under the Declaration. Further provided, the Association shall not suspend the right of any Owner to use any portion of the Common Property over which there is an easement that provides access for ingress and egress from a public street to such Owner's Parcel, or over which a sanitary sewer, water or other utility easement is located that provides such utility services to such Owner's Parcel, but 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.

(c) the right of the Association to dedicate, sell, transfer or exchange all or any part of the Common Property, subject to the voting requirements for such actions contained in the Declaration.

(d) the right of the Declarant, during the Declarant Control Period, and the right of the Association, to grant easements over and across the Common Property to any public agency, authority or utility for the installation and maintenance therein of water and sanitary sewer, natural gas, telephone, cable television and other utilities, and storm water drainage facilities when, in the opinion of the Declarant or Board, as applicable, such easements are necessary for the convenient use and enjoyment of the Properties or any part thereof.

(e) the right of the Association to borrow money and, subject to the voting requirements for such actions contained in the Declaration, 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 the Declaration.

(f) the right of the Association, as provided by and consistent with the provisions of Section 10-3073(a)(2) of the Raleigh City Code, the Act and the Declaration, to exchange all or part of the Common Property for other property and consideration.

(g) the right of the Association to temporarily close or limit the use of Common Property for maintenance or installation of improvements thereon.

(h) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Property.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment and access in and to the Common Property granted to every Owner may be exercised by members of the Owner's family who occupy the Dwelling of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) Tenants. The right and easement of enjoyment and access in and to the Common Property granted to every Owner may be delegated by such Owner to the Owner's tenants or contract purchasers who occupy a Dwelling within the Properties owned by the Owner, or a portion of said Dwelling, as their principal residence in Wake County, North Carolina. It is the intent of this provision to make it clear that an Owner of Apartment Units may delegate such rights of easement and enjoyment to the occupants of such Apartment Unit, as the Owner is obligated to pay assessments with respect to such Apartment Units under the Declaration. Provided, however, this provision is not applicable to the occupants of any utility apartment who are not either a child or parent of the Owner of the utility apartment. All other such occupants of a utility apartment may have such rights and easements of enjoyment of the Common Property only as Recreational Users and upon payment of all applicable fees and charges required of Recreational Users.

(c) Guests. The right and easement of enjoyment and access in and to the Common Property granted to every Owner by this Article may be delegated to guests of such Owners, subject to such rules and regulations as may be established by the Board.

(d) Suspension of Rights. The rights of any Person to whom an Owner has delegated any right and easement of enjoyment and access in and to the Common Property shall be suspended by, upon and during suspension of such Owner's rights.

Section 3. Conveyance of Title to the Association. Declarant covenants, for itself, its successors and assigns, that it will convey title to the Common Property within each phase or section of the Community to the Association prior to the conveyance of the first Lot or Dwelling Unit within such phase or section to an Owner other than a Builder. Declarant reserves an easement over and across the Common Property so long as it owns any Parcel within the Properties for the purpose of constructing any improvements on the Common Property as it deems necessary or advisable, provided that any such improvements must comply with Legal Requirements. Except as otherwise stated herein, all conveyances by Declarant to the Association may be by special warranty deed and shall be free and clear of all encumbrances and liens, except greenway, utility, and drainage easements of record or shown on the recorded plats of the Community, and the Declaration. Any improvements placed on the Common Property by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Rights and Responsibilities as to Common Property Easements.

(a) Owners. Each Owner of a Parcel upon which a Common Property Easement lies shall pay all property taxes and other assessments levied against such Parcel, including that portion of such tax or assessment as is attributable to such Common Property Easement. Notwithstanding any other provision of the Declaration, no Owner or other Person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within a Common Property Easement; (2) erect gates, fences, or other structures on a Common Property Easement; (3) place any garbage receptacles on or in a Common Property Easement; (4) fill or excavate a Common Property Easement or any part thereof; or (5) plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of a Common Property Easement.

(b) Association. The Association and its employees, agents, contractors and subcontractors, shall have a nonexclusive right and easement at all times to enter upon any portion of a Parcel reserved or designated as a Common Property Easement for the purposes of: (i) installing and maintaining entrance sign and other signs, any and all of which shall have been approved by the City of Raleigh prior to installation; (ii) making such improvements to the Common Property Easement as have been approved by the Association and, if required, by the City of Raleigh; and (iii) maintaining the Common Property Easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the Common Property Easement free from obstructions and impediments to its use.

Section 5. Leases. Every lease or sublease between an Owner and a lessee for the lease of a portion of the Properties shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and any applicable Subdivision Declaration, and that failure by the lessee to comply with the terms of such documents shall be a default under the terms of the lease. If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease.

Section 6. Ingress and Egress; Utilities. Notwithstanding anything to the contrary appearing in the Declaration, (i) if ingress and egress from a public street to any Parcel is over any part of the Common Property as shown on any plat or described in any instrument recorded in the Registry, or (ii) sanitary sewer, water or other utility services are provided to a Parcel 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.

ARTICLE V
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Each and every Owner of a Parcel, including the Declarant, is a Member of the Association and, by execution of the Declaration or by acceptance of a deed conveying to such Owner title to any Parcel, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Parcel owned by such Owner. An Owner's membership in the Association automatically terminates whenever such Person ceases to be an Owner of a Parcel (except that the Declarant's Class B Membership shall terminate only as provided herein), but such termination shall not release or relieve any such Owner from any liability or obligation incurred under the 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.

Section 2. Classes of Voting Members. The Association shall have two (2) classes of voting Members as follows:

(a) **Class A.** Class A Members are the Owners of Development Parcels and Lots, excluding the Declarant during the Declarant Control Period. Class A Members are entitled to the following votes:

(1) A Class A Member is entitled to one (1) vote for each Lot owned by the Class A Member; provided, however, only one (1) vote may be cast for each Lot, regardless of the number of Owners thereof.

(2) A Class A Member is entitled to one (1) vote for each acre of a Development Parcel owned by such Class A Member. Provided, however, after a Development Parcel has been fully developed in accordance with the Subdivision Plan, site plan or other development plan therefor approved by the City, or there has been no development or marketing of a Development Parcel for a period of twenty-four (24) consecutive months, no votes as a Development Parcel will be allocated to any remaining acreage in that Development Parcel. The determination of the time when such full development has occurred shall be in the reasonable discretion of the Declarant, during the Declarant Control Period, and thereafter. In determining the number of votes for a Development Parcel, a partial acre equal to 0.5 acre or more shall be rounded up to the nearest whole acre, and a partial acre less than 0.5 acre shall be rounded down to the nearest whole acre, except that where the acreage is less than one (1) acre, the Development Parcel shall be allocated one (1) vote. Only one (1) vote may be cast for each acre of a Development Parcel, regardless of the number of Owners thereof.

When more than one Person owns an interest (other than a leasehold or security interest) in any Lot or Development Parcel, all such Persons shall be Members and the voting rights appurtenant to their Parcel shall be exercised as they, among themselves, determine, but fractional voting shall not be allowed.

(2) **Class B.** The Class B Member is the Declarant. At the time of the recording of the Declaration, the Class B Member is entitled to 5,547 votes (the maximum number of Dwelling Units allowed in the Properties at the time of the recording of the Declaration under Legal Requirements is 1,849, and 1,849 multiplied by 3 is 5,547). During the Declarant Control Period, the number of votes to which the Class B Member is entitled shall decrease as follows: by three (3) votes for each vote entitled to be cast by the Class A Members with respect to Development Parcels and Lots.

The Class B Membership shall terminate at the end of the Declarant Control Period. Upon such termination, the Declarant shall become a Class A Member, shall have Class A votes with respect to the portions of the Properties owned by it, and all Unsubdivided Land shall be treated in the same manner as Development Parcels for purposes of assessments and voting under the Declaration; provided, however, that Lots owned by the Declarant shall be assessed at the rate applicable to Builders as provided in Article IV, Section 4 of the Declaration.

If Declarant annexes Exhibit B Property to the Declaration, or if other real property owned by the Declarant is annexed to this Declaration as allowed herein, the number of Class B votes attributable to such Exhibit B Property or other real property shall be the maximum number of Dwellings Units allowed in such Exhibit B Property or other real property by applicable Legal Requirements at the time it is annexed to the Declaration.

Section 3. Non-Voting Membership. Owners of Exempt Property, except for the City (which shall not be a Member of the Association), shall be non-voting Members of the Association with respect to that Exempt Property. Declarant, in its sole discretion, also may designate the Owners of any commercial property within the Properties non-voting Members of the Association.

Section 4. Voting Rights. The exercise of voting rights shall be governed by the Bylaws of the Association.

ARTICLE VI
ASSESSMENTS AND OTHER CHARGES

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner, by execution of the Declaration or by acceptance of a deed or other instrument conveying title to a Parcel, whether or not it shall be so expressed therein, hereby is deemed to consent and agree to pay to the Association (or to any Person which may be designated by the Association to collect such monies on behalf of the Association) the following assessments and other charges as required by the Declaration: (i) annual assessments; (ii) Reserve Fund Assessment; (iii) special assessments for capital improvements or other matters as set forth herein; (iv) 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 Parcel, or for such other purposes as stated herein; (v) architectural review fees and costs as specified herein; (vi) fines for violations of Association rules and regulations with respect to use of the Common Property; (vii) late payment penalties and interest on unpaid assessments; and (viii) other charges imposed under authority contained in the Governing Documents (architectural review fees, fines, penalties, interest and other 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. All assessments and other charges shall be established and collected as hereinafter provided. All assessments 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 lien on the Parcel against which they are assessed or charged from the time of the filing of a lien 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 Parcel 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. 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 Parcel, or abandonment of a Parcel, or temporary unavailability of the use or enjoyment of the Common Property. If necessary to establish the right to collect reasonable attorneys' fees under the Declaration, any obligation of a Owner to pay assessments or other charges or monetary obligations under the 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 with respect to reasonable attorneys' fees.

Section 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 the Declaration because of any resignation or attempted resignation by such Owner of membership in the Association while such Owner owns a Parcel, or because of any suspension of such Owner's membership or membership rights in the Association as allowed under the Governing Documents.

Section 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 Declaration and any applicable Supplemental Declaration; and (iii) to implement, administer and enforce the terms and provisions of the Declaration and any applicable Supplemental Declaration, as the Board determines to be in the best interests of the Association or its Members.

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 Parcel owned by such Member. When any Owner shall cease 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 may have been paid to the Association by such Owner or acquired with any funds paid to the Association by such Owner.

Section 4. Maximum Annual Assessment and Annual Assessment.

(a) For calendar year 2002, the **maximum annual assessments** shall be as follows:

(1) $1,200.00 per Lot; and
(2) $300.00 per acre for Development Parcels.

(b) The **annual assessments** for calendar years 2002 and 2003 shall be as follows:

(1) $840.00 per Lot; and
(2) $150.00 per acre for Development Parcels.

Beginning with the annual assessment for calendar year 2004, the Board shall establish the annual assessment at any amount not in excess of the maximum annual assessment for the applicable calendar year.

(c) Beginning with calendar year 2003, unless a different amount is determined by the Board as allowed in this paragraph, the maximum annual assessment for each calendar year shall be equal to 110% of the maximum annual assessment for the immediately preceding calendar year (for example, if the maximum annual assessment for the preceding calendar year is $1,200.00, the maximum annual assessment for the current calendar year would be $1,320.00, as $1,200.00 x 110% = $1,320.00). Provided, however, for any calendar year the Board, in its sole discretion by majority vote, may establish the maximum annual assessment for that calendar year at any amount equal to or greater than the amount for the immediately preceding calendar year, up to and including 110% of the amount for the immediately preceding calendar year. The amount finally determined as the maximum annual assessment for a calendar year shall be the amount used to determine the maximum annual assessment for the subsequent calendar using the 110% multiplier provided for in this paragraph.

(d) The maximum annual assessment for any calendar year may be established at an amount greater than 110% of amount of the maximum annual assessment for the immediately preceding calendar year by the affirmative vote by each class of Members of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a duly called meeting of the Association for which notice of the meeting included notice of the proposal to increase the maximum annual assessment by more than 110% of the maximum annual assessment for the immediately preceding calendar year. Provided, however, the automatic increase in the maximum annual assessment for the year subsequent to any year in which the membership increases the maximum annual assessment above its limit as otherwise established pursuant to the Declaration, shall be calculated based on the maximum annual assessment using the 110% multiplier that would have been in effect if no action of the membership had been taken. Further provided, the provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken incident to a merger or consolidation in which the Association is authorized to participate under the Governing Documents or any Legal Requirement.

(e) If the Board establishes the annual assessment at an amount less than the maximum annual assessment for any calendar year and, thereafter, during such calendar year, determines that such annual assessment is insufficient, the Board, by majority vote, may levy one or more supplemental annual assessments. Provided, however, the total of the annual assessment plus all supplemental assessments assessed in any calendar year shall not exceed that calendar year's maximum annual assessment.

Section 5. Reduced Assessment Amount; Assessment Deficit.

(a) Notwithstanding anything to the contrary herein, the amount of any annual or special assessment on a Lot owned by a Builder on which there is not an occupied Dwelling shall be 40% of the amount of the applicable assessment. During any calendar year in which a Builder sells a Lot to an Owner other than a Builder, or in which an unoccupied Dwelling on a Lot owned by a Builder becomes occupied, the annual assessment for the remainder of that calendar year shall be due and payable at the full rate, and the Association may bill and collect the additional amount accordingly. The additional amount of annual assessment owed shall be determined by multiplying the amount of the applicable assessment by a fraction whose numerator is the number of months in the calendar year after the month in which the sale or occupancy occurs, and whose denominator is 12.

(b) Notwithstanding anything to the contrary herein, during the Declarant Control Period no portion of the Properties owned by the Declarant shall be subject to assessment, as Declarant's financial responsibility for the Association is as described in the immediately following paragraph. Following the end of the Declarant Control Period, Unsubdivided Land owned by the Declarant shall be assessed in the same manner as Development Parcels, and Lots owned by the Declarant shall be assessed in the same manner as Lots owned by Builders.

(c) During the Declarant Control Period the Declarant shall fund all annual operating budget deficits, if any, to the extent necessary to keep the Association solvent. The Declarant's deficit funding obligation may be satisfied with in-kind payments of services or materials. The Declarant's deficit funding obligation does not include any expenses that the Association is unable to meet because of nonpayment of any assessment by Owners other than the Declarant, or because of unusual or extraordinary expenses not included in the annual operating budget. The deficit funding obligation of the Declarant may be enforced against the Declarant and collected by the Association in the same manner as annual assessments applicable to other Owners.

(d) After a Development Parcel has been fully developed in accordance with the Subdivision Plan, site plan or other development plan therefor approved by the City, the remaining acreage in the Development Parcel shall not be assessed for annual or special assessments. The determination of the time when such full development has occurred shall be in the reasonable discretion of the Declarant, during the Declarant Control Period, and thereafter, the Board.

(e) Following the end of the Declarant Control Period, the Declarant will receive an "assessment credit" toward payment of assessments applicable thereafter to Declarant's portions of the Properties, in an amount equal to the following: the amount paid or provided by Declarant to fund its deficit funding obligation, less the amount of assessments that Declarant would have been obligated to pay the Association during the Declarant Control Period had Declarant's Unsubdivided Land been assessed at the same rate as Development Parcels and had Declarant's Lots been assessed at the same rate as the rate applicable to Builders. The assessment credit shall be applied to all assessments due from Declarant until it has been applied in full, and thereafter assessments shall be due and payable by Declarant as provided herein.

Section 6. Commencement of Assessments. Parcels shall be subject to annual and special assessments beginning with the first calendar month after the calendar month in which the Declaration is recorded in the Registry. Provided, any Parcel that first become a Lot or Development Parcel after the recording of the Declaration shall become subject to annual and special assessments on the first day of the calendar month immediately following the calender month in which it becomes a Lot or Development Parcel. With respect to any Parcel that becomes subject to annual and special assessments beginning with any month other than January, the annual assessment for that calendar year shall be determined by multiplying the amount of the applicable annual assessment by a fraction whose numerator is the number of months in that calendar year that the Parcel is subject to assessment, and whose denominator is 12. The payment due date(s) for each annual assessment shall be as determined by the Board.

Section 7. Operating Budget. The Board shall adopt an operating budget for calendar year 2002, as there are no Members other than Declarant prior to January 1, 2002. Beginning with calendar year 2003, the Board shall adopt a proposed annual operating budget for the Association for each calendar year, containing an estimate of the total amount believed to be necessary to pay the Common Expenses for that calendar year, including such reasonable amounts as the Board deems necessary to provide working capital (available for day-to-day operating expenses and otherwise uncommitted for specific expenses), reserves for contingencies, and reserves for replacement of Common Property. The Board shall give due consideration to the annual operating budget in establishing the annual assessment for that calendar year. Within thirty (30) days after adoption of same, the Board shall provide a summary thereof to all Members (provided, however, a copy or summary provided to any one of multiple Owners of a Parcel is deemed to be provided to all Owners of such Parcel), together with a notice of the annual or special meeting of the Association at which ratification of such proposed annual operating budget will be considered, including a statement that the proposed annual operating budget may be ratified without a quorum for the meeting. The annual or special meeting at which ratification of the proposed annual operating budget is to be considered shall be held not less than ten (10) days nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting at which ratification of the proposed annual operating budget is to be considered. The proposed annual operating budget is ratified unless at that meeting Members possessing sixty-seven percent (67%) or more of the total number of votes in the Association reject it. In the event that the proposed annual operating budget is rejected, the annual operating budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent annual operating budget proposed by the Board.

Section 8. Establishing the Annual Assessment. The Board shall establish the amount of the annual assessment for each calendar year beginning with calendar year 2004 (the annual assessment for 2002 and 2003 having been established in the Declaration) and shall cause written notice of each annual assessment to be sent to at least one (1) of the Owners of each Parcel not less than thirty (30) days in advance of the payment due date specified in the notice (which shall not be earlier than January 31 of the applicable calendar year), which written notice may be in the form of an invoice for the annual assessment. The failure of the Board to establish the amount of any annual assessment or send timely notice as required herein shall not constitute a violation, waiver or modification of the provisions of the Declaration, or a waiver of the Board's right to establish and collect the annual assessment at any time during the calendar year to which it is applicable, or a release of any Owner from the obligation to pay the assessment or any installment thereof for that or any subsequent year, and the annual assessment for the immediately preceding calendar year shall continue in effect until the Board has established the new annual assessment (but when established, the amount of the new annual assessment shall be retroactive to January 1 of the applicable calendar year). If the annual assessment for any calendar year has not been established by December 31 of the immediately preceding calendar year, the Board may send a notice of assessment as provided herein for the amount of the immediately preceding calendar year's annual assessment, together with notice that a new assessment may be established for that calendar year that may require an additional payment. Once the new annual assessment is established, any additional amount owed is due and payable by the payment due date specified in a supplemental notice to be sent to the Members by the Board; provided, such payment due date may not be less than thirty (30) days following the date of the notice.

Section 9. Collection of Assessments; Penalties for Late Payment.

(a) Annual and special 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 shall be the same for all Owners. The Board shall have the power at any time and from time to time, in its sole discretion and upon such terms as the Board deems appropriate, to allow percentage discounts to Owners who pay annual and/or special assessments earlier than the payment due date therefor; provided, however, all such discounts shall be made available and applied uniformly to all Owners.

(b) Subject to any limitations contained in the Declaration, other Governing Documents, or any applicable Legal Requirement, the Board has the authority at any time and from time to time to establish the payment due dates, interest rate on unpaid amounts, and penalties for late payment of annual and special 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 applicable 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 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 at any time and from time to time authorize a management company or other billing agent, on behalf of the Association, to bill and collect all assessments and other charges payable under the Declaration.

Section 10. Special Assessments. In addition to the annual assessments authorized herein, and subject to the other requirements of the Declaration, at any time and from time to time the

Association may levy a special assessment 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 Property.

(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 first shall be approved by the affirmative vote by each class of Members of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a duly called meeting of the Association for which notice of the meeting includes notice of the proposed special assessment. A special assessment shall be 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.

Section 11. Certification of Assessments Paid. The Association (or any property manager authorized by the Association), upon demand and payment of a reasonable charge or fee established by the Association, shall furnish to any Owner or such Owner's authorized agent, or to any holder of a first lien deed of trust on a Parcel, or to an attorney who represents the Owner or a prospective purchaser of such Parcel, or to any other Person approved by the Board, a certificate signed by an officer of the Association (or the authorized property manager) setting forth whether or not the assessments and other charges owed by such Owner have been paid. The certificate shall be furnished within ten (10) business days after receipt of the request therefor and it shall be binding on the Association, the Board and every Owner.

Section 12. 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 an Owner of the Parcel against which they are assessed or charged. Any assessment or other charge not paid on or before the payment due date and remaining unpaid for a period of thirty (30) days or longer, together with the fines, penalty and interest charges as provided in the Declaration, plus the costs of collection (including reasonable attorneys' fees), shall be a charge and continuing lien on the Parcel (and all Improvements thereon) owned by the defaulting Owner from and after the date on which a claim of lien is filed by the Association in the office of the Wake County Clerk of Court. Except as otherwise provided in the Declaration or by Legal Requirements, such lien shall be superior to all other liens and charges against the Parcel and Improvements thereon. 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 the name and address of the Association, the name of the record Owner of the Parcel at the time the claim of lien is filed, a description of the Parcel, and the amount of the lien claimed. In addition to the claim of lien, the Association may execute, issue or record such other evidence of the lien as the Board deems necessary. Subsequent to the filing of the lien in the office of the Wake County Clerk of Court, the Association may foreclose the claim of lien in like manner as a mortgage on real estate under a power of sale or in any other manner allowed or required by applicable Legal Requirements, 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. In any foreclosure proceeding the defaulting Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred by the Association. The Association shall have the power to bid on and purchase the Parcel at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal therewith. The remedies against a defaulting Owner and such Owner's Parcel 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.

Section 13. Lien Priority. The lien for unpaid assessments and other charges provided for herein is prior to all liens and encumbrances on a Parcel except (i) liens and encumbrances (specifically including a mortgage or deed of trust on a Parcel) 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 entity assessments and charges against the Parcel. Provided, however, this Section does not affect the priority of mechanic's or materialmen's liens. A lien for unpaid assessments and other charges is extinguished unless proceedings to enforce the lien are instituted within three (3) years 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 Parcel obtains title to the Parcel as a result of foreclosure of a first mortgage or first deed of trust or deed or other proceeding in lieu of foreclosure, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Parcel which became due prior to the acquisition of title to such Parcel by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Owners, including such purchaser, its heirs, successors, and assigns in the event that the Association is unable to collect, or chooses not to pursue collection, from the Person who was the Owner of the Parcel during the time the assessments were assessed against the Parcel.

Section 14. Exempt Property. All Exempt Property is exempt from the assessments, charges and liens established pursuant to the Declaration.

Section 15. Reserve Funds. From the annual assessments the Board, in the exercise of its reasonable discretion, shall establish and maintain reserve funds for working capital, contingencies, and replacements of Common Property and Common Expense Properties. Reserve funds are subject to the following:

(a) Extraordinary expenditures not originally included in the annual operating budget, including (i) major rehabilitation or repair of the Common Property, (ii) emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss, or (iii) the initial costs of any new service to be performed by the Association, first shall be charged against the appropriate reserves. Except for expenses of normal and routine maintenance included in the annual operating budget, all expenses for repair or replacement of the Common Property shall be charged first against appropriate reserves.

(b) If reserve funds become excessive, as determined by the Board, the Board may adjust the reserve funds by reallocation to other annual operating budget items or by applying excess amounts as credits against annual assessments, or by refunding the excess amount to the then Owners.

Section 16. Operating Fund Assessment. At the first closing of the sale of each Lot after a Dwelling has been constructed thereon (except for a Lot on which an Apartment Unit is located), the purchaser of the Lot and Dwelling shall pay to the Association at the time of the closing of the purchase an "Operating Fund Assessment" in an amount equal to one-fourth (1/4) of the then applicable annual assessment. The Operating Fund Assessment shall be paid only once with respect to each Lot, and is in addition to all applicable annual and special assessments. All Operating Fund Assessments shall be treated in the same manner as annual assessments and may be enforced and collected in the same manner as annual assessments.

Section 17. Additional Assessments for Limited Common Property.

(a) The Declarant reserves the right, by recording Supplemental Declarations or Subdivision Declarations or other documents, to subject portions of the Properties located in one or more phases, sections or subdivisions in the Properties to provisions requiring the Owners thereof to pay additional annual assessments and special assessments to the Association for the maintenance of, and addition to, Limited Common Property, including any one or more of the following: (i) private streets; (ii) alleys; and (iii) landscaping, signs and decorative features.

All of the provisions of the Declaration relating to annual and special assessments shall apply to the additional annual and special assessments for Limited Common Property, with the following exceptions: (i) the additional assessments with respect to any particular Limited Common Property are assessed only against those Owners of portion of the Properties associated with such Limited Common Property; (ii) the initial additional maximum annual assessment and additional annual assessment for each Limited Common Property shall be established in the Supplemental Declaration or Subdivision Declaration that creates or establishes that Limited Common Property; (iii) the actual additional annual and special assessments may vary from phase to phase, section to section or subdivision to subdivision; and (iv) the additional annual and special assessments for portions of the Properties in any particular phase, section or subdivision of the Properties shall be used exclusively in connection with the Limited Common Property associated with that phase, section or subdivision.

Section 18. No Default Under Insured Mortgage. Nothing contained in the 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 Parcel that is insured by the Federal Housing Administration or Veterans Administration, or any mortgage program administered by either of said agencies.

ARTICLE VII
INSURANCE

Section 1. General Provisions.

(a) The Board shall have the power on behalf of the Association to: (i) purchase insurance policies relating to the Common Property and the activities of the Association; (ii) adjust all claims arising under such policies; and (iii) sign and deliver releases upon payment of claims. The cost of all insurance policies purchased by the Board as allowed or required by the Declaration is a Common Expense. Neither the Board, nor a property manager, nor Declarant, shall be liable for failure to obtain any insurance required by this Article, or for any loss or damage that could have been paid by such insurance, if such insurance is not reasonably available. With respect to insurance required by applicable Legal Requirements, the Association, either by hand delivery or United States Mail, postage prepaid, promptly shall notify the Owners if such insurance is not reasonably available, or if there is any material adverse modification, lapse, or cancellation of, such insurance that is not being replaced by other insurance.

(b) To the extent such policy provision is reasonably available, no policy obtained by the Association shall be canceled, invalidated or suspended due to the conduct of any Owner, or such Owner's lessee or such Owner's (or lessee's) household members, guests, employees or agents, or of any director, officer or employee of the Board, or the property manager, without a prior demand in writing that the Association or the property manager cure the defect and such defect is not cured within thirty (30) days after such demand.

(c) An insurer that has issued an insurance policy to the Association for property insurance on the Common Property or for liability insurance shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee under any mortgage on a Parcel or beneficiary under any deed of trust on a Parcel. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and each Owner, mortgagee and beneficiary to whom certificates or memoranda of insurance have been issued, to their respective last known addresses.

(d) All policies or insurance shall be written by reputable companies licensed or qualified to do business in North Carolina.

(e) The deductible or retained limit (if any) on any insurance policy obtained by the Association shall be a Common Expense.

Section 2. Property Insurance.

(a) Commencing not later than the first conveyance of a Lot to a Class A Member other than a Builder, the Association, to the extent that it is reasonably available, shall obtain and maintain property insurance on the Common Property insuring against all risks of direct physical loss commonly insured against, including fire damage and extended coverage perils. The total amount of such insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. The Board shall also obtain and maintain appropriate coverage on personal property owned by the Association.

(b) Each such property policy also shall provide:

(1) that each Owner is an insured person under the policy to the extent of such Owner's insurable interest;

(2) that the insurer waives its right to subrogation under the policy against any Owner or member of that Owner's household;

(3) that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(4) that any "no other insurance" clause expressly exclude individual Owner's policies from its operation so that the Association's policy provides primary coverage and any individual Owners' policies covering the same risk shall be excess coverage, and in no event shall the insurance coverage obtained and maintained by the Association hereunder provide for or be brought into contribution with insurance purchased by Owners or Mortgagees, unless otherwise required by law;

(c) Certificates of property insurance on the Common Property, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same.

Section 3. Liability Insurance. Commencing not later than the first conveyance of a Lot to a Class A Member other than a Builder, the Association, to the extent that it is reasonably available, shall obtain and maintain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Property. "Umbrella" liability insurance in excess of the primary limits may be obtained in reasonable amounts as determined by the Board in its sole discretion.

Section 4. Other Insurance. The Association may obtain and maintain other insurance as follows:

(a) adequate fidelity coverage to protect against dishonest acts on the part of directors, officers, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, including any property manager and volunteers. If the Association has delegated some or all of the responsibility for handling funds to a property manager, such property manager shall be covered by its own fidelity insurance; however, the Board may purchase additional fidelity coverage for the property manager as well. Such fidelity insurance (except for fidelity insurance obtained by the property manager for its own personnel) shall: (i) name the Association as an obligee; (ii) be written in an amount not less than one-fourth of the total annual assessment for Common Expenses or the amount required by the Mortgagees, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greatest; and

(iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(b) if required by a majority of the Mortgagees or any applicable Legal Requirement, flood insurance on the Common Property in accordance with the then applicable regulations for such coverage.

(c) workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement).

(d) directors and officers liability insurance.

(e) such other insurance as the Board may determine from time to time in the exercise of its reasonable discretion, or as may be requested from time to time by the affirmative vote of a majority of the Members present at a duly called meeting of the Association.

Section 5. Owners' Insurance. In addition to any insurance policy issued to the Association, each Owner shall have the right to obtain insurance for such Owner's benefit, at such Owner's expense. Provided, however, no Owner shall acquire or maintain insurance coverage on the Common Property so as to: (i) decrease the amount which the Association may realize under any insurance policy maintained by the Association; or (ii) cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage obtained by an Owner.

ARTICLE VIII
REPAIR AND RESTORATION OF THE PROPERTIES

Section 1. When Required.

(a) Common Property. If all or any part of the Common Property for which property insurance under the Declaration or applicable Legal Requirements is damaged or destroyed the Association promptly shall repair or replace same unless (i) the Declaration is terminated, (ii) repair or replacement would be illegal under any applicable Legal Requirement, or (iii) the Members decide not to repair, restore or replace by a vote of eighty percent (80%) or more of the votes cast by the Members present at a duly called meeting of the Association (which vote, during the Declarant Control Period, also must be have the affirmative vote of a majority of the Class A Members who are present at such meeting, and which vote, with respect to any Limited Common Element, must have the approval of one hundred percent (100%) of the Members to which such Limited Common

Element is allocated). The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense, for which there may be a special assessment.

If the damage is not repaired or replaced, then (i) the Association, first using the insurance proceeds attributable to the damaged property, shall remove all remnants of the damaged improvements and restore the damaged area to a condition compatible with the remainder of the Properties, (ii) the insurance proceeds attributable to Limited Common Property which are not repaired or replaced shall be distributed to the Members to whom such Limited Common Property were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the insurance proceeds shall be distributed to all of the Members or lienholders, as their interests may appear, in proportion to the Common Expense liabilities of all of the Lots and Development Parcels. Provided, however, and notwithstanding the foregoing, if the Declaration is terminated, the distribution of insurance proceeds shall be in compliance with the applicable requirements of the Act.

(b) Lots. If a Dwelling or other Improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site either: (i) by repairing or replacing such Dwelling or other Improvement; or (ii) by clearing away the debris and restoring the site to a condition compatible with the remainder of the Properties. Unless the Architectural Review Committee permits a longer time period, such work must be commenced within six months and substantially completed within twelve months after the occurrence of the damage or destruction. Any repair or replacement that differs in any material respect from the previously Approved Plans for the Dwelling or other Improvement that was damaged or destroyed first must be approved by the Architectural Review Committee in the manner required herein.

Section 2. Eminent Domain.

(a) Definitions. For the purposes of this Section, "Taking" means an acquisition of all or any part of the affected portion of the Properties or of any interest therein or right accruing thereto as a result of, in lieu of, or in anticipation of, the exercise of the right of condemnation or eminent domain, or a change of grade caused by the action of the City affecting the value of the Common Property or any part thereof so severely as to amount to condemnation.

(b) Taking of Lot. If there is a Taking of a Lot, or a Taking of part of a Lot leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted under the Declaration, the award shall compensate the Owner for the Lot and the Owner's interest in the Common Property. Upon such Taking, there shall be no votes in the Association allocated to such Lot, or remnant thereof, nor shall such Lot or remnant thereof, be subject to any further assessments under the Declaration.

If there is a Taking of part of a Lot, the award shall compensate the Owner for the reduction in value of the Lot. With respect to determining the foregoing, in the event of a Taking of part of a Lot there shall be no reduction in the vote allocated to that Lot nor in the assessments assessed against such Lot.

(c) Taking of Common Property. If there is a Taking of all or any part of the Common Property, then the Association shall notify the Owners, but the Board shall act on behalf of the Association in connection therewith and no Owner shall have any right to participate in the proceedings incident thereto as an Owner. The award made for such Taking shall be payable to the Association, to be disbursed as follows. If the Taking involves a portion of the Common Property on which improvements have been constructed, then the Association, to the extent reasonably practicable and in accordance with plans reasonably adopted by the Board, shall restore or replace such Common Property improvements, unless a contrary determination is made by Declarant, during the Declarant Control Period, or, following the end of the Declarant Control Period, by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a duly called meeting of the Association.

If any portion of any award for a Taking of the Common Property is attributable to any Limited Common Element, such portion of the award shall be apportioned equally between the Association and the Owners of the Lots to which the Limited Common Element was allocated at the time of the Taking.

ARTICLE IX
USE OF THE PROPERTIES; PROTECTION OF COMMON ELEMENTS

Section 1. Use of the Properties. No portion of the Properties shall be used for other than residential, recreational or substantially related purposes which are permissible under applicable City zoning ordinances for residential zoning districts, except that Commercial Property may be used for all purposes allowed under City zoning ordinances and other Legal Requirements. Provided, however, and notwithstanding the foregoing sentence, during the Declarant Control Period: (i) Declarant, and any Builder with Declarant's consent, may maintain sales offices and temporary construction trailers on any portion of the Properties owned by such Person, for the purpose of conducting business related to the development, improvement or sale of such portion of the Properties or the construction of improvements thereon. Provided, however, all such non-residential uses must comply with all applicable Legal Requirements; and (ii) Declarant, and any Builder with Declarant's consent, may conduct such business activities on any portion of the Properties owned by such Person as may be necessary in connection with the development and/or sales or marketing of any part or all of the Properties.

Section 2. Owner Liability. If any Owner is legally responsible for damage inflicted on any Common Property, the Association may direct such Owner to repair such damage, or the Association may itself cause the repairs to be made and recover damages from the responsible Owner, including costs incurred in seeking and enforcing applicable legal remedies, including reasonable attorneys' fees.

Section 3. 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 applicable 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 the Declaration impose a more restrictive requirement than the applicable Legal Requirements, the provisions of the Declaration shall be complied with in addition to the applicable Legal Requirements.

Section 4. New Construction. Construction of new Dwellings only shall be permitted on Lots and Development Parcels, it being the intent of this Section to prohibit the moving of any existing building or structure onto any Lot or Development Parcel and remodeling or converting same into a Dwelling. Provided, however, the foregoing shall not be construed as prohibiting maintenance of, remodeling of, or construction of additions to, existing Dwellings that previously have been constructed in compliance with the Declaration, provided that such maintenance, remodeling or additions is performed in accordance with the Approved Plans therefor.

Section 5. Rules of the Association. All Owners and occupants of Parcels shall abide by all rules and regulations for the Common Property adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and any Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and fines, including costs incurred in seeking and enforcing applicable legal remedies, including reasonable attorneys' fees.

Section 6. Temporary Structures Prohibited. No structure of a temporary character, such as a trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of the Properties at any time as a Dwelling.

Section 7. Wetlands; Neuse River Buffers. Portions of the Properties may have been determined to meet the requirements for designation as a regulatory wetland. Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, any subsequent fill or alteration of any portion of the Properties that has been determined to be a regulatory wetland under applicable laws of the United States or the State of North Carolina shall conform to the requirements of applicable wetland rules adopted by the United States or the State of North Carolina and in force at the time of the proposed alteration. The intent of this Section is to prevent additional wetland fill except as allowed under applicable Legal Requirements, so the Owner of any such portion of the Properties should not assume that a future application for fill or alteration of a wetland will be approved. The Owner of any portion of the Properties subject to any such future application shall report the name of the development (in this case, Bedford At Falls River), together with the name of the particular phase, section or subdivision within the Properties, if any, in any application pertaining to wetland rules. The provisions of this Section are intended to ensure continued compliance with wetland rules adopted by the United States or State of North Carolina and this covenant may be enforced by the United States or State of North Carolina. Portions of the Properties also may be subject to Neuse River Buffer requirements in connection with the Neuse River. Owners of all portions of the Properties subject to such Neuse River Buffer requirements shall at all times comply with same. The provisions of this Section 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.

Section 8. Animals. No animals of any kind (including livestock, reptiles or poultry) shall be kept on any portion of the Properties or in any Dwelling except for dogs, cats or other household pets which are not used for breeding or other commercial purposes, and provided that they do not create a nuisance (in the judgment of the Board), by number of animals, noise, odor, damage or destruction of property, animal waste, or any other reason, and further provided that they are kept in compliance with all applicable Legal Requirements and such rules and regulations pertaining thereto as the Board may adopt from time to time, which rules and regulations may include requirements that all such animals be kept on a leash or otherwise restrained whenever they are anywhere on the Properties other than on the Owner's Lot or other areas specifically designated for animals not on leashes, and that animals not be allowed on the Recreational Amenities. The Owner responsible for an animal being on the Properties shall promptly clean up or remove from the Properties all solid bodily wastes from that animal.

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 City to exercise and enforce all applicable Legal Requirements relating to animal control.

Section 9. Antennas and Other Attachments. No permanent attachments of any kind or character whatsoever (including, but not limited to, television and radio antennas and satellite dishes or other device for reception of television or radio signals) shall be made to the roof or exterior walls of any Dwelling or other building on any portion of the Properties, nor shall the same be located on any portion of the Properties outside of any Dwelling or other building, unless such attachments first shall have been submitted to and approved by the Architectural Review Committee. Provided, however, the Association shall not prevent access to telecommunication services in violation of any applicable Legal Requirement. Generally, exterior antennas, satellite dishes greater than one meter (39 inches) in diameter, or satellite dishes or other reception devices located in or on the front of a Dwelling or other building, will not be allowed on the Properties. Provided, however, (i) a Owner may install an antenna permitted by any applicable architectural guideline upon prior written notice to the Architectural Review Committee; (ii) the Architectural Review Committee may approve other antennas in appropriate circumstances; and (iii) the Architectural Review Committee may establish additional guidelines as technology changes. Further provided, the Association may, but shall not be required to, install and maintain antennas, satellite dishes or similar equipment in or on the Common Property to serve the Common Property and/or the Properties. No outdoor clotheslines shall be allowed on any portion of the Properties.

Section 10. Boats, etc. No motorboat, houseboat or other similar water-borne vehicle, airplane, travel trailer, other trailer, or "camper" vehicle shall be maintained, stored or kept on any portion of the Properties, except in enclosed garages or screened areas approved by the Architectural Review Committee, nor shall any of the foregoing at any time be parked on any street within the Properties.

Section 11. Fences, Walls and Hedges. Except as specifically approved in writing by the Architectural Review Committee with respect to Approved Plans or in architectural guidelines, or except as maintained by the Association on any Common Property, no fence shall be maintained on a Lot or Development Parcel, and no fence, wall or hedge shall be maintained on any Lot nearer to any street adjoining the front of such Lot than the front corner of the Dwelling thereon, and shall not exceed four (4) feet in height. All fences on Lots shall be maintained at all times in a structurally sound and attractive manner and in a good state of repair, and shall consist of materials approved by the Architectural Review Committee. Provided, however, the foregoing shall not be construed to prohibit, or require prior Architectural Review Committee approval for, fencing to contain trash or "silt" fencing or other soil erosion control fencing used in connection with the construction of Improvements on the Lots.

Section 12. 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 normal, 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 by Declarant or any other Owner in accordance with applicable Legal Requirements, nor shall they prevent the reasonable use, handling, storage and disposal of medically related hazardous substances and wastes in compliance with all applicable Legal Requirements.

Section 13. Home Businesses. A Owner may maintain an office or home business on such Owner's Lot or in any Dwelling or other improvement located on the Lot only if: (i) such office or home business is operated by the Owner or a member of the Owner's household residing on the Lot, or by Owner's tenant residing on the Lot; (ii) there are no displays or signs indicating that the Lot or improvement is being used other than as a residence; (iii) such office or business does not generate significant traffic or parking usage (as determined by the Board) by clients, customers or other Persons; (iv) no equipment or other items related to the office or business is stored, parked or otherwise kept on such Owner's Lot outside of the Dwelling or other enclosure approved by the Architectural Review Committee; (v) such Owner has obtained from the City, 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 applicable Legal Requirements; (vii) no person is employed in such office or home business except for the Owner or the members of the Owner's household residing on the Lot or the Owner's tenant residing on the Lot; and (viii) the Owner has obtained prior written approval from the Board and thereafter registers annually with the Association as long as the operation of the home business continues. As a condition to such use, the Board 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 from such use. Garage sales, yard sales and similar activities shall be conducted only in accordance with all applicable Legal Requirements and the rules and regulations, if any, adopted by the Board.

Section 14. 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 public or private safety.

Section 15. Landscaping; Utility Lines. No fence, wall, tree, hedge or shrub planting 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, plants, trees and other landscape and decorative materials shall not be placed or permitted to remain on any portion of the Properties: (i) if such materials may damage or 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 holder of the easement; or (iv) if such materials may unreasonably change, obstruct or retard direction or flow of any storm water drainage. Otherwise, the installation and maintenance of such materials within utility easements shall be permitted. Except for hoses, 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, storm water drainage pipe, television or telephone cable, electric line or other, similar transmission line shall be installed or maintained on any Parcel above the surface of the ground, except for those located in easements maintained by the City or applicable public utility provider or otherwise required by the City or applicable public utility provider, or as necessary for such pipes, lines and other facilities to function properly, or as approved by Declarant during the Declarant Control Period, or as approved by the Board following the end of the Declarant Control Period.

Section 16. Lighting. No exterior lighting on any portion of the Properties shall be directed outside the boundaries thereof, except for required street and parking lot lighting and as otherwise approved by the Architectural Review Committee. Typical residential floodlights and decorative directed toward the Dwelling on a Lot shall be permitted when used in a reasonable manner. All exterior lighting that is not in conformity with applicable architectural guidelines, if any, first shall be approved in writing by the Architectural Review Committee.

Section 17. Mailboxes and Newspaper Tubes. All mailboxes, unless affixed to the Dwelling (which may occur only if approved by the Architectural Review Committee or if required by any Legal Requirement), shall be affixed to a substantial pole or stand permanently placed in the ground and shall not be located within a sidewalk. Newspaper tubes shall conform to the architectural guidelines for same, if any. Architectural guidelines with respect to mailboxes and newspaper tubes may require, prohibit, restrict or specify one or more of the following: method and type of support; style; material; color; size; height; and one or more of the foregoing with respect to the numbering and/or lettering to be placed on a mailbox or newspaper tube, or affixed thereto. There may be different mailbox and newspaper tube requirements for the various phases, sections or subdivisions within the Properties.

Section 18. Motorized Vehicles; On-Street Parking. All motorized vehicles operating within the Properties, including automobiles, motorcycles, trucks and golf carts, must have proper and adequate mufflers. Each Owner, or any applicable Sub-Association, shall provide for adequate parking space on such Owner's Lot or on Sub-Association Common Property for all motorized vehicles and bicycles regularly used in connection with such Lot. No vehicles of any kind or any other apparatus designed for movement over and upon streets or highways (whether self-propelled or not) shall be parked in the Common Property (except in areas, if any, designated for parking) or regularly parked on the streets within or adjoining the Properties, and trucks with tonnage in excess of one (1) ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Properties, except that, during the Declarant Control Period, Declarant, and thereafter, the Board, may allow such parking by any vehicles used in connection with the construction of improvements within the Properties. In addition to and supplemental to the foregoing, the Association may promulgate and enforce rules and regulations relating to parking on the streets within or adjoining the Properties, including allowing temporary on street parking for special events related to the Recreational Amenities.

Section 19. 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 on the Recreational Amenities or other Common Property or Sub-Association Common Property conducted in accordance with the applicable rules and regulations of the Association, including swim meets and other athletic and social events. Further provided, the foregoing prohibitions shall not prevent or interfere with the reasonable development or maintenance of any portion of the Properties by the Association, Declarant or any other Owner in accordance with applicable Legal Requirements.

Section 20. 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 neighborhood. Provided, however, the usual, customary or reasonable use and maintenance of a Lot, a Dwelling, the Recreational Amenities, or any other Common Property, 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 Recreational Amenities in the manner required or allowed by the provisions of the 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, 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 recycling pick-up and similar items may be kept or placed temporarily and only for such time as is reasonably necessary to enable the City or appropriate private entity to remove same, and inoperable motor vehicles may be stored if the same are kept entirely in an enclosed garage. Provided, however, as approved by Declarant during the Declarant Control Period, trucks and/or other construction vehicles, materials and equipment may be allowed to remain on the Properties temporarily during construction of roads, utilities, the Recreational Amenities, Dwellings and other improvements in the Properties, and 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 applicable 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 installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Properties.

Section 21. Obstructions, etc. No Owner shall obstruct any of the Common Property, City greenways or greenway easements or any pedestrian access easements providing access to Common Property or City 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 Declarant Control 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 Declarant Control 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 the Declaration, or to enable Declarant or such Builders to market and sell the Properties. The rights of use and enjoyment of the Common Property conferred upon Owners by the Declaration do not include the right to interfere with the Declarant's, any Builder's, or the Association's use or maintenance of the Common Property.

Section 22. Prohibition on Use for Streets. Without the express written consent of Declarant during the Declarant Control Period (and, thereafter, by the Board), which consent may be given or denied in its sole discretion, no Lot or Development Parcel 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 pedestrian access easements as are shown on recorded plats of the Properties and are established to provide access to Common Property or to City greenways or greenway easements.

Section 23. 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 or the Association to exercise any rights reserved to them hereunder or except as may be necessary to enable the Association to perform its functions and provide services under the 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.

Section 24. Restrictions on Rental of Dwellings. It is contemplated by the Declaration that all Dwellings other than Apartment Units generally are intended for use and occupancy by the Owner of the Dwelling. Accordingly, and notwithstanding anything to the contrary herein, the term "residential, recreational or substantially related purposes" as used in Section 1 of this Article specifically excludes the leasing of Dwellings other than Apartment Units, in any one or more of the following instances:

(a) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and has no future intent to do so;

(b) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and who enters into a lease with a tenant that gives the tenant the option to purchase the Dwelling during, or at the end of, the term of the lease; or

(c) by an Owner where the primary purpose of the ownership of the Dwelling is for commercial purposes in that the Dwelling is intended primarily for lease to tenants and not for occupancy by the Owner as the Owner's primary residence.

Provided, however, and notwithstanding the foregoing restrictions on leasing of Dwellings, any model home may be leased to or by a Builder.

Section 25. Sewer Systems. As long as reasonably adequate sanitary sewer service is supplied to a Lot or Development Parcel by the City, no private sewage system shall be permitted on that Lot or Development Parcel.

Section 26. Signs. No sign of any kind shall be displayed to the public view on any portion of the Properties except for signs which are approved by Declarant, during the Declarant Control Period, and thereafter, by the Board, and which are for one or more of the following purposes: (i) advertising a portion of the Properties for sale or rent; (ii) advertising the Builder constructing Improvements on a Lot or Development Parcel during the construction and/or sales period; (iii) identifying the subdivision name of the Properties or of a phase, section or subdivision of the Properties, or the number or street address of a Lot or Dwelling, or directing Persons as to the location of certain portions of the Properties; (iv) identifying any portion of the Common Property; (v) signs required by the City or a utility provider, whether or not approved by Declarant or the Board; and (vi) any other purpose approved by Declarant, during the Declarant Control Period, and thereafter, by the Board; provided however, the foregoing limitations shall not restrict or prohibit Declarant (or, at the appropriate time, the Board) or the City from maintaining on any portion of the Properties signs describing the identity, location, or "for sale" character of the Properties, or portions thereof, or signs identifying various phases, sections or subdivisions of the Properties, or regulatory, street and directional signs. All signs maintained on any portion of the Properties must comply with all applicable Legal Requirements.

Section 27. Soil Erosion Control. During all periods of construction on any portion of the Properties, the Owner thereof shall maintain proper and adequate soil erosion control to protect other portions of the Properties from accumulated silt and other soil erosion.

Section 28. Tree Cutting. No live trees with a diameter in excess of six (6) inches, measured twelve (12) inches above the ground, nor "flowering trees" (such as dogwood or redbud) or broad leaf evergreens (such as holly, laurel or rhododendron) trees in excess of two (2) inches in diameter, similarly measured, no live vegetation on slopes of greater than twenty percent (20%) gradient or marked "no cut" areas on Approved Plans, may be cut without the prior written approval of the Architectural Review Committee, unless necessary to construct Improvements based on Approved Plans or to prevent injury to Persons or property. Further, no live trees planted by the Declarant or any Builder to comply with applicable Legal Requirements shall be cut without the prior written approval of the Person who planted same. The Board may adopt rules and regulations for cutting of trees to allow for selective clearing or cutting.

Section 29. Utility Yards. One or more utility yards shall be provided for each Lot or groups of Lots (for example, Lots which contain attached townhome Dwellings, Condominium Units or Apartment Units), as required by the Architectural Review Committee. A "utility yard" is an area within which one or more of the following is wholly located: pens, yards and houses for pets; above ground garbage and trash cans or receptacles, above ground and exterior air conditioning, heating and other mechanical equipment, meters, transformers and other utility equipment; and all other structures and objects determined by the Architectural Review Committee to be of a similar nature to the foregoing items or determined by the Architectural Review Committee to be of an unsightly nature or appearance. Each utility yard shall be screened or fenced or otherwise enclosed as required by the Architectural Review Committee. Provided, however, nothing in the Declaration shall prohibit location of trash cans, meters, transformers or other equipment in such places as required by the City or applicable public utility provider.

Section 30. Water Systems. As long as reasonably adequate potable water service is supplied to a Lot or Development Parcel by the City, no private potable water system shall be permitted on that Lot or Development Parcel. Provided, however, private wells for irrigation purposes may be allowed in accordance with Approved Plans. With respect to private wells, the Owner on whose Lot or Development Parcel any such private well is located shall be indemnify, defend and hold harmless the Association, the Declarant and other Owners of and from any and all claims of damages for injury to person or property, and all other causes of action and legal proceedings (including matters related to environmental hazards), and including the costs of defending against same (including reasonable attorney fees) that arise out of or result from the maintenance of any such private well on such Lot or Development Parcel.

Section 31. Exclusion for Declarant and Builders. Notwithstanding any other provision of the Declaration or any other Governing Documents, during the Declarant Control Period neither the restrictions contained in this Article nor any rules or regulations of the Association with respect to matters addressed in this Article shall apply to any otherwise lawful acts or omissions of Declarant or to any lawful acts or omissions of a Builder in constructing Improvements in accordance with approvals, variances or waivers given by the Declarant, except that Declarant and all Builders at all times shall be subject to the provisions of this Article regarding Soil Erosion Control, Sewer Systems, Tree Cutting and Water Systems.

ARTICLE X
ARCHITECTURAL APPROVAL

Section 1. Architectural Review Committee - Jurisdiction and Purpose. Except for ordinary and routine maintenance to an existing Dwelling or other Improvement on a Lot or Development Parcel, and excluding areas within a Dwelling or other building on a Lot or Development Parcel visible from the exterior only because of the transparency of doors, walls or windows: no site preparation of a Lot or Development Parcel, no change in grade or slope, no construction of any Dwelling or other Improvement or exterior additions or exterior alterations to any Dwelling or other Improvement, and no construction of, or alterations or additions to, the exterior of any other Improvement shall be commenced, nor shall any of the same be placed, altered or allowed to remain, until the "Architectural Review Committee" has approved in writing the Plans therefor. The Architectural Review Committee is established to assure that Improvements are constructed and maintained in a manner that provides for harmony of external design and location in relation to Dwellings and Improvements in the Properties, natural features and topography, that avoids Improvements deleterious to the aesthetic or property values, and that promotes the general welfare of the Owners. Notwithstanding anything to the contrary expressed or implied herein, 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 the City or owned by or subject to easements in favor of providers of public utilities, are specifically excluded from the requirements of this Article. The Architectural Review Committee also is established to exercise jurisdiction over other matters specifically assigned to it in the Declaration.

Section 2. Composition and Duration. During the Declarant Control Period, the Architectural Review Committee shall consist of Persons appointed thereto by Declarant, or Declarant may serve as the Architectural Review Committee. Declarant has the right at any time and from time to time to remove and replace the Persons appointed by it to the Architectural Review Committee. Following the end of the Declarant Control Period, the Architectural Review Committee shall consist of not less than three (3) members, who shall be appointed by, and shall be subject to removal with or without cause by, the Board. Persons who serve on the Architectural Review Committee are not required to be Members of the Association.

Section 3. Procedure.

(a) Unless otherwise permitted by the Architectural Review Committee in its sole discretion, not less than thirty (30) days prior to the commencement of any construction, alteration, addition, or placement of any Improvement requiring approval by the Architectural Review Committee , Plans for the proposed Improvement shall be submitted to the Architectural Review Committee, in such format and in such numbers or sets (not to exceed three) as the Architectural Review Committee may require. The Architectural Review Committee shall have the right to refuse to approve any Plans for Improvements which are not, in its sole discretion, suitable or desirable for the Properties, including purely aesthetic reasons. Unless a written response is given by the Architectural Review Committee within thirty (30) days following its receipt of the required number of complete sets of Plans and payment by the applicant of any applicable processing fee and consulting fees, if any established by the Architectural Review Committee, the Plans shall be deemed approved. At any time that the Architectural Review Committee consists of more than one individual, decisions of the Architectural Review Committee shall be by majority vote of its members present (in person or by proxy) at a duly called meeting thereof (or by the written consent of a majority of all the members of the Architectural Review Committee). The written response of the Architectural Review Committee may be an approval, a denial of approval, a conditional approval, or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was incomplete or inadequate, and the thirty (30) day time period for further Architectural Review Committee response shall commence only upon receipt of the requested additional information. If conditional approval is granted, and construction, alteration, addition or placement of the Improvement thereafter commences, the conditions imposed shall become fully a part of the Approved Plans. Any material modification or change in the Approved Plans must again be submitted to the Architectural Review Committee for its review in accordance with the foregoing requirements or such other procedures as adopted by the Architectural Review Committee. If the Plans are approved, or conditional approval is given, at least one set of Approved Plans shall be retained by the Architectural Review Committee and at least one set of Approved Plans shall be returned to the applicant. The Architectural Review Committee shall keep such other records of its activities as it is instructed to keep by either the Declarant or the Board, whichever is applicable.

(b) The Declarant or the Board, as applicable, may from time to time adopt procedures for the Architectural Review Committee to conduct the architectural reviews and its other duties, provided that such procedures do not conflict with the specific requirements of the Declaration. Such procedures may include reasonable fees for processing requests for approval, including the services of an architect or other consultant to assist the Architectural Review Committee in its review of any Plans, the costs of which shall be the responsibility of the applicant, and shall be in addition to any fees due for processing the request for approval. Processing fees shall be payable to the Association at the time the Plans are submitted to the Architectural Review Committee, and the charges of the consultant shall be due and payable immediately to the Association upon its receipt of an invoice therefor. Prior to incurring any consultant charges, the Architectural Review Committee shall afford the applicant a reasonable opportunity either to agree to pay such charges or to withdraw the request for approval. The payment of such fees and costs, as well as other expenses of the Architectural Review Committee required to be paid, shall be deemed to be an individual assessment, enforceable against any applicant in the same manner provided herein for enforcement of annual assessments.

(c) The Declarant or Board, as applicable, at any time and from time to time may establish architectural guidelines for one or more types of Improvements to be constructed, altered, added or placed on any portion of the Properties, which guidelines shall not conflict with the specific terms of the Declaration or any applicable Supplemental Declaration, shall be fair and reasonable, and shall carry forward the spirit and intention of the Declaration. With respect to Improvements other than initial construction of a Dwelling, the architectural guidelines may, but shall not be required to, allow construction, alteration, addition or placement of one or more types of Improvements without submitting the Plans therefor to the Architectural Review Committee and going through the formal approval process provided for herein. Although the Architectural Review Committee shall not have unbridled discretion with respect to taste, design and the standards specified herein or in such guidelines, the Architectural Review Committee shall have broad discretion in considering and approving technological advances or general changes in architectural designs and materials in future years and shall use its best efforts to balance the equities between matters of taste and design and the use of private property.

(d) The Declarant or the Board, as applicable, in its sole discretion, may at any time and from time to time appoint two separate Architectural Approval Committees, one for the purpose of reviewing Plans for initial Improvements, and the other to review Plans for subsequent new Improvements and alterations or additions to existing Improvements, the specific division of authority between such Architectural Approval Committees to be as specified by the Declarant or Board, as applicable. Each such Architectural Approval Committee separately shall be subject to and shall comply with the provisions of the Declaration applicable to the Architectural Approval Committee, including the appointment, removal and replacement of its members and the review of Plans by the Architectural Approval Committee.

(e) Approval by the Architectural Review Committee of any Plans shall not relieve the applicant from any obligation to obtain all required City approvals and permits, and shall not relieve the applicant of the obligation and responsibility to comply with all applicable Legal Requirements with respect to such Improvements.

(f) 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.

(g) Notwithstanding anything to the contrary herein, architectural approvals given by the Architectural Review Committee prior to the end of the Declarant Control Period shall remain in effect following the end of the Declarant Control 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.

(h) The Architectural Review Committee shall have the right, but not the obligation, to inspect Improvements that are being constructed or installed on any portion of the Properties to monitor compliance with the provisions of this Article and compliance with the Approved Plans for such Improvements, such right to include entry onto such portion of the Properties at reasonable times to inspect the Improvements. Provided, however, no member of the Architectural Review Committee shall have the right to enter a Dwelling without the consent of an Owner or occupant of such Dwelling.

Section 4. Completion of Construction. Construction of detached Dwellings on Lots shall be completed not later than twelve (12) months immediately after construction is commenced, or by such later date as specified in the Approved Plans, and construction of attached Dwellings, Condominiums and Apartment Units on Lots or Development Parcels shall be completed not later than eighteen (18) months immediately after construction is commenced, or by such later date as specified in the Approved Plans. For the purposes of this Section, construction is "commenced" when a building permit for the construction has been issued by the City, and construction is "completed" when the City has issued a certificate of occupancy or completion, or for the Improvement. The Architectural Review Committee, in its sole discretion, may grant waivers or extensions of the foregoing time period for completion of construction, 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 completing construction within the foregoing time periods. For such purposes, events of "Force Majeure" are any one or more of the following: acts of God, earthquakes, blizzards, tornadoes, hurricanes, fire, flood, malicious mischief, insurrection, 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 such performance.

Section 5. 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 performing such services.

Section 6. Limitation of Liability. Neither the Architectural Review Committee nor the members thereof, nor Declarant, nor the Association, nor any partners, members, managers, shareholders, officers, directors, employees or agents 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 applicable Legal Requirements, including zoning and building codes; or (iii) any defect in any Improvements constructed on any portion of the Properties.

Section 7. Violation; Enforcement. Each failure of an Owner or any other Person to construct or alter any Improvement in accordance with the Approved Plans as required herein therefor shall be a violation of the Declaration. Declarant, each Owner and the Association each shall have the right, but not the obligation, to enforce the provisions of this Section 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 Section of the 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 Section of the 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.

ARTICLE XI
EASEMENTS

Section 1. Easements Reserved by Declarant. Declarant, for itself, and its successors and assigns (which may include the Association, Sub-Associations, the City and public utility providers), reserves the following easements and rights, which may be exercised by Declarant or its successors or assigns in its sole discretion, without any obligation to exercise any of same. These easements specifically include the right of access to and from the easement area, the right to maintain equipment, structures, facilities and impoundments therein, and the right to remove any obstruction within the easement area that, in the sole discretion of Declarant or its successors or assigns, constitutes interference with the use of the easement or with the maintenance of any equipment or structures or facilities or impoundments located therein:

(a) Perpetual, non-exclusive and alienable easements for maintenance of utilities and related appurtenances and equipment (including wires, poles, pipes, transformer boxes and conduits), storm water drainage equipment and facilities, and soil and water impoundments over, under and across all of the following: (i) portions of the Properties identified as easements on plats recorded in the Registry; (ii) an area on each Lot and Development Parcel that is five (5) feet in width and adjacent to each boundary line of such Lot and Development Parcel; and (iii) the Common Property, including Common Property Easements. Provided, however, neither the foregoing reservation of easement rights nor any similar reservation of easement rights contained in the Declaration shall create or impose any obligation upon Declarant, or its successors and assigns, to provide or maintain any such utility, equipment, facility, structure or impoundment.

(b) The right to subject the Properties to a contract with Carolina Power And Light Company (or other, appropriate utility provider) for the installation of above ground or underground electric cables and lines and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment by each Owner.

(c) During the Declarant Control Period, for itself and Builders, the right to use the Recreational Amenities at reasonable times, without any charge or payment therefor, for any one or more of the following purposes: (i) the club house, if any, for meetings with Owners, prospective Owners and Builders in connection with the development or sale of portions of the Properties and for meetings of the Association, the Board and Association committees; provided, however, the club house shall not be used by Declarant or any Builder as an administrative or sales office; (ii) to the extent that it does not unreasonably interfere with use of the Recreation Amenities by Class A Members, the Recreational Amenities may be used from time to time by Declarant or Builders for promotional functions in connection with the marketing or sale of any part of the Properties. The foregoing rights include the right to use a reasonable number of parking spaces on the Recreational Amenities and any other Common Property parking areas.

Section 2. 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 of access to and from the easement area, the right to maintain equipment, structures, facilities and impoundments therein, and the right to remove any obstruction within the easement area that, in the Association's sole discretion, constitutes interference with the use of the easement or with the maintenance of any equipment or structures or facilities or impoundments located therein:

(a) A perpetual, non-exclusive and alienable easement over and upon all portions of the Properties to enable the Association to perform its functions and provide the services under the Declaration. 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, this easement does not include a right to enter any Dwelling or other building on a Lot or Development Parcel without the consent of an Owner of that portion of the Properties, 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 storm water 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 storm water management; provided, however, the Association shall not at any time be required to exercise this easement, and no exercise of the easement shall interfere 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 storm water 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 storm water 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, and shall be a lien and be enforceable in the same manner as annual assessments. 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 may then exercise this easement.

Section 3. Easement Reserved for the City and Public Utilities. Perpetual, non-exclusive and alienable easements are hereby reserved and established over all portions of the Properties for the City and for all public utility providers serving the Properties, and their agents, employees and contractors, for the purpose of setting, removing and reading utility meters, maintaining utility or storm water drainage equipment and connections, and acting for other purposes consistent with the public safety and welfare, including garbage removal, police protection, fire protection and delivery of mail. Except in an emergency, these easements shall be exercised in a reasonable manner and at reasonable times. This easement does not include a right to enter any Dwelling or other building on any portion of the Properties without the consent of the Owner of such portion of the Properties. 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 City greenways or City greenway easements are established for the benefit of the City of Raleigh, its employees and the public in general, and the Association has the responsibility with respect to such pedestrian access easements that Legal Requirements of the Raleigh City code impose on owners of properties over which such pedestrian access easements are located and on property owner associations that serve properties over which such pedestrian access easements are located.

Section 4. Easements Shown On Recorded Plats. Declarant, for itself and its successors and assigns (which may include the Association, Sub-Associations, the City and public utility providers), and in addition to all other easements reserved in the 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 of ingress, egress and regress over and upon such easement areas, and the right to maintain in the easement areas identified on such plats all improvements deemed necessary, in the reasonable discretion of the Person who exercises the easement rights, for the full exercise of such easements. The Persons who have the foregoing easement rights shall have no obligation to exercise any part or all of same.

Section 5. 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 the Dwelling is located (for the purposes of this Section, the "subject Lot"), then as provided by Section 10-3073(b)(8) if the Raleigh City Code the Owner of the Dwelling, and such Owner's tenants and contractors, shall have a perpetual, non-exclusive access easement over the Lot or other portion of the Properties that adjoins such boundary line of the subject Lot 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, the Owner of the subject Lot shall restore the Lot or other portion of the Properties on which the easement has been exercised to as nearly the same condition as it was in prior to the maintenance as reasonably practicable. When the foregoing easement exists, 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, but it is the responsibility of the Owner of the adjoining Lot or other portion of the Properties to comply with the applicable provision of the Raleigh City Code). Provided, however, the easement established by this Section shall not restrict or impair any easements established herein in favor of the Declarant, the Association or any public utility provider.

Section 6. Restriction on Easements. Notwithstanding anything to the contrary contained in this Article, no easement granted, reserved or established in the Declaration shall be construed to give Declarant, the Association, the City or any other Person the right to enter any Dwelling or other building located on any Lot.

ARTICLE XII
OWNER AND SUB-ASSOCIATION MAINTENANCE RESPONSIBILITIES

Section 1. Duty to Maintain. Subject to any other applicable terms of the Declaration, each Owner, at such Owner's sole cost and expense, and each Sub-Association, at such Sub-Association's sole costs and expense, shall maintain such Owner's Parcel, or such Sub-Association's Sub-Association Common Property, as the case may be, including all Improvements thereon, in a safe, clean and attractive condition at all times, 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 applicable Legal Requirements, any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such portion of the Properties and not maintained by the Association or the City.

(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 applicable Legal Requirements.

(h) Soil erosion control as required by the Declaration.

(i) Maintenance of storm water drainage easements and portions of the Properties served by storm water drainage easements, as required by the Declaration.

(j) To the extent not adequately maintained by the City, the Association or a public utility provider, maintenance of the sidewalk, driveway, driveway apron and utility laterals serving each such portion of the Properties, even if located in the Common Property. Each Owner and Sub-Association also shall provide snow and ice removal for any sidewalks located adjacent to such Owner's or Sub-Association's portion of the Properties, to the extent that it is not promptly and adequately provided by the City.

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 provisions of this Article regarding Owner Maintenance Responsibilities with respect to all portions of the Properties it owns.

Section 2. Enforcement. If any Owner or Sub-Association fails to perform any of the foregoing maintenance Responsibilities, then the Association may give such Person written notice of the failure and such Person must, within ten (10) days after such notice is given by the

Association, perform the required maintenance. If any such Person 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 Person's portion of the Properties and perform such maintenance without any liability for damages for wrongful entry or trespass. Such Person 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 or Sub-Association fails to reimburse the Association as required, the Association shall have the same rights and remedies against such Owner or Sub-Association and such Owner's or Sub-Association's portion of the Properties, as the Association has with respect to the enforcement and collection of annual assessments.

Section 3. Unimproved Portions of the Properties. Notwithstanding the foregoing provisions of this Article, but subject to the other applicable provisions of the Declaration, Owners of unimproved Lots or other 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 Declarant Control Period, and thereafter, in accordance with such reasonable maintenance standards established by the Board.

ARTICLE XIII
MORTGAGEES

Section 1. Notice to Board. Upon request from the Board, any Owner who mortgages such Owner's Lot shall notify the Association of the name and address of the Mortgagee. No Mortgagee shall be entitled to any Mortgagee rights under the Declaration unless such Mortgagee has notified the Association as required in this Article and has requested Mortgagee rights under the Declaration.

Section 2. Requirements of Mortgagee. Whenever any Mortgagee desires to avail itself of the rights afforded Mortgagees under the Declaration and receive notices from the Association, it shall furnish written notice thereof to the Association by CERTIFIED OR REGISTERED MAIL, identifying the Lot upon which such Mortgagee holds a first lien mortgage or deed of trust, specifying which rights it wishes to exercise and notices or other information it wishes to receive, 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.

Section 3. Obligation of Association to Mortgagees. Any Mortgagee who has notified the Association as required in the immediately preceding Section of this Article, shall have each of the following rights that are specifically requested in the notice to the Association:

(a) To inspect Association documents and records on the same terms as the Members of the Association.

(b) To be notified of any proposed amendments to the Declaration and any meetings of the Association at which such proposed amendments are to be voted on.

(c) To be notified of any condemnation or casualty loss affecting the Common Property or any portion thereof.

(d) To be notified of any event giving rise to a claim under the Association's physical damage insurance policy insuring the Common Property, where the damage to the improvements on the Common Property exceeds an amount equal to ten percent (10%) of the Association's annual budget for Common Expenses.

(e) To be notified of any lapse, cancellation or material modification of any insurance policy maintained by the Association.

(f) To be notified of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days), and to be notified of any other default of the provisions of the Declaration, by the Owner of the Lot upon which the Mortgagee has a mortgage. Provided, however, any failure of the Association to notify the Mortgagee of the delinquency or default shall not affect the validity of any Association lien, or any other Association rights and remedies, against the defaulting Owner or such Owner's Lot.

(g) Following the end of the Declarant Control Period, the right of a majority of all the Mortgagees (including those who have notified and who have not notified the Association) to demand professional management of the Association.

(h) Following the end of the Declarant Control Period, the right of a majority of all the Mortgagees (including those who have notified and who have not notified the Association) to demand an audit of the Association's financial records, not to exceed one audit per calendar year.

Section 4. Mortgagees Not Obligated to Collect Assessments. No Mortgagee shall have any obligation to collect any assessment under the Declaration.

ARTICLE XIV
AMENDMENT OF DECLARATION

Section 1. Amendment by Declarant. During the Declarant Control Period Declarant may, without the approval or joinder of the Association, or any Member of the Association, Mortgagee or Secondary Mortgage Market Agency, amend any provision of the Declaration or any Supplemental Declaration from time to time to: (i) make non-material, clarifying or corrective changes not materially, adversely affecting any Owner's rights or obligations hereunder; or (ii) satisfy the requirements of FHA (Federal Housing Administration), VA (Veterans Administration), Fannie Mae (Federal National Mortgage Administration), Office of Interstate Land Sales Registration of the Department of Housing and Urban Development (OILSR) or other governmental agency Secondary Mortgage Market Agency or Mortgagee; 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. Any such amendment shall be effective upon the later of the date of its recording in the Registry or the effective date specified therein. Provided, however, during the Declarant Control Period any such amendment of the Declaration also shall require approval by the United States Department of Housing and Urban Development ("HUD") or its designee and/or by the United States Veterans Administration ("VA") or its designee unless, at the time of such amendment, applicable HUD or VA regulations no longer require such approval.

Section 2. Amendment by the Members. Unless amended as allowed under Section 1 of this Article, the Declaration may be amended only as follows:

(a) Unless a higher percentage or different voting requirement is specified herein or by applicable Legal Requirements, the Declaration may be amended only by (i) the written agreement or consent of those Class A Members who have, or the affirmative vote at a duly called meeting of the Association of those Class A Members who have, sixty-seven percent (67%) or more of the total number of votes allocated to the Class A Members, and (ii) during the Declarant Control Period, with the written consent of Declarant.

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to the 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 the 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 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), 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. Provided, however, and notwithstanding the foregoing or anything to the contrary appearing herein, no amendment to the 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 the 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 Supplemental Declarations shall be governed by the provisions for amendment contained therein, if any; otherwise, the provisions of regarding amendment of the Declaration shall apply.

(e) In addition to the foregoing requirements, during the Declarant Control Period any such amendment to the Declaration also shall require approval by the United States Department of Housing and Urban Development ("HUD") or its designee and/or by the United States Veterans Administration ("VA") or its designee unless, at the time of such amendment, applicable HUD or VA regulations no longer require such approval.

Section 3. Prohibited Effects of Amendment. No amendment to the Declaration 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 the rights 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 the Mortgagees under the Declaration without the prior written approval of a majority of the Mortgagees. Except as specifically provided in the Declaration, no provision of the Declaration shall be construed to grant to any Owner or to any other Person any priority over any rights of Mortgagees.

(f) terminate or revise any easement established by the Declaration, without the written consent of the Person benefitted by the easement or by the Owner of the portion of the Properties benefitted by the easement, whichever is applicable.

(g) alter or remove any applicable Legal Requirement.

ARTICLE XV
DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION

Section 1. Duration. Unless sooner terminated as required by applicable Legal Requirements, the 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 the 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, as follows: (i) during the Declarant Control Period, executed or ratified by Declarant and by those Members to whom eighty percent (80%) or more of the Class A votes in the Association are allocated; and (ii) following the end of the Declarant Control Period, executed or ratified by those Members to whom eighty percent (80%) or more of the total votes in the Association are allocated. Execution or ratification by any one of multiple Owners of a Parcel is sufficient for that Parcel unless, prior to the time the termination agreement is recorded in the Registry, any other Owner of that Parcel files with the Association a written objection to the termination of the Declaration (in which event the vote allocated to that Parcel 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 the Declaration, the minimum terms of the sale shall be set forth therein.

Section 2. Dissolution of the Association. The Association shall be dissolved upon the termination of the 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 the 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 the Declaration, or by reason of merger and/or consolidation with any other association as allowed by the 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 applicable 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 the City of Raleigh, North Carolina (or, if the City of Raleigh refuses such offer, then to some other appropriate governmental entity 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 the City of Raleigh or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Property and assets shall be conveyed by the Association to the City of Raleigh 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 Parcel and the public or private street(s) on which that Parcel 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 the City of Raleigh or such other appropriate governmental entity 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 the 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.

Section 3. Termination or Dissolution During Declarant Control Period.

In addition to the foregoing requirements, during the Declarant Control Period any termination of the Declaration or dissolution of the Association also shall require approval by the United States Department of Housing and Urban Development ("HUD") or its designee and/or by the United States Veterans Administration ("VA") or its designee unless, at the time of such termination or dissolution, applicable HUD or VA regulations no longer require such approval.

ARTICLE XVI
COMMERCIAL PROPERTY

It is anticipated by Declarant that a portion of the Properties described on **Exhibit** A may, but shall not be required to, be used in whole or in part for commercial purposes, including all uses allowed under the City zoning ordinance applicable to such portion of the Properties, such portion of the Properties being referred to herein as the "Commercial Property". Notwithstanding anything to the contrary appearing herein Declarant, at any time and from time to time during the Declarant Control Period, may withdraw any part or all of the Commercial Property from the effect and operation of the Declaration by recording a withdrawal declaration in the Registry, except that, notwithstanding any such withdrawal, Dwellings on the Commercial Property and the Owners of Dwellings on the Commercial Property shall be treated in the same manner as Owners of Lots under the Declaration for the purposes of assessments and voting rights in the Association, and those portions of the Commercial Property on which no Dwellings are located shall continue to be treated in the same manner as Development Parcels under the Declaration for the purposes of assessments and voting rights in the Association.

ARTICLE XVII
RALEIGH CITY CODE REQUIREMENTS

Section 1. Applicability. Certain provisions of the Raleigh City Code apply to part or all of the Properties. The Declaration is subject to and shall be construed in accordance with all applicable provisions of the Raleigh City Code, including all sections thereof previously described or referenced herein, and including all other applicable sections not referenced. It shall be the responsibility of each Owner of any portion of the Properties subject to any provisions of the Raleigh City Code to comply with all provisions thereof applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of the Declaration has been given by the Declarant, the Board or the Architectural Approval Committee with respect to such portion of the Properties.

Section 2. Party Walls. As required by Raleigh City Code Section 10-3073 (b) (7), all common party walls between Dwellings shall conform to the requirements of the North Carolina State Building Code. In the absence of provisions in a declaration or other document specific to a particular phase or section of the Properties containing Dwellings with party walls, the following rules with respect to party walls in the Properties shall apply:

(a) Each wall which is built as a part of the original construction of the Dwellings and placed on the dividing line between the Dwellings shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section of the Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto;

(b) The cost of reasonable Maintenance of a party wall shall be shared by the Owners of the Dwellings that use the party wall, in proportion to such use.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the party wall may restore or repair it, and if the other Owners thereafter use the party wall they promptly shall contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner who by such Owner's negligent or willful act or omission causes the party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(e) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to such Owner's Dwelling and shall pass to such Owner's successors in title of the Dwelling.

(f) If any Owner desires to sell a Dwelling that shares a party wall with any other Dwelling, the Owner who desires to sell may request each other Owner of a Dwelling that shares that party wall to provide a certificate stating whether or not such Owner has any right of contribution with respect to such party wall against the Owner who desires to sell. Each Owner from whom such certificate is requested shall furnish same promptly to the requesting Owner, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of an adjoining Dwelling shall be conclusive evidence of its contents with respect to all other Owners of that Dwelling and with respect to third parties.

(g) Each Owner of a Dwelling that shares a party wall with one or more other Dwellings shall have an easement and right of entry upon such other Dwelling to the extent reasonably necessary to repair, restore, maintain or reconstruct the party wall. Such repair, restoration, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner on whose behalf the work is being done shall restore the adjoining Dwellings to substantially the same condition as that which existed at the time the work commenced.

Section 3. Private Streets. Pursuant to Raleigh City Code Section 10-3074 (b):

(a) "In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any cluster unit development, unit ownership (condominium) development, group housing development, townhouse development, or mobile home park or their occupant when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the developer, homeowners association, or occupants;" and

(b) "In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the homeowners association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance."

(c) The Association will be responsible for maintaining all private streets that are Common Property of the Association. Each Sub-Association will be responsible for maintaining all private streets that are the Sub-Association Common Property of such Sub-Association.

Section 4. City of Raleigh Greenways. Notwithstanding any other provision of the Declaration, without the prior written consent of the City of Raleigh, the Association, Owners, Members, tenants of Members and their respective families, guests and invitees, shall not, within any City of Raleigh owned greenway in or adjoining the Properties or within any City of Raleigh greenway easement in or adjoining the Properties:

(a) grant any easement of any nature whatsoever;
(b) remove any tree or vegetation, except as may be necessary to prevent injury to person or property;
(c) erect any gate, fence or other structure or improvement;
(d) place any garbage receptacle;
(e) fill or excavate;

(f) plant vegetation of any type or otherwise restrict or interfere with the use, maintenance and preservation of the greenway in its natural or improved state, including, without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that, within any such greenway, the City of Raleigh may erect trails and trail markers, place or erect litter receptacles and other convenience facilities, and adopt and amend regulations concerning the use of the greenway (including, without limitation, hours of operation and use), which rules and regulations shall be equally applicable to the general public and the Owners. The Association and the Owners may adopt such other regulations governing the use of the greenway not inconsistent with those adopted by the City and may enter into such agreements with the City of Raleigh as are deemed appropriate to ensure the maintenance and upkeep of the greenway in its natural or improved state, free of litter and unsightly debris.

ARTICLE XVIII
GENERAL PROVISIONS

Section 1. Enforcement. The Association, each Owner, and, when enforcement rights are granted by the Declaration, a Mortgagee, the VA or FHA, shall have the right, but not the obligation, to enforce the Declaration by any proceeding at law or in equity (or otherwise, as provided in the Declaration) against any Person who has violated, is violating, or is attempting to violate, any part of the Declaration, either to restrain the violation, recover damages, or seek other available legal or equitable remedies. Any failure by the Association, an Owner, or any other Person to enforce the Declaration 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 the Declaration at any other time with respect to the same or substantially similar matter. All rights, remedies and privileges granted to 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.

Section 2. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of the 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 the 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.

Section 3. Notice. Except as otherwise provided herein, whenever written notice to an Owner is required hereunder, such notice may be hand delivered to such Owner, or given by first class United States mail, postage prepaid, or given in such other manner specifically allowed or required by applicable Legal Requirements, or given in such other manner determined by the Board to be proper and which does not violate any applicable Legal Requirements, addressed to the address of such Owner appearing on the records of the Association or to the address for such Owner 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) 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 Owner or an adult residing with the Owner, as evidenced by a receipt signed by the Owner 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 Owner or other adult residing with such Owner, or (vi) upon execution of a written waiver of such notice by the Owner. Notice to the Association may be given and shall be deemed to have been given in the same manner as notice to an Owner, 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 to keep the Association informed of such Owner's current mailing address and telephone number. If an Owner has not provided the Association with the Owner's current mailing address the Association may use as the mailing address the street address of the Parcel owned by such Owner or the address for such Owner in the records of the Wake County Revenue Department. If no address for an Owner is reasonably available to the Association, the Association shall not be required to give notice to such Owner. 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.

Section 4. Titles. The titles, headings and captions which have been used throughout the Declaration are for convenience only and are not to be used in construing the Declaration or any part thereof, except as necessary with respect to any cross-referencing of any provisions of the Declaration.

Section 5. Number and Gender. Whenever the context of the Declaration requires, the singular shall include the plural and one gender shall include all.

Section 6. No Exemption. No Owner may become exempt from any obligations imposed hereby by non-use or abandonment of the Common Property or any Parcel owned by such Owner.

Section 7. Subdivision, Combination of Lots; Plat Re-recording. A Parcel may be subdivided, and the boundaries of a Parcel may be altered, only with the written consent of the Owner thereof and the Declarant, during the Declarant Control Period (and, thereafter, the Board), and with any prior approval required of the Mortgagees and the City. Provided, however, and notwithstanding the foregoing sentence, such consent 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, the City or a public utility provider. One or more Parcels may be combined into a single Parcel with the written consent of the Owner thereof and the Declarant, during the Declarant Control Period (and thereafter, the Board), and the resulting Parcel shall be considered as one Parcel for the purposes of the Declaration. Nothing contained herein shall prohibit or restrict the right of Declarant, during the Declarant Control Period to subdivide, combine, re-subdivide or recombine portions of the Properties, or to record or re-record maps relating to, any portion of the Properties owned by Declarant, nor to prohibit or restrict the right of Declarant to approve or disapprove such activities with respect to portions of the Properties owned by other Owners.

Section 8. Changes in Planned Development Conditional Use Overlay District and/or Cluster Unit Development Plan. The provisions of this Section apply to any part or all of Bedford that has been approved by the City of Raleigh as a planned development conditional use overlay district and/or cluster unit development, as those terms are defined in the Raleigh City Code. Therefore, although a Parcel within the Community may appear to contain enough land area to permit construction of additional Dwelling Units or to create additional Parcels, prior approved density transfers within the cluster unit development may, in fact, preclude City approval of additional Dwelling Units or creation of additional Parcels. During the Declarant Control Period, without the written consent of the Declarant (and, if required, by the City of Raleigh), no Parcel within Bedford may be subdivided by sale or otherwise so as to reduce the total land area shown on the recorded plats of Bedford.

With the approval of the City of Raleigh, and subject to such terms and conditions as the City or Raleigh may impose, during the Declarant Control Period Declarant shall have the right, without consent or approval of the Owners, to create additional Dwelling Units or Parcels, add Common Property, and make density transfers among various Parcels.

Section 9. Association Contracts and Leases During Declarant Control Period.

All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must meet at least one of the following criteria: (i) be for a term limited to two years or less; (ii) be terminable without penalty by the Association upon ninety (90) days written notice; (iii) be commercially reasonable and made with an entity not affiliated with

Declarant; or (iv) be approved by the United States Department of Housing and Urban Development ("HUD") or its designee or by the United States Veterans Administration ("VA") or its designee. Any Association contract or lease entered into before the first Board elected by the Class A Members takes office, and which is not bona fide or which was 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 the first Board elected by the Class A Members takes office, upon not less than ninety (90) days' notice to the other parties to the contract or lease.

Section 10. Conflicts. Whenever there exists a conflict among the Governing Documents of the Association, the provisions of the Declaration and thereafter, any applicable Supplemental Declaration shall control, except as to matters of compliance with the Nonprofit Corporation Act, in which event the Articles shall control. Whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control. 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 Raleigh City Code shall in all cases control over any construction inconsistent therewith. The provisions of the Act and Nonprofit Corporation Act shall in all cases control over any conflicting provisions of the Raleigh City Code. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted by the Association. The Governing Documents shall be construed together and shall be deemed to incorporate one another in full.

Section 11. Assignment. Declarant specifically reserves the right, in Declarant's sole discretion, at any time and from time to time, to temporarily or permanently assign any or all of its rights, privileges and powers under the Declaration or under any Supplemental Declaration. If Declarant has not assigned all of such rights by the time Declarant no longer owns any portion of the Properties, such rights then possessed by the Declarant shall be deemed to have been assigned to the Association.

Section 12. 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 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.

Section 13. 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 the 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(b) of the Act, if any provision of the Declaration violates any applicable Rule Against Perpetuities, such provisions shall be deemed reformed to continue in effect for the maximum period of time that such provision could exist without violating such applicable Rule Against Perpetuities.

Section 14. Reserved Rights. Whenever the Declaration reserves a right for, or requires or authorizes a consent, approval, variance or waiver by, Declarant during the Declarant Control Period, and thereafter confers such right upon, or requires or authorizes such approval or waiver by, the Board, the applicable right may be exercised, or the applicable approval or variance or waiver may be given, only by Declarant (or its assigns, which may include the Board) during the Declarant Control Period, and, thereafter, only by the Board or its authorized designee.

Section 15. Legal Requirements. All Governing Documents shall be subject to and construed in accordance with all applicable Legal Requirements, including all applicable provisions of the Raleigh City Code. It shall be the responsibility of each Owner to comply with all applicable 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 from time to time 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.

Section 16. Marketable Title Act. It is the intention of the Declarant that the 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 the Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may at any time and from time to time, re-record in the Registry the Declaration or some memorandum or other notice hereof in order to continue the Declaration in full force and effect and/or to qualify the Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other Legal Requirement.

IN WITNESS WHEREOF, Declarant has caused the Declaration to be executed in legal and binding form, on the date indicated in the acknowledgment of such signature.

BRANDYWINE, L.L.C., a Virginia Limited Liability Company, doing business in North Carolina as BRANDYWINE OF VIRGINIA, L.L.C.

By: ______________________
Nathan D. Benson, Manager

State of Virginia, County or City of Virginia Beach

I, Jean A. Norton, Notary Public of the County or City and State aforesaid, certify that Nathan D. Benson, Manager of Brandywine, L.L.C., a Virginia Limited Liability Company, doing business in North Carolina as Brandywine of Virginia, L.L.C., personally appeared before me this day and acknowledged that he is a Manager of said company and that he executed the Declaration on behalf of and as the act of the company by authority duly given.

Witness my hand and official stamp or seal, this 28 day of march, 2002.

____
Notary Public
My commission expires: Commission Expires November 30, 2004

JEAN A. NORTON
COMMONWEALTH OF VIRGINIA
NOTARY PUBLIC

EXHIBIT A

Description of the real property initially subjected to the Declaration:

LYING AND BEING in the City of Raleigh, Neuse Township, Wake County, North Carolina, and being all of the real property described in those certain Deeds recorded in the Wake County, North Carolina Registry in Book 8795, Page 2666 and in Book 8795, Page 2671, said Deeds being incorporated by reference as if fully set out herein.

EXHIBIT B

Description of the real property that constitutes the "Exhibit B Property":

Exhibit B Property shall consist of any Property that is contiguous to any portion of the Properties. The total acreage of Exhibit B Property subjected to the Declaration shall not exceed 150 acres.

Laura M Riddick
Register of Deeds
Wake County, NC

Book : 009366 Page : 00895 - 00981

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.

Wake County Register of Deeds