

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
CARY GLEN**

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
CARY GLEN**

TABLE OF CONTENTS

	<u>Page</u>
DECLARATION	1
I. DEFINITIONS.....	2
II. ASSOCIATION	5
II.A. Powers.....	5
II.B. Members.....	6
II.C. Transfer Fees.....	6
III. OWNER'S RIGHTS AND DUTIES	6
III.A. Easement of Enjoyment in and to Common Property	6
III.B. Delegation of Use of Common Property	7
III.C. Damage or Destruction of Common Property.....	7
III.D. Maintenance of Lot	7
IV. COMMON PROPERTY AND EASEMENTS	7
IV.A. Maintenance of Common Property	7
IV.B. Title to Common Property	8
IV.C. Additions, Alterations or Improvements	9
IV.D. Easements.....	9
IV.E. Special Provisions Regarding Recreational Facilities.....	10
IV.F. Damage or Destruction	11
IV.G. Stormwater Management System.....	11
IV.H. Conservation Areas.....	13
IV.I. Parcel Areas	13
V. UTILITIES	14
V.A. Water System	14
V.B. Sewage System	14
V.C. Cable Television	14
VI. COVENANTS FOR MAINTENANCE ASSESSMENTS	14
VI.A. Annual Assessments	14
VI.B. Assessment Value	15
VI.D. Parcel Assessments	15
VI.E. Special Assessments.....	15
VI.F. Emergency Assessments	16
VI.G. Lot Assessments.....	16
VI.H. Commencement of Annual Assessments	16

VI.I.	Nonpayment of Assessments; Remedies of the Association.....	16
VI.J.	Subordination of the Lien to Mortgages	17
VI.K.	Budget.....	18
VI.L.	Assessments on Non-Uniform Basis.....	20
VI.M.	Exempt Property	20
VI.N.	Parcel Expenses.....	20
VI.O.	Parcel Association.....	20
VI.P.	Real Estate Taxes	21
VI.Q.	Certificate of Payment.....	21
VII.	ARCHITECTURAL CONTROL.....	21
VII.A.	Purpose.....	21
VII.B.	Construction Subject to Architectural Control.....	21
VIII.	PROTECTIVE COVENANTS	25
VIII.A.	Access	25
VIII.B.	Air Conditioning Residences	25
VIII.C.	Basketball Backboards.....	25
VIII.D.	Beaches/Lake Banks	25
VIII.E.	Boat Docks.....	25
VIII.F.	Clothes Lines and Outside Clothes Drying.....	26
VIII.G.	Common Property and Parcel Areas	26
VIII.H.	Fences and Walls	26
VIII.I.	Firearms	26
VIII.J.	Garages	26
VIII.K.	Garbage and Trash Containers.....	26
VIII.L.	Garbage Containers, Oil and Gas Tanks, Air Conditioners	26
VIII.M.	Hazardous Materials	26
VIII.N.	Insurance	26
VIII.O.	Lakes	27
VIII.P.	Landscaping	27
VIII.Q.	Lot Resubdivision	27
VIII.R.	Maintenance	27
VIII.S.	Motor Vehicles and Parking	27
VIII.T.	Nuisances; Other Improper Use.....	28
VIII.U.	Offstreet Motor Vehicles.....	28
VIII.V.	Oil and Mining Operations	28
VIII.W.	Open Space	28
VIII.X.	Outside Antennas	28
VIII.Y.	Outside Storage of Personal Property	28
VIII.Z.	Personal Services	29
VIII.AA.	Pets.....	29
VIII.BB.	Recreational Vehicles.....	29
VIII.CC.	Residential Use	29
VIII.DD.	Signs.....	30
VIII.EE.	Solar Collectors.....	30
VIII.FF.	Soliciting	30
VIII.GG.	Swimming Pools	30
VIII.HH.	Temporary Structures.....	30
VIII.II.	Tree Preservation	30
VIII.JJ.	Utility Lines and Services	30
VIII.KK.	Visibility at Street Intersections	30
VIII.LL.	Window Treatments.....	31
IX.	INSURANCE.....	31

X.	ASSOCIATION LIABILITY	32
X.A.	Disclaimer of Liability	32
X.B.	Specific Provisions.....	32
X.C.	Owner Covenant	33
XI.	PROPERTY SUBJECT TO THIS DECLARATION	33
XI.A.	Existing Property.....	33
XI.B.	Annexation	33
XI.C.	Supplemental Declaration	33
XI.D.	Effect of Annexation.....	33
XI.E.	Withdrawal of Property.....	33
XII.	DEVELOPMENT APPROVALS	33
XII.A.	In General.....	33
XII.B.	Scope and Effect	34
XII.C.	Dedication of Lands	34
XII.D.	Changes to Development Approvals.....	34
XII.E.	Responsibilities Under the Development Approvals	34
XIII.	ENFORCEMENT OF NON-MONETARY COVENANTS.....	34
XIII.A.	Enforcement Options	34
XIII.B.	Expenses	35
XIII.C.	Fines and Suspensions	35
XIII.D.	Negligence	36
XIII.E.	Responsibility of an Owner for Occupants, Tenants, Guests, and Invitees	36
XIII.F.	Right of Association to Evict Tenants, Occupants, Guests and Invitees	37
XIII.G.	No Waiver.....	37
XIV.	AMENDMENT OF DECLARATION	37
XV.	RIGHTS OF MORTGAGEES.....	38
XVI.	GENERAL TERMS.....	38
XVI.A.	Duration	38
XVI.B.	Condemnation	38
XVI.C.	Notices	39
XVI.D.	Interpretation.....	39
XVI.E.	Invalidity	39
XVI.F.	Rules and Regulations.....	39
XVI.G.	Litigation.....	39
XVI.H.	Legal Fees and Costs.....	39
XVI.I.	Law to Govern	40
XVI.J.	Tax Deeds and Foreclosure.....	40
XVI.K.	Assignment of Developer Rights	40
XVI.L.	Dedications.....	40

Prepared by and return to:
Moore & Van Allen, PLLC (JHC)
2200 West Main Street, Suite 800
Durham, North Carolina 27705

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
CARY GLEN**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CARY GLEN (the "Declaration") is made as of this ____ day of December, 1998, by **PANTHER CREEK-RALEIGH LIMITED PARTNERSHIP**, a North Carolina limited partnership, hereinafter referred to as "Developer," who recites and provides:

RECITALS:

A. Developer is the owner of certain land located in or near the Town of Cary, Wake County, North Carolina, being the real property which is to be developed within the residential planned unit development sometimes referred to as Panther Creek but now commonly referred to as "Cary Glen" (the "Community") Certain adjacent property is an industrial planned unit development that, combined with the residential planned unit development, is part of a combined planned unit development also known as Panther Creek. The Community will be developed in phases and may be improved with residences of different size and types. The dwellings will share certain Common Property (this and all capitalized terms are hereinafter defined), which will be occupied and maintained for the mutual and common advantage of all Owners and occupants thereof.

B. To provide for the preservation, enhancement and maintenance of the Community and the improvements thereon, Developer desires to subject the portions of the Community, as they are developed and improved, to the protective covenants, conditions, restrictions, easements, charges and liens of this Declaration, each and all of which are for the benefit of the Community and of each Owner.

C. To provide for the efficient management of the Community, Developer deems it desirable to create a non-profit corporation with the power and duty of administering and enforcing the protective covenants, conditions, restrictions and easements, charges and liens hereinafter set forth, including, without limitation, the maintenance and administration of the Common Property and the collection and disbursement of the Assessments hereinafter created, and, to this end, Developer has created or will create the Association. All Owners of portions of the Property shall be members of the Association and shall share in the expenses of the Association.

DECLARATION

NOW, THEREFORE, Developer declares that the Property shall be held, sold, occupied, and conveyed subject to the following covenants, conditions, restrictions, easements, and limitations, which are for the purpose of protecting the value and desirability of the Property, shall run with the title to the Property, and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors and assigns, and shall inure to the benefit of each owner thereof and Developer.

I. DEFINITIONS

The following definitions shall apply wherever these capitalized terms appear in this Declaration:

- I.A. **"Additional Property"** means any land that is adjacent to or contiguous with the Property, including without limitation, the land more fully described in Exhibit "B" attached hereto and made a part hereof, which land is located such that if the land is annexed to the Declaration by the Developer and its successors or assigns, it shall form an integrated community with the Property. Developer or the Association may annex Additional Property to the terms and conditions of this Declaration in the manner hereinafter set forth.
- I.B. **"Annexation"** means the addition of all or any part of the Additional Property to the development community created herein and the subjecting of such property to the terms and conditions set forth in this Declaration and such additional terms and conditions as may be permitted in accordance with Article XI.
- I.C. **"Approving Party"** means Developer, as long as it owns any portion of the Property or Additional Property, or until Developer relinquishes its rights as the Approving Party by written notice to the Association. Developer reserves the right to assign its rights as the Approving Party with respect to any Parcel to the Parcel Developer of the Parcel or to the Association, in whole or in part. When Developer or its assignee is no longer the Approving Party with respect to any Parcel, the Association shall be the Approving Party with respect to such Parcel. Notwithstanding the foregoing, Developer, so long as it owns any portion of the Property or Additional Property, and thereafter the Parcel Developer of any Parcel or its assignee, and not the Association, shall be the Approving Party with respect to the initial construction of any improvements within a Parcel by the Parcel Developer of the Parcel or by any builder or Developer.
- I.D. **"Articles"** means the Articles of Incorporation for the Association, as amended from time to time, a copy of which is attached hereto and made a part hereof as Exhibit "C".
- I.E. **"Assessment"** means the amount of money which may be assessed against an Owner for the payment of the Owner's share of the costs and expenses arising under this Declaration, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, Lot Assessments and, if applicable, Parcel Assessments (as hereinafter defined).
- I.F. **"Assessment Charge"** means all Assessments currently owed by each Owner, together with any late fees, interest, and costs of collection (including reasonable attorney's fees) when delinquent.
- I.G. **"Association"** means Cary Glen Property Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns, which is responsible for the management and operation of the Property.
- I.H. **"Board of Directors" or "Board"** means the Board of Directors of the Association.

- I.I. **"Bylaws"** means the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto and made a part hereof as Exhibit "D".
- I.J. **"Common Property"** means any real property, or easement or other interest therein that is (i) declared to be a Common Property by this Declaration, (ii) dedicated to the Association on any recorded plat of all or a portion of the Property and/or Additional Property, or (iii) intended by Developer to be Common Property. Common Property also includes all personal property owned or leased by the Association and intended for the common use and enjoyment of the Owners which the Association is obligated to maintain. The Common Property may specifically include, without limitation, all rights of way of publicly dedicated roads, signs, fencing, landscaped entry features (including entry sign, lighting, irrigation, and landscaping), any landscaping not located within a Lot, parks, open areas, conservation areas, nature preserves, and recreational facilities, provided that the foregoing list shall not be deemed to be a representation or warranty that any of the foregoing types of Common Property will be provided.
- I.K. **"County"** means Wake County, North Carolina.
- I.L. **"Declaration"** means this Declaration of Covenants, Conditions, Restrictions and Easements, as it may hereafter be amended and supplemented from time to time.
- I.M. **"Developer"** means the entity signing this Declaration or any assignee of all or substantially all of its interests in the development of the Property, as set forth in paragraph XVI.K herein. Developer may also be an Owner, for so long as Developer shall be the Owner of any Lot.
- I.N. **"Lot"** means any plot of land intended as a site for a Residence and shown upon any recorded subdivision plat of the Property or portion thereof or a parcel of land which is permitted to be improved with a Residence. References herein to "Lot" shall also include the Residence and all improvements constructed on a Lot, unless set forth to the contrary. In the case of any condominium or other multi-family structure such as townhouses or zero lot line homes, "Lot" shall refer to the property interest intended for fee ownership by an Owner. In the event that Developer conveys a Lot together with all or part of an adjacent Lot or additional unplatted lands (such combination of Lots and lands being hereafter referred to as a "Reconfigured Lot") to one Owner who constructs only one Residence thereon and who landscapes all the land within the Reconfigured Lot so that it appears to be a single building plot, such Reconfigured Lot shall be deemed to be one Lot subject to one Assessment and entitled to one vote, and except as specifically set forth herein, all references to Lots shall include Reconfigured Lots. Provided, however, if such a Reconfigured Lot is subsequently developed with an additional Residence, it shall be deemed to constitute two Lots, shall be entitled to two votes, and shall be liable for payment of two Assessments.
- I.O. **"Member"** means a person entitled to membership in the Association, as provided in the Declaration and the Articles.
- I.P. **"Mortgage"** means any bona fide first mortgage encumbering a Lot as security for the repayment of a debt obligation in favor of a Mortgagee.
- I.Q. **"Mortgagee"** means any bank, savings and loan association, or other recognized institutional lender, any insurer or guarantor of mortgages and any holder of mortgages

in the secondary market (including, without limitation, the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association), which, in the ordinary course of business, is the holder of a Mortgage now or hereafter placed upon any Lot. For purposes of this definition in this Declaration, the holder of a Mortgage executed in favor of Developer also shall be considered a Mortgagee.

- I.R. **"Owner"** means the record Owner, whether one or more persons or entities, of the fee simple title to any Lot, including the buyer under a contract for deed. Owners shall not include those having such interest merely as security for the payment or repayment of a debt obligation.
- I.S. **"Parcel"** means any group of Lots or other portion of the Property which share one or more common roads and/or is developed as a separate residential community in which the Owners of the Lots or property comprising the Parcel have a common interest separate and distinct from the interest of all of the Owners, or which is designated as a Parcel in this Declaration or any amendment or supplement. Each Parcel may be subject to a separate Parcel Declaration, and may, but is not required to, be operated by or subject to the jurisdiction of a Parcel Association.
- I.T. **"Parcel Areas"** means any property, whether improved or unimproved, or any easement or interest therein, now or hereafter owned by the Association, other than the Common Property, which is owned and/or maintained by the Association, and which are located within a Parcel and primarily benefit the Owners of the Lots and/or Residences within the Parcel, and which are declared to be Parcel Areas pursuant to this Declaration, or in any amendment or supplement, or in any deed or easement to the Association.
- I.U. **"Parcel Assessment"** means an Assessment which is assessed against the Owners within one or more, but less than all of, the Parcels.
- I.V. **"Parcel Association"** means a non-profit corporation, other than the Association, which is formed to administer a Parcel Declaration, and whose members consist of the Owners within the Parcel affected by the Parcel Declaration. For purposes of this Declaration, the Parcel affected by any Parcel Declaration shall be deemed to be operated by, and subject to the jurisdiction of, the respective Parcel Association.
- I.W. **"Parcel Declaration"** means a supplement to this Declaration or a separate and distinct Declaration of covenants and restrictions that affects one or more Parcels and which contains provisions specially relating to such Parcels, which may include provisions regarding Parcel Areas, Parcel Assessments and use and maintenance covenants and restrictions applicable to such Parcels. A Parcel Declaration may, but is not required to, establish a separate and distinct Parcel Association to administer the Parcel Declaration, or in the alternative a Parcel Declaration may assign various duties and obligations to the Association.
- I.X. **"Parcel Developer"** means the entity that executes a Parcel Declaration, or the entity named as the Parcel Developer in any Parcel Declaration, or the entity which owns or contracts to purchase an entire Parcel or all of the undeveloped Lots or property within a Parcel, or any entity that succeeds to all of the interests of the Parcel Developer with respect to the applicable Parcel other than a single Lot, or any entity assigned the rights

of the Parcel Developer with respect to the Parcel pursuant to a written assignment executed by the then present Parcel Developer and recorded in the Public Records of the County in which the Property is located. In any event, any subsequent Parcel Developer shall not be liable for any actions or defaults of, or obligations incurred by, any prior Parcel Developer, except as same may be expressly assumed by the subsequent Parcel Developer.

- I.Y. **"Parcel Expense"** means a common expense which is incurred in connection with the ownership, maintenance, repair, improvement, or operation of any Parcel Area or which is incurred exclusively for the benefit of one or more Parcels pursuant to a Parcel Declaration, the cost of which is to be assessed solely against the Owners within the Parcel(s) benefited by the expense.
- I.Z. **"Permits"** means any permits, easement or other approvals secured from various governmental agencies and regulatory bodies which govern the development of the Property, including without limitation the Permits issued by the Town, the County, the North Carolina Department of Environment, Health and Natural Resources, the North Carolina Environmental Management Commission, the Army Corps of Engineers and the North Carolina Department of Transportation.
- I.AA. **"Property"** means that certain real property more fully described in Exhibit "A" attached hereto and made a part hereof, and the Property also includes those portions of the Additional Property which may, from time to time, be subjected to the terms hereof by Annexation as set forth herein. Property shall exclude any portion of the land which is dedicated to the public or for the exclusive use of a utility company.
- I.BB. **"Recreational Facilities"** means the clubhouse building, swimming pool, tennis court and associated improvements and facilities located or to be located on the recreation area parcel shown in the Panther Creek Residential PUD plan. In addition, Developer may provide other recreational and social facilities as Common Property for the benefit of the residents of the Property, the timing, kind, value and nature of which shall be determined in Developer's sole discretion, and Developer reserves the right to increase or add to such facilities, or to expand the facilities, without the consent of the Owners or the Association. Such additional facilities may be within or outside of the Property, but all of such facilities shall be considered part of the Recreational Facilities.
- I.CC. **"Residence"** means any single family residential dwelling constructed or to be constructed on or within any Lot together with any appurtenant improvements, including, without limitation, driveways, detached buildings, patios, sidewalks, and other facilities. Where any building contains more than one dwelling, each such dwelling shall be a Residence. A Residence may include, but is not limited to, a house, apartment, townhouse, patio home, or condominium unit.
- I.DD. **"Town"** means the Town of Cary, North Carolina.

II. **ASSOCIATION**

- II.A. **Powers.** In order to provide for the ownership, operation and/or maintenance of portions of the Property and Common Property pursuant to this Declaration, the

Association has been organized under the Laws of the State of North Carolina. The Association shall have the powers as set forth in the Articles, Bylaws and this Declaration and shall have the power to enforce this Declaration. By this Declaration, the Property is hereby submitted to the jurisdiction of the Association.

- II.B. **Members.** Every Owner shall be a mandatory Member of the Association. Membership shall be appurtenant to and may not be separated from title to each Lot. Membership shall be transferred automatically by conveyance of the title to any Lot, whereupon the membership of the previous Owner shall automatically terminate. Notwithstanding the foregoing, no governmental authority or utility company shall be deemed a Member unless one or more Residences actually exist upon the Lot owned by such governmental authority or utility company, in which event the governmental authority or utility company will be a Member only with respect to the Lot owned in conjunction with such Residence(s). Moreover, persons or entities which have an interest in any Lot merely as security for the performance of an obligation shall not be Members of the Association, and in such case the beneficial Owner shall retain the membership in the Association. Additionally, for so long as Developer or Parcel Developer own any portion of the Property and/or Additional Property, the Developer or Parcel Developer, respectively, also shall be a Member. The voting rights shall be as set forth in the By Laws.
- II.C. **Transfer Fees.** The Association reserves the right to establish a transfer fee to be paid by the Owners or grantees upon transfer of their Lot or Residence. The policies and procedures for such transfer shall be established by the Board from time to time.

III. OWNER'S RIGHTS AND DUTIES

- III.A. **Easement of Enjoyment in and to Common Property.** Subject to the limitations provided elsewhere in this Declaration, every Owner is granted a nonexclusive right and perpetual easement of enjoyment in and to the Common Property, which easement is appurtenant to and shall pass with the title to every Lot, subject to the following:
- III.A.1. The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure.
- III.A.2. The right of Developer or the Association to grant easements and rights of way as may be appropriate for the proper development and maintenance of the Property, including, without limitation, Developer's right to reserve easements for itself, its successors and assigns for ingress, egress, maintenance, drainage and utilities over all Common Property.
- III.A.3. All provisions of this Declaration, any plat of any part of the Property, and the Articles and Bylaws of the Association.
- III.A.4. The rules and regulations governing the use and enjoyment of the Common Property adopted by the Association.
- III.A.5. All easements and restrictions of record affecting any part of the Common Property.

- III.B. **Delegation of Use of Common Property.** Each Owner may delegate, subject to the Articles, Bylaws, and the Declaration, his right of enjoyment of the Common Property and facilities to the members of his family, his tenants, his guests, licensees, domestic servants, or contract purchasers who occupy the Lot.
- III.C. **Damage or Destruction of Common Property.** In the event any Common Property is damaged or destroyed by an Owner or any of his guests, tenants, invitees, agents, employees, or family members as a result of negligence or misuse, the Association shall repair the damaged area or property in a good and workmanlike manner, in accordance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association. The cost of such repairs shall be the responsibility of that Owner and shall be a Lot Assessment, payable by the responsible Owner immediately upon receipt of a written invoice or statement.
- III.D. **Maintenance of Lot.** Each Owner shall, at the Owner's cost and expense, keep all parts of his Lot, including the Residence, clean and free of debris, and in good order and repair. Such duties shall include, without limitation, repair or replacement of the roof, windows and doors (including glass or screens), and exterior of the Residence. Each Owner shall also maintain all landscaping on his Lot including any portion of the right of way which is bounded by his front Lot line, the continuation of his side Lot lines, and the paved portion of any road adjacent to his Lot and any land lying between the Owner's Lot line and the water's edge of any body of water, natural or man-made. The foregoing obligations shall include all maintenance, repair or replacement required because of the occurrence of any fire, wind, vandalism, theft or other casualty. All maintenance and repair shall be performed by each Owner at regular intervals as shall be necessary to keep the Lot and the Residence in an attractive condition and in substantially the same condition and appearance as existed at the time of completion of construction; subject to normal wear and tear that cannot be avoided. If an Owner fails to comply with these provisions, the Association, after ten (10) days written notice to the Owner and with the approval of the majority of the Board of Directors, shall have the right, in addition to all other rights and remedies granted under this Declaration, to enter upon such Lot to perform any needed repairs or maintenance, and the cost of same shall be a Lot Assessment, payable by the responsible Owner immediately upon receipt of a written invoice or statement therefor.

IV. COMMON PROPERTY AND EASEMENTS

- IV.A. **Maintenance of Common Property.** It shall be the duty of the Association to manage and maintain the Common Property in a clean, attractive, sanitary and serviceable condition, and in good order and repair. The Association's duties shall commence upon the completion of any improvements upon the Common Property, irrespective of which entity holds title thereto, and shall include the management, operation, maintenance, repair, servicing, replacement, and renewal of all improvements, equipment, and tangible personal property installed by Developer as a part of the Common Property. The Association shall also maintain all landscaping on the Common Property, provided, however, that neither Developer nor the Association shall be deemed a guarantor of such landscaping. There shall be no absolute liability imposed on Owners for damage to Common Property or the Lots in the Property.
- IV.A.1. **Compliance with Permits and Approvals.** It is acknowledged that in connection with the development of the Property various permits and

approvals will be issued by various governmental and quasi-governmental authorities. If any permit or approval provides for continuing maintenance, monitoring, or other obligations, relating to the Common Property or any other portions of the Property, Developer may assign to the Association the obligation to comply with same, as set forth in Article XII hereof.

IV.A.2. **Entry Features.** The Association shall maintain all entry features installed for the benefit of the Property, whether within or outside of the Property; provided that entry features for Parcels may, at the election of the Association, be maintained by the Association as Parcel Area, or, if a Parcel Association for that Parcel exists, by the separate Parcel Association.

IV.A.3. **Streets, Roads, and Sidewalks.** The Association shall be responsible for maintaining and repairing all streets, roads and common sidewalks that are not dedicated to the public (but not any driveway, sidewalk or walkway exclusively serving only one Lot) within the Property, and all costs of maintaining, repairing and operating any street lighting associated therewith. Notwithstanding the foregoing, where any Parcel consists of any Residences which are condominium units, or consists of Residences which are attached to one or more other Residences by a common wall, including townhomes, all paved areas within such Parcel shall be deemed driveways and not roads, and shall be maintained by the Association as Parcel Area, or or, if a Parcel Association for that Parcel exists, by the separate Parcel Association.

IV.B. **Title to Common Property.**

IV.B.1. **Conveyance of Title to Common Property by Developer.** Developer shall have the right to convey title to any property owned by it, or any easement or interest therein, to the Association as a Common Property, and the Association shall be required to accept such conveyance. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the public records of the county where the Property is located. Notwithstanding the foregoing, Developer shall not have the obligation to develop and/or convey any property to the Association as a Common Property, and if Developer desires to convey any property to the Association, the timing of the conveyance shall be in the sole discretion of Developer.

IV.B.2. **Warranties.** Any property conveyed to the Association by Developer or by any Parcel Developer will be conveyed in a "where is, as is" condition, and any such property will be conveyed and/or any improvements to the Common Properties made by Developer or any Parcel Developer without any warranty, including but not limited to any warranty of merchantability or of fitness for a particular purpose, or the adequacy of the size or capacity in relation to the utilization or operation thereof. However, Developer or any Parcel Developer transferring any Common Property to the Association or making any improvement to the Common Property will assign to the Association any warranties which they receive from contractors, manufacturers or suppliers.

IV.B.3. **Mortgage and Sale of Common Property.** The Association shall not encumber, sell or transfer any Common Property owned by the Association

without the approval of a 2/3 vote of the Owners, excluding Developer, provided, however, that the Association may dedicate the fee title to any Common Property, or any easement therein, to any governmental authority without the approval of the Owners, and further provided that the Association may grant a mortgage or deed of trust to secure the purchase price of the Recreational Facilities as provided in Section IV.E. below. However, if Developer changes the development plan for a portion of the Property such that any portion of the Common Property previously conveyed to the Association would be within any Property which is not intended to be a Common Property, then the Association shall have the right, without the approval of the Owners, to convey such portion of the Common Property to Developer, and, in connection therewith, Developer shall convey to the Association any property which will be a Common Property pursuant to the new development plan. If ingress or egress to any Property is through any Common Property, any conveyance or encumbrance of such Common Property shall be subject to an appurtenant easement for ingress and egress in favor of the Owner(s) of such Property, unless alternative ingress and egress is provided to the Owner(s). Notwithstanding the foregoing, until Turnover (as that term is defined in the Bylaws), the prior written consent of the FHA/HUD is required prior to dedication of the Common Property in accordance with HUD regulations, if the FHA or VA is the insurer of any Mortgage encumbering a Lot.

IV.C. **Additions, Alterations or Improvements.** The Association shall have the right to make additions, alterations or improvements to the Common Property, and to purchase any personal property as it deems necessary or desirable from time to time; provided, however, that the approval of a 2/3 vote of the Owners shall be required for any addition, alteration or improvement, or any purchase of personal property, exceeding in the aggregate a sum equal to one month's total Annual Assessments payable by all of the Owners, or if the cost of the foregoing shall in any fiscal year exceed in the aggregate a sum equal to 2 months' total Annual Assessments payable by all of the Owners. The foregoing approval shall in no event be required with respect to expenses incurred in connection with the maintenance, repair or replacement of then existing Common Property, or any existing improvements or personal property associated therewith.

IV.D. **Easements.**

IV.D.1. **Blanket Development Easement.** Developer reserves for itself, its successors and assigns, a nonexclusive, alienable blanket easement and right for the benefit of the Property and the Additional Property upon, across, over, through, and under the Property as may be reasonably required in connection with the development, construction sale, leasing and promotion of the Property (including the right to install and operate sales trailers).

IV.D.2. **Service and Utility Easements.** Easements are hereby created in favor of governmental and quasi-governmental authorities, utility companies, cable television companies, ambulance or emergency vehicle companies, mail carrier companies, and all other individuals or entities providing services to or for the benefit of the Property, over and across all roads existing from time to time within the Property, and over, under, on and across the Common

Property, as may be reasonably required to permit the foregoing, and their agents and employees, to provide their respective authorized services to and for the Property, and as may be required for the installation, maintenance, repair and providing of utility services, equipment and fixtures in order to adequately serve the Property, including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, and television antenna and cable television facilities, and electronic security.

IV.D.3. **Additional Easements and Modifications to Easements.** Developer, its successors and assigns, and the Association, have the unrestricted right, without approval or joinder of any other person or entity: (i) to designate the use of, alienate, release, modify, abandon, terminate or assign the easements shown in the plat of the Property or described herein, (ii) to plat or replat all or any part of the Property owned by Developer, and (iii) to widen or extend any right of way shown on any plat of the Property or convert a Lot to use as a right of way, provided that Developer owns the lands affected by such change. Notwithstanding the foregoing, or any other provisions in this Declaration to the contrary, the easements created herein may not be substantially modified so as to unreasonably interfere with the proper and intended use of the Property.

IV.D.4. **Restrictions on Owners in Easement Areas.** Owners of Lots subject to easements shown on any plat of the Property shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under the easement area. The Owners of Lots subject to any easements shall not construct any improvements on the easement areas, alter the flow or drainage, or landscape such areas with hedges, trees, or other landscape items that might interfere with the exercise of the easement rights. Any Owner who constructs any improvements or landscaping on such easement areas shall remove the improvements or landscape items upon written request of Developer, the Association, or the grantee of the easement.

IV.E. **Special Provisions Regarding Recreational Facilities.** It is acknowledged Developer plans to construct and install the Recreational Facilities. Upon completion of the Recreational Facilities described in the first sentence of the definition of Recreational Facilities, Developer will sell and transfer such Recreational Facilities to the Association to become Common Property and the Association will purchase such Recreational Facilities from the Developer for use as Common Property. The purchase price not exceed the actual costs of design, construction or installation of the Recreational Facilities plus a land cost for any associated land of not more than Twenty Thousand Dollars (\$20,000) per acre. The purchase price shall be paid in cash at closing or, at the option of the Association, in the form of a promissory note in the amount of the purchase price bearing interest at a fixed rate per annum equal to the "prime rate" (as announced by NationsBank, N.A.) as of the date of closing, such note to be payable in equal monthly installments of principal and interest over a twenty (20) year term. The promissory note shall be secured by the grant of a deed of trust encumbering the Recreational Facilities. Notwithstanding anything contained herein to the contrary, Developer and/or the Association shall have the following rights with respect to the Recreational Facilities:

- IV.E.1. Developer shall have the right to use the Recreational Facilities for office or sales purposes, as may be desired by Developer in its sole discretion, so long as Developer owns any portion of the Property or Additional Property; provided that in such event Developer shall pay a reasonable rental to the Association for such use.
- IV.E.2. The Association shall have the right to impose a charge for the use of any of the Recreational Facilities, or any services offered therein, and shall have the right to permit the use of any portion thereof for private, charitable or promotional functions
- IV.E.3. The Association, shall have the right to lease or grant concessions or contract with others to provide programs or services within such Recreational Facilities to the Owners and residents of the Property, and in connection therewith may permit persons residing outside of the Property to attend or use such programs or services.
- IV.E.4. Developer so long as it owns any portion of the Property or Additional Property, and the Association, may permit persons residing outside of the Property to use the Recreational Facilities upon such conditions, and for such fees payable to the Association, as Developer or the Association may determine from time to time in their sole discretion.
- IV.F. **Damage or Destruction.** In the event any improvement (other than landscaping) within any Common Property is damaged or destroyed due to fire, flood, wind, or other casualty or reason, the Association shall restore, repair, replace or rebuild (hereinafter collectively referred to as a "repair") the damaged improvement to the condition the improvement was in immediately prior to such damage or destruction, unless otherwise approved by a 2/3 vote of the Board of Directors. If any landscaping within any Common Property or any other property maintained by the Association is damaged or destroyed, the Association shall only be obligated to make such repairs to the landscaping as is determined by the Board of Directors in its discretion.
- IV.G. **Stormwater Management System.** It is acknowledged the surface water management and drainage system for the Property may be developed as one integrated system, and accordingly shall be deemed a Common Property, and an easement is hereby created over the entire Property for surface water drainage and for the installation and maintenance of the surface water management and drainage system for the Property; provided, however, that such easement shall be subject to improvements constructed within the Property as permitted by controlling governmental authorities from time to time. The surface water management and drainage system of the Property shall be developed, operated, and maintained in conformance with the requirements of any applicable Permits.
- IV.G.1. **Association's Maintenance Obligations.** Except to the extent maintained by any governmental entity and except to the extent hereafter provided, the Association shall maintain the entire surface water management and drainage system for the Property, including but not limited to all lakes and canals, swale areas, retention areas, culverts, pipes, pumps, catch basins, and related appurtenances, and any littoral zones in any lakes or other waterway, whether natural or man-made within the Property or owned by the

Association. Such maintenance shall be performed in conformance with the requirements of any controlling governmental authority.

IV.G.2. **Owners' Maintenance Obligations.** The Owners of Lots adjacent to any part of the stormwater management system shall remove and dispose of trash which may accumulate in the stormwater management system, shall maintain all shoreline vegetation and the grade and contour of all embankments to the water's edge, shall keep the grass, plantings, and other lateral support of the embankments in a clean and safe manner so as to prevent erosion.

IV.G.3. **LIABILITY.** NEITHER DEVELOPER, THE ASSOCIATION, NOR ANY MAINTENANCE ENTITY SHALL HAVE ANY LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY INCURRED BY OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE RETENTION AND DETENTION LAKES AND DRAINAGE EASEMENTS OR ANY PART OF THE STORMWATER MANAGEMENT SYSTEM. EACH OWNER, FOR ITSELF AND ITS GUESTS, TENANTS, OR INVITEES, RELEASES DEVELOPER, AND THE ASSOCIATION, AND ANY MAINTENANCE ENTITY FROM ANY LIABILITY IN CONNECTION WITH SUCH INJURY TO PERSONS OR DAMAGE TO PROPERTY.

NEITHER DEVELOPER, THE ASSOCIATION, ANY MAINTENANCE ENTITY, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, RETENTION AND DETENTION AREA, CANAL, CREEK, MARSH AREA, STREAM OR OTHER WATER BODY WITHIN OR ADJACENT TO THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY IS IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR ENTITY AS REFERENCED HEREIN IN ACCORDANCE WITH THE PERMITS. ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY LAKE ACKNOWLEDGE THAT THE WATER LEVELS ARE SUBJECT TO CHANGE BASED ON HYDROLOGICAL FACTORS. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID AREAS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED TO, OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY RELATED TO ANY CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY THEIR ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT WITHIN THE PROPERTY, ALL OWNERS OR USERS OF

SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR BOTTOMS.

IV.H. **Conservation Areas.**

IV.H.1. **Wetlands and Jurisdictional Land.** This Declaration is subject to the rights of the State of North Carolina and the United States Army Corps of Engineers over portions of the Property which may be considered wetlands, marshes, or jurisdictional lands, and every Owner shall obtain any permit necessary prior to undertaking any dredging, filling, improving, landscaping, or removal of plant life existing on his Lot. Further, in the event berms are constructed within Lots which are contiguous to any jurisdictional lands, the Owners thereof shall not remove or modify the berms without the consent of the applicable governmental entities.

IV.I. **Parcel Areas.** The following provisions shall apply with respect to any Parcel Area, notwithstanding other provisions in this Declaration to the contrary:

IV.I.1. **Use.** Any Parcel Area that is a Common Property shall be held by the Association solely for the use and benefit of the Owners and residents of the Parcels who are intended to be benefited by the Parcel Areas, and the respective guests and invitees.

IV.I.2. **Parcel Expenses.** Any expenses associated with any Parcel Areas are Parcel Expenses, and shall only be assessed to the Owners of the applicable Parcels which are entitled to use or which are benefited by the Parcel Areas.

IV.I.3. **Approval of Action Concerning Parcel Areas.** Where pursuant to this Declaration the Owners are given the right to approve any action concerning any Common Property, any such approval rights with respect to any Parcel Area shall only be approved by the required vote of the Owners of the applicable Parcels served by the Parcel Area, and such action shall not be voted upon by any other Owners.

IV.I.4. **Common Irrigation System.** If a common irrigation system serving any Parcel is installed, the Association shall maintain such common irrigation system as a Parcel Expense. The Association shall also pay for any utility services used in connection with such common irrigation system as a Parcel Expense. Notwithstanding the foregoing, each Owner shall be responsible for the repair and replacement of the sprinkler heads on the Owner's Lot, and each Owner shall be responsible for any damage to any common sprinkler system caused by the Owner or any resident of the Owner's Residence. No Owner shall make any improvement to the Owner's Lot which would affect the common sprinkler system serving the Lot without the written consent of the Approving Party, and each Owner shall be responsible for any alterations, repairs, or replacements to the common irrigation system necessitated by the acts of the Owner or any resident of the Owner's Lot, or their contractors, guests or invitees.

IV.I.5. **Maintenance Easements.** In the case of any Parcel that is improved with of multi-family dwellings such as condominiums or townhomes, all expenses that are common expenses of such Residences (including landscaping) shall be considered to be Parcel Expense. If there is a Parcel Association, it shall be responsible for maintenance, repair and replacement of all such common areas. If there is no Parcel Association, or if the Parcel Association fails to perform its obligations to maintenance, repair and replace any common area improvements (including landscaping) the Association shall have the right, but not the obligation, to perform any maintenance, repair or replacement of common areas for the Parcel (including landscaping), the cost of such maintenance, repair or replacement to be Parcel Expenses. The Association is hereby granted an easement for access to all common areas of such Parcel for the purpose of carrying out its rights under this subsection.

V. UTILITIES

- V.A. **Water System.** The central water system which is to be operated and maintained by the Town provides for water service to the Property and shall be used as the sole source of potable water for all water spigots and outlets located within or on all buildings and improvements located on each Lot. Each Owner shall pay water meter charges established or approved by the supplier thereof, and shall maintain and repair all portions of such water lines located within the boundaries of his Lot. No individual water supply system or well for consumptive purposes shall be permitted on any Lot.
- V.B. **Sewage System.** The central sewage system which is to be operated and maintained by the Town provides for service to the Property and shall be used as the sole sewage system for each Lot. Each Owner shall maintain and repair all portions of such sewer improvements and lines located within the boundaries of his Lot, and shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal services made by the operator thereof. No sewage shall be discharged into the open ground or in to any marsh, lake, pond, park, ravine, drainage ditch, canal or roadway.
- V.C. **Cable Television/Security System.** The Developer or the Association shall have the right, but not the obligation, to enter into a "bulk rate contract" for cable television and/or security system monitoring, and if such contract is entered into, the Association shall pay the contractual charges for all Lots within the Property as a common expense of the Association. If home security monitoring services are provided under contract with the Association, Developer and the Association will have no liability of any kind or nature due to the failure of the company providing such service to detect or react to fire, unauthorized entry or any other security problem in a Residence.

VI. COVENANTS FOR MAINTENANCE ASSESSMENTS

- VI.A. **Annual Assessments.** For each Lot within the Property, each Owner, by acceptance of a deed or other conveyance, agrees to pay Annual Assessments levied by the Association for the improvement, maintenance, and operation of the Common Property, including, without limitation, the management and administration of the Association, and the furnishing of services as set forth in this Declaration and all general activities and expenses of the Association incurred in the administration of duties granted under this Declaration.

As further hereinafter described, the Board of Directors, by majority vote, shall set the Annual Assessments at a level sufficient to meet the Association's obligations for the following year, including any contingencies and reserves it deems necessary or convenient. The Board of Directors shall set the date or dates such Annual Assessments shall become due and may provide for collection of Assessments to be payable annually or in monthly, quarterly or semi-annual installments; provided, however, that upon default in the payment of any one or more installments, the entire balance of such Annual Assessment may be accelerated, at the option of the Board of Directors, and be declared due and payable in full. Reconfigured Lots, for so long as only one single family Residence is located thereon, shall be subject to a single Annual Assessment.

VI.A. **Assessment Value.** For purposes of establishing Annual Assessments, "Assessment Values" shall be established, as follows:

a) Any Lot not designated or planned as a multi-unit or condominium building, which Lot does not yet have constructed thereupon a residence for which a certificate of occupancy has been issued, shall have an Assessment Value of 0.50. Any such Lot shall have an Assessment Value of 1.00 upon the earlier to occur of (i) 1 year after the Lot is conveyed by Developer, or (ii) at the time title to such Lot is conveyed to an Owner who intends to dwell in the Residence or who intends to rent or otherwise permit someone to dwell in the Residence.

b) Any Property designated or planned as a multi-unit or condominium building shall have a Value of 0.10 per Residence to be built therein. Each newly constructed Residence shall have a Assessment Value of 1.00 upon the first to occur of (i) one year after the Property is conveyed by Developer, or (ii) the first conveyance of the Residence by the Developer of a condominium within such Property, or (iii) the first occupancy of the Residence for residential purposes.

c) Notwithstanding the foregoing, if any Owner or purchaser of a Lot or Residence elects to use the Recreational Facilities prior to the completion of the Residence within the Property, thereafter such Owner or purchaser will be required to pay an Annual Assessment based upon an Assessment Value of 1.00 per Lot or Residence.

VI.B. **Parcel Assessments.** In addition to any other Assessments payable by Owners, each Owner shall be responsible for the payment of Parcel Assessments, if applicable, established as set forth herein.

VI.C. **Special Assessments.** In addition to the Annual Assessments, the Association may levy, by majority vote of the Board of Directors, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto. Where any such funds are only required for any Parcel Expenses, the Special Assessments shall only be made against the applicable Parcel(s) as special Parcel Assessments. Special Assessments shall be levied in the same manner as hereinbefore provided for Annual Assessments and shall be payable in one lump sum or as otherwise determined by the Board in its sole discretion and as stated in the notice of any Special Assessment.

- VI.D. **Emergency Assessments.** The Association may also levy an Emergency Assessment at any time by a majority vote of the Board of Directors, for the purpose of defraying, in whole or in part, the cost of any extraordinary or emergency matters that affect all or a portion of the Common Property or Members of the Association, including, after depletion of any applicable reserves, any unexpected expenditures not provided for by the Budget or unanticipated increases in the amounts budgeted. Any Emergency Assessment shall be due and payable at the time and in the manner specified by the Board of Directors.
- VI.E. **Lot Assessments.** In addition to the Annual and Special Assessments authorized above, the Board of Directors, by majority vote, may from time to time levy a Lot Assessment against a particular Lot and the Owner thereof for the purpose of defraying, in whole or in part, the cost of any repair, maintenance or restoration as provided herein; for the construction, reconstruction, repair, or replacement of a capital improvement upon or serving the specific Lot, including any additional special services to such Lot, the cost of which is not included in the Annual Assessment; or to reimburse the Association for any costs it incurs as a result of the Owner's failure to comply with this Declaration or any damage to the Common Property. If the Association levies a fine in the manner set forth hereinafter, such fine shall also be deemed a Lot Assessment enforceable in accordance herewith.
- VI.F. **Commencement of Annual Assessments.** The Annual Assessments provided for herein shall commence with respect to each Lot on the date of conveyance of the Lot to an Owner, other than Developer. The initial Annual Assessment on any Lot subject to Assessment shall be collected at the time title to such Lot is conveyed by Developer. During the initial year of ownership, each Owner shall be responsible for the pro rata share of the Annual Assessment charged to each Lot, prorated from the day of closing to the end of the calendar year on a per diem basis; provided that any builder (an Owner who purchases a Lot for the purposes of building a Residence thereon for resale to an Owner who intends to dwell in the Residence or who intends to rent or otherwise permit someone to dwell in the Residence) who purchases a Lot at a time when there are less than six months left in the calendar year shall, at the discretion of Developer, prepay six months Annual Assessment at the time of acquisition of title from Developer (with an appropriate portion of such prepayment credited against the following year's Annual Assessment).
- VI.G. **Nonpayment of Assessments; Remedies of the Association.**
- VI.G.1. **Creation of Lien.** The Assessment Charge is a charge and continuing lien upon each Lot subject to this Declaration. The lien provided for in this paragraph shall be perfected by the filing of a notice of lien in the public records of the County, in favor of the Association.
- VI.G.2. **Owner's Acceptance.** The Assessment Charge is also the personal obligation of the person or entity which was the Owner of such Lot at the time when the Assessment was levied, and of each subsequent Owner thereof. Each Owner of a Lot, by acceptance of a deed or other transfer document therefor, whether or not it shall be so expressed in such deed or transfer document, is deemed to covenant and agree to pay to the Association the Assessments established or described in this Article. Each Owner, by his

acceptance of title to a Lot, expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such Assessment Charge as a debt and to enforce the aforesaid by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner is deemed to have granted to the Association a power of sale in connection with such lien. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of his Lot or waiver of the use of the Common Property. In the event of a sale or transfer of a Lot, both the new Owner and the prior Owner shall be jointly and severally liable for all Assessments, interest, and other costs and expenses owed to the Association which are attributable to any Lot purchased by or transferred to such new Owner.

VI.G.3. **Late Fees, Interest.** Any Assessments not paid within ten (10) days after the due date shall be subject to a late fee as determined from time to time by the Board of Directors, and may, upon resolution of the Board of Directors, bear interest at a percentage rate determined by such Directors. Moreover, if any check for any Assessment or any other monies owed to the Association is dishonored, the Association shall have the right to charge the applicable Owner or Parcel Association a bad check fee in an amount established by the Association that is permitted under North Carolina law, in addition to any late fees due as set forth above.

VI.G.4. **Remedies.** The Association may bring an action at law against the Owner or Owners personally obligated to pay an Assessment Charge or may foreclose the lien against the Lot upon which the Assessment Charge is made in the manner provided below. The Association also may suspend the voting rights of any Owner, except the Developer, that fails to pay any Annual Assessment within ninety (90) days after becoming due and/or accelerate the Annual Assessments due for the next 12 month period. The Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Lot at such foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

The Owner or Parcel Association shall be liable to the Association for all costs and expenses incurred by the Association incident to the collection of any Assessment or other moneys owed to it, and the enforcement and/or foreclosure of any lien for same, including reasonable attorneys' fees whether or not incurred in legal proceedings, and all sums paid by the Association for taxes and on account of any mortgage lien and encumbrance in order to preserve and protect the Association's lien.

VI.G.5. **No Set-Offs.** No Owner shall have the right to set-off or reduce the Assessment Charge by any claims that such Owner may have or may claim to have against the Association or against Developer or any Parcel Developer.

VI.H. **Subordination of the Lien to Mortgages.** The lien of the Assessment Charge shall be inferior and subordinate to the lien of any Mortgagee, but only to the extent of the Mortgage balance outstanding as of the date the notice of an Assessment Charge was

first recorded against the Lot, plus interest and reasonable costs of collection accruing thereafter. The sale or transfer of any Lot shall not affect the Assessment Charge; however, the sale or transfer of any Lot pursuant to foreclosure of a Mortgage or deed in lieu thereof shall extinguish the lien of an Assessment Charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve the transferee of such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor the Owner responsible for such payments from such Owner's personal liability as provided herein. Mortgagees shall in no event be responsible or liable for the collection of any Assessments. The failure to pay any Assessments shall in no event be deemed to constitute a default under any Mortgage by reason of anything contained in this Declaration, unless otherwise expressly provided in the Mortgage.

VI.I. **Budget.**

VI.I.1. **Fiscal Year.** The fiscal year of the Association shall consist of the twelve (12) month period commencing on January 1 of each year.

VI.I.2. **Preparation and Approval of Annual Budget.** Commencing December 1st of the year in which a Lot is first conveyed to an Owner other than Developer, and on or before December 1 of each year thereafter, the Board of Directors shall adopt a budget for the coming year containing an estimate of the total amount which it considers necessary to pay the cost of all expenses to be incurred by the Association to carry out its responsibilities and obligations, including, without limitation, the cost of wages, materials, insurance premiums, services, supplies, and other expenses for the rendering to the Owners of all services required or permitted hereunder and such other items as provided in the ByLaws. Such budget may also include such reasonable amounts as the Board of Directors considers necessary to provide working capital for the Association, and to provide for a general operating reserve and reserves for contingencies and replacements. The Board of Directors shall send to each Owner a copy of the budget, in a reasonably itemized form which sets forth the amount of the Annual Assessments payable by each Owner, or a written notice that a copy of the budget is available to each Owner upon request with no charge, on or before December 15 preceding the fiscal year to which the budget applies. From time to time during the fiscal year, the Board may modify the budget of the Association for the fiscal year, and pursuant to the revised budget or otherwise, the Board may, upon written notice to the Owners, change the amount, frequency and/or due dates of the Annual Assessments.

VI.I.3. **Amount of Annual Assessment.** Upon establishing the annual budget, the Board shall establish the per Lot Annual Assessment. To calculate the Annual Assessment, the Board shall calculate the Assessment Value for all Lots within the Property as of the commencement of the fiscal year and may consider any Additional Property or Lots anticipated to be added during the fiscal year. The total estimated expenses for the fiscal year shall be divided by the total Assessment Value. The amount of each Owner's Annual Assessment will be determined from time to time by multiplying the total amount to be assessed by a fraction, the numerator of which will be the total Assessment Value assigned to the Owner's Property, and the denominator of which will be the total Assessment Value assigned to all of the Property. The

Annual Assessment may increase each year, but the increase in any year (for any Lot which does not have a change in Assessment Value) may not be more than fifteen percent (15%) above the Annual Assessment for the previous year unless approved by a majority of votes cast, in person or by proxy, at duly constituted meeting of the members of the Association or by written consent.

- VI.I.4. **Reserves.** The Association may, in its discretion, maintain such reserves as it deems reasonable or necessary for (i) working capital, (ii) contingencies, (iii) replacements, and (iv) the performance of such other coordinating or discretionary functions not contrary to the terms of this Declaration which the Board of Directors may from time to time approve. The amount and manner of collection of reserves shall be as determined by the Board of Directors, in its sole discretion. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless approved by a majority of the votes cast, in person or by proxy, at a duly constituted meeting of the Association or by written consent. If the reserves are inadequate for any reason, including nonpayment of any Owner's Assessment, the Board of Directors may, at any time, levy a Special Assessment in accordance with the provisions of this Article, which may be payable in a lump sum or in installments as the Board of Directors may determine. In the event there is a balance of reserves at the end of any fiscal year and the Board of Directors so determines, any excess reserves may be taken into account in establishing the next year's budget and may be applied to defray general expenses incurred thereunder.

During the period of time that the Developer is funding any deficit in the budget, the Developer shall not be required to fund any reserves regardless of whether such reserve amounts are shown in the budget.

- VI.I.5. **Effect of Failure to Prepare or Adopt Budget.** The failure or delay of the Board of Directors to prepare or adopt an annual budget or adjusted budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his Assessments, as herein provided, whenever the same shall be determined. In the absence of any annual Association budget or adjusted budget, each Owner shall continue to pay the Annual Assessment at the then existing rate established for the previous fiscal period, in the manner such payment was previously due, until notified otherwise.

- VI.I.6. **Special Provisions for Parcel Assessments.** If the Association incurs any Parcel Expenses for any Parcel, the Association shall adopt a budget for such Parcel, shall establish a per-Residence Parcel Assessment pursuant to the budget, and shall collect Parcel Assessments from the Owner within the Parcel. All of the provisions of this Declaration relating to the establishment of the Association's budget for common expenses and the establishment and collection of Annual Assessments shall apply to the budget and Parcel Assessments for the Parcel, except as follows or as otherwise provided in any amendment or supplement to this Declaration.

- VI.J. **Assessments on Non-Uniform Basis.** Notwithstanding anything contained herein to the contrary, pursuant to any amendment or supplement to this Declaration made or approved by Developer so long as Developer owns any portion of the Property or any portion of the Additional Property, any portion of the Property may be (i) only liable for a share of certain specified common expenses, or (ii) assessed on a different basis than the other Property, and, in such event, the Owner of such portion of the Property shall only be liable for Annual Assessments in accordance with the provisions of such amendment or supplement.
- VI.K. **Exempt Property.** The following properties subject to this Declaration shall be exempted from the Assessments, Assessment Charges, and liens created herein: (a) all properties dedicated to and accepted by a governmental body, agency or authority; and (b) all Common Property. Moreover, all Lots owned by the Developer shall be exempt from payment of Assessments for so long as Developer funds any deficit in the annual budget. A deficit shall have occurred if in any fiscal year of the Association the expenses of the Association exceed the Assessments plus other income receivable by the Association. Developer shall fund such expenses only as they are actually incurred by the Association during the period that Developer is funding the deficit. Developer's obligation to fund any deficits shall terminate at such time as Developer, in its sole discretion, elects to pay the Assessment for each Lot owned by it which has been subjected to the Declaration, or after Turnover, whichever shall first occur. Developer may, but is not obligated to, assign this exemption right to any entity it may determine, including without limitation any Parcel Developer or any builder owning lots solely for the purpose of constructing Residences intended to be sold to ultimate purchasers. Any such assignment of Developer's exemption shall have no effect on Developer's exemption hereunder. Notwithstanding the foregoing, in the event the Association incurs any expense not ordinarily anticipated in the day-to-day management and operation of the Property, including but not limited to expenses incurred in connection with lawsuits against the Association or in connection with damage to property, or injury or death to any person, which are not covered by insurance proceeds, the liability of Developer for such expenses during the period Developer is funding the deficit shall not exceed the amount that it would be required to pay if it were liable for Annual Assessments as any other Owner, and any excess amounts payable by the Association shall be assessed to the other Owners.
- VI.L. **Parcel Expenses.** Any obligation of a Parcel Developer to fund any Parcel Assessments or any deficits in any Parcel Expenses may be established pursuant to any Parcel Declaration, and in that event the Parcel Declaration shall control over any conflict with the provisions of this Paragraph. In addition, Developer shall not be liable for any Parcel Assessments or Parcel Expenses relating to any Parcel except to the extent Developer is the Parcel Developer of the Parcel or an Owner within the Parcel.
- VI.M. **Parcel Association.** If any Parcel is subject to the jurisdiction of a separate Parcel Association, then at the request of the Parcel Association the Association may agree to include in the Assessments against the Owners within the Parcel any Parcel Assessments and remit such funds to the Parcel Association as same are collected. Furthermore, at the request of the Association, the Parcel Association shall collect all Assessments assessed by the Association against the Owners within the Parcel and remit the Assessments to the Association on or before the date when same are due.

VI.N. **Real Estate Taxes.** In the event the Common Property is taxed separately from the Lots, the Association shall include such taxes as part of the Annual Assessment. In the event the Common Property is taxed as a component of the value of the Lot owned by each Owner, it shall be the obligation of such Owner to promptly pay such taxes prior to their becoming a lien on the Property.

VI.O. **Certificate of Payment.** The Treasurer of the Association, or the management company authorized by the Board of Directors, upon demand of any Owner liable for an Assessment, shall furnish to such Owner a certificate in writing setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge for the services involved in preparing such certificate may be assessed by the Association or management company, as applicable.

VII. ARCHITECTURAL CONTROL

VII.A. **Purpose.** The Approving Party shall have the right to exercise architectural control over all improvements constructed, erected, or placed upon any part of the Property, to assist in making the Property a community of high standards and aesthetic beauty. Such architectural control may include all architectural aspects of any such improvement including, without limitation, size, height, site planning, setbacks, exterior design, materials, colors, open space, landscaping, waterscaping, and aesthetic criteria.

VII.B. Construction Subject to Architectural Control.

VII.B.1. **Approval.** No construction, modification, alteration, or improvement of any nature whatsoever, except for interior alterations not affecting the external structure or appearance of any Residence, shall be undertaken on any Lot, nor shall any application for permit therefor be made, unless and until a plan of such construction, modification, alteration, or improvement shall have been approved in writing by the Approving Party.

VII.B.2. **Improvements Subject to Approval.** Construction, modifications and improvements subject to approval by the Approving Party specifically include, but are not limited to, painting or other alteration of the exterior appearance of a Residence (including doors, windows and roof); installation of antennae, satellite dishes or receivers, solar panels or other devices; construction of docks, fountains, screened enclosures, swimming pools, whirlpools, or other pools; construction of privacy walls or other fences; addition of awnings, signs (whether located on the Lot or in windows of the Residence), gates, flower boxes, shelves, statues, or other outdoor ornamentation, patterned or brightly colored window coverings; alteration of the landscaping or topography of the Property, including, without limitation, any cutting or removal of trees, planting or removal of plants, and creation or alteration of lakes or similar features of the Property; and all other modifications, alterations, or improvements visible from any road or other Lots. All of the foregoing are jointly referred to herein as "Proposed Improvements".

VII.B.3. **Procedures.**

VII.B.3.I. **Application.** The Approving Party shall establish uniform procedures for the review of applications, including the assessment of review costs and fees, if any, to be paid by the applicant, and the requirement of a security deposit, the time and place of meetings, and the posting of a compliance bond to ensure the full and timely compliance by the applicant with the conditions imposed by the Approving Party. Included in any fee that may be charged to any applicant is, if appropriate, the fee of any architect or engineer hired by the Approving Party. The documents, materials and items to be submitted for approval shall include two (2) sets of the following: (i) the construction plans and specifications, if any, including a detailed landscape plan; (ii) an elevation or rendering of all Proposed Improvements, if any, (iii) samples of materials or paint colors and (iv) such other items as the Approving Party may deem appropriate.

VII.B.3.II. **Basis for Decision.** Approval shall be granted or denied by the Approving Party based upon compliance with the provisions of this Declaration, as supplemented and amended from time to time, and any guidelines established pursuant thereto, the quality of workmanship and materials, the harmony of external design with its surroundings, the effect of the construction on the appearance from surrounding Lots, and all other factors, guidelines and standards promulgated from time to time, including purely aesthetic considerations, which, in the sole opinion of the Approving Party, will affect the desirability or suitability of the construction.

In connection with its approval or disapproval of an application, the Approving Party shall evaluate each application for total effect. The evaluation relates to matters of judgment and taste which cannot be reduced to a simple list of measurable criteria. It is possible, therefore, that an application may meet individual criteria and still not receive approval, if in the sole judgment of the Approving Party, its overall aesthetic impact is unacceptable. The approval of an application shall not be construed as creating any obligation on the part of the Approving Party to approve applications involving similar designs for different Lots.

VII.B.3.III. **Notification.** Approval or disapproval of applications to the Approving Party shall be given to the applicant in writing within thirty (30) days of receipt thereof, by the Approving Party. The Approving Party shall indicate its approval by stamping the plans with its seal and the date of approval. If the Approving Party disapproves the requested Proposed Improvement, it shall provide written notice of such disapproval to the Owner. Disapproval by the Approving Party may be appealed to the Board of Directors of the Association, and the determinations of the Board of Directors shall be dispositive. No construction on

any Lot or within the Property shall be commenced, and no Residence shall be modified, except in accordance with such approved plans and specifications.

- VII.B.4. **Architectural Guidelines.** The Board of Directors and the Approving Party may, from time to time, adopt and amend Architectural Guidelines; provided, however, that same shall not apply to any previously existing and approved improvements.
- VII.B.5. **Construction by Licensed Contractor.** If a building permit is required for any improvement made by any Owner or Parcel Association, then the improvement must be installed or constructed by a licensed contractor unless otherwise approved by the Approving Party, and in any event must be constructed in a good and workmanlike manner.
- VII.B.6. **Enforcement.** The Board of Directors shall have the authority and standing on behalf of the Association to enforce, in courts of competent jurisdiction, the decisions of the Approving Party. Without limiting the foregoing, the landscaping of the Lot shall be completed in accordance with the landscaping plan prior to the initial occupancy of the Residence or in the case of a Proposed Improvement, which require additional landscaping, the landscaping must be completed within thirty (30) days from completion of the Proposed Improvement. In the event that the landscaping is not completed as provided herein, the Association or the Developer shall have the right to enter upon the Lot and complete the landscaping in accordance with the approved plans, in the same manner as exterior maintenance may be performed by the Association or Developer in accordance with the terms hereof.
- VII.B.7. **Remedy for Violations.** In the event any Proposed Improvement is constructed without first obtaining the approval of the Approving Party or is not constructed in strict compliance with any approval given or deemed given by the Approving Party or the provisions of this Article are otherwise violated, the Approving Party shall have the specific right to injunctive relief to require the Owner to stop, remove, and alter any improvements in order to comply with the requirements hereof, or the Approving Party may pursue any other remedy available to it, including without limitation, the right to assess a fine. In connection with this enforcement paragraph, the Approving Party shall have the right to enter into any Lot or Residence and make any inspection necessary to determine compliance with the provisions of this Declaration. The failure of the Approving Party to object to any Proposed Improvement prior to its completion shall not constitute a waiver of the Approving Party's right to enforce this Article. The foregoing rights shall be in addition to any other remedy set forth herein for violations of this Declaration.
- VII.B.8. **Variances.** The Approving Party may authorize a variance from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardships, or aesthetic or environmental consideration require the same. A variance shall be evidenced by a document signed by the Approving Party. If such a

variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions this Declaration for any purpose except as to the particular Lot and the particular provisions of this Declaration covered by the variance, nor shall it affect in any way the Owners' obligation to comply with all governmental laws and regulations, including, but not limited to, zoning ordinances and set back lines or requirements imposed by any governmental or municipal authority.

- VII.B.9. **Reservation of Right to Release Restrictions.** In each instance where a structure has been erected, or construction thereof has substantially advanced, in such a manner that some portion of the structure encroaches on any Lot line, setback line, or easement area, Developer reserves the right to release such Lot from the encroachment and to grant a variance to permit the encroachment without the consent or joinder of any person, irrespective of who owns the burdened Lot or easement areas, so long as Developer, in the exercise of its sole discretion, determines that the release or a variance will not materially or adversely affect the value of the adjacent Lot and the overall appearance of the Property. This reserved right shall automatically pass to the Association when Developer no longer owns any portion of the Property. Upon granting of an exception to an Owner, the exception shall be binding upon all subsequent Owners of the affected Lots. Any such grant shall also be subject to any requirements of governmental entities.
- VII.B.10. **No Liability.** Notwithstanding anything contained herein to the contrary, the Approving Party shall merely have the right, but not the obligation, to exercise architectural control, and shall not be liable to any Owner, its successors, assigns, personal representatives, or heirs, due to the exercise or non-exercise of such control or the approval or disapproval of any Proposed Improvement. Furthermore, the approval of any plans and specifications or any Proposed Improvements shall not be deemed to be a determination or warranty that such plans and specifications or Proposed Improvements are complete, do not contain defects, or in fact meet any standards, guidelines, or criteria of the Approving Party, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and neither the Approving Party, the Association, nor Developer shall be liable for any defect or deficiency in such plans and specifications or Proposed Improvements, or any injury to persons or property resulting therefrom.
- VII.B.11. **Effect of Parcel Association.** If a Parcel Association is also granted the right to exercise architectural or similar control pursuant to a recorded Declaration with respect to any portion of the Property, then any Owner seeking architectural approval from the Approving Party shall first be required to obtain such approval in writing from the Parcel Association; however, no approval given by any Parcel Association shall be binding upon the Approving Party.
- VII.B.12. **Approval by Parcel Developer.** So long as a Parcel Developer of any Parcel owns any Property within the Parcel, the Parcel Developer shall also have the

right to approve any improvement pursuant to the provisions of this Article, and the Approving Party shall not approve any improvement until such Parcel Developer has approved same in writing.

VII.B.13. **Committee.** Notwithstanding anything contained herein to the contrary, the Approving Party may assign any right to exercise architectural control or approve any other matter which may be approved by the Approving Party to a committee or committees. Separate committees may be established for each Parcel, and the committee for any Parcel may be assigned the right to exercise architectural control or approve any other matter which may be approved by the Approving Party and which relate to the Parcel. Such assignment to a Parcel committee may provide that after the Parcel committee has approved any matter, such matter must be further approved by the Approving Party or a master committee.

VIII. PROTECTIVE COVENANTS

In order to keep the Property a desirable place to live for all Owners, the following protective covenants are made a part of the Declaration. The Owner of any Property shall be responsible for complying with all of the provisions of this Section with respect to such Property. Each Parcel Association shall be responsible for complying with all provisions of this Section with respect to all of the Property which is subject to the jurisdiction of the Parcel Association, notwithstanding the fact that the Owner of any portion of the Property may also be responsible for such compliance with respect to the Property owned by such Owner. Without limiting any of the provisions or requirements hereof, the specific references to the Approving Party approval set forth in this paragraph or elsewhere in the Declaration shall not be construed as a limitation on the requirements of Article VII of the Declaration or in any Supplemental Declaration. The Association reserves the right to waive any of the protective covenants as set forth herein as deemed necessary or reasonable by the Association.

- VIII.A. **Access.** Owners shall allow the Board of Directors or the agents and employees of the Association to enter any Lot for the purpose of maintenance, inspection, repair, replacement of the improvements within the Lot, or in case of emergency, for any lawful purpose, or to determine compliance with this Declaration.
- VIII.B. **Air Conditioning Residences.** Only central air conditioning Residences are permitted without the prior written consent of the Approving Party.
- VIII.C. **Basketball Backboards.** Only professionally manufactured basketball backboards are permitted, which must be installed on black poles, with a white or clear backboard, and must be approved by the Approving Party. No garage or roof mounted basketball backboards are permitted.
- VIII.D. **Beaches/Lake Banks.** No Owner shall create any beach or sandy area contiguous to any lake or canal within the Subject Property without the approval of the Approving Party and any controlling governmental authorities, and all lake banks shall be sodded after the development of the Property adjacent thereto is completed, unless otherwise approved by the Approving Party.
- VIII.E. **Boat Docks.** No boat docks or boat launching facilities shall be permitted other than those located within any recreational areas within the Common Property.

- VIII.F. **Clothes Lines and Outside Clothes Drying.** No outdoor clothes drying shall be permitted.
- VIII.G. **Common Property and Parcel Areas.** Nothing shall be stored, constructed, placed within, or removed from any Common Property or any Parcel Area by any Owner other than Developer or a Parcel Developer, unless approved by the Approving Party.
- VIII.H. **Fences and Walls.** Fences and walls shall not be permitted in the front of any Residences. No fence or wall shall be installed without the consent of the Approving Party as to the location, height, type, and materials of the fence or wall. In approving any fence or wall, the Approving Party may give due consideration to such matters as easements, drainage, berms, or other physical characteristics of the applicable Lot or Property, and the effect of the fence or wall on the surrounding community. All fences and walls must be maintained in good condition at all times.
- VIII.I. **Firearms.** The use or discharge of firearms, including but not limited to BB guns and pellet guns, is prohibited.
- VIII.J. **Garages.** No garage shall be permanently enclosed, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage area, without the prior written consent of the Approving Party. All garage doors shall remain closed when not in use. If any garage is enclosed, the garage door shall not be removed and the enclosure shall be performed in a manner such that from the outside of the Residence it appears the Residence still contains a garage.
- VIII.K. **Garbage and Trash Containers.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste must be kept in sanitary containers and placed in trash enclosures and further disposed of in accordance with the applicable rules of the County in its collection procedures.
- VIII.L. **Garbage Containers, Oil and Gas Tanks, Air Conditioners.** All garbage and refuse containers, air conditioning Residences, oil tanks, bottled gas tanks, and all permanently affixed swimming pool equipment and housing shall be underground or placed in walled-in or landscaped areas, and shall be appropriately landscaped, as approved by the Approving Party so that they will be substantially concealed or hidden from any eye-level view from any street or adjacent Property.
- VIII.M. **Hazardous Materials.** No hazardous or toxic materials or pollutants shall be discharged, maintained, stored, released or disposed of in or under the Property, except in strict compliance with applicable rules and regulations. Flammable, combustible or explosive fluids, materials or substances for ordinary household use may be stored or used on the Property, subject to strict safety codes and shall be stored in containers specifically designed for such purposes.
- VIII.N. **Insurance.** Nothing shall be done or kept in any Residence, Lot, or in the Common Property which will increase the rate of insurance for the Property or any other Lot, or the contents thereof, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Residence, on his Lot, or in the Common Property which will result in the cancellation of insurance on the Property or any other Lot, or the contents thereof, or which would be in violation of any law.

- VIII.O. **Lakes.** No swimming or motor boating will be allowed in any lake.
- VIII.P. **Landscaping.** All Property containing a Residence, or owned in conjunction with the Ownership of a Residence or owned and/or operated by a Parcel Association, shall be tastefully landscaped in accordance with any criteria established by the Approving Party, to the waterline of any abutting lake and to the pavement edge of any abutting road or parking area. Lawns shall be primarily grass, and shall not be paved or covered with gravel, artificial turf or other covering unless permitted by the Approving Party. All diseased or dead sod, plants, shrubs or flowers shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be removed. All landscaping shall be regularly maintained in first-class condition and appearance, including mowing, trimming, fertilization, irrigation, and weed, insect and disease control.
- VIII.Q. **Lot Resubdivision.** No Lot shall be further subdivided, replatted, or separated into smaller Lots by any Owner without the prior written consent of the Approving Party. Provided however, this restriction shall not prohibit corrective deeds or similar corrective instruments. Developer or a Parcel Developer shall have the right to reconfigure Lots or modify subdivision plats of the Property if Developer or such Parcel Developer owns all the Lots within the legal description of the Property to be subjected to the replat, or if all Owners of Lots which are included within the portion of the plat so modified consent to such modification, which consent shall not be unreasonably withheld or delayed. Further, Developer may resubdivide Lots to be used for streets.
- VIII.R. **Maintenance.** All Residences, buildings and other improvements existing under, upon or over any Property from time to time shall at all times be maintained in accordance with all applicable governmental requirements, in first class condition and good working order, and in a neat and attractive manner. Exterior maintenance, including painting, shall be periodically performed as reasonably required. Paint colors shall not be materially changed without the consent of the Approving Party, and all paint colors shall be harmonious with other improvements within the Subject Property. No excessive and/or unsightly mildew, rust deposits, dirt, or deterioration shall be permitted to accumulate on any building or improvement. All sidewalks, roads, streets, driveways, parking areas, and other paved or hard-surfaced areas intended for use by vehicular or pedestrian traffic shall be cleaned and kept free of debris; and cracks, damaged and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary. All curbing and bumper stops shall be repaired or replaced if damaged. All striping, including but not limited to, parking space, traffic lane and directional markings, within any road, street, or parking area, shall be repainted as necessary, so that same will be clearly visible at all times.
- VIII.S. **Motor Vehicles and Parking.** Except as specifically set forth in paragraph VIII.H, no vehicles, except four wheeled passenger automobiles or standard sized pick up trucks not exceeding one-ton capacity, with no lettering or signage thereon, shall be placed, parked or stored upon any Lot, unless totally contained within a garage or appropriately screened from view of the neighboring Owners and from the street or unless being utilized in the construction of a Residence on the Lot. The sufficiency of such screening shall be determined solely in the discretion of the Approving Party. No maintenance or repair of the type of vehicles permitted hereunder, which necessitates putting the vehicle on blocks or otherwise extends for a period of greater than three daylight hours may be performed upon any such vehicle on any Lot unless with the

written approval of the Approving Party, except within a garage, totally isolated from public view.

- VIII.T. **Nuisances; Other Improper Use.** No nuisance shall be permitted to exist on any Lot or Common Property so as to be detrimental to any other Lot in the vicinity thereof or its occupants, or to the Common Property. Any activity on a Lot which interferes with television, cable, or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. No immoral, offensive, or unlawful use shall be made of the Property or any part thereof. All laws, zoning ordinances, orders, rules, regulations, and requirements of any governmental agency having jurisdiction relating to any portion of the Property shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property. No waste will be committed upon the Common Property. Owners hereby acknowledge that construction activity on or about the Property during daylight hours shall not be deemed to be a nuisance. The determination of the Board of Directors as to what may be or become a nuisance shall be conclusive.
- VIII.U. **Offstreet Motor Vehicles.** No motorized vehicles including, without limitation, two, three and four wheel all terrain vehicles or "dirt bikes" may be operated off of paved roadways and drives except as specifically approved in writing by the Approving Party or if utilized for the purpose of maintenance, construction, security or other similar purposes.
- VIII.V. **Oil and Mining Operations.** No oil drilling, oil development, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or on the Property.
- VIII.W. **Open Space.** All open space within the Property as required by the Town or any other applicable governmental authority shall be preserved and maintained as open space, and the development thereof shall be restricted to open space purposes, in accordance with the requirements of the Town or any other applicable governmental authority, unless otherwise permitted by the Town or any other applicable governmental authority. With the exception of lawns owned solely by a the Owner of a Lot, all other open space areas will be preserved or maintained by the Owner thereof, a Parcel Association, or the Association so that its use and enjoyment as open space will not be diminished or destroyed, except as permitted by the Town or any other applicable governmental authority.
- VIII.X. **Outside Antennas.** No outside antennas or signal-receiving or sending dishes or devices are permitted which are visible from the exterior of a Residence without the prior written consent of the Approving Party, except for digital satellite dishes not exceeding 18" in diameter which are located in the rear of the home on the Lot and not visible from adjoining streets or Lots.
- VIII.Y. **Outside Storage of Personal Property.** The personal Property of any resident of the Property shall be kept inside the resident's Residence or a fenced or a walled-in yard, except for tasteful patio furniture and accessories, Bar-B-Q grills, playground equipment approved by the Approving Party, and other personal Property commonly

kept outside, which must be kept in the rear of the Lot and must be neat appearing and in good condition.

- VIII.Z. **Personal Services.** The employees of the Association shall not be required to attend to any personal matters or business of Owners, nor shall they be permitted to leave the Property on any private business of Owners. The uses and functions of such employees shall be governed by the Board of Directors. In the event personal services are provided to Owners by any employees of the Association, the Association will not assume any responsibility or be liable for, in any manner, the quality of such services or work provided, nor shall it warrant such services or work. In addition, the Association shall not be liable for any injury to persons or damage to property resulting from any act or omission by those performing such personal work or services for Owners.
- VIII.AA. **Pets.** No animals, livestock, or poultry shall be raised, bred, or kept anywhere within the Property, except that not more than three dogs, cats, or caged birds (or any combination thereof), not exceeding three animals, may be kept by an Owner or occupant of a Lot, but only if such permitted pets do not constitute a nuisance on the Property. Pitbull terriers are permitted only with prior written approval of the Association, which approval may be withheld in its sole discretion. All pets must be held or kept leashed or otherwise appropriately restrained at all times they are on the Common Property, and all Owners of pets shall be held strictly responsible to immediately collect and properly dispose of the wastes and litter of their pets. The Association reserves the right to designate specific areas within the Common Property where pets may be walked on leashes by their Owners. The Association further reserves the right to demand that an Owner permanently remove from the Property all pets which create disturbances or annoyances that constitute nuisances, in the sole determination of the Board of Directors. The decision of the Board of Directors in such matters is conclusive and shall be enforced by the Association.
- VIII.BB. **Recreational Vehicles.** No travel trailer, mobile home, boat, tent, storage building, garage, barn or outbuilding shall be, at any time, used as a residence temporarily, or permanently; provided, however, that recreational vehicles such as travel trailers, mobile homes, motor homes, tents, trailers, boats, etc., not exceeding eight feet (8') in height and twenty-five feet (25') in length, may be stored on a Lot at the rear of the Residence situated thereon upon the following conditions:
- i. All such vehicles shall bear current registration or inspection tag.
 - ii. No such vehicle shall be permitted anywhere within the yard of any Lot which is adjacent to a lake.
 - iii. All such vehicles must be screened from view, and all screening material shall be subject to review and approval by the Approving Party.
- VIII.CC. **Residential Use.** Each Lot shall be used, improved and devoted exclusively to single family residential use, and for no commercial purpose. No time share ownership of Lots shall be permitted without Developer's approval. Nothing herein shall be deemed to prevent any Owner from leasing a Residence, subject to all of the provisions of the Declaration, Articles, and Bylaws, nor to prevent Developer from converting the use of a platted Lot to a road for ingress and egress from an adjacent Lot or land. The foregoing restriction shall not operate to prevent Developer or its designees from using one or more Residences as model homes or sales centers during the development and

sale of the Property. No other business or commercial use may be made of any part of the Property. Provided, however, an occupant of a Residence who maintains a personal or professional library, keeps personal or professional books or accounts, conducts personal business (provided that such use does not involve customers, clients, employees, licenses or invitees regularly visiting the Residence), or makes professional telephone calls or correspondence in or from a Residence is engaging in a residential use and shall not be deemed to be in violation of this paragraph by reason thereof.

- VIII.DD. **Signs.** No sign of any kind shall be displayed to public view on any Lot except one sign of not more than two (2) square feet advertising such Lot for sale or rent. The foregoing restriction shall not apply to the Developer or any designee of the Developer during the period of time that the Developer or its designees are constructing improvements or marketing within the Community.
- VIII.EE. **Solar Collectors.** Solar collectors are permitted, provided that the Approving Party shall have the right to approve the specific location where solar collectors may be installed on a roof with an orientation to the south or within 45 degrees east or west of due south, provided that such determination does not impair the effective operation of the solar collectors.
- VIII.FF. **Soliciting.** No soliciting will be allowed at any time within the Property.
- VIII.GG. **Swimming Pools.** No above-ground swimming pools, spas, or the like, shall be installed without the consent of the Approving Party.
- VIII.HH. **Temporary Structures.** Unless first approved in writing by the Approving Party, no structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, except that the Developer or its designees, may install sales trailers or other approved temporary structures on a Lot for use as a sales office or construction office during any development within the Community.
- VIII.II. **Tree Preservation.** No trees measuring four inches (4") or more in diameter at a point which is three feet (3') above ground level may be removed without the written approval of the Developer, unless located within ten feet (10') of the Residence or accessory building or within ten feet (10') of the approved site for such building. No tree shall be removed from any Lot without the consent of the Developer until the Owner shall be ready to commence construction, except Lot clearing contracted for by Developer or a builder. Developer may designate the right to approve tree removal to the Association at any time. Unless sooner designated, Developer's authority to approve tree removal shall automatically vest in the Association at such time as Developer no longer owns any portion of the Property.
- VIII.JJ. **Utility Lines and Services.** All utility lines and services shall be maintained in good working condition.
- VIII.KK. **Visibility at Street Intersections.** No hedge, shrub, or planting which obstructs the site lines and elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and the line connecting them at points twenty five feet (25') from the intersection of the street lines or in the case of a rounded property corner from the

intersection of the street lines as extended. The same site line limitation shall apply to any Lot within ten feet (10') from an intersection of street property lines with the edge of a driveway or alley pavement. No tree shall be permitted to remain within the above described limits of the intersections unless the foliage line is maintained at or above six feet (6') above the roadway intersection elevation to prevent the obstruction of sight lines.

- VIII.LL. **Window Treatments**. Window treatments shall consist of drapery, blinds, shutters, decorative panels, or other tasteful window covering, of the type customarily found in single family homes, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding 2 weeks after an Owner or tenant first moves into a Residence or when permanent window treatments are being cleaned or repaired.

The foregoing restrictions shall not apply to Developer, and nothing contained herein shall preclude Developer (or any builder with Developer's consent) from maintaining any construction trailer, signs, model homes, sales centers or such other structure or activity that Developer deems necessary for the development, sale or construction of any portion of the Property.

IX. INSURANCE

The Association shall purchase insurance as a common expense, as follows:

- IX.A. Hazard Insurance protecting against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard all-risk endorsement, covering 100% of the current replacement cost of all Common Property and property owned by the Association, excluding land foundations, excavations and other items normally excluded from insurance coverage, or such reduced coverage as is approved by the Board. The Association shall not use hazard insurance proceeds for any purpose other than repair, replacement or reconstruction of any damaged or destroyed property, until such repair, replacement or reconstruction is completed, without the approval of a 2/3 vote of the Owners.
- IX.B. Comprehensive General Liability Insurance protecting the Association from claims for bodily injury, death or property damage providing for coverage of at least \$1,000,000.00 for any single occurrence. Notwithstanding the foregoing, if the Board determines that it is impossible or unduly expensive to obtain \$1,000,000.00 of general liability insurance, then the Board may, upon a unanimous vote of the directors, obtain a lower amount of general liability insurance.
- IX.C. Blanket Fidelity Bonds for anyone who handles or is responsible for funds held or administered by the Association, covering the maximum funds that will be in the custody or control of the Association or any managing agent, which coverage shall be at least the sum of three (3) months Assessments on all Residences plus reserve funds.
- IX.D. Such other insurance as may be desired by the Association, such as flood insurance, errors and omissions insurance, workman's compensation insurance, or any other insurance.

- IX.E. All insurance purchased by the Association must include a provision requiring at least ten (10) days written notice to the Association before the insurance can be canceled or the coverage reduced for any reason.
- IX.F. Any deductible or exclusion under the policies shall be an expense of the Association and shall not exceed \$2,500.00 or such other sum as is approved by a majority of the Board.
- IX.G. Upon request, each Mortgagee shall have the right to receive a copy or certificate of the insurance purchased by the Association and shall have the right to require at least ten (10) days written notice to the Mortgagee before any insurance can be canceled or the coverage reduced for any reason. Each Mortgagee shall have the right upon notice to the Association to review and approve, which approval shall not be unreasonably withheld, the form, content, issuer, coverage and deductibles of all insurance purchased by the Association, and to require the Association to purchase insurance complying with the reasonable and customary requirements of the Mortgagee. In the event of a conflict between the Mortgagees, the requirements of the Mortgagee holding mortgages encumbering Residences which secure the largest aggregate indebtedness shall control.

X. ASSOCIATION LIABILITY

- X.A. **Disclaimer of Liability.** Notwithstanding anything contained in this Declaration, in the Articles or Bylaws, or in any other document governing or binding the Association (collectively, "Association Documents"), neither Developer nor the Association shall be liable or responsible for, or shall be deemed in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant, or user of any portion of the Property, including, without limitation, Owners, occupants, tenants, and their families, guests, invitees, agents, servants, contractors or subcontractors, nor for any property of such persons.
- X.B. **Specific Provisions.** Without limiting the generality of the foregoing:
- X.B.1. It is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern and regulate the use of the Property have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof.
- X.B.2. Neither Developer nor the Association is empowered, nor have they have been created, to act as an entity which enforces or insures compliance with the laws of the United States of America, the State of North Carolina, the County, the Town, or any other jurisdiction, or prevents tortious or criminal activities.
- X.B.3. The provisions of the Association Documents setting forth the uses of Assessments which may relate to health, safety, or welfare shall be attributed and implied only as limitations on the usage of such funds, and not as creating an obligation of the Association or Developer to protect the health, safety or welfare of any persons.

- X.C. **Owner Covenant.** Each Owner, for himself and his heirs, legal representatives, successors and assigns (by virtue of his acceptance of title of his Lot), and every other person or entity having an interest in or a lien upon, or making use of, any portion of the Property (by virtue of accepting such interest or lien or making use thereof), shall be bound by this Article and shall be deemed to automatically waive all rights, claims, demands, and causes of action against the Association or Developer arising from or connected with any act or omission for which the liability of the Association or Developer has been described in this Article.

XI. PROPERTY SUBJECT TO THIS DECLARATION AND ANNEXATIONS THERETO

- XI.A. **Existing Property.** The Property as defined in Article I hereof is the land which is initially subject to this Declaration.
- XI.B. **Annexation.** Developer shall have the right, but not the obligation, from time to time and within its sole discretion, without the consent of any Owner or Mortgagee, to annex to the Property all or any portion of the Additional Property or other parcels now or hereafter acquired by it, as well as parcels of land owned by others, with their consent and joinder. Annexation of Additional Property by the Developer requires the approval of HUD/VA for so long as Developer is in control of the Board.
- XI.C. **Supplemental Declaration.** Any such additions shall be made by the filing of record of one or more Supplemental Declarations with respect to the portion of the lands to be annexed. A Supplemental Declaration may contain any additions to or modifications of the provisions hereof applicable to the property to be annexed as may be necessary, in Developer's judgment, to reflect the different character, if any, of such land that is the subject of the Supplemental Declaration, including, without limitation, any differences in the method or level of Assessments to be levied upon such property, taking into account the different nature or amount of services to be rendered to its Owners by the Association. A Supplemental Declaration shall become effective upon being recorded in the public records of the County.
- XI.D. **Effect of Annexation.** In the event that any portion of the Additional Property is annexed to the Property pursuant to the provisions of this Article XI, upon recording of the Supplemental Declaration, such Additional Property shall be considered within the definition of the term "Property" for all purposes of this Declaration. Provided further, until any land is subjected to the terms of this Declaration by recording a Supplemental Declaration all such land may be conveyed, transferred, held, occupied and mortgaged free and clear of the terms and conditions hereof.
- XI.E. **Withdrawal of Property.** At any time Developer may determine in its sole discretion to withdraw any portion of the Property owned by it from the terms and conditions of this Declaration by recording a Declaration of Withdrawal, executed by the Developer and no further consent of any Owners or Mortgagees shall be required.

XII. DEVELOPMENT APPROVALS

- XII.A. **In General.** The Community is a development within the Town limits in the County intended to be developed in phases in accordance with the permits and approvals issued

by the City, County and government agencies ("Development Approvals") which govern its overall development.

- XII.B. **Scope and Effect.** No portion of the Property shall be used for any purpose or in any manner inconsistent with the Development Approvals. Any violation of the Development Approvals shall be a violation hereof, and the Developer shall have the right to enforce the provisions hereof regarding the Development Approvals against any person in violation thereof.
- XII.C. **Dedication of Lands.** The Developer hereby reserves the right to dedicate or cause the Association to dedicate any portion of the Property to an appropriate governmental or quasi-governmental agency for such purposes as may be provided by the Development Approvals. That notwithstanding, the provisions of this Article are not intended to require, declare, dedicate or cause the Association to dedicate any portion of the Property to any governmental or quasi-governmental agency, except as the Developer deems appropriate.
- XII.D. **Changes to Development Approvals.** Developer reserves the absolute right, power and authority to amend the Development Approvals in any manner and for any purpose Developer deems appropriate for the development of the Property or the Additional Property. Further, no other person shall have the right to amend the Development Approvals without the prior written consent of the Developer.
- XII.E. **Responsibilities Under the Development Approvals.** Developer hereby reserves the right to the extent permitted by the Development Approvals to delegate or to contract concerning any or all of its responsibilities thereunder, including without limitation, maintenance of Common Property and monitoring of environmental or other conditions to or with the Association or any other person, exclusively or non-exclusively, and on a permanent or temporary basis, which delegation may be subject to such terms and conditions as may be acceptable to Developer. Developer shall have the right, at any time, to terminate such delegation and perform such functions itself or delegate the same to another person. The Association, or any other person having responsibilities regarding any portion of the Property which arise directly under the Development Approvals by delegation from another person having such responsibilities shall cooperate fully with each other and all persons having responsibilities under the Development Approvals to ensure such responsibilities are carried out to the full extent required thereunder. Further, Developer and the Association shall have the right, but not the obligation, to perform any functions required of any person by delegation or directly under the Development Approvals upon such person's failure to properly perform such functions.

XIII. ENFORCEMENT OF NON-MONETARY COVENANTS

- XIII.A. **Enforcement Options.** In the event of a violation by any Owner or any tenant of an Owner, or any person residing with them, or their guests or invitees, or by any Parcel Association (other than the nonpayment of any Assessment or other moneys) of any of the provisions of this Declaration, or of the Articles or Bylaws, the Association shall notify the Owner (and where applicable any tenant of the Owner) or Parcel Association of the violation, by written notice. If (i) such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or (ii) the violation is not capable of being cured within such seven (7) day period and the Owner

or tenant, or Parcel Association, fails to commence and diligently proceed to completely cure as soon as practicable such violation within seven (7) days after written notice by the Association, then the Association may, at its option:

XIII.A.1. Fine the Owner or tenant, or Parcel Association, as provided below and/or suspend, for a reasonable period of time, the rights of the Owner and anyone residing in the Owner's Residence, and their guests, and invitees, to use the Common Property (but such suspension shall not impair the right of an Owner or tenant to have vehicular and pedestrian access to and from the Owner's Residence); and/or

XIII.A.2. Commence an action to enforce the performance on the part of the Owner or Parcel Association, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

XIII.A.3. Commence an action to recover damages; and/or

XIII.A.4. Take any and all action reasonably necessary to correct such failure, which action may include, but is not limited to, removing any building or improvement for which architectural approval has not been obtained, or performing any maintenance required to be performed by this Declaration; and/or

XIII.A.5. Record a "notice of violation" in the public records of the county in which the Property is located, which shall describe the legal description of the applicable Property owned by the Owner, the Owner's name, and the nature of the violation, and shall be signed by an officer or agent of the Association. If recorded, such notice of violation shall be released when the violation is cured and the applicable Owner pays any costs or expenses due to the Association in connection with the violation and the recording of the notice of violation.

XIII.B. **Expenses.** All expenses incurred by the Association in connection with the enforcement of this Declaration action against any Owner or Parcel Association, including reasonable attorneys' fees whether or not incurred in legal proceedings, shall be assessed against the applicable Owner or Parcel Association, and shall be due upon written demand by the Association. The Association shall have a lien for any such Assessment and any interest, costs or expenses associated therewith, including attorneys' fees incurred in connection with such Assessment, and may take such action to collect such Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided above. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of the County in which the Property is located.

XIII.C. **Fines and Suspensions.**

XIII.C.1. The amount of any fine shall not exceed any amount as is permitted by law. Notwithstanding the foregoing, if any violation of this Declaration or the Rules and Regulations is of a continuing nature, and if the Parcel Association, Owner or tenant fails to cure any continuing violation within 30 days after written notice of such violation, or if such violation is not capable

of being cured within such 30 day period, if the Parcel Association, Owner or tenant fails to commence action reasonably necessary to cure the violation within such 30 day period or shall thereafter fail to diligently proceed to cure the violation as soon as is reasonably practical, in addition to the initial fine a daily fine may be imposed until the violation is cured in an amount not to exceed \$10.00 per day, to the extent not prohibited by law.

XIII.C.2. Prior to imposing any suspension or fine, the Parcel Association, Owner or tenant shall be given written notice of the fact that the Association is considering the imposition of the suspension or fine, including (i) a statement of the provisions of the Declaration, Bylaws or Rules and Regulations which have allegedly been violated, (ii) the proposed length of the suspension or amount of the fine, and (iii) the right of the Parcel Association, Owner or tenant to request a hearing by written request to the Association within 14 days after the Association's notice. If the Parcel Association, Owner or tenant desires a hearing, they must so notify the Association in writing within 14 days after the Association's notice, and in that event a hearing shall be held in accordance with applicable law upon not less than 14 days written notice to the Parcel Association, Owner or tenant. At the hearing, the Parcel Association, Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and the suspension or fine previously imposed may be approved, disapproved or modified. If the Parcel Association, Owner or tenant fails to timely request a hearing, or fails to attend the hearing, the proposed fine or suspension set forth in the Association's notice shall be deemed imposed.

XIII.C.3. Any fine imposed shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after the decision at the hearing. Any fine levied against an Owner shall be deemed a Lot Assessment, and if not paid when due all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable.

XIII.C.4. The Board may, and to the extent required by law shall, delegate the right to impose suspension or fines, set the amount thereof, and/or conduct hearings pursuant to this paragraph, to a committee of the Association.

XIII.C.5. Notwithstanding the foregoing, the Association shall not have the right to impose any fine against Developer, and Parcel Developer, or any other builder or Developer of any portion of the Property.

XIII.D. **Negligence.** An Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a LOT or Residence, or the Common Property.

XIII.E. **Responsibility of an Owner for Occupants, Tenants, Guests, and Invitees.** Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Residence, and for all guests and invitees of the Owner or

any such resident. Any violation of any of the provisions of this Declaration, of the Articles, or the Bylaws, by any resident of any Residence, or any guest or invitee of an Owner or any resident of a Residence, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

XIII.F. **Right of Association to Evict Tenants, Occupants, Guests and Invitees.** With respect to any tenant or any person present in any Residence or any portion of the Property, other than an Owner and the members of his immediate family permanently residing with him in the Residence, if such person shall materially violate any provision of this Declaration, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of the Property, or shall willfully damage or destroy any Common Property or personal property of the Association, then upon written notice by the Association such person shall be required to immediately leave the Property, and, if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

XIII.G. **No Waiver.** The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the ARTICLES, or the BYLAWS, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

XIV. AMENDMENT OF DECLARATION

This Declaration may be amended at any time by an instrument signed by the President or Vice President and the Secretary or Assistant Secretary of the Association, certifying that such amendment has been approved by at least two thirds (2/3rds) of the Members present in person or by proxy at a duly constituted meeting of the Association or by written consent. The amendment shall become effective upon its filing in the public records of the County. Provided, however, