and/or rights therein, and transfer of ownership of any and all improvements thereon, including transfer or assignment of any and all associated rights, easements, permits, and obligations.

(f) The Association shall accept from Declarant any and all assignments of Declarant rights and obligations under any part or all of this Declaration, any Subdivision Declaration, any Supplemental Declaration, any easements, any encroachment agreement with a Governmental Authority, or any other agreement with or permit issued by a Governmental Authority, a utility provider, or any other Person, and any document required to be executed with respect to the Properties by a Governmental Authority, including assumption of all Declarant or Association obligations which are contained in such documents and agreements or which are incident to such assignments, as they relate to any Common Property, architectural approvals or other functions or services performed or provided by the Association.

(g) The Association shall accept from Declarant any and all appointments of the Association as the agent of Declarant for administration and enforcement of any of the provisions of this Declaration or any Subdivision Declaration or Supplemental Declaration, and shall assume all obligations which are incident to such appointments as they relate to any

Common Property, architectural approvals or other functions or services performed or provided by the Association.

(h) All rights and powers granted to, or reserved for, or established for the benefit of, the Association may be exercised by the Association (or, as the case may be, on behalf of the Association by the Board or a Committee of the Board), at any time and from time to time, whether or not the right to do so is stated specifically in connection with such right or power.

6.3 Functions and Services. The Association shall or may, as indicated, do, provide, provide for, perform, accept, or be responsible for the following, the expenses for which are Common Expenses, and in carrying out these and other functions and providing services as required or allowed by the Governing Documents, the Association has all of the following described or referenced rights and powers. The Association may take all actions and do all things its deems necessary or desirable to enforce and implement the provisions of Legal Requirements and the Governing Documents, and to exercise the rights, satisfy the obligations, and perform the functions or services the Association is required or allowed to do by the Governing Documents, and in connection therewith, except as specifically limited by this Declaration, the Association shall have all of the rights and powers under the Act and the Nonprofit Corporation Act.

6.4 Stormwater Management. Except for maintenance responsibilities (i) placed on Owners by the Governing Documents or Legal Requirements, or (ii) assumed or undertaken by other Persons, the Association shall maintain the Stormwater Control Measures and shall pay for the maintenance thereof as part of the Common Expenses. As used in the immediately preceding sentence, the word "maintain" includes provision for maintenance of, which may include financial contributions toward maintenance of Stormwater Control Measures located on and/or shared with other properties not subject to this Declaration. Provided, however, such maintenance obligations shall cease and terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time as another Person is providing the necessary maintenance therefor (for example, pursuant to an agreement which requires monetary payments by the Association to the Person who is performing the maintenance). Following any such assumption of maintenance by another Person, the Association may, without obligation, continue to provide maintenance to the extent that the other Person fails to provide adequate maintenance, in the opinion of the Board, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the other Person has not assumed maintenance responsibility, or following termination of such Person's maintenance responsibility. Notwithstanding anything to the contrary herein, the Owner of any Lot on, over or through which any Stormwater Control Measures or portion thereof is located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable, unless the Association assumes such responsibility; and (ii) removal of debris and other materials, to the extent that it is reasonable for an Owner to do so, where such debris or materials has impeded or threatens to impede the free flow of stormwater on, over or through the Stormwater Control Measures located on the Lot. Such Owner's responsibility shall include notification of the Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter which

the Owner reasonably believes is beyond the Owner's ability to remove, and any excessive erosion or other problem within any such Stormwater Control Measures. The Owner of a Lot on which a Stormwater Control Measure is located shall not obstruct it or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all stormwater drainage easements and stormwater management facilities located on and used exclusively in connection with such Owner's Lot or the improvements thereon, including guttering, and pipes and drains on the Lot used exclusively for transportation of stormwater from such Lot into any other Stormwater Control Measures. All issues as to whether a stormwater drainage easement or stormwater management facility is part of the Stormwater Control Measures for which the Association is responsible or whether it is the responsibility of an Owner shall be determined by the Declarant during the Development Period (unless Declarant assigns such right to the Association), and thereafter by the Association.

Declarant, during the Development Period, and thereafter, the Association, subject to any approval required by a Governmental Authority, may grant, relocate, abandon and/or release one or more stormwater drainage easements in the Properties, subject to the following: (i) the grant of any such stormwater drainage easement also shall be consented to in writing by the Owners of all portions of the Properties on which such stormwater drainage easement is located, such consent not to be unreasonably withheld, delayed, or conditioned, unless the stormwater drainage easement is shown on a previously recorded plat of such portions of the Properties or is within any 10 foot wide easement area reserved by Declarant in this Declaration, in which event the consent of the Owners is not required, and the Declarant or the Association, as applicable, also may grant the stormwater drainage easement by written instrument; and (ii) no such grant, relocation, abandonment or release shall materially adversely affect the Stormwater Control Measures for the Properties. The provisions of this paragraph also are applicable to any access easement over any portion of the Properties that provides pedestrian or vehicular access from a public street right of way or other public easement or facility to and from any Stormwater Control Measures. With respect to its obligations under this Section, the Association shall pay, post, provide for or comply with all bonds and other financial obligations under Legal Requirements, Stormwater Agreements, and/or other agreements related to Stormwater Control Measures that are executed by the Association (or, during the Development Period, by the Declarant on behalf of the Association or for later assignment to the Association). The Association (and, during the Development Period, the Declarant on behalf of the Association) may enter Stormwater Agreements and/or other agreements and amend, add to, or supplement existing Stormwater Agreements and other agreements (and when Stormwater Agreements or other agreements are referred to in this Declaration, the reference includes amendments, additions, and supplements thereto), with a Governmental Authority, another property owners' association, or any other Person with respect to inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating, and managing any part or all of the stormwater on, to, or from any part or all of the Properties and/or any or all of the Stormwater Control Measures for the Properties, whether such Stormwater Control Measures are located within or outside of the Properties, and with respect to maintenance of the Stormwater Control Measures and access to Stormwater Control Measures. Such Stormwater Agreements and other agreements shall be binding on all Owners, and may

require payments from the Association or the Owners whose Lots are served by the applicable Stormwater Control Measures for the services provided by a Governmental Authority, such other association or such other Person in inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such Stormwater Agreements and other agreements may include all other terms and obligations required by Legal Requirements. In connection with the foregoing purposes expressed in this paragraph, the Association (and, during the Development Period, the Declarant on behalf of the Association) may grant rights over, in, under, upon and through any and all stormwater drainage easements and Stormwater Control Measures in the Properties, and may grant rights over, in, under, upon and through all easements in the Properties that provide pedestrian and/or vehicular access from a publicly dedicated street right of way to and from stormwater drainage easements and/or Stormwater Control Measures. Provided, however, during the Development Period no such Stormwater Agreement or other agreement shall be valid unless the same shall have been consented to in writing by the Declarant.

Declarant hereby informs all Owners and other Persons who may from time to time deal with or come in contact with the Properties, that as stormwater drains from the Properties or other properties onto or into the Properties, including Lots, Stormwater Control Measures, and other Common Property, it is possible that substances or materials that may be classified or regulated as "hazardous substances" or "toxic substances" or other regulated substances or materials under Legal Requirements relating to the environment, may flow through and/or accumulate on or in the Properties, including Lots, Stormwater Control Measures, and other Common Elements. Accordingly, each Owner and other Person assumes the risk of the existence of such hazardous substances, toxic substances, or other regulated substances or materials that enter and/or accumulate in the Properties. In addition, each Owner further acknowledges that if it becomes necessary (as determined by Legal Requirements or by the Board) for such substances to be removed from the Stormwater Control Measures or other Common Elements or otherwise handled in accordance with Legal Requirements, and for such Stormwater Control Measures or other Common Elements to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling and/or clean-up are Common Expenses, and that an additional assessments may be required to pay for such removal and/or resultant clean-up of the Stormwater Control Measures or other Common Elements. Declarant reserves for itself and the Association a blanket easement across all Lots for maintaining satisfactory storm water drainage in the Properties; provided, however, such easement area shall not include any portion of a Dwelling on a Lot. It is anticipated that increased storm water run-off across downstream Lots may result from the construction of impervious surface within the Properties. Neither the Declarant nor the Association with respect to Improvements it constructs in accordance with Legal Requirements applicable at the time of construction, and neither any other Builder or Owner constructing Improvements according to Approved Plans and Legal Requirements applicable at the time of construction, shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from construction of such Improvements. Declarant may assign to the Association, and the Association shall accept from Declarant the assignment of all obligations of the Declarant under agreements entered into by the Declarant with respect to Stormwater Control Measures for the Subdivision, provided the Declarant has

performed, or made adequate provision for the performance of, all obligations, if any, specifically required of the Declarant, prior to the time of the assignment, under the agreement being assigned to the Association. The provisions of this Section shall be construed liberally in order to allow the Declarant and the Association, on behalf of the Subdivision and all Owners, the necessary flexibility to comply with all Legal Requirements with respect to stormwater, including the execution of Stormwater Agreements or other agreements with a Governmental Authority or other Persons and the granting of easements to a Governmental Authority or other Persons.

6.5 Dedication, Conveyance or Exchange of Common Property. The Association, (i) upon obtaining the minimum required voting percentage under applicable provisions of the Act for conveyance of Common Property (at the time of recording of this Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) or more of the total number of votes in the Association), and (ii) upon compliance with any applicable provisions of the Code and other Legal Requirements, and (iii) prior to the end of the Development Period, upon obtaining the written consent of Declarant, may dedicate portions of the Common Property to public use and/or convey or exchange portions of the Common Property with the Declarant or any other Person, for any purpose approved by any required vote of the Members, including any one or more of the following purposes: (i) to eliminate unintentional encroachments of improvements or easements; (ii) to correct any building or other setback violations; (iii) to adjust boundary lines of portions of the Properties; (iv) to facilitate the orderly subdivision and development of the Properties; or (v) to conform the configuration of the Properties to any applicable Development Plan. All conveyances and exchanges of Common Property are subject to the following: (i) no such conveyance or exchange (either alone, or in conjunction with other conveyances or exchanges) shall result in a reduction of the portion of the Common Property that constitutes "open space" below the minimum amount of "open space", if any, required by the applicable Governmental Authority; (ii) if required by Legal Requirements, the applicable Governmental Authority must approve any exchange or boundary line adjustment; (iii) any boundary line adjustment must be approved by the Owners of all portions of the Properties affected by the adjustment; (iv) properties received by the Association in an exchange must be of like value and utility as the Common Property that are part of the exchange transaction; (v) each Lot contiguous to Common Property prior to the conveyance shall remain contiguous to Common Property after the conveyance, unless otherwise approved by the Owner of the Lot that no longer will be contiguous; (vi) the conveyance shall not materially conflict with any applicable Subdivision Plan; (vii) no conveyance of Common Property shall deprive any Lot of its rights of access and support; and (viii) any conveyance of real property to the Association must be free and clear of all encumbrances except for this Declaration and any applicable Supplemental Declaration, Stormwater Agreements and other agreements executed as allowed by this Declaration, Legal Requirements, street rights of way or access easements, greenway easements, easements for utilities, and stormwater drainage easements.

6.6 Mortgage and Pledge of Common Property. The Association, (i) upon complying with the minimum required voting percentage under applicable provisions of the Act for conveyance or dedication of Common Property (at the time of recording of this Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) or more of

the total number of votes in the Association), and (ii) prior to the end of the Development Period upon obtaining the written consent of Declarant, shall have the power and authority to mortgage the Common Property and to pledge its assets as security for loans made to the Association, which loans shall be used by the Association in performing its functions and providing services under this Declaration. Declarant may, but shall not be required to, make loans to the Association, subject to the foregoing and further subject to approval by the Declarant of the use of such loan proceeds and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, at any time that there is any unpaid amount owed to Declarant under any loan made by it to the Association, without Declarant's written consent the annual assessments shall not be reduced below the amounts in effect at the time such loan first was made.

6.7 Liability Limitations. Except as required by Legal Requirements or this Declaration, or agreed to by any of the following Persons otherwise excluded from liability by the provisions of this sentence, neither Declarant, nor any Builder, nor any current or former Member of the Association, nor the Board, nor any director on the Board, nor any officer of the Association, nor any member of the Architectural Review Committee or any other Association committee, nor any shareholder, director, officer, partner, member, manager, agent or employee of any of the foregoing, shall be personally liable for debts contracted or incurred by the Association or for a tort of another current or former Member, whether or not such other current or former Member was acting on behalf of the Association, unless such Person specifically agrees in writing to be obligated for any such debt of the Association or any such tort (but the foregoing shall not relieve such Person from that Person's obligation, if any, under this Declaration, to pay assessments to the Association or other obligations as a Member of the Association). Neither Declarant, nor the Association, nor the Board, nor any director on the Board, nor any officer of the Association, nor any member of the Architectural Review Committee or any other Association committee, nor any shareholder, director, officer, partner, member, manager, agent or employee of any of the foregoing, acting in those official capacities, shall be liable for any incidental or consequential damages for failure to inspect any Owner's Lot or improvements thereon, or for failure to maintain the same (provided, however, and notwithstanding the foregoing, as required by Legal Requirements and the Governing Documents, Declarant and the Association each shall maintain all portions of the Properties it owns, and, except as otherwise specifically provided herein, directors on the Board and officers of the Association and members of the Architectural Review Committee and other Association committees shall have all of the other obligations and liabilities of an Owner under this Declaration with respect to portions of the Properties owned by such Persons). The Association shall indemnify all Association directors and officers, and members of the Architectural Review Committee and other committees of the Board, as required by the Articles and Bylaws. Neither the Board or any director of the Board, the Association or any of its officers, the Declarant or any of its shareholders, directors, officers, partners, members, managers, agents or employees, nor any current or former Member of the Association, shall be considered as a bailee of any personal property stored or placed on the Common Property (including vehicles parked on the Common Property), whether or not exclusive possession of the particular area is given to the Person who owns such personal property, nor shall any of the foregoing Persons (other than the Person who owns the personal property) be responsible for the security of such personal property or for any

loss or damage thereto. With the exception of liability for gross negligence, the Association shall not be liable for any personal injury or damage to property arising out of or resulting from any of the following: (i) failure of or interruption to any service to be obtained by the Association or paid for as a Common Expense; (ii) weather or other natural events or events of Force Majeure; (iii) the acts or omissions of any Owner or any other Person; or (iv) electricity, water, snow or ice which may leak or flow from or over any portion of the Properties or from any pipe, drain, conduit, appliance or equipment, or any incidental or consequential damages of any type resulting from the foregoing. No diminution, offset or abatement of any assessment or other charge shall be claimed or allowed for inconvenience or discomfort arising from maintenance of the Common Property or from any action taken by the Association to comply with any Legal Requirement. This Section is not intended, nor shall it be construed, to relieve any insurer of its contractual obligations under any policy benefitting the Association or any Owner. The Association shall indemnify all Association directors, officers, and members of the Architectural Review Committee and other Association committee members as provided in the Articles or other Governing Documents.

## ARTICLE VII PROPERTY RIGHTS IN COMMON AREA

7.1 Owners' Easements of Enjoyment and Access. Except as limited by the provisions of this Section, or by other provisions of this Declaration or any other Governing Document, every Owner shall have a non-exclusive right and easement of enjoyment in, use of and access to, from, and over the Common Property, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following:

- (a) Restrictions, easements, and other matters applicable to the Common Elements.
- (b) Subject to the provisions of the Code and the Governing Documents, the right of the Association to charge reasonable admission and other fees for the use of any Common Elements and to regulate the use thereof by Owners and other Persons.
- (c) The right of the Association to regulate or limit use and access by Owners to Common Elements to only such use or access as is reasonably necessary to the full use and enjoyment of the Lot owned by such Owner. In this regard, it is contemplated that there may be some Common Elements to which no Owners, or only a limited number of Owners, will have any right of use or access.
- (d) Limitation of use of Limited Common Property to those Lots and Owners to whom such Limited Common Property is allocated or with whom it is associated.
- (e) Subject to any applicable notice and hearing requirements of the Act and maximum fine limitations of the Act, the right of the Association to fine an Owner and/or suspend the voting rights of an Owner and/or suspend other rights and easements of enjoyment in and to the Common Property of an Owner and such Owner's family members, tenants, contract purchasers, guests, or other Persons to whom the Owner has delegated such rights, for

any period during which any assessment or other amount owed by the Owner to the Association remains unpaid, and for a reasonable period of time for any violation or infraction of the Governing Documents by an Owner or such Owner's family members, tenants, contract purchasers, guests, or other Persons to whom the Owner has delegated such rights or who are asserting any rights through such Owner. Provided, however, no such suspension shall constitute a waiver or discharge of the Owner's obligation to pay any assessment or other charge under this Declaration. Further provided, the Association shall not suspend the right of any Owner to any of the following: (i) ingress and egress over any portion of the Common Elements on which there is a private street or easement that provides access for ingress and egress from a public street to and from such Owner's Lot; (ii) drainage of storm water in, on, over, under, or through, as applicable, any portion of the Common Elements on which there is a stormwater drainage easement or Stormwater Control Measures that provides storm water drainage for such Owner's Lot; or (iii) sanitary sewer, water or other utility service in, on, over, under, or through, as applicable, any portion of the Common Elements on which there is an easement that provides such utility service to such Owner's Lot. Provided, however, such Owner shall remain subject to the rules and regulations, if any, established by the Association for use of such portion of the Common Property.

(f) The right of the Association to dedicate, sell, transfer or exchange all or any part of the Common Property, subject to the applicable voting requirements for such actions.

(g) The right of the Declarant, during the Development Period, and the right of the Association, to grant easements over, across, in, on, under, and through the Common Property to any Governmental Authority or utility provider for the installation and maintenance therein of water and sanitary sewer, natural gas, electric, telephone, cable television and other utilities, and Stormwater Control Measures.

(h) The right of the Association to borrow money and, subject to the applicable voting requirements for such actions, to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Property or its other assets as security for such indebtedness. Provided, however, that the rights of any such lender or Mortgagee shall be subordinate to the property rights of the Members and the Association as provided in this Declaration.

(i) The right of the Association, as provided by and consistent with the provisions of the Code, the Act and this Declaration, to exchange all or part of the Common Property for other property or consideration.

(j) The right of the Association to close or limit the use of Common Property for maintenance of improvements thereon or to close or limit use of Common Property temporarily in order to prevent or defeat any claims of adverse possession or unintentional dedication to public use.

(k) The right of the Association to adopt and enforce Restrictions and Rules or rules and regulations governing the use of the Common Property.

(l) Special Declarant Rights and any other rights of the Declarant reserved in the Declaration.

7.2 Delegation of Use. Except as may be specifically limited hereinbelow, any Owner of a Lot may delegate, in accordance with the Bylaws, its right of use and enjoyment to the Common Area and Improvements related thereto to the members of its family, its guests, its tenants, or contract purchasers who reside on such Owner's Lot.

7.3 Suspension of Use Privilege. All uses of the Common Property by an Owner's family members, tenants, and guests constitute a privilege and not a right. The privilege of any Person under this Section to use the Common Property may be suspended for violation of the Governing Documents and as otherwise provided in the Governing Documents, and such privilege shall be suspended during any period of time that the rights of the Owner through whom the Person derives his or her privilege to use the Common Property are suspended.

7.4 Limitation of Liability. Owners, occupants, tenants, and guests shall use the Common Elements and other property maintained by the Association at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners, occupants, tenants, and guests shall have an affirmative duty and responsibility to inspect such Common Elements and other property maintained by the Association for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof and to report any of the foregoing to the Association. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person as a result of anything other than the gross negligence of the Association or Declarant, as applicable, nor for loss or damage to personal belongings used or stored on any of the Common Elements or other property maintained by the Association. The Association shall not be liable to any Owner, occupant, tenant, or guest for loss or damage, by theft or otherwise, of any property of Owner, occupant, tenant, or guest. The Association shall not be liable for injury or damage to any Person or property: (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, Stormwater Control Facilities, or utility line or facility, or from any portion of the Common Elements or other property maintained by the Association, unless resulting from the gross negligence of the Association, or (c) resulting from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, Stormwater Control Facilities, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair, unless resulting from the gross negligence of the Association.

7.5 Title to the Common Area. Declarant covenants, for itself, its successors and assigns, that it will convey Common Property to the Association as required by Legal Requirements, this Declaration, or other Governing Documents within the applicable time periods set forth therein or, absent such time periods, following the end of the Development Period. Provided, however, specific performance shall be the only remedy available for any failure of Declarant to do so, and the Association shall accept conveyance of Common Property from the Declarant at any time. Such conveyance shall be by deed (including but not limited to a

deed without warranty at Declarant's option) conveying fee simple title to all real property portions of the Common Area to the Association, free and clear of all encumbrances and liens, other than the lien of: (i) current taxes and assessments not in default; (ii) utility, drainage and greenway easements, and other easements and encumbrances not constituting a lien to secure the payment of money; and (iii) the terms and conditions of this Declaration, including any amendments thereto and any applicable supplemental Declaration of Annexation.

#### 7.6 Rights and Responsibilities as to Common Elements on a Lot.

(a) Each Owner of a Lot upon which any Common Elements is located shall pay all ad valorem property taxes and assessments levied against such Lot, including that portion of such tax or assessment as is attributable to such Common Elements (unless such Common Elements constitute a separate parcel owned by the Association for ad valorem property tax purposes or are taxed separately from the Lot, in which event the Association shall pay the tax or assessment attributable to such Common Elements), and, except as otherwise provided by the Association, shall maintain the portion of such Owner's Lot subject to the Common Elements in the same manner as the Owner is required to maintain the remainder of the Lot under this Declaration, except that the Association shall maintain those improvements on the Lot constructed or installed by or on behalf of the Association for use in connection with the Common Elements, and the Association shall reimburse the Owner for any additional ad valorem property taxes assessed against the Lot specifically for the improvements associated with those Common Elements. The Board shall have the right to resolve any conflict with an Owner with respect to payment of any such tax or assessment attributable to the Common Elements. Notwithstanding any other provision of this Declaration, no Owner or other Person shall, without the prior written consent of the Association (or, during the Development Period, the prior written consent of the Declarant): (i) remove any trees or other vegetation or improvements located within Common Elements; (ii) maintain gates, fences, or other improvements in or on any Common Elements; (iii) place any garbage receptacles in or on any Common Elements; (iv) fill or excavate any Common Elements or any part thereof; or (v) plant trees or other vegetation in, or otherwise restrict or interfere with, the maintenance of Common Elements.

(b) The Declarant and Association, and their respective employees, agents, contractors and subcontractors, have a nonexclusive right and easement at all times to enter upon any Common Elements located on a Lot or any other portion of the Properties not owned by the Declarant or the Association for any or all of the following purposes: (i) maintaining entrance signs, monuments and decorative features, and other signs, all of which shall have been approved by a Governmental Authority if such approval is required under Legal Requirements; (ii) maintaining landscaping, Stormwater Control Measures, and other improvements to or in the Common Elements that have been constructed or installed by the Declarant or the Association and, if required by Legal Requirements, by the Town; and (iii) otherwise maintaining the Common Elements or keeping the Common Elements free from obstructions and impediments to its use.

7.7 Ingress and Egress; Utilities. Notwithstanding anything to the contrary appearing in this Declaration, (i) if ingress and egress from a public street to and from any Lot is over any

part of the Common Property as shown on any plat or described in any instrument recorded in the Registry, or (ii) Stormwater Control Facilities, stormwater drainage, sanitary sewer, water or other utility services are provided to a Lot over or through an easement located on the Common Property as shown on any plat or described in any instrument recorded in the Registry, any conveyance or encumbrance of the affected portion of the Common Property shall be subject to those easements for ingress and egress and/or utilities, and no suspension of the rights of the Owner of said Lot in and to the use and enjoyment of the Common Property as allowed herein shall include suspension of any rights of such Owner to ingress and egress or utilities.

## ARTICLE VIII COVENANT FOR MAINTENANCE ASSESSMENTS

8.1 Creation of Lien and Personal Obligation for Assessments and Other Charges. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies on behalf of the Association) all assessments and other charges as required or allowed by this Declaration, including the following: (i) annual assessments; (ii) working capital assessment; (iii) stormwater assessments; (iv) special assessments for capital improvements or other matters as set forth herein; (v) special individual assessments levied against an Owner to reimburse the Association for maintenance expenses resulting from the failure of such Owner to maintain adequately that Owner's Lot; or for damages to Common Elements, or for such other purposes as stated herein; (vi) specific assessments; (vii) special area assessments; (viii) architectural review fees and costs as specified herein; (ix) fines for violations of Restrictions and Rules and/or Association rules and regulations with respect to use of the Common Property; (x) late payment penalties and interest on unpaid assessments and other charges; and (xi) other charges imposed under authority contained in the Act (specifically including all fees allowed under Section 47F-3-102 of the Act) or Governing Documents (architectural review fees, fines, penalties, interest and other fees and charges all being referred to herein collectively as "other charges"), and, in addition to such assessments and other charges, to pay all costs, fees and expenses, including reasonable attorneys' fees, incurred by the Association in enforcing or collecting any of the foregoing assessments or other charges against the obligated Owner. All assessments and other charges shall be established and collected as hereinafter provided. All assessments levied against a Lot and other charges remaining unpaid for a period of thirty (30) days or longer, together with the costs of collection thereof, including reasonable attorneys' fees, shall constitute a charge and continuing lien on that Lot from and after the time of the filing of a claim of lien by the Association in the office of the Clerk of Superior Court of Wake County, North Carolina, and shall be the personal and continuing obligation of the Person who was the Owner of such Lot at the time when the assessment or other charge first became due and payable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid. No Owner shall be exempt from liability for any assessment provided for herein by reason of non-use of the Common Property or such Owner's Lot, or

abandonment of a Lot, or temporary unavailability of the use or enjoyment of the Common Property. If necessary to establish the right to collect reasonable attorneys' fees under this Declaration, any obligation of an Owner to pay assessments or other charges or monetary obligations under this Declaration shall constitute evidence of indebtedness for the purpose of establishing under Section 6-21.2 of the North Carolina General Statutes (or any successor statute) the right to collect reasonable attorneys' fees in any action or proceeding to enforce or collect payment of such obligation. Provided, however, the foregoing sentence specifically is intended to supplement, and not to interfere, limit, invalidate or be in conflict with, any provisions of the Act or Legal Requirements with respect to reasonable attorneys' fees.

8.2 Liability for Assessments After Change in Membership Status. No Owner shall be relieved of, or released from, the obligation to pay assessments and other charges under this Declaration because of any resignation or attempted resignation by such Owner of membership in the Association while such Owner owns a Lot, or because of any suspension of such Owner's membership or membership rights in the Association as allowed under Legal Requirements or the Governing Documents.

8.3 Nature, Purpose and Use of Assessments. The assessments shall be used by the Association for any one or more of the following: (i) to pay the Common Expenses; (ii) to perform the functions or provide the services required or authorized of the Association pursuant to the Governing Documents, Legal Requirements, and the Association's contractual obligations; (iii) to implement, administer and enforce the terms and provisions of the Governing Documents as the Board determines to be in the best interests of the Association or its Members; and (iv) for all other purposes required or authorized under the Governing Documents, the Act, and other Legal Requirements. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies set aside for reserves, for the fiscal year to which it applies and in accordance with the annual operating budget adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board. All assessments and other charges collected by the Association shall be the separate property of the Association. As assessments and other charges are paid to the Association by Owners, such funds may be commingled with assessments and other charges paid to the Association by other Owners. No Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer, such Member's interest in the assets of the Association, except as an appurtenance to the Lot owned by such Member. When any Owner ceases to be a Member of the Association, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association or any portion thereof which were paid to the Association by such Owner or acquired with any funds paid to the Association by such Owner.

8.4 Annual Assessments.

(a) The annual assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Board of Directors and may be collected on a monthly, quarterly, semiannual or yearly basis, as determined by the Board of Directors. The annual assessments shall be charged to each Owner of a Lot in Use. On or before December 1st of each year, the

Board of Director's shall adopt the Budget (as defined below) for the upcoming Annual Assessment Period. The annual budget for the Association shall include all anticipated revenues (including revenues from annual assessments to be charged in the next Annual Assessment Period - the "Anticipated Annual Assessments") and anticipated costs for the Association for the upcoming Annual Assessment Period (together the "Budget"). The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the annual assessment to be charged each Owner for the upcoming Annual Assessment Period.

(b) Notwithstanding the above to the contrary:

(i) Through and including January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment per Lot in Use shall be Twelve Hundred Dollars (\$1,200.00).

(ii) An annual increase in the annual assessments shall not be more than ten percent (10%), except by approval of at least two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting call for this purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws.

(iii) Subject to the provisions of this Article VIII, the Board of Directors may fix the annual assessment at any amount not in excess of the maximum annual assessment allowed for the applicable calendar year.

8.5 Working Capital. In addition to the regular annual assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of a Lot by Declarant or a Builder to an Owner who is not a Builder, pay to the Association \$600.00 on that Lot as additional working capital of the Association. These amounts need not be segregated, but may be commingled with regular Assessment funds.

8.6 Special Assessments. In addition to any other assessments authorized herein, and subject to the other requirements of this Declaration, the Association may levy special assessments for the purpose of defraying, in whole or in part, the costs or expenses of any one or more of the following:

(a) Maintenance of a capital improvement in or on the Common Property, including fixtures and personal property related thereto.

(b) Additions to the Common Elements, including acquisition of new Common Elements and improvements to existing Common Elements.

(c) The necessary facilities and equipment to enable the Association to perform the functions and offer the services required or authorized herein.

(d) The Common Expenses of the Association, to the extent that such Common Expenses are not covered by annual assessments and applicable reserve funds.

(e) Repayment of any loan made to the Association to enable it to pay the Common Expenses or to perform the other functions and provide the other services required or authorized herein.

Each special assessment levied under this Section first shall be approved by the affirmative vote by sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association and, during the Development Period, the written consent of the Declarant. Notices for all meetings of the Association at which there is to be a vote on a special assessment shall include notice of the purpose and amount of the proposed special assessment. A special assessment is effective on the later of the date it is approved by the Members or Declarant (if such approval is required), or such later date adopted by the Members in the vote approving the special assessment, and is due and payable as established by the vote of the Members approving the special assessment, or, if not established by such vote of the Members, as established by the Board. Except as otherwise provided in this Declaration or required by Legal Requirements, special assessments shall be assessed equally against the Lots - for example, if there are 100 Lots subject to a special assessment, each Lot is assessed an amount equal to 1/100th of the total amount of that special assessment.

8.7 Special Individual Assessment. In addition to all other assessments, the Board (without any vote of the Members as required for other types of special assessments) may levy a special individual assessment against any Owner for (i) the repair of any damage to any portion of the Properties, including, without limitation, Common Elements and public road rights of way (other than normal wear and tear), caused by the Owner or any such Owner's family members, tenants, contractors, subcontractors, agents, or guests, or (ii) maintenance expenses resulting from the failure of such Owner to maintain adequately that Owner's Lot, or (iii) for any other purposes for which a special individual assessment may be assessed under Legal Requirements or Governing Documents. The notice of such special individual assessment shall describe the nature of the damage and the necessary repairs or maintenance, or any other purpose for the special individual assessment, and any such special individual assessment shall be due and payable to the Association on or before the tenth (10th) day following the giving of the notice by the Association. The Board may, in its discretion, levy any such special individual assessment prior to the commencement by the Association of the repairs or maintenance for which such special individual assessment is levied; provided that, if not already completed, upon the Association's receipt of payment of such special individual assessment the Association promptly shall undertake to have such repairs or maintenance performed and shall refund to such Owner any excess of the amount assessed and paid over the cost of such repairs or maintenance. In the event that the cost of such repairs exceeds the amount assessed and paid, the Board may assess such Owner for the excess costs.

8.8 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Dwelling into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any specific assessment under this subsection (b); and

(c) to cover costs incurred or expected to be incurred by the Association to set up, clean up, provide additional security, utilities or other services in connection with any festival or other special events sponsored by the Owners or tenants of any Lot or group of Lots, upon the Board's determination, in the exercise of its business judgment, that such services are necessary and appropriate.

8.9 Stormwater Assessment. Notwithstanding anything to the contrary in this Declaration, and in keeping with the obligation of the Association under Section 47F-3-107(a) of the Act to be "responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the Lot Owners as necessary to recover the costs of such maintenance, repair, or replacement", (i) if the Board determines for any fiscal year that the Association has insufficient funds to pay a Common Expense for maintenance of Stormwater Control Facilities, and (ii) the Board determines that there are not sufficient reserve funds available both to pay that Common Expense and continue to have adequate reserve funds, and (iii) the maximum annual assessment has been assessed for the applicable fiscal year and the Board is unable to obtain ratification of an amended budget to increase the maximum annual assessment, then the Board, without any vote of the Members, may levy a "stormwater assessment" in an amount sufficient to pay for that Common Expense. The amount of such stormwater assessment shall be determined and assessed against all Lots. The payment due dates for such stormwater assessment shall be as determined by the Board and shall be enforceable against Owners and their Lots in the same manner as annual assessments. Provided, however, during the Development Period no such stormwater assessment shall be valid unless the same shall have been consented to in writing by the Declarant. Further provided, except as may be necessary to account for different Stormwater Control Measures and/or Stormwater Agreements (or other agreements related to stormwater) applicable to different Lots as allowed in the Governing Documents or under Legal Requirements, all stormwater assessments shall be the same for all Lots subject to the stormwater assessment. Any stormwater assessment for excess expenses is in addition to all other assessments provided for herein.

8.10 Assessment for Governmental Entity Agreements. Notwithstanding anything to the contrary in this Declaration, and in keeping with the obligation of the Association under Section 47F-3-107(a) of the Act to be "responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to

recover the costs of such maintenance, repair, or replacement”, (i) if the Board determines for any fiscal year that the Association has insufficient funds to pay a Common Expense pursuant to any agreement with a Governmental Authority other than those related to Stormwater Control Facilities, and (ii) the Board determines that there are not sufficient reserve funds available both to pay that Common Expense and continue to have adequate reserve funds, and (iii) the maximum annual assessment has been assessed for the applicable fiscal year and the Board is unable to obtain ratification of an amended budget to increase the maximum annual assessment, then the Board, without any vote of the Members, may levy an additional assessment in an amount sufficient to pay for that Common Expense owed to the Governmental Authority. Except as otherwise provided in any Governing Documents or Legal Requirements, these additional assessments shall be assessed equally against the Lots - for example, if there are 100 Lots subject to a special assessment, each Lot is assessed an amount equal to 1/100th of the total amount of that special assessment. The payment due dates for such additional assessment shall be as determined by the Board and shall be enforceable against Owners and their Lots in the same manner as annual assessments. Provided, however, during the Development Period no such additional assessment shall be valid unless the same shall have been consented to in writing by the Declarant. Any assessment under this Section is in addition to all other assessments provided for herein

8.11 Notice and Quorum for Any Action Authorized Under Article VIII. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be delivered to all Members entitled to vote not less than ten (10) days nor more than sixty (60) days in advance of the meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Association, with postage thereon prepaid. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.12 Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots in Use.

8.13 Date of Commencement of Annual Assessments/Due Dates. The annual assessments shall commence as to a Lot on the first day of the month following the date it becomes a Lot in Use. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the annual assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of each annual assessment Period.

8.14 Collection of Assessments; Penalties for Late Payment.

(a) Assessments may be collected on a monthly, quarterly, annual or other basis, as

determined from time to time by the Board, with the payment due date to be specified in the notice of the applicable assessment. The billing schedule and payment due date shall be the same for all Lots subject to the applicable assessment. Provided, however, the Board has the power, in its sole discretion and upon such terms as the Board deems appropriate, to allow percentage discounts to Owners who pay assessments earlier than the payment due date therefor; provided, however, all such discounts shall be made available and applied uniformly to all Lots subject to the applicable assessment.

(b) Subject to any limitations contained in this Declaration, other Governing Documents, or any Legal Requirement, the Board has the authority to establish the payment due dates, interest rate on unpaid amounts, and penalties for late payment of assessments and other charges. Assessments and other charges not paid by the payment due date shall bear interest at a rate equal to the lesser of (i) eighteen percent (18%) per annum, or (ii) the highest lawful rate under Legal Requirements, or (iii) the amount, if any, established by the Board (or, in the absence of any amount being established by the Board, the lesser amount otherwise established by (i) or (ii) of this subsection). In addition to the obligation to pay the assessment and other charges and interest charges thereon, the defaulting Owner also shall pay all of the Association's costs and expenses of collection thereof, including reasonable attorneys' fees.

(c) The Board may authorize a management company or other billing agent, on behalf of the Association, to bill and collect all assessments and other charges payable under this Declaration.

8.15 Certification of Assessments Paid. The Association, or any property manager or agent authorized by the Association, upon written request and payment of a reasonable charge or fee established or approved by the Board, shall furnish to any Owner or such Owner's authorized agent, or to any holder of a first lien deed of trust on a Lot, or to an attorney who represents the Owner or a prospective purchaser of such Lot, or to any other Person approved by the Board, a certificate signed by an officer of the Association or other Person authorized by the Board to give such certificate setting forth whether or not there are any unpaid assessments or other charges against such Lot and the amount of any unpaid assessments or other charges. The certificate shall be furnished within ten (10) business days after receipt of the request therefor and, except in the event of any willful misstatement made by the issuer of the certificate, it shall be binding on the Association, the Board and every Owner. If requested by the requesting party, the certificate also shall indicate whether or not the Association has knowledge of any uncured default in, or violation of, any provision of this Declaration and other Governing Documents with respect to the Lot and the then Owners thereof and, if there is any uncured default or violation, the action required to cure it.

8.16 Assessment Lien and Foreclosure. The assessments and other charges provided for herein shall be the personal and individual debt of each Person who, at the time of the assessment or other charge, is the Person against whom they are charged or is an Owner of the Lot against which they are assessed or charged. All assessments levied against a Lot and other charges owed by the Owner of a Lot that remain unpaid for a period of thirty (30) days or longer, together with the costs of collection thereof, including reasonable attorneys' fees, shall constitute

a charge and continuing lien on that Lot from and after the time of the filing of a claim of lien by the Association in the office of the Clerk of Superior Court of Wake County, North Carolina, and shall be the personal and continuing obligation of such Owner at the time when the assessment or other charge first became due and payable. The Association must make reasonable and diligent efforts to ensure that its records contain the current mailing address for the Owner of such Lot. No fewer than fifteen (15) days prior to filing the claim of lien, the Association shall mail a statement of the assessment amount due by first-class mail to the physical address of the Lot and to the Owner's address of record with the Association, and, if different, to the address for such Owner shown on the Wake County property tax records for the Lot. If the Owner of the Lot is a corporation or other legal entity that has a registered agent, the statement also shall be sent by first class mail to the mailing address of the registered agent for the corporation or such other legal entity. Provided, however, and notwithstanding anything to the contrary in this Declaration, the Association is not required to mail a statement to an address known to be a vacant Lot on which no Dwelling has been constructed or to a Lot for which there is no United States postal address. The claim of lien shall set forth all of the information required by the Act and may contain such other information as allowed by the Act. Except as otherwise set forth herein or provided in the Governing Documents or by Legal Requirements, such lien shall be superior to all other liens and charges against such Lot. The Board shall have the power, in its sole discretion, to subordinate the lien to any other lien. The claim of lien shall set forth all of the information required by the Act and may contain such other information and take such other action as allowed by the Act.

8.17 Power of Sale. Except as otherwise provided in the Act, the Association may foreclose the claim of lien in like manner as a mortgage or deed of trust on real estate under a power of sale (a "nonjudicial foreclosure") if the assessment remains unpaid for ninety (90) days or more, and/or the Association may institute suit against the Owner personally obligated to pay the assessment or charge, and/or the Association may seek any other available remedy or relief, including judicial foreclosure in accordance with Legal Requirements or accepting a deed in lieu of foreclosure. Provided, however, the Association shall not foreclose the claim of lien unless the Board votes to commence the proceeding against the specific Lot. In any nonjudicial foreclosure, the Association shall have the right to appoint a trustee or commissioner (or other appropriately named Person) to implement the foreclosure, and the Association, upon giving any notice to the Owner required by Legal Requirements, may recover reasonable attorneys' fees and costs it incurs in connection with the collection of any sums due, subject to any limitations imposed by the Act or other Legal Requirements. The Association shall have the power to bid on and purchase the Lot at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal therewith. The remedies against a defaulting Owner and such Owner's Lot are cumulative and not mutually exclusive, and the Association may seek none, or any one or more of such remedies, separately or simultaneously, as deemed appropriate by the Board.

8.18 Lien Priority. The lien for unpaid assessments and other charges provided for herein is prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including a first lien mortgage or deed of trust on a Lot) recorded before the docketing of the claim of lien in the office of the Wake County Clerk of Court, and (ii) liens for real estate taxes and other Governmental Authority assessments and charges against the Lot.

Provided, however, this Section does not affect the priority of mechanic's or materialman's liens. A lien for unpaid assessments and other charges is extinguished unless proceedings to enforce the lien are instituted within any applicable time required by the Act after the docketing of the claim of lien in the office of the Wake County Clerk of Court. Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust or deed or other proceeding in lieu of foreclosure, such new Owner of the Lot and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which became due prior to the acquisition of title to such Lot by such new Owner. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Owners, including such new Owner, its heirs, successors, and assigns.

8.19 Exempt Property. All Lots dedicated to and accepted by a local public authority, the Common Area, and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the Assessments.

8.20 No Default Under Insured Mortgage. Nothing contained in this Declaration shall be construed as stating or implying that any failure of an Owner to pay assessments constitutes a default under any mortgage on such Owner's Lot that is insured by the FHA, VA, FNMA, FHLMC, or other Secondary Mortgage Market Agency, or any mortgage program administered by any of said agencies

## ARTICLE IX USE RESTRICTIONS

9.1 Building Sites. Each Lot, as approved by the appropriate Governmental Authority, shall constitute a building site (a "Building Site") and shall be used for single-family residential purposes only. The lay of each Lot as shown on the recorded plat shall be substantially adhered to; provided, however, that the size and shape of any Lot may be altered with the prior written approval of the Declarant (during the Development Period), the Board of Directors or the Architectural Review Committee and the appropriate Governmental Authority. More than one Lot may be used as one Building Site. In no event, however, shall any Lots be re-subdivided or recombined in violation of any applicable zoning or other laws in force at the time of the change. Declarant reserves the right to utilize any Lot for purposes of constructing a road to access adjacent property, subject to approval by all necessary governmental authorities. The Architectural Review Committee has the right (but is not required) to implement and enforce requirements for the location and screening of construction materials, the use, type and location of fencing, the use, location and screening of portable toilets, the use, location and screening of receptacles for the collection of construction debris and excess materials, and the use, location and screening of other materials and devices used in connection with construction or maintenance of improvements on Lots.

9.2 Setbacks. Building setbacks of the Improvements on any Lot shall be as set forth in the zoning ordinances of Wake County, North Carolina, or any other Governmental Authority having jurisdiction over the Property. Declarant (during the Development Period), the Board of

Directors or the Architectural Review Committee may approve a violation of these requirements by written waiver, provided such violation otherwise complies with the applicable zoning ordinances and setback requirements.

9.3 Improvements. Except as may otherwise be authorized herein, Improvements on any Lot shall be limited to a single-family, residential structure, and the accessory uses thereto. All Improvements constructed upon the Lots shall be of new construction. No residential structure shall be constructed or placed on any Lot which has a minimum area of less than 3,000 square feet of heated area (the "Minimum Area"); provided, however, Declarant may approve a reduction in the Minimum Area by up to ten percent (10%), in Declarant's sole discretion. No residential structure shall be constructed or placed on any Lot which is more than three (3) stories in height (excluding a basement). Each Lot shall contain a minimum of three (3) trees in the front yard, all of which shall have a caliper of 2.5 inches or greater. At least one (1) tree shall be evergreen, and at least one (1) tree shall have ornamental blooms. Corner Lots shall have additional trees on the street-side yard. All Dwellings shall be designed to minimize the appearance of front loading garages by utilizing porches, covered entrances, or other architectural features to add dimensions to the front facade. All Dwellings with front loading garages for two (2) or more vehicles shall have a separate single garage door for each vehicle the garage is designed to hold. All garages shall be completely dry-walled for fire and energy rating purposes. Each Dwelling shall have a crawl space foundation. No "thermoply" or narrow wall panel structural sheathing shall be permitted. No structures of a temporary character, manufactured home, modular home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Property at any time as a residence, either temporarily or permanently. No storage shed, garage or other out-building shall be constructed, used or permitted on any portion of the Property without the prior written approval of the Declarant (during the Development Period), the Board of Directors or the Architectural Review Committee.

9.4 Declarant Facilities. Notwithstanding any provision in this Article to the contrary, during the Development Period, Declarant may, subject to all applicable laws of any Governmental Authority having jurisdiction over the Property, maintain such facilities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots. These facilities may include, without limitation, a mobile or modular business/sales office, storage area, construction yards and signs.

9.5 Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained on the Property or in any Improvements thereto, except that a reasonable number of domesticated household pets may be kept on any Lot, provided that such pet(s): (a) are not kept for breeding or commercial purposes, (b) do not pose an unreasonable disturbance to adjacent neighbors, do not unreasonably interfere with a Lot Owner's peaceful enjoyment of their Lot or of the Common Area, and do not constitute a nuisance or annoyance to the neighborhood; (c) do not pose an unreasonable risk to the safety, health or wellbeing of adjacent neighbors or to the neighborhood; (d) can be, and are, restrained by a fence of not more than six feet in height; (e) are reasonably restrained while outside of the residence; and (f) are not permitted access to an outside shelter which is (i) not approved by the Declarant (during the

Development Period), the Board of Directors or the Architectural Review Committee, or (ii) visible from the street. The term "domesticated household pet," as used herein, means, among other things, that the pet regularly resides within the home on the Lot or is a pet of a kind or nature that is capable of regularly residing within the home on the Lot. Notwithstanding the foregoing, the following dog breeds are specifically prohibited from being kept or maintained on the Property or on a Lot: Rottweilers, Presa Canarios, Dobermans, Chow-Chows, Pit Bull Breeds (including but not limited to American Pit Bull Terrier, American Staffordshire Terrier, and Staffordshire Terrier) and Wolf Hybrids. Notwithstanding the foregoing, any animal with a bite history as evidenced by documentation from a state or local animal control agency or other reliable medical or veterinary records are specifically prohibited from being kept or maintained on the Property or on a Lot. No pet shall be permitted upon the Common Area unless attended and carried or leashed by a Person who can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including but not limited to loud or excessive barking) on the Property.

All Owners and their respective tenants and invitees who own pets (collectively, the "Pet Owners") shall immediately clean up any waste on the Property from his/her pet. All Pet Owners shall indemnify and hold the Declarant (during the Development Period) and the Association harmless from any claim, action or demand against the Declarant or Association that arises out of or results from any act of their pet. All Pet owners shall promptly repair, at his/her own cost, any damage to the Common Area caused by their pet. If any Pet Owner violates this Section, the Declarant (during the Development Period) and the Association shall have the right, but not the obligation, to require the Pet Owner to permanently remove the pet from the Property upon no less than ten (10) days prior written notice, in addition to any other remedy. In addition, the Declarant (during the Declarant Control Period) and the Association shall specifically have the power and authority to designate by rule from time to time, based upon temperament, size, nature or tendencies, a list of animal breeds or types which shall be additionally prohibited on the Property or on any Improvements thereto. Each Owner who keeps any animal on any portion of the Properties shall be deemed to have indemnified and agreed to hold harmless the Association, Declarant and all other Owners, from and against any loss, claim for damages to person or property, cause of action, or liability of any kind, including all costs of defending against same (including reasonable attorneys' fees), arising out of or resulting from such animal, including any actions of the animal. An easement over and upon the Properties hereby is reserved for the applicable Governmental Authority to exercise and enforce Legal Requirements relating to animal control.

9.6 Screening. All mechanical equipment (including but not limited to heating and air conditioning units), equipment (including play equipment), garbage cans, recycling bins, service yards, wood piles or storage piles shall be kept screened by adequate Improvements so as to screen them from view of the street and adjoining Lots. All garbage, trash or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate.

9.7 Harmful Discharges. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances from any portion of the Properties into the atmosphere (other than those resulting from cleaning or reasonable residential chimney or outdoor grill emissions);

there shall be no production, storage or discharge of hazardous wastes from or on any portion of the Properties; and there shall be no discharges of liquid or solid wastes or other harmful matter into the ground, sewer or any body of water within the Properties, if such emission, production, storage or discharge may adversely affect the use of any portion of the Properties, or may adversely affect the health, safety or comfort of the occupants of the Properties. Provided, however, the foregoing prohibitions shall not prevent or interfere with the reasonable development or maintenance of any portion of the Properties or improvements thereon by Declarant, any Builder or any other Person in accordance with Legal Requirements, nor shall they prevent, as incident to the residential use of the Properties, the reasonable use, handling, storage and disposal of medically related hazardous substances and wastes in compliance with all Legal Requirements.

9.8 Leasing. No Lot or any portion of the Improvements situated thereon shall be leased for transient or hotel purposes, or for purposes of operating a group home; and no Lot or any portion of the Improvements situated thereon may be leased to an individual with prior felony convictions. Notwithstanding the foregoing, an Owner may lease not less than the entire residential structure on its Lot, provided that the lease must be in writing, must be for a period of not less than three hundred sixty five (365) days, and must provide that it is subject to this Declaration and the Bylaws, and that any failure by a tenant to comply with such documents shall be a default under the lease. Failure to include this provision in the lease shall not relieve the tenant from complying with the Declaration and the Bylaws.

9.9 Hunting; Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows and/or other weapons within the Properties is prohibited, unless required for safety or personal protection reasons.

9.10 Utility Devices. Without the prior written approval of Declarant (during the Development Period), the Board of Directors or the Architectural Review Committee, no exterior television or radio antennas, satellite dishes, solar panels or other utility devices of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Improvements situated on the Property.

9.11 Noises. No Person shall cause any unreasonably loud noise anywhere on the Properties, except for security devices used in the manner intended therefor, nor shall any Person permit or engage in any activity, practice or behavior resulting in substantial and unjustified annoyance, discomfort or disturbance to any Person lawfully present on any portion of the Properties. Provided, however, the prohibition against noises contained in this Section shall not preclude or limit activities in the Properties conducted in accordance with the applicable Restrictions and Rules or other rules and regulations of the Association, including recreational events and social events. Further provided, the foregoing prohibitions shall not prevent or interfere with the reasonable development, construction, use, or maintenance of any portion of the Properties or improvements thereon by the Association, Declarant, a Builder, a Governmental Authority, a utility provider, or any other Person in accordance with Legal Requirements or the Governing Documents.

9.12 Nuisance and Other Matters. No noxious or offensive activity shall be conducted upon any portion of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Community or any part thereof, or to any person lawfully residing in the Subdivision. Provided, however, the usual, customary or reasonable use and maintenance of a Lot, a Dwelling, or any Common Elements shall not constitute a nuisance. Further provided, the development of the Properties by Declarant and Builders, and the usual, customary or reasonable construction and maintenance of Dwellings and other improvements in the Properties shall not constitute a nuisance. Further provided, the operation and use of the Common Elements in the manner required or allowed by the provisions of this Declaration shall not constitute a nuisance. No trade materials or inventories (other than materials used for construction of Dwellings or other approved structures or improvements) shall be stored upon any portion of the Properties and no tractors, inoperable motor vehicles, RVs, ATVs, trailers, boats, rubbish, trash, or unsightly materials of any kind shall be stored, regularly placed, or allowed to remain on any portion of the Properties unless adequately screened or contained as approved by the Architectural Review Committee, except that trash, leaves, tree limbs, materials for trash or recycling pick-up and similar items may be kept or placed temporarily and only for such time as is reasonably necessary to enable the applicable Governmental Authority or appropriate private entity to remove same, and inoperable motor vehicles may be stored only if the same are kept entirely in an enclosed garage or other building. Provided, however, and notwithstanding anything to the contrary herein, (i) as approved by Declarant during the Development Period, trucks and/or other construction vehicles, materials and equipment may be allowed to remain on the Properties temporarily during construction of roads, utilities, Dwellings and other improvements in the Properties, and (ii) such vehicles, materials and equipment also may be allowed to remain on the Properties during construction or maintenance on the Properties of Dwellings and/or other improvements which have been approved by the Architectural Review Committee. Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any Legal Requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or maintenance of streets, utilities or other improvements in the Properties, or as may be allowed by Declarant, during the Development Period, and thereafter, the Board, when reasonably required for the construction or maintenance of improvements within the Properties.

9.13 Home Businesses. An Owner may maintain an office or home business in such Owner's Dwelling or other improvement in the Properties only if: (i) such office or home business is operated by the Owner or a member of the Owner's household residing in the Dwelling; (ii) there are no displays or signs indicating that the Dwelling or improvement or portion of the Properties on which it is located is being used other than as a residence; (iii) such office or business does not generate significant traffic or parking usage by the business itself or by clients, customers or other Persons, it being in the sole discretion of the Board to determine compliance with this requirement; (iv) no vehicles, equipment or other items related to the office or business are stored, parked or otherwise kept on the streets in the Subdivision or on the portion of the Properties on which such Dwelling is located outside of the Dwelling or other

enclosure approved by the Architectural Review Committee; (v) such Owner has obtained from the applicable Governmental Authority, and maintains in effect, all required approvals for such use; (vi) the activity is consistent with the residential nature of the Properties and complies with all Legal Requirements and other provisions of this Declaration; (vii) no person is employed in such office or home business except for the Owner or the members of the Owner's household residing in the Dwelling or the Owner's tenant residing in the Dwelling; and (viii) the Owner has obtained prior written approval from the Board before commencing such business or office use and thereafter registers annually with the Association and obtains annual re-approval of such business or office use by the Board as long as the operation of the home business continues. As a condition to such use, the Association may require the Owner to pay any increase in the rate of insurance, trash removal, utilities or other costs for the Association or other Owners which result or reasonably may be anticipated to result from such use. Garage sales, yard sales and similar activities shall be conducted only in accordance with all Legal Requirements and the rules and regulations, if any, adopted by the Association.

9.14 Vehicles. All motorized vehicles operating within the Properties, including automobiles, motorcycles, trucks, lawn mowers, and golf carts, must have proper and adequate mufflers. No boats, recreation vehicles, or trailers of any Owner or member of its family, tenants, or contract purchasers shall be parked within the Common Area, or within the right-of-way of any street in or adjacent to the Property. Such vehicles shall only be parked within the Owner's garage or other areas of the Property, which areas shall be designated by the Declarant (during the Development Period), the Board of Directors or the Architectural Review Committee in its sole discretion. No Owner or its tenant(s) shall park or store an inoperative or abandoned boat, recreation vehicle, trailer or automobile on any Lot or on the streets in the Property. In addition to and supplemental to, but not inconsistent with, the foregoing, the Association also may adopt and enforce additional Restrictions and Rules relating to the operation and parking of vehicles on Lots or any other portion of the Properties.

9.15 Above-Ground Tanks. No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance.

9.16 Lawn Ornaments. Decorative lawn ornaments shall be approved in writing by the Architectural Review Committee prior to installation or placement thereof on any Lot.

9.17 Window Treatments. No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

9.18 Clothes Lines. No clothes lines shall be permitted on any Lot.

9.19 Fences; Pools.

(a) Fences in general. The construction plans for any fence must be submitted to Declarant (during the Development Period), the Board of Directors or the Architectural Review Committee for prior written approval. Perimeter fencing and privacy fencing may not exceed six (6) feet in height. No chain link fences shall be permitted, and no wooden fences will be

permitted, except as otherwise specifically approved in writing by the Declarant (during the Development Period), the Board of Directors or the Architectural Review Committee in its sole discretion.

(b) Pool fences. Notwithstanding anything to the contrary contained herein, any pool constructed within the Property shall be surrounded by a non-climbable perimeter fence at least five (5) feet, but no more than six (6) feet, in height, and equipped with a self-closing mechanism on all gates. Wooden swimming pool fences are prohibited. The construction plans for any swimming pool and fence must be submitted to Declarant (during the Development Period), the Board of Directors or the Architectural Review Committee for prior written approval, and such approval will not be given unless such plans include a perimeter fence in compliance with this sub-paragraph (b). All requests for approval must be submitted in writing and must be accompanied by a survey showing the proposed location of the fence. The minimum fence requirements contained in sub-paragraph (a) above shall apply to any pool fences constructed within the Property.

(c) Pools. No above-ground pools will be permitted within the Property.

9.20 Parking Right. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles owned by that Owner. Owners and their tenants shall not be permitted to park their automobiles on the streets in the Subdivision.

9.21 Maintenance. Each Owner shall keep its property free of grass taller than eight inches (8"), undergrowth, dead trees, trash and rubbish, and shall otherwise properly maintain its Lot and the Improvements located thereon so as to present a pleasing appearance. If an Owner does not, in the reasonable opinion of the Declarant (during the Development Period), the Board of Directors or the Architectural Review Committee, properly maintain the same, Declarant and/or the Association may have the required work done and the costs incurred for such work, plus a service charge of fifteen percent (15%) of such costs, shall be assessed against the Owner.

9.22 Legal Requirements. Nothing herein contained shall be deemed to constitute a waiver of any Legal Requirement applicable to any portion of the Properties, and all Legal Requirements relative to the construction of improvements on, and/or use and utilization of, any portion of the Properties shall be complied with by the Owners and occupants of such portions of the Properties, whether or not the Approved Plans for same are in compliance with such Legal Requirements. Provided, that in any instance in which the provisions of this Declaration contain a provision that requires something more than or in addition to, or prohibits something otherwise allowed under, a Legal Requirement (for example, prohibition of a use allowed under a Legal Requirement or requirement of a greater distance or size than required under a Legal Requirement), the provisions of this Declaration shall control, unless prohibited by a Legal Requirement.

9.23 Obstructions, etc. No Owner shall obstruct any of the Common Property, Town greenways or greenway easements or any pedestrian access easements providing access to Common Property or Town greenways or greenway easements, nor shall anything be kept,

stored, altered, constructed or planted in or on the Common Property or removed therefrom (except as necessary to prevent injury to person or property), without the prior consent of Declarant, during the Development Period, and, thereafter, the Board, or except in the exercise of any valid easement over any portion of the Common Property. Provided, however, the Association, and, during the Development Period Declarant and Builders (with Declarant's consent), shall have the right to maintain signs in and on the Common Property, and to maintain in the Common Property such materials, equipment and other apparatus, as may be reasonably necessary to enable the Association to perform its functions and provide the services under this Declaration, or to enable Declarant or such Builders to market, develop, and sell the Properties. Following the end of the Development Period each Builder shall have the right, subject to the reasonable review and approval of the Board (or Architectural Review Committee if directed by the Board), to maintain signs in the Common Property as such Builder determines is reasonably necessary or desirable for marketing and selling all portions of the Properties owned by such Builder. The rights of use and enjoyment of the Common Property conferred upon Owners by this Declaration do not include the right to interfere with the use or maintenance of the Common Property by Declarant, any Builder, or the Association.

9.24 Additional Restrictions. The Declarant (during the Development Period), the Board of Directors or the Architectural Review Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Property.

9.25 Anti-Discrimination. No action shall at any time be taken by the Declarant, the Board of Directors or the Architectural Review Committee in the enforcement or interpretation of these Covenants and Restrictions which in any manner would unfairly discriminate against any Owner in favor of any of the other Owners.

9.26 Restricted Actions by Owners. No Owner shall do or permit anything to be done or kept within the Properties or on the Common Property which will result in the cancellation of or increase in the cost of any insurance carried by the Association, or which would be in violation of any Legal Requirement or any rule or regulation established by the Association. No waste shall be committed on the Common Property, except as may be necessary to enable Declarant, a Builder, the Association, an Owner, or the holder of an easement to construct or maintain improvements (in accordance with Approved Plans or Architectural Guidelines, when applicable), or to maintain the Properties, or to exercise any rights reserved to them hereunder or provided in an applicable easement, or except as may be necessary to enable the Association to perform its functions and provide services under this Declaration. Each Owner shall comply with all Legal Requirements applicable to any part or all of the Properties, including applicable zoning ordinances and building codes.

9.27 Owner Liability. If any Owner or such Owner's family members, tenants, guest, employees, contractors, subcontractors, or agents is legally responsible for damage inflicted on any Common Property, the Association may direct such Owner to repair such damage, or the Association itself may cause the repairs to be made and recover damages from the responsible Owner, including costs incurred in seeking and enforcing such recovery or other applicable legal

remedies, including reasonable attorneys' fees. In addition to or as an alternative to the foregoing, the Association may impose a special individual assessment against any such Owner.

9.28 Prohibition on Use for Streets. Without the written consent of Declarant during the Development Period (and, thereafter, by the Board), which consent may be given or denied in the sole discretion of the party having the right to give the consent, and which consent may be given and evidenced only by the execution by the consenting party of a plat or document recorded in the Registry, or unless required by a Development Plan or a Legal Requirement, no Lot or portion thereof may be used, established or dedicated as a public street right of way or a private street right of way or driveway, where one of the purposes therefor or results thereof is to provide pedestrian or vehicular access to any property that is not part of the Properties, except for such vehicular and/or pedestrian access easements as are described or shown in documents or on plats of the Properties recorded in the Registry and are established to provide access to Common Property or to Town greenways or greenway easements.

9.29 Soil Erosion Control. During all periods of construction on any portion of the Properties, the Owner thereof, or the Person exercising easement rights thereon, shall maintain proper and adequate soil erosion control to protect other portions of the Properties from accumulated silt and other soil erosion.

9.30 Wetlands; Conservation Areas; Buffers.

(a) Wetlands. Legal Requirements of the United States of America may result in portions of the Properties being designated as "wetlands". Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, and whether or not the Approved Plans for any improvements on the portion of the Properties on which such wetlands are located are in compliance with Legal Requirements applicable to wetlands, any subsequent fill or alteration of any such wetlands shall conform to the Legal Requirements in force at the time of the proposed fill or alteration. The intent of this subsection (a) is to prevent filling or alteration of such wetlands except as allowed under Legal Requirements; accordingly, the Owner of any such portion of the Properties should not assume that any application for fill or alteration of wetlands will be approved. The Owner of the applicable portion of the Properties shall report the name of the Subdivision, together with the name of the particular phase, section or subdivision within the Properties, if any, in any application pertaining to filling or alteration of wetlands. The provisions of this Section are intended to ensure continued compliance with wetlands rules under Legal Requirements and this Section may be enforced by the United States of America or, State of North Carolina or any other Governmental Authority having jurisdiction over the subject wetlands.

(b) Conservation Areas. Legal Requirements of the United States of America may result in portions of the Properties being designated as "conservation areas". Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, and whether or not the Approved Plans for any improvements on the portion of the Properties on which such conservation areas are located are in compliance with Legal Requirements applicable to conservation areas, all such conservation areas shall be

maintained in perpetuity in their natural or mitigated condition. No Person shall perform any of the following activities on any such conservation areas:

- (1) fill, grade, excavate, or perform any other land disturbing activities.
- (2) cut, mow, burn, remove, or harm any vegetation.
- (3) construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures.
- (4) drain or otherwise disrupt or alter the hydrology or drainage ways of any conservation area.
- (5) dump or store soil, trash, or other waste.
- (6) graze or water animals, or use for any agricultural or horticultural purpose.

The intent of this subsection (b) is to ensure continued compliance with the mitigation condition of any Clean Water Act authorization for the Properties or any part thereof issued by the United States of America, U. S. Army Corps of Engineers, for the district in which the Properties is located, and may be enforced by the United States of America or any other Governmental Authority having jurisdiction over conservation areas.

(c) **Buffers.** Portions of the Properties may be subject to river basin or stream buffers designated by the State of North Carolina or other applicable Governmental Authority and/or certain buffer requirements set forth in the Utility Allocation Agreement. Owners of all portions of the Properties subject to such buffer requirements shall at all times comply with same, whether or not the Approved Plans for any improvements are in compliance therewith. The provisions of this Section, including all of its subsections, shall run with the Properties and be binding on all Owners of any part or all of the Properties and all persons claiming under them.

9.31 Waiver. Notwithstanding any other provision of this Declaration or any other Governing Documents, Declarant, during the Development Period (and thereafter, the Board) has the right, permanently or temporarily (as determined in the discretion of Declarant or the Board, as applicable) to waive any one or more of the provisions of this Article with respect to construction or maintenance of any improvements in the Properties, except that there shall be no waivers with respect to soil erosion controls and Legal Requirements. Any such waiver granted by the Declarant to a Builder or other Person during the Development Period shall be binding on the Board after the Development Period has ended.

## ARTICLE X EASEMENTS

10.1 Exercise of Easement Rights. Each easement described in this Article includes the following rights as reasonably necessary for the full exercise of the easement: vehicular and

pedestrian ingress, egress, and regress (together referred to as "access") over other portions of the Properties as reasonably necessary to go to and from the easement area (the "easement area" being defined as the portion of the Properties subject to the easement) and to transport equipment and materials to and from the easement area; the right to maintain equipment, structures, facilities and soil and water impoundments in the easement area; the right to remove any obstruction within the easement area that interferes with the use of the easement or with the maintenance of any equipment or structures or facilities or soil or water impoundments located therein; and the right to use as temporary work space such portions of the Properties immediately adjacent to and outside of the easement areas as may be reasonably necessary for the full exercise of such easements. Provided, with respect to any portion of the Properties outside of the applicable easement area damaged as a result of the exercise of such access or temporary work space rights, the Person who exercises the access or temporary work space rights, as soon as practicable after completion of the work (and during the performance of the work if such restoration is necessary to prevent injury or death to any Person or damage to any other property or damage to any Dwelling), shall restore all such portions of the Properties to substantially the same condition as they were in immediately prior to the occurrence of the damage. The easements established in this Article may be exercised in the discretion of the Declarant, the Association, or other Person for whom they are established, but this Article does not impose any obligation on the Declarant, the Association, or other Person to exercise any such easements or rights.

10.2 Easements Reserved by Declarant. Declarant, for itself, and its successors and assigns and transferees (which may include the Association, Governmental Authorities, and public utility providers), reserves the following easements and rights in, over, under, across and through the Properties, which may be exercised by Declarant or its successors or assigns in its sole discretion, in whole or in part, without any obligation to exercise any of same, and without the consent, approval, or joinder of the Association, any Owner, or any other Person, except where such consent, approval, or joinder specifically is required in this Section. These easements specifically include the right to connect to and use and maintain new and existing wires, poles, lines, pipes, conduits, meters, equipment, structures, facilities, and soil and water impoundments and other Stormwater Control Measures in the easement areas, without payment of any charge or fee to the Association or any Owner of any part or all of the Properties, and during the Development Period the right (without obligation) to exercise all of the easements reserved for the Association in this Article:

(a) Perpetual, exclusive or non-exclusive, and alienable easements for commencement and completion of development of any portion of the Properties or any Additional Property, for the exercise of any Special Declarant Right or other right granted to or reserved by Declarant under this Declaration or any other Governing Documents, and for Declarant to conduct any activity necessary to fulfill any obligation to any Governmental Authority, the Association, a Builder or any Owner with respect to any portion of the Properties. Such easement rights include the right to construct, install, and maintain streets (both publicly dedicated and private streets), water, sanitary sewer and other utilities and related appurtenances and equipment, retaining walls, and soil and water impoundments and other Stormwater Control Measures, including wires, poles, lines, pipes, transformer boxes and conduits, meters,

equipment, structures, and facilities related thereto, in, over, under, across, and through all of the following: (i) easement areas that have been identified as easements on plats or in documents that have been executed by the Declarant or other Owner of such portions of the Properties and recorded in the Registry; (ii) all streets in the Properties, including both publicly dedicated and private streets; (iii) an area on each Lot that is ten (10) feet in width and adjacent to each boundary line thereof, or such shorter distance from the applicable Lot boundary to the exterior portion of the Dwelling, garage, or other permanent building on the Lot; (iv) portions of Lots and Common Elements on which retaining walls are located and a fifteen (15) foot wide area immediately adjacent to each side of each retaining wall, (v) any other portion of a Lot, subject to the written approval of an Owner of the Lot (the written approval of any one of multiple Owners of a Lot is sufficient), which approval shall not be unreasonably withheld, delayed, or conditioned; and (vi) the Common Elements. Provided, however, neither the foregoing reservation of easement rights nor any similar reservation of easement rights contained in this Declaration shall create or impose any obligation upon Declarant, or its successors and assigns, to provide or maintain any such street, wire, pole, line, pipe, conduit, meter, equipment, structure, facilities, or soil and water impoundment or other Stormwater Control Measures. Declarant's rights under this Section Include the right to assign its rights under the easements and/or to grant easements to other Persons, for recording in the Registry, in, over, under, across and through those portions of the Properties described in the foregoing items nos. (i), (ii), (iii), (iv), (v), and (vi) in this subsection.

(b) The right to subject the Properties and/or the Association to a contract with Duke Power (or other appropriate utility provider) for the installation and maintenance of above ground or underground electric cables and lines and/or the installation and maintenance of street lighting (including poles and light fixtures), either or both of which may require an initial payment and/or a continuing monthly payment by each Owner and/or by the Association as part of the Common Expenses. The Association shall accept assignment from Declarant of contracts entered into by the Declarant with Duke Power or other utility provider for such electrical and/or lighting services.

(c) A perpetual, non-exclusive, and alienable easement to maintain all vegetation required or allowed under any planting, landscaping, tree conservation plan, or replanting plan required or approved for the Subdivision pursuant to a Development Plan or Legal Requirements.

(d) A perpetual, non-exclusive, and alienable easement for a centralized cluster mailbox kiosk, a concrete or paved area surrounding the kiosk, any parking areas required in connection therewith, and landscaping surrounding the kiosk.

10.3 Agreements With Other Persons. In connection with its exercise of any easements or rights reserved in this Article, Declarant reserves the additional right, which may be exercised by Declarant or its successors or assigns in its sole discretion, in whole or in part, without any obligation to exercise such right, to enter into agreements on behalf of and binding on the Association with other Persons (including other associations of property owners) for any one or more of the following: (i) use and maintenance of any easements and associated improvements

and facilities therein located on the Properties or on the properties owned or used by such other Persons, which agreements may provide for financial and/or management responsibilities for the Association and/or for such Persons; and (ii) use and maintenance of Stormwater Control Facilities in the Properties and/or on the properties owned or used by such Persons.

10.4 Easements Reserved for the Association. Easements are reserved for the Association as follows, which may be exercised by the Association in its sole discretion, without any obligation to exercise any of same. These easements specifically include the right to connect to and use and maintain new and existing wires, poles, lines, pipes, conduits, meters, equipment, structures, facilities, and soil and water impoundments and other Stormwater Control Measures in the easement areas, without payment of any charge or fee to any Owner of any part or all of the Properties:

(a) A perpetual, non-exclusive and alienable easement in, over, under, across and through all portions of the Properties to enable the Association to perform its functions and provide the services under this Declaration, and specifically including the same easement reserved for Declarant herein with respect to retaining walls. Provided, however that any such entry by the Association upon any portion of the Properties shall be made with as minimum inconvenience to the Owner of such portion of the Properties as reasonably practicable, and any damage caused by or resulting from the gross negligence or willful misconduct of the Association's employees, contractors or agents shall be repaired by the Association at the expense of the Association.

(b) In addition to the foregoing, and in order to implement effective and adequate soil erosion controls and/or stormwater management, a perpetual, non-exclusive easement to enter upon any portion of the Properties, before and after improvements have been constructed or placed thereon, to maintain or cause to be maintained soil erosion control and/or stormwater management; provided, however, the Association shall not at any time be required to exercise this easement, and no exercise of the easement shall interfere unreasonably with any permanent improvements constructed on any such portion of the Properties (which improvements have been approved by the Architectural Review Committee as required herein). If the need for stormwater management or soil erosion controls results from the construction of improvements on any portion of the Properties or any excavation, grading, removal, reduction, addition or clearing of any portion of the Properties, the cost of any such work performed by the Association for the purpose of implementing effective and adequate stormwater management or soil erosion control shall be assessed against the Owner of such the portion of the Properties on which such work has been performed as a special individual assessment. Provided, however, if the Association determines that appropriate corrective action is necessary on any portion of the Properties, prior to exercising this easement the Association shall give the Owner of such portion of the Properties written notice of the proposed corrective action and a reasonable opportunity to take the corrective action specified in such notice. If such Owner fails to complete the corrective action by the date specified in the notice, the Association then may exercise this easement.

(c) A perpetual, non-exclusive, and alienable easement to maintain all vegetation required or allowed under any planting, landscaping, tree conservation plan, or replanting plan

required or approved for the Subdivision pursuant to any Development Plan or Legal Requirements.

(d) The Association has the right to assign its rights under its easements as it deems reasonable in the best interests of the Subdivision.

10.5 Easement Reserved for the Governmental Entities and Public Utilities. Perpetual, non-exclusive and alienable easements are hereby reserved and established over all portions of the Properties for governmental entities and for all public utility providers serving the Properties, and their agents, employees and contractors, for the purposes, as applicable to the Governmental Authority or utility provider, of setting, removing and reading utility meters, maintaining Stormwater Control Measures, maintaining utility equipment, facilities and connections, and acting for other purposes consistent with the public safety and welfare, including garbage removal, police protection, fire protection (including access to any and all fire hydrants located outside of public street rights of way or easements dedicated to a Governmental Authority) and delivery of mail. Except in an emergency, these easements shall be exercised in a reasonable manner and at reasonable times. Any pedestrian access easement established by Declarant or the Association over any portion of the Properties for the purpose of providing pedestrian access to and from Governmental Authority greenways or Governmental Authority greenway easements are established for the benefit of the applicable Governmental Authority and the public in general.

10.6 Easements Shown On Recorded Plats. Declarant, for itself and its successors and assigns (which may include the Association, the applicable Governmental Authority, and public utility providers), and in addition to all other easements reserved in this Declaration, hereby reserves perpetual, non-exclusive and alienable easements in the locations and for the purposes shown and indicated on all plats of the Properties recorded in the Registry. These easements specifically include the right to maintain in the easement areas identified on such plats all improvements (including but not limited to landscaping and signs, as applicable) deemed necessary, in the reasonable discretion of the Person who exercises the easement rights, for the full exercise of such easements. Except as otherwise required by the Governing Documents or Legal Requirements, the Persons who have the foregoing easement rights shall have no obligation to exercise any part or all of same. On those certain development plans approved by Wake County and potentially other future plats with respect to the Properties, certain easements may be referred to as being "Public" without reference to which public entity those easements are being granted to, in which case such easements shall be deemed granted to the Wake County; additionally, certain easements may be referred to as being "Private" without reference to which private entity those easements are being granted to, in which case such easements shall be deemed granted to the Association.

10.7 Easement for Encroachments. If, in accordance with Approved Plans, any Dwelling is closer than five (5) feet to any boundary line of the Lot on which that Dwelling is located (for the purposes of this Section, the "subject Lot"), then the Owner of the Dwelling, and such Owner's tenants and contractors, shall have a perpetual, non-exclusive access easement over the adjoining Lot or other portion of the Properties as reasonably necessary from time to

time to facilitate maintenance of the Dwelling on the subject Lot. All such maintenance shall be done expeditiously and the exercise of this easement shall in all respects be reasonable and, upon completion of the maintenance, as reasonably practicable the Owner of the subject Lot shall restore the Lot or other portion of the Properties on which the easement has been exercised, including all improvements thereon that are damaged by the exercise of this easement, to substantially the same or better condition as it was in prior to the maintenance. When the foregoing easement exists, except in accordance with Approved Plans, no fence, wall, storage shed, or similar structure or any other kind of obstruction to the exercise of the easement shall be permitted on the adjoining Lot or other portion of the Properties (as a guideline, the area on the adjoining Lot or other portion of the Properties within five (5) feet of the common boundary line of the adjoining Lot or other portion of the Properties and the subject Lot shall be left free of all such obstructions). Provided, however, the easement established by this Section shall not restrict or impair any other easements established herein in favor of the Declarant, the Association, an Owner, a Governmental Authority, or any public utility provider.

10.8 Restriction on Entry. Notwithstanding anything to the contrary contained in this Article, no right or easement granted, reserved or established in this Declaration shall be construed to give Declarant, the Association, an Owner, a Governmental Authority or any other Person the right to enter any Dwelling or other Improvement located on any portion of the Properties, except as otherwise specifically stated in the provision of this Declaration relating to the particular right or easement or as reasonably and necessarily implied in order for the right or easement to be exercised, or as allowed by the Owner of the applicable portion of the Properties. Provided, however, each Owner hereby is given notice that Legal Requirements may allow such entry by a Governmental Authority or other Persons, even though the particular easement granted, reserved or established in this Declaration does not allow such entry.

10.9 Priority of Easements. Each of the above easements shall be deemed established upon the recordation of this Declaration and shall henceforth be deemed covenants running with the land for the use and benefit of the Lots and the Common Area, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

## ARTICLE XI INSURANCE

11.1 Coverage. The Association shall obtain a broad-form public liability policy covering all Common Area and all damage or injury caused by the negligence of the Association or any of its agents. This coverage shall be in the amount of at least One Million and No/100 Dollars (\$1,000,000.00). This insurance may include coverage against vandalism. All Persons responsible for or authorized to expend funds or otherwise deal in the Association's assets shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties. The Association shall also obtain such other insurance coverage as it deems desirable and necessary.

11.2 Ownership/Proceeds. All contracts of insurance purchased by the Association

shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association, as insurance trustee, shall be to receive any proceeds as are paid and to hold them in trust for the purposes stated in these Covenants and Restrictions. The proceeds received by the insurance trustee shall be distributed to, or for the benefit of, the appropriate beneficiary(ies).

11.3 Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be included in Common Expenses.

11.4 Prohibited Acts. No Owner shall do or keep anything on the Property which shall cause an increase in the premiums for, or the cancellation of, any insurance maintained by the Association.

## ARTICLE XII ARCHITECTURAL CONTROL AND INSPECTION

12.1 Members. The Architectural Review Committee shall initially consist of one (1) or more Persons designated by Declarant. Upon the expiration of the Development Period, Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Review Committee. Such assignment may, however, be made subject to a reservation by Declarant of its right hereunder to review and approve all plans for new homes and other Improvements to be constructed on any Lot in Use. Upon the assignment of Declarant's architectural review rights in accordance with the terms of this Section, the Board of Directors shall appoint three (3) or more persons as the members of the Architectural Review Committee. Persons who serve on the Architectural Review Committee are not required to be Members of the Association.

12.2 Architectural Guidelines. The Declarant, during the Development Period and, thereafter, the Board, and the Architectural Review Committee as authorized by the Declarant or the Board, as applicable, may establish, amend, revise and/or delete Architectural Guidelines for one or more types of improvements to be constructed or maintained on any portion of the Properties, which Architectural Guidelines shall not conflict with the specific terms of this Declaration or any applicable Supplemental Declaration or Subdivision Declaration, shall be fair and reasonable, and shall carry forward the spirit and intention of this Declaration. Architectural Guidelines may be enforced in the same manner and to the same extent as the provisions of this Declaration may be enforced. If there is any conflict between Approved Plans and Architectural Guidelines, the Approved Plans control, it being within the discretion of the Architectural Review Committee to approve Plans that differ in one or more respects from the then existing Architectural Guidelines. Compliance with Architectural Guidelines does not guarantee approval by the Architectural Review Committee of Plans for improvements that must be submitted for approval.

12.3 Powers. The Architectural Review Committee shall have the right to refuse approval of any Plans for Improvements proposed to be constructed on a Lot which are not

suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans, the Architectural Review Committee shall consider the suitability of the proposed Improvements, color, and materials to be used in those Improvements, the site upon which they are proposed to be erected, and the effect of the Improvements on adjacent or neighboring property. There is specifically reserved unto the Architectural Review Committee the right to enter and inspect any Lot for the purpose of determining whether there exists thereon any Improvements which violate the terms of any approval by the Architectural Review Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. If an Owner fails to construct Improvements on its Lot(s) in accordance with the Plans approved therefore, or if an Owner constructs Improvements without obtaining approval of the Plans therefore, as required by this Article, the Declarant (during the Development Period), the Association, or the Architectural Review Committee may, but shall not be required to, remedy the non-compliance or remove the unauthorized Improvements, and the Owner of such Improvements shall indemnify the Declarant, the Association or the Architectural Review Committee, as applicable, for the reasonable expense incurred in performing such remedial work or removal. If an Owner fails to commence construction of initial Improvements on its Lot within ninety (90) days after the Lot is conveyed by Declarant to the Owner, the Declarant (during the Development Period) shall have the right, but not the obligation, to re-purchase the Lot from the Owner at the same price paid to Declarant by the Owner. The Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any Improvements, or to remove any unauthorized Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorneys' fees). Notwithstanding anything to the contrary expressed or implied herein: (i) all Plans and other architectural approvals given by the Declarant during the Development Period, all improvements constructed or maintained by Declarant or the Association within the Properties, all portions of the Properties owned by Declarant or the Association, all Common Property and improvements therein maintained by the Association, and all portions of the Properties owned by or subject to easements in favor of a Governmental Authority or public utility providers (except for any such portions of the Properties that contain or are proposed to contain Dwellings or other Improvements), are specifically excluded from the requirements of this Article; and (ii) during the Development Period (x) the Declarant has the right to exercise all rights of the Architectural Review Committee and the Board that are described in this Article as it determines in its sole discretion, including whether to utilize an Architectural Review Committee or to serve as the Architectural Review Committee itself, or any combination thereof, (y) the Declarant determines the matters, if any, to be reviewed by the Architectural Review Committee, and (z) any decision of the Declarant made during the Development Period with respect to any matter subject to this Article controls over any contrary decision of the Architectural Review Committee or the Board.

12.4 Approval of Plans. No Improvement shall be constructed upon the Property, nor shall any Improvement be repaired or rebuilt after casualty damage until completed Plans showing the nature, kind, space, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee. An Owner's proposed contractor(s) and/or architect for any Improvement shall be subject to the reasonable

prior written approval of the Architectural Review Committee. A failure to approve or disapprove completed Plans, the proposed contractor(s), and/or the proposed architect within sixty (60) days after they have been submitted shall be deemed to be a disapproval thereof. Any Plans containing inaccurate information or omitting information of a material nature shall not be deemed to be approved notwithstanding any prior approval by the Architectural Review Committee. Neither the Association, the Association's Board of Directors, Declarant, the Architectural Review Committee nor any officer, employee, director or members thereof shall be liable for damages to any Persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans, contractor(s) or architect. Every Person who submits Plans for approval agrees, by submission of such Plans, that it will not bring any action or suit to recover any such damages.

Approval by the Architectural Review Committee of any Plans shall not relieve the owner of the applicable Lot from any obligation to obtain all required Governmental Authority approvals and permits, and shall not relieve such Owner of the obligation and responsibility to comply with all Legal Requirements with respect to such improvements. An Owner also must comply with all applicable Legal Requirements with respect to Improvements constructed, placed, or used on a Lot in compliance with Architectural Guidelines.

Approval of any particular Plans does not waive the right of the Architectural Review Committee to disapprove the same or substantially similar Plans subsequently submitted, nor does such approval relieve an applicant of the requirement to resubmit such Plans for approval in connection with any portion of the Properties other than the portion for which the Plans were approved. Each Owner acknowledges that the Persons reviewing Plans, as well as compliance with Approved Plans and Architectural Guidelines, may change at any time and from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Architectural Review Committee may refuse to approve similar proposals in the future and may revise Architectural Guidelines with respect to such improvements.

Notwithstanding anything to the contrary herein, architectural approvals given prior to the end of the Development Period by the Declarant or by an Architectural Review Committee appointed by the Declarant shall remain in effect following the end of the Development Period, but subject to expiration if the construction or installation of the approved improvements is not completed within any applicable time limits required by any Governing Documents or the Approved Plans. In addition, with respect to each Lot for which there are no Approved Plans that include a Dwelling in effect at the end of the Development Period, Declarant shall continue to have all of the Declarant rights under this Article for a period of one (1) year following the end of the Development Period. Approved Plans may not be revoked or withdrawn by the Architectural Review Committee without the written consent of the Person who owns the portion of the Properties to which the Approved Plans are applicable.

12.5 Landscaping; Utility Lines. No fence, wall, sign, tree, hedge, shrub, or other

vegetation or other improvement which obstructs sight lines for vehicular traffic on public or private streets in the Properties shall be placed or permitted to remain on any portion of the Properties. Pavement, fences, walls, signs, trees, hedges, shrubs, and other vegetation shall not be placed or permitted to remain on any portion of the Properties: (i) if such materials may damage or unreasonably interfere with any easement for the installation or maintenance of utilities; or (ii) in violation of the requirements of such easements; or (iii) unless in conformity with applicable standards of the holder of the easement; or (iv) if such materials may unreasonably change, obstruct or retard direction or flow of any stormwater drainage. Otherwise, the installation and maintenance of such materials within utility easements shall be permitted as allowed by Approved Plans or Architectural Guidelines. Except for hoses, gauges and controls for well pumps, temporary lines and other equipment reasonably necessary in connection with construction or maintenance activities or normal landscape or yard maintenance, no water pipe, sewer pipe, gas pipe, stormwater drainage pipe, television or telephone cable, electric line or other, similar transmission line shall be installed or maintained on any Lot above the surface of the ground, except for those located in easements maintained by a Governmental Authority or applicable public utility provider or otherwise required by a Governmental Authority or applicable public utility provider, or as necessary for such pipes, lines and other facilities to function properly, unless the same are adequately screened, as determined by the Architectural Review Committee, or the same are approved by Approved Plans or allowed by Architectural Guidelines.

12.6 Tree Cutting. Architectural Guidelines also may address the cutting or removal of trees and other vegetation. No trees planted by the Declarant to comply with Legal Requirements shall be cut without the prior written approval of the Declarant during the Development Period, and thereafter, only with approval of the Architectural Review Committee.

12.7 Commencement and Completion of Construction. Unless the time period is extended by the Architectural Review Committee, Approved Plans for a Dwelling or other Improvement expire unless construction or installation of the Dwelling or other improvement commences within twelve (12) months after the date of the approval. Provided, however, and notwithstanding the foregoing, the Declarant may allow Approved Plans that have been approved by Declarant to continue in effect for longer than twelve (12) months after the date of approval. Construction or installation of all such improvements shall be completed not later than twelve (12) months immediately after construction or installation is commenced, or shall commence and be completed by such later dates as specified in the Approved Plans. For the purposes of this Section, construction or installation is "commenced" when a building permit has been issued by the applicable Governmental Authority (or if no building permit is required, when work commences or materials for the improvement are delivered to the applicable portion of the Properties), and construction or installation is "completed" when it has been completed in compliance with Approved Plans or Architectural Guidelines and the applicable Governmental Authority has issued a certificate of occupancy or completion for the improvement (or if no certificate of occupancy is required, when the improvement has been substantially completed as determined by the Architectural Review Committee). The Architectural Review Committee, in its sole discretion, may grant waivers or extensions of the foregoing time periods for commencement and completion of construction or installation of improvements, and, when

requested and upon reasonable evidence of the existence thereof, shall grant reasonable waivers or extensions for events of Force Majeure that delay or prevent a Person from commencing or completing construction or installation within the foregoing time periods. Each Owner is responsible for providing that maintenance of improvements not addressed in the foregoing provisions of this Section (for example, repainting of a Dwelling) is diligently pursued until completion.

12.8 Compensation. No member of the Architectural Review Committee shall be compensated for service on the Architectural Review Committee. However, the Association may reimburse members of the Architectural Review Committee for reasonable out-of-pocket expenses incurred in serving on the Architectural Review Committee, and the Association may pay third party professionals and/or consultants (e.g., landscape architects) for work performed at the reasonable request of the Architectural Review Committee.

12.9 Limitation of Liability. Neither the Architectural Review Committee nor the members thereof, nor Declarant, nor the Association, nor any shareholders, directors, officers, partners, members, managers, agents or employees of Declarant or the Association, shall be liable in damages or otherwise to any Person by reason of: (i) mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of Plans, or the failure to approve or disapprove any Plans, except where the foregoing results from gross negligence or willful misconduct; or (ii) any failure of Approved Plans to comply with any Legal Requirements, including zoning and building codes; or (iii) any defect in, or lack of structural soundness or integrity of, any improvements constructed, placed, or maintained on any portion of the Properties.

12.10 Violation; Enforcement. Each failure of an Owner or any other Person to construct or maintain any improvement in accordance with the Approved Plans or applicable Architectural Guidelines shall be a violation of this Declaration. Declarant, each Owner and the Association each shall have the right, but not the obligation, to enforce the provisions of this Article against an Owner or any other Person who violates or attempts to violate same, either to restrain the violation, recover damages, or seek other available legal or equitable remedies. Any failure to enforce this Article of this Declaration or seek any applicable remedy with respect to any specific violation hereof shall not constitute a waiver of the right to do so thereafter, nor shall it constitute a waiver of the right to enforce this Article of this Declaration at any other time with respect to the same or substantially similar matter. All such rights, remedies and privileges granted in this Section are cumulative, and the exercise of any one or more of such rights, remedies or privileges shall not constitute an election of remedies or preclude subsequent exercise of other rights, remedies and privileges.

### XIII OWNER MAINTENANCE RESPONSIBILITIES

13.1 Duty to Maintain. Except for those items for which the Association or an Additional Association has maintenance responsibility under the Governing Documents, or except as otherwise provided in the Governing Documents, each Owner, at such Owner's sole

cost and expense, shall maintain such Owner's Lot, including all improvements thereon, in a safe, clean and attractive condition at all times, subject to and in a manner consistent with the Governing Documents and Community Wide Standard, including all of the following:

- (a) Prompt removal of all litter, trash, refuse and wastes.
- (b) Lawn mowing and maintenance on a regular basis, including, subject to any Legal Requirements, any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such Lot that are not maintained in accordance with the Community Wide Standard by either the Association or a Governmental Authority.
- (c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material.
- (d) Maintenance of flower and plant gardens.
- (e) Maintenance of exterior lighting and mechanical facilities.
- (f) Maintenance of parking areas and driveways.
- (g) Complying with all Legal Requirements.
- (h) Soil erosion control as required by this Declaration.
- (i) Maintenance of drainage easements and Storm water Control Measures as required by this Declaration.

The foregoing responsibilities shall be performed in a manner that does not unreasonably disturb or interfere with the reasonable enjoyment of the Properties by Persons entitled thereto. Provided, however, and notwithstanding anything to the contrary appearing herein, Declarant is exempt from the required maintenance provisions of this Article with respect to all portions of the Properties it owns, except for any of same on which Dwellings are located.

13.2 Enforcement. If any Owner fails to perform any of the foregoing maintenance responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required maintenance. If any such Owner fails to perform the required maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's Lot and perform such maintenance without any liability for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Person an invoice therefor. If any Owner fails to reimburse the Association as required, the Association may impose a special individual assessment against the Owner and such Owner's Lot for the amount owed.

13.3 Unimproved Portions of the Properties. Notwithstanding the foregoing provisions of this Article, but subject to the other applicable provisions of this Declaration, Owners of unimproved Lots or other unimproved portions of the Properties shall be required to maintain same only in accordance with such maintenance standards, if any, as are established by the Declarant, during the Development Period, and thereafter, in accordance with such reasonable maintenance standards established by the Board.

#### ARTICLE XIV AMENDMENT OF DECLARATION

14.1 Amendment by Declarant. In addition to specific amendment rights, if any, granted or reserved elsewhere in this Declaration, during the Development Period, Declarant may unilaterally, and in its sole discretion, without the consent, approval, or joinder of any Owner, the Association, or any other Person. (except to the extent that Legal Requirements require the consent or joinder of a Governmental Authority or a vote of the Members), and without the necessity of a meeting of the Association, amend this Declaration for any purpose that is not prohibited by the Act or other Legal Requirement, including, without limitation, amending any provision of the Declaration or any Subdivision Declaration or Supplemental Declaration to: (i) make non-material, clarifying or corrective changes not materially affecting any Owner's rights or obligations hereunder; or (ii) satisfy the requirements of FHA, VA, FNMA, FHLMC, OILSR or other governmental agency, Secondary Mortgage Market Agency or Institutional Lender; or (iii) establish or maintain the tax exempt status of the Association under the laws of the United States or the State of North Carolina; or (iv) amend the Declaration as may be necessary to prevent it from being declared invalid under any Legal Requirement or by any court of competent jurisdiction, or to add or delete provisions to or from the Declaration as may be necessary to prevent it from being declared invalid under any Legal Requirement or by any court of competent jurisdiction. Any amendment of this Declaration adopted by the Declarant shall be effective upon the later of the date of its recording in the Registry or the effective date specified therein.

14.2 Amendment by the Members. Unless amended as allowed under Section 14.1 of this Article, this Declaration may be amended only as follows:

(a) Unless a higher percentage or different voting requirement is specified herein or by Legal Requirements, this Declaration may be amended only by (i) the written agreement or consent of those Members, or the affirmative vote at a meeting of the Association of those Members, to whom are allocated sixty-seven percent (67%) or more of the total number of votes in the Association, and (ii) during the Development Period, with the written consent or joinder of Declarant.

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to this Declaration is to be voted on, together with at least a summary description of the proposed amendment, shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of the date of such meeting.

(c) When any amendment to this Declaration is approved by Members of the Association (and Declarant, when applicable) as provided in this Section, the appropriate officers of the Association (and Declarant, when applicable) shall execute in the same manner as a deed and record in the Registry, a document setting forth the following: the amendment; the effective date of the amendment (if no effective date is stated the amendment shall be effective upon the recording of same in the Registry); and if applicable, the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes required to constitute a quorum at such meeting, the total number of votes present at such meeting, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of such amendment and the total number of votes cast against the amendment. The document shall be recorded in the Registry within thirty (30) days following the date of the meeting at which the amendment was adopted or the written agreement for the amendment is completed. Provided, however, and notwithstanding the foregoing or anything to the contrary appearing herein, no amendment to this Declaration duly adopted by the Members of the Association shall be void or invalid solely because the document describing the amendment is not recorded in the Registry within said thirty (30) day period, and any such duly adopted amendment to this Declaration recorded following the end of said thirty (30) day period shall become effective on the later of the effective date specified therein, if any, or on the date it is recorded in the Registry.

(d) Amendment of Subdivision Declarations and Supplemental Declarations shall be governed by the provisions for amendment contained therein, if any; otherwise, the provisions regarding amendment of the Declaration shall apply to amendment of those documents.

14.3 Consent of Mortgagees. Unless required by a Legal Requirement, no consent, joinder, or approval of any Mortgagee to any amendment of this Declaration by Declarant during the Development Period is required. No consent, joinder, or approval of any Mortgagee to any other amendment of this Declaration is required unless (i) the amendment materially, adversely affects the rights of Mortgagees under this Declaration, or (ii) a Legal Requirement requires the consent of Mortgagees or a percentage of Mortgagees, or (iii) the mortgage held by such Mortgagee specifically requires the Mortgagee's consent with respect to the Member's Lot subject to the mortgage, and if either (ii) or (iii) is applicable, the Mortgagee has notified the Association of its rights regarding consent to amendments in writing delivered to the Association by certified or registered mail, or by overnight delivery service, identifying the Lot upon which such Mortgagee holds a first lien mortgage or deed of trust, and designating the name of the person and mailing address to which notices, reports or information are to be sent by the Association. The Mortgagee shall be responsible for updating the information required by this Section, and the Association is obligated to give the required notices only to the most current name and address it has received from the Mortgagee. Such notice shall be deemed to have been received by the Association only upon actual delivery thereof, as evidenced by the return registry receipt or records of the overnight delivery service. If the amendment is adopted by the required percentage of Members exclusive of the Member or Members who own Lots for which consent of a Mortgagee is required under this Section, then the amendment is valid whether or not the necessary Mortgagees have consented to the amendment.

14.4 Prohibited Effects of Amendment. No amendment to this Declaration, whether adopted by the Declarant, by the Association, or by the Members or any applicable group of Members of the Association, shall do or result in any of the following:

- (a) increase the financial obligations of an Owner in a discriminatory manner.
- (b) further restrict development on any portion of the Properties in a discriminatory manner.
- (c) diminish or impair, or in any way adversely affect the rights or protections of Declarant without the written consent of Declarant.
- (d) impose additional obligations upon Declarant without the written consent of Declarant.
- (e) diminish or impair the express rights of Institutional Lenders under this Declaration without the prior written approval of a majority of the Institutional Lenders who have requested the exercise of such rights as provided herein.
- (f) terminate or revise any easement established by this Declaration, without the written consent of the Persons whose Lots or other real property is benefitted by the easement and, with respect to a revision, the written consent of the Persons whose Lots or other real property is burdened by the easement.
- (g) without the consent of the applicable Governmental Authority, terminate, reduce, amend, revise, or alter any obligation of the Association or the Members of the Association under any Legal Requirement or under any encroachment agreement, or other agreement entered into with a Governmental Authority by the Association or, as allowed by this Declaration, by the Declarant on behalf of the Association.
- (h) alter or remove or attempt to alter or remove any applicable Legal Requirement.

## ARTICLE XV

### DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION

15.1 Duration. Unless sooner terminated as required by Legal Requirements, this Declaration shall run with and bind the Properties and each Owner, and shall inure to the benefit of the Association and each other Owner of any portion of the Properties, and their respective heirs, successors, and assigns, from and after the recording of this Declaration in the Registry until such time as it is terminated by a written termination agreement, executed or ratified in the same manner as a deed, by those Members to whom eighty percent (80%) or more of the total number of votes in the Association are allocated, and also with the written consent of Declarant during the Development Period. Execution or ratification by any one of multiple Owners of a Lot is sufficient for that Lot unless, prior to the time the termination agreement is recorded in the

Registry, any other Owner of that Lot files with the Association a written objection to the termination of this Declaration (in which event the vote allocated to that Lot shall be considered as not having been exercised). The termination agreement shall specify a date after which it will be void unless it is recorded in the Registry before that date. The termination agreement may not be recorded in the Registry unless and until the requisite number of signatures have been obtained as provided herein, and it shall be effective only upon recording. If, pursuant to the termination agreement, any real estate in the Properties is to be sold following termination of this Declaration, the minimum terms of the sale shall be set forth therein. The Declaration shall be deemed incorporated in all deeds and conveyances hereinafter made by Declarant or any other Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Properties shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of the Properties, such Person shall be deemed to have assented to this Declaration and all of the terms and provisions hereof.

15.2 Dissolution of the Association. The Association shall be dissolved upon the termination of this Declaration. Provided, however, until any sale of the Common Property authorized by the termination agreement or approved by the Owners in the same manner as required for approval of the termination agreement is completed and the sale proceeds distributed, the Association shall continue in existence with all of the powers it had before termination. The Association, on behalf of the Owners, may contract for the sale of the Common Property, but the contract is not binding unless such sale has been authorized in the termination agreement or it has been approved by the Owners in the same manner as required for approval of the termination agreement. Proceeds of the sale of Common Property shall be distributed to the Owners and lienholders as their interests may appear, as provided in the termination agreement or other agreement approved by the Owners in the same manner as required for approval of the termination agreement. If the Common Property is not to be sold following termination of this Declaration, title to the Common Property vests in the Owners upon termination, as tenants in common in proportion to their respective interests as provided in the termination agreement. Upon dissolution of the Association or upon loss of ownership of all of the Common Property by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Property as allowed by this Declaration, or by reason of merger and/or consolidation with any other association as allowed by this Declaration), except as otherwise provided in the termination agreement, other agreement approved by the Owners in the same manner as required for approval of the termination agreement, or Legal Requirements (in particular, Section 47F-2-118 of the Act, or any successor Section of the Act), any portion of the Common Property not under the jurisdiction of and being maintained by another association substantially similar to the Association, together with all other assets of the Association, first shall be offered to Wake County (or, if Wake County refuses such offer, then to some other appropriate Governmental Authority or public agency as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Property and such assets were required to be devoted by the Association. If Wake County or such other Governmental Authority or public agency accepts the offer of dedication, such portion of the Common Property and assets shall be conveyed by the Association to Wake County or such

other appropriate governmental entity or public agency, subject to the superior right of an Owner to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which that Lot is located, subject to all other applicable rights of way and easements, and subject to ad valorem property taxes subsequent to the date of such conveyance.

If Wake County or such other appropriate Governmental Authority or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Property and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Property was required to be devoted by this Declaration, such transfer and conveyance to be made subject to the rights of Owners and the other matters set forth in the immediately preceding paragraph of this Section. If there is no nonprofit corporation, association, trust or other entity who will accept such transfer and conveyance of the Common Property and assets of the Association, then such Common Property and assets shall be distributed as provided in the plan of termination/dissolution adopted by the Association.

## ARTICLE XVI RECREATIONAL AMENITIES

16.1 Recreational Amenities Contemplated. Declarant has no obligation to construct, furnish, or provide for any Recreational Amenities for the Subdivision, except as required by Legal Requirements and any such Recreational Amenities may be provided by third parties on or off the Properties.

16.2 Other Recreational Facilities. Declarant may in the future develop other real property that is not be part of the Subdivision but that may have recreational facilities (the term "recreational facilities" is being used here to distinguish it from the term "Recreation Amenities" as defined in the Declaration) that are available for use to Owners of Lots in the Subdivision in accordance with the rules and regulations applicable to those recreational facilities. Provided, however, nothing herein shall be construed as a commitment from Declarant or the owners of such other real property, or as a requirement of Declarant or such owners, to develop such other real property or to provide for such recreational facilities on such other real property that are available for use by the Owners of Lots in the Subdivision. With respect to any such recreational facilities that are on such other real property, one of the requirements for the use of those recreational facilities by Owners of Lots in the Subdivision may be that all of the Owners of Lots in the Subdivision pay assessments or membership fees or use fees for the use and/or maintenance of such recreational facilities, or that the Association pay such assessments or fees on behalf of the Owners of Lots in the Subdivision. In the event that the applicable rules and regulations for use of such recreational facilities by the Owners of Lots in the Subdivision require all of the Owners of Lots in the Subdivision to pay assessments or membership fees or use fees for the use and/or maintenance of such recreational facilities or that the Association pay such assessments or fees on behalf of the Owners of Lots in the Subdivision, then the Declaration may be amended to require all of the Owners of Lots in the Subdivision, either

individually or through assessments paid to the Association, to pay assessments or membership fees or use fees for the use and/or maintenance of such recreational facilities, subject to the following: (i) any such amendment to the Declaration must be approved by the affirmative vote at a meeting of the Association of those Members to whom are allocated eighty percent (80%) or more of the total number of votes in the Association, and during the Development Period, with the written consent of Declarant, and (ii) the per Lot amount to be paid is the same for each Lot in the Subdivision. The foregoing provisions for amendment of the Declaration with respect to recreational facilities on real property that is not part of the Subdivision are applicable to other real property that is developed by Declarant and to other real property that is developed by another Person (for example, there may be another residential development that offers to allow Owners of Lots in the Subdivision to use its recreational facilities). Also, the foregoing provisions for amendment of the Declaration with respect to recreational facilities are in addition to matters dealing with merger of the Association with another association that results in the members of each having rights to use recreational facilities that are owned by the other association.

16.3 Parties with Right to Use Recreational Amenities. The Owner of a Residential Lot who resides in the Dwelling on such Lot may extend his or her right of use and enjoyment of the Recreational Amenities to the other members of his or her household and to guests, subject to reasonable Board regulation. If the Owner of a Residential Lot does not reside in the Dwelling on such Lot, the Owner shall be deemed to have assigned all of the Owner's rights to use and enjoy the Recreational Amenities to the occupants of the Dwelling, who may extend the privilege of use and enjoyment to their guests, subject to reasonable Board regulation. The Board may require written notice of any Person to whom such rights are assigned or extended.

16.4 Use of Recreational Amenities. Subject to the rights of Declarant to use the Recreational Amenities reserved in the Declaration, use of the Recreational Amenities shall be subject to the rules and regulations established by the Association, and any use of the Recreational Amenities in violation of those rules and regulations shall be deemed a trespass and shall subject such Owner or other Person to all of the penalties for violation established by the Association or the Governing Documents.

16.5 Use of Recreational Amenities by Declarant. During the Development Period, Declarant hereby reserves the right to use the Recreational Amenities at any time and from time to time, without any charge or payment therefor, for any one or more of the following purposes: (i) the club house, as an administrative and sales office for Declarant and/or for any real estate brokerage company or individual used or authorized by Declarant for sales of Lots (with or without Dwellings thereon) for marketing, meeting and promotional functions in connection with the marketing or sale of any part of the Properties, and as an office and meeting room for the Declarant, the Association, the Board, the Architectural Review Committee and other Board committees; (ii) the remaining Recreational Amenities, for marketing, meeting and promotional functions in connection with the marketing or sale of any part of the Properties. The foregoing rights of the Declarant include the right to use a reasonable number of parking spaces on the Recreational Amenities and any other Common Property parking areas. Declarant's use of the Recreational Amenities as aforesaid shall have priority over the use of the Recreational

Amenities by the Association and other Persons who have rights or privileges to use the Recreational Amenities; provided, however, Declarant and the Association shall cooperate to schedule Recreational Amenities events so that they do not unreasonably overlap or interfere with the use of the Recreational Amenities by the Association and other Persons.

16.6 Use Not a Nuisance. Use of any part of the Recreational Amenities by Declarant as described herein, or by any other Person in accordance with the rules and regulations established by the Association, including use of the swimming pool for swim meets and social events, shall not constitute a nuisance.

16.7 Management. The Association shall have the right and authority, at any time and from time to time, to employ a property manager or other Person to manage and operate the Recreational Amenities for the Association.

16.8 Risks Associated With Use. Declarant hereby informs all Persons who use any part or all of the Recreational Amenities that there are certain risks associated with the use thereof, particularly with use of the swimming pool, if any, whether or not a lifeguard is on duty during times when the swimming pool is open for use. The Association may, but shall not be required to, employ or provide for the services of one or more lifeguards during certain times that the swimming pool is open for use, it being within the sole discretion of the Board whether or not to employ or provide for the services of lifeguards. Each Owner, by acceptance of a deed to such Owner's Lot, and each other Person who uses any part or all of the Recreational Amenities, specifically acknowledges the existence and acceptance of the foregoing risks, and agrees to comply with the rules and regulations established by the Association for use of the Recreational Amenities.

16.9 Limitation of Liability. Neither the Declarant, nor any of its members, managers, employees, agents, contractors, affiliates, subsidiaries, predecessors or successors (for the purposes of this paragraph, referred to as a "Named Person") shall be responsible or liable in any way to any Owner or to any other Person for any claims, causes of action, damages, judgments, liens, losses, injuries, demands, interference, liabilities, or obligations whatsoever, that may result from property damage or personal injury in connection with such Owner or other Person's use of any Recreational Amenities, unless the same arises out of or results from the gross negligence or intentional act or omission of such Named Person, or unless the same arises out of or results from the act or omission of any such named Person while actually using the Recreational Amenities.

16.10 Use Fees. The Board may establish use fees for the use the Recreational Amenities for the upkeep of the Recreational Facilities, which fees may be charged to Owners or any party to whom an Owner assigns its rights.

## ARTICLE XVII DISCLOSURES AND WAIVERS

The following are in addition to any other disclosures and waivers in this Declaration.

17.1 Construction Activities. All Owners and other Persons who use the Properties hereby are notified that Declarant and/or its agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within the Properties. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Properties generally, such Owners and such other Persons acknowledge, stipulate, and agree: (i) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (ii) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the portion of the Properties where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (iii) that Declarant and its agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shareholders, directors, officers, partners, members, managers, agents and employees shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (iv) that any purchase or use of any portion of the Properties has been and will be made with full knowledge of the foregoing; and (v) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of the Properties.

17.2 Conveyance of Common Property. Declarant may convey or transfer all Common Property, including all improvements thereon, to the Association in an "AS IS, WHERE IS" condition, and in such conveyances may reserve such easements as Declarant, in its sole discretion, deems necessary or advisable for completion or maintenance of any improvements in the Common Elements and any development of the Subdivision. Declarant hereby disclaims and makes no representations, warranties or other agreements, express or implied, by law or fact, with respect to the Common Property and improvements thereon, including, without limitation, representations or warranties of merchantability regarding the condition, construction, accuracy, completeness, design, adequacy of size or capacity thereof in relation to the utilization, date of completion, or the future economic performance or operations of or the materials, furniture, or equipment used therein. Neither the Association nor any Owner or any other Person shall make any claim against Declarant, its successors and assigns, relating to the condition, operation, use, accuracy or completeness of the Common Property, or for incidental or consequential damages arising therefrom. Declarant shall transfer and assign to the Association, without recourse, all warranties received from manufacturers and suppliers relating to any of the Common Property or improvements thereon, or relating to any personal property transferred by Declarant to the Association, which exist at the time of transfer and are assignable, but Declarant's failure to do so shall not constitute any grounds for any claim, cause of action or other legal recourse against Declarant for failing to do so, other than to compel Declarant to transfer or assign same.

17.3 Liability for Association Operations. The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant, its successors and assigns, and its shareholders, directors, officers, partners, members, managers, agents and employees

from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of Common Property and the collection of assessments.

17.4 Public Facilities and Services. Certain facilities and areas within and adjoining the Properties may be open for use and enjoyment of the public. Such facilities and areas may include, for example: greenways, trails and paths, parks, and other neighborhood spots conducive to gathering and interaction, roads, sidewalks, and medians. In addition to any such facilities and areas that are open for use and enjoyment of the public pursuant to Legal Requirements, Declarant may designate facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Common Property or the Board may so designate at any time thereafter.

17.5 Safety and Security. Each Owner and occupant of a Dwelling, or Improvement, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Subdivision. The Association may, but shall not be obligated to, maintain or support certain activities within the Subdivision designed to enhance the level of safety or security which each Person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Subdivision, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Subdivision, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing such Owner's tenants and all occupants of its Dwelling that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Subdivision assumes all risks of personal injury and loss or damage to property, including Dwellings and the contents thereof, resulting from acts of third parties.

17.6 View Impairment. Neither Declarant nor the Association guarantee or represent that any view from, over, or across any portion of the Properties will be preserved without impairment or change. Neither Declarant nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement, if any. The Association (with respect to the Common Property) has the right to add or remove trees and other landscaping to and from the Common Property, subject to Legal Requirements. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

17.7 Powers of the Association Relating to Additional Associations. The Association shall have the power to block any action taken or contemplated to be taken by any Additional

Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community Wide Standard. The Association also shall have the power to require specific action to be taken by any Additional Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor. An Additional Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Additional Association fails to comply, the Association shall have the right to effect such action on behalf of the Additional Association and levy Specific Assessments against the Units subject to the Additional Association's jurisdiction to cover the costs incurred, as well as an administrative charge and sanctions.

17.8 Water Management. Each Owner and any other Person who uses any portion of the Properties acknowledges and agrees that any or all bodies of water (including lakes, ponds, creeks, streams, and wetlands in the Properties), together with any dams or other facilities or devices that contain, control, or direct such waters, may be designed as water management areas (including stormwater management) and not designed solely as aesthetic features, and that, with respect to those that are water management areas, due to fluctuations in ground water elevations within the immediate area and/or the receipt or discharge of stormwater, the water level of such lakes, ponds, and wetlands may rise and fall. Each Owner and other such Person further acknowledges and agrees that Declarant has no control over such elevations. Therefore, each Owner and other such Person releases and discharges Declarant, and its successors, assigns, contractors, subcontractors, shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water elevations. Declarant reserves for itself, the Association, and their successors, assigns, and designees, the perpetual, nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within or adjoining the Properties to do any or all of the following: (i) install, operate, maintain, and replace pumps to supply irrigation water to the Common Areas; (ii) construct, maintain, and repair structures and equipment used for retaining water; and (iii) maintain such areas in a manner consistent with the Community Wide Standard. Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the Dwellings thereon) adjacent to or within 50 feet of bodies of water within or adjoining the Properties, in order to do any or all of the following: (i) temporarily flood and back water upon and maintain water over such portions of the Properties; (ii) alter in any manner and generally maintain the bodies of water within and adjoining the Properties; and (iii) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage to a Lot resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences. Owners and other Persons who use any portions of the Properties shall not alter, modify, expand, or fill any lakes, ponds, or wetlands located in the Properties without the prior written approval of the governmental entities having jurisdiction over such matters,

including the U. S. Army Corps of Engineers if applicable, and the Declarant, during the Development Period, and the Association thereafter.

## ARTICLE XVIII ALTERNATIVE DISPUTE RESOLUTION

### 18.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Owners and other Persons subject to this Declaration, and any other Person not subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree or are deemed to agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in this Article in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to any of the following:

(1) the interpretation, application, or enforcement of the Governing Documents;

(2) the rights, obligations, and duties of any Bound Party under the Governing Documents; and/or

(3) the design or construction of improvements within the Community, other than matters of aesthetic judgment, which shall not be subject to review.

(c) Provided, however, that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in this Article (the word "action" includes any legal or equitable action or procedure filed in any court, as well as any other procedure):

(1) any action by the Association to collect assessments or other amounts due from any Owner;

(2) any action by the Association to obtain a temporary restraining order or other emergency equitable relief and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration relating to creation and maintenance of the Community Wide Standard;

(3) any action between Owners, which does not include Declarant or the Association as a party, if such action or matter asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(4) any action in which any indispensable party is not a Bound Party;

(5) any action as to which any applicable statute of limitations or statute of repose would expire within one hundred eight (180) days of the date of the filing of the action, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and

(6) any action to enforce any financial or monetary obligation of any Person under the Governing Documents.

#### 18.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice (the "Notice") to each Respondent and to the Board stating plainly and concisely:

(1) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(3) the Claimant's proposed resolution or remedy; and

(4) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

Within thirty (30) days of receipt of the Notice, the Respondent, subject to all of the foregoing requirements for the giving of the Notice, shall give the Claimant a Notice of any Claim the Respondent has against the Claimant.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing by either the Claimant or the Respondent, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the Bound Parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice, or within such other period as the Bound Parties may agree upon, either of the Bound Parties shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party

to the Claim) or to an independent agency providing dispute resolution services in the Wake County, North Carolina area.

If the Claim is not submitted to mediation within such time, or if the Bound Party who submitted the Claim to mediation does not appear for the mediation when scheduled, that Bound Party shall be deemed to have waived the Claim, and the other Bound Party shall be relieved of any and all liability to the Bound Party who submitted the Claim to mediation (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. Either the Claimant or Respondent thereafter shall be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Bound Party shall share equally all fees charged by the mediator.

(d) Right to File Action. Notwithstanding anything to the contrary herein, a Bound Party may file an action with respect to any matter subject to a pending negotiation or a pending mediation, if the applicable statute of limitations or statute of repose would expire within ninety (90) days or less of the date of the filing of the action.

(d) Resolution of Claim. Any resolution or settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Claimant and Respondent. If either of such Bound Parties thereafter fails to abide by the terms of any negotiated or mediated settlement, then the other Bound Party may pursue an action to enforce the settlement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce any settlement, upon prevailing, is entitled to recover from the noncomplying Bound Party (or if more than one non-complying Bound Party, from all such Bound Parties in equal proportions) all costs incurred in enforcing such settlement, including, without limitation, attorneys' fees and court costs.

## **ARTICLE XIX RETAINING WALLS**

Retaining walls installed in the Properties by or on behalf of Declarant that are located on more than one (1) Lot or that are located partially on a Lot and partially on Common Elements, are Common Elements and are the property of the Association. With respect to initial construction or installation and subsequent maintenance of retaining walls, Declarant and the Association shall have all of the easements reserved for Declarant and the Association in Article X of this Declaration. Declarant, during the Development Period, and thereafter the Association, has the right to determine what constitutes a retaining wall and to resolve all issues and other matters related to retaining walls.

## ARTICLE XX GENERAL PROVISIONS

20.1 Assignment. Declarant specifically reserves the right, in Declarant's sole discretion, to assign temporarily or permanently any or all of its rights, privileges, powers and/or obligations under this Declaration or under any Supplemental Declaration or Subdivision Declaration, including assignment of any or all of same as security for any obligation of Declarant to one or more Persons. Except as otherwise provided in this Section, no such assignment shall be effective unless (i) it is in writing, (ii) it is executed by the assignee (unless, with respect to an assignment to the Association of a Governmental Authority permit, execution of the assignment by the assignee is not required by the applicable Governmental Authority or Legal Requirement), (iii) it is recorded in the Registry or other Governmental Authority office required under Legal Requirements, with the date of recording or such later effective date stated in the assignment being the effective date thereof (and the terms of the recorded assignment shall be conclusive and binding as to the matters assigned), and (iv) if it purports to assign any obligations of the Declarant to complete initial capital improvements within the Subdivision required by a Development Plan or other Legal Requirements, it describes the specific obligations assigned.

Upon Declarant's request, the Association shall execute any such assignment by Declarant to the Association, and Declarant is designated by this Declaration as the Association's agent and/or attorney-in-fact to execute any such assignment on behalf of the Association, which agency and power of attorney shall be effective until the end of the Development Period, unless sooner terminated in writing by Declarant. Provided, however, and notwithstanding anything herein to the contrary, Declarant may not assign to the Association any obligation to complete initial capital improvements within the Subdivision required by a Development Plan or other Legal Requirements to be completed by Declarant. With respect to assignments described in any instrument under which Declarant rights specifically or impliedly are given as security for an obligation of Declarant, the terms of such instrument shall control over the provisions of this Section, including execution and recording requirements and the matters assigned thereby. Upon any completed foreclosure sale pursuant to any instrument under which the Declarant rights become security for an obligation, or the recording or filing of a deed or other instrument in lieu of foreclosure, the purchaser at the foreclosure sale, or the grantee under any deed or other instrument in lieu of foreclosure, shall receive the rights, privileges, powers and/or obligations that were assigned as security for the Declarant's obligation, unless the foreclosure documents or conveying document specifically exclude such rights, privileges, powers and/or obligations.

Notwithstanding anything to the contrary in this Section, with respect to Common Elements, Stormwater Control Measures and utilities in the Subdivision, Declarant may assign to the Association, and the Association shall accept assignment of and execute the assignment document with respect to, any or all of the following in whole or in part, including the costs thereof: all rights, duties, liabilities, obligations and indemnities of the Declarant under all permits issued by a Governmental Authority (but execution of the assignment by the Association

is not required unless required by the applicable Governmental Authority or Legal Requirement); and all easements and agreements with any provider of utilities to any part or all of the Subdivision and/or under all agreements between the Declarant and a Governmental Authority or any provider of utilities to any part or all of the Subdivision, with respect to maintenance of Common Elements, Stormwater Control Measures and/or utilities in the Subdivision. Provided, however, and notwithstanding the foregoing, Declarant may not assign to the Association any of its obligations or liabilities or indemnities directly related to the initial construction or installation of improvements for Common Elements, Stormwater Control Measures, utilities, and/or publicly dedicated streets in the Subdivision as required by a Governmental Authority or a utility provider for development of the Properties in accordance with a Development Plan. Declarant shall have the authority to resolve any dispute as to what rights, duties, liabilities, obligations and/or indemnities can be assigned to the Association pursuant to this Section.

Any approvals, waivers, or variances granted by the Declarant under the Governing Documents shall be binding upon all assignees and successors to Declarant's approval, waiver, or variance authority.

20.2 Duration of Special Declarant Rights. Unless otherwise specifically provided in the Governing Documents, or unless waived or released by the Declarant or other Person possessing such rights, all Special Declarant Rights under this Declaration shall exist and continue through the end of the Development Period.

20.3 Association Contracts and Leases During Declarant Control Period. All Association contracts and leases that affect or relate to the Properties or any part thereof and (i) are entered into prior to the time that the first Board whose majority of directors is elected by the Members takes office, and (ii) are not bona fide or were unconscionable to the Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after such first Board whose majority of directors is elected by the Members takes office, upon not less than ninety (90) days written notice to the other parties to the contract or lease (or any different minimum time period provided for in the Act), and all such contracts and leases are terminable as provided in this Section, whether or not the right of the Association to terminate is stated therein.

20.4 Conflicts. Whenever there exists a conflict among the Governing Documents of the Association, the order in which Governing Documents control is as follows: agreements with Governmental Authorities; this Declaration; other Governing Documents, except that as to matters of compliance with the Nonprofit Corporation Act, the Articles shall control. Whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control. The provisions of the Bylaws shall control over any conflicting provision of any Restrictions and Rules, Board resolutions or rules and regulations, or Architectural Guidelines. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act, the Nonprofit Corporation Act and the Code shall in all cases control over any construction inconsistent therewith.

The provisions of the Code and other Legal Requirements control over any conflicting

provisions of this Declaration and any other Governing Documents.

Whenever the Act, the Nonprofit Corporation Act, or the Code provides for limitations on any amount of assessments, fines, late payment fees, charges, or attorney fees that may be assessed, fined, charged, imposed, or collected by the Association, and the amount of any such assessment, fine, late payment fee, charge, or attorney fee allowed or authorized by this Declaration or other Governing Documents (including any assessment, fine, late payment fee, charge, or attorney fee amount established by the Board as allowed by this Declaration or other Governing Documents) exceeds the applicable limitation of the Act, the Nonprofit Corporation Act, or the Code, unless the applicable limitation specified by the Act, the Nonprofit Corporation Act, or the Code is a mandatory limitation that cannot be exceeded by provisions in this Declaration or other Governing Documents allowing or providing for the possibility of a greater amount than the applicable limitation otherwise allows, the provisions of this Declaration or other Governing Documents control and are deemed to constitute an express provision contrary to the limitation contained in the Act, the Nonprofit Corporation Act, or the Code. The provisions of the Act and Nonprofit Corporation Act shall in all cases control over any conflicting provisions of the Code. The Governing Documents shall be construed together with the construction that avoids, insofar as possible, conflicts among them.

For the purposes of this Article and any other references in this Declaration to similar conflicts, a 'conflict' is a situation in which the provisions in question cannot be reconciled or where enforcement of one provision necessarily would prohibit enforcement of another provision for example, where one provision allows a certain action and the other provision prohibits the same action. Two provisions that are different, but not mutually exclusive or prohibitive of each other do not constitute a conflict for the purposes of this Article.

20.5 Consent and Notice. Except as otherwise may be specifically required by the Governing Documents or Legal Requirements, when a Lot is owned by more than one Person: (i) with respect to any matter under this Declaration requiring the consent, the consent of any one of such Owners is sufficient; and (ii) the notice provisions of this Declaration are deemed satisfied if notice is given to any one of such Owners. Whenever the written consent of Declarant is required for the effectiveness of some action under this Declaration in addition to any required vote of the Members of the Association, the votes in the Association allocated to Declarant shall be counted in determining the vote of the Members, the written consent requirement being in addition to the voting requirement, whether or not Declarant actually participates in the voting.

20.6 Costs and Reasonable Attorneys' Fees. In any action to enforce the provisions of any Governing Documents, the court may award reasonable attorneys' fees to the prevailing party, even if such action is settled prior to any trial, judgment or appeal. It also is the specific intent of this Section that it constitute the allowance of the award of reasonable attorneys' fees as required under Section 47F-3-120 of the Act.

20.7 Determination of Class of Membership. If at any time during the Development Period there is a question or dispute as to what class of membership is applicable to the Owner of a particular portion of the Properties, the Declarant has the right and authority to resolve such

question or dispute. Following the end of the Development Period, the Board has the right to resolve any such question or dispute.

20.8 Enforcement. Subject to applicable alternative dispute resolution provisions of this Declaration, and subject to any rights of enforcement provided for any Governmental Authority by this Declaration or any Legal Requirement, (i) the Declarant and the Association shall have the right, but not the obligation, to enforce the provisions of this Declaration and other Governing Documents relating to the collection of assessments and other charges payable to the Association, and (ii) the Declarant, the Association, each Owner, and, when enforcement rights are granted by this Declaration, an Institutional Lender or other Secondary Mortgage Market Agency, shall have the right, but not the obligation, to enforce the other provisions of this Declaration and other Governing Documents, by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any Person who has violated, is violating, or is attempting to violate, any part of this Declaration or other Governing Documents, either to restrain the violation, recover damages, or seek other available legal or equitable remedies. Any failure by the Declarant, the Association, an Owner, or any other Person to enforce this Declaration or other Governing Document or seek any applicable remedy with respect to any specific violation or lien shall not constitute a waiver of the right to do so thereafter, nor shall it constitute a waiver of the right to enforce this Declaration at any other time with respect to the same or substantially similar matter. All rights, remedies and privileges granted to the Declarant, the Association, any Owner, or any other Person herein are cumulative, and the exercise of any one or more of such rights, remedies or privileges shall not constitute an election of remedies or preclude subsequent exercise of other rights, remedies and privileges.

20.9 Exclusive Rights to Use Name of Subdivision. During the Development Period, no Person shall use the name "Falls Reserve" or any derivative of such name in any logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Falls Reserve" in printed or promotional matter where such term is used solely to specify that a particular Lot is located within the Subdivision and the Association shall be entitled to use the word "Falls Reserve" in its name and for other purposes related to the functions of the Association under this Declaration.

20.10 Legal Actions Against Declarant. The affirmative vote or consent of the Members that is equal to or greater than sixty-seven percent (67%) of the total number of votes in the Association first shall be required prior to the Association doing any or all of the following with respect to the Declarant or any successor Declarant, regardless of whether such Person is the Declarant at the time the Association takes the action or obtains the necessary vote or consent required to take such action: (i) file a complaint, on account of any act or omission of Declarant, with any Governmental Authority which has regulatory or judicial authority over the Properties or any part thereof; or (ii) assert a claim against Declarant or sue Declarant or request legal or equitable relief against Declarant in any court, before any Governmental Authority board, or otherwise.

20.11 Legal Requirements. All Governing Documents shall be subject to and construed in accordance with all Legal Requirements and all applicable provisions of the Code. It shall be

the responsibility of each Owner to comply with all Legal Requirements, whether or not any approval, disapproval, waiver or variance of the terms of any Governing Documents has been given by Declarant, the Association or the Architectural Review Committee. It is the express intention of the Governing Documents to comply with the Act, and any provisions of the Governing Documents that are not in compliance with the Act shall be deemed reformed to comply therewith. Provided, however, it also is the intention of the Governing Documents that, unless its provisions violate the Act, such provisions shall control, and, insofar as reasonably possible, the provisions of the Governing Documents shall be construed in such manner as to be consistent with, and not in violation of, the Act.

20.12 Marketable Title Act. It is the intention of the Declarant that this Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or replacement statute or any other Legal Requirement that would or could terminate this Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may re-record in the Registry this Declaration or some memorandum or other notice hereof in order to continue this Declaration in full force and effect and/or to qualify this Declaration as an exception to any such automatic termination, or expiration provision of the Real Property Marketable Title Act or any other Legal Requirement.

20.13 No Exemption. No Owner may become exempt from any obligations imposed hereby by non-use or abandonment of the Common Elements or any portion of the Properties owned by such Owner.

20.14 No Timesharing. No Dwelling or Improvement may be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to use or occupancy of the Dwelling rotates among participants in the program on a fixed or floating time schedule over any period of time.

20.15 Notice. Except as otherwise provided herein, whenever written notice to any Person (including Owners and Members) is required hereunder, such notice may be hand delivered to such Person, or given by first class United States mail, postage prepaid, or given in such other manner specifically allowed or required by Legal Requirements, or given in such other manner determined by the Board to be proper and which does not violate any Legal Requirements, addressed to the address of such Person appearing on the records of the Association or to the address for such Person appearing in the records of the Wake County Revenue Department. Properly addressed notice shall be deemed to have been given by the Association as follows: (i) in the absence of any delays in delivery by the United States Postal Service resulting from acts of war or terrorism, on the third day following the date the notice was deposited in the United States mail, first class postage prepaid; or (ii) on the date of personal delivery to the Person or an adult residing with the Person, as evidenced by a receipt signed by the Person or such other Person; or (iii) on the delivery date indicated on a return certified or registered mail receipt, or (iv) on the date indicated by the records of a national, regional or local same day or overnight courier service, or (v) on the date acknowledged in writing by the

recipient Person or other adult residing with such Person, or (vi) upon execution of a written waiver of such notice by the Person. Notice to the Association may be given and shall be deemed to have been given in the same manner as notice to a Person, when addressed to the principal business office of the Association or the property manager employed by the Association. It shall be the duty of each Owner and other Person entitled to receive a notice from the Association to keep the Association informed of such Owner's or other Person's current mailing address and telephone number. If an Owner or other Person has not provided the Association with such current mailing address the Association may use as the mailing address the street address of the Lot owned by such Owner or other Person or the address for such Owner or other Person in the records of the Wake County Revenue Department. If no address for an Owner other Person is reasonably available to the Association, the Association shall not be required to give notice to that Owner or other Person. Notice given to any one of multiple Owners of any portion of the Properties shall be deemed to have been given to all of such Owners. When an Owner requests in writing that communications from the Association be given by electronic mail, then notices under this Declaration also may be given to that Owner by electronic mail by an officer, director, or agent of the Association (which may include a property manager) and shall be deemed to have been given on the date that it is sent by the sending Person to the Owner to the electronic mail address of the Owner most recently given to the Association.

20.16 Number and Gender. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

20.17 Reserved Rights. Whenever this Declaration reserves a right for, or requires or authorizes a consent, approval, variance, or waiver by Declarant, and thereafter confers such right upon, or requires or authorizes such consent, approval, variance, or waiver by the Association or Board, the applicable right may be exercised, or the applicable consent, approval, variance, or waiver may be given, only by Declarant (or its assigns, which may include the Board) during the applicable period, and, thereafter, only by the Board or its authorized designee (unless a vote or consent of the Members of the Association also is required or alone is required). All rights of Declarant and the Association under this Declaration, unless otherwise specifically provided or limited, may be exercised at any time and from time to time.

20.18 Rule Against Perpetuities. As provided in Section 47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of this Declaration, or the Bylaws, rules, or regulations adopted pursuant to Section 47F-3-102(1) of the Act. In the event of the absence of the protection of Section 47F-2-103(h) of the Act, if this Declaration or any provision thereof violates any applicable Rule Against Perpetuities, this Declaration or such provisions shall be deemed reformed to continue in effect for the maximum period of time that this Declaration or such provision could exist without violating such applicable Rule Against Perpetuities.

20.19 Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent and final jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of this Declaration shall continue in full force and effect

and shall not be affected thereby. To the extent that any provision of the Governing Documents is determined to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision without destroying its intent, then the narrower or partially enforceable provision shall be applied and, to the extent lawful, shall be enforced. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

20.20 Subdivision, Combination of Lots; Plat Re-recording. Any portion of the Properties may be subdivided, and the boundaries of any portion of the Properties may be altered, only with the written consent of the Owner thereof and the Declarant, during the Development Period (and, thereafter, the Board), and with any prior approval required by a Governmental Authority. Provided, however, and notwithstanding the foregoing sentence, such written consent of the Declarant is not required for leases, deeds of correction, deeds to resolve boundary line disputes or similar corrective instruments, or deeds or other instruments granting any easement, right-of-way or license to Declarant, the Association, a Governmental Authority, or a public utility provider, provided that the number of then existing Lots in the Properties is not changed by any such action.

One or more Lots may be combined into a single Lot, and a Lot may be subdivided into two or more Lots, only with the written consent of the Owner thereof and the Declarant during the Development Period and, when the Development Period is not in existence, only with the written consent of such Owner and the Board. Unless otherwise provided on the plat that records the combined Lot or in a written instrument recorded in the Registry and executed by Declarant, the Association, and/or the Owner, as applicable, when two or more such Lots are combined into one Lot, the resulting Lot shall continue to be assessed and have voting rights in the Association based on the number of Lots that existed prior to the combination into one Lot. When one Lot is subdivided into two or more Lots, the resulting Lots each shall be considered as a separate Lot and each shall be subject to assessments and have voting rights in the Association in accordance with the assessments and voting rights then applicable to a Lot. When the boundaries of two or more such Lots are changed but the resulting number of Lots is the same as the original number of Lots, the assessments and voting rights in the Association for those resulting Lots shall continue as they were immediately prior to the change. When two or more such Lots are combined into one Lot, the easements reserved by this Declaration around the boundaries of the former Lots shall continue in effect, except that any such easements reserved along the former common boundary line(s) between the combined parcels and not actually being exercised or used by any Person at the time of the combination shall terminate. Provided, however, it shall be the responsibility of the Owner of such resulting Lot to obtain any documentation that is necessary or required to confirm such termination and to obtain termination or relocation of any such easements that are actually being exercised or used at the time of the combination of Lots. When a Lot is subdivided into two or more Lots, the easements established herein adjacent to the boundaries of a Lot shall apply to all of the resulting Lots.

Nothing contained herein shall prohibit or restrict the right of Declarant, during the Development Period to (i) subdivide, combine, re-subdivide or recombine, or to record or re-

record maps relating to, any portion of the Properties owned by Declarant, or (ii) to approve or disapprove such activities with respect to portions of the Properties owned by other Owners. The provisions of the immediately preceding paragraph with respect to the effects of subdivision or combination of Lots are applicable to subdivision or combination of Lots owned by the Declarant unless the Declarant otherwise indicates on the plat of such subdivision or combination recorded in the Registry or in an instrument recorded in the Registry prior to the end of the Development Period.

20.21 Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof, except as necessary with respect to any cross-referencing of any provisions of this Declaration.

20.22 Effective Date. This Declaration becomes effective as of the date and time of its recording in the Registry with no further act or confirmation required by Declarant or any other Person.

20.23 Casualty. Whenever all or any part of the Common Area Improvements, if any, shall be damaged or destroyed by fire or other casualty, the insurance proceeds therefrom shall be payable to the Association. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such damage or destruction to repair or restore any such damaged or destroyed Improvements, or any part thereof, then the Board of Directors of the Association shall arrange for such repairs or restorations, and the Association shall disburse the insurance proceeds accordingly; subject, however, to the right hereby reserved to the Association, which may be exercised by a majority of the votes of the Members thereof, to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such repairs or restorations) to the Members, or any one or more of them, in amounts disproportionate to their voting rights, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Members, or any one or more of them, as the Association may determine. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such damage or destruction to not replace such Improvements, or if the damage or destruction is confined to Common Area on which no Improvements have been constructed, then the Association shall disburse the casualty insurance proceeds in the manner hereinabove provided for the disbursement of any insurance proceeds remaining after payment of all costs incident to the repair or restoration of Improvements.

20.24 Condemnation. Whenever all or any part of the Common Area shall be taken by an entity having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association. Unless otherwise required by law at the time of such taking, any award made therefore shall be disbursed by the Association as hereinafter provided. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such taking to replace any condemned Improvements, or any part thereof, on the remaining lands which are part of the Common Area, then the Board of Directors of the Association shall arrange for such replacements, and the Association shall

disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the property is to be repaired or reconstructed; subject, however to the right hereby reserved to the Association, which may be exercised by a majority of the votes of the Members thereof, to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Members, or any one or more of them, in amounts disproportionate to their voting rights, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Members, or any one or more of them, as the Association may determine. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such taking to not replace such Improvements, or if the taking is confined to Common Area on which no Improvements have been constructed, then the Association shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of Improvements.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed under seal as of the 19<sup>th</sup> day of January, 2017.

FALLS LAKE DEVELOPERS, LLC

By: [Signature] (SEAL)  
Andrew K Sandman, Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

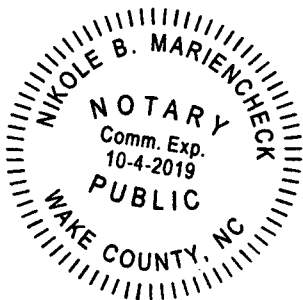
I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that ANDREW K. SANDMAN, Manager of FALLS LAKE DEVELOPERS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal or stamp, this 19<sup>th</sup> day of January, 2017.

[Signature]

Notary Public

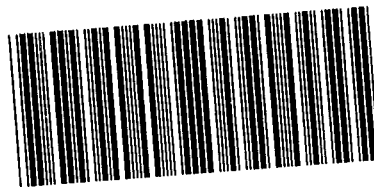
My Commission Expires: 10-4-2019



**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

Lots 1 through 15, Lots 34 and 35, and Lots 64 through 72, inclusive, Open Space, Well Lot(s) and right(s) of way, Falls Reserve Subdivision, Phase One, as shown on that certain plat recorded in Book of Maps 2016, Pages 2190 through 2194, Wake County Registry.



BOOK:016673 PAGE:01527 - 01605



---

**Please retain yellow trailer page**

**It is part of the recorded document and must be submitted with the original for re-recording**

---

**Laura M. Riddick  
Register of Deeds**

Wake County Justice Center  
300 South Salisbury Street, Suite 1700  
Raleigh, NC 27601

☐ New Time Stamp

☐ \$25 Non-Standard Fee

☐ Additional Document Fee

☐ Additional Reference Fee

**This Customer Group**

\_\_\_\_\_ # of Excessive Entities

\_\_\_\_\_ # of Time Stamps Needed

**This Document**

79 # of Pages

F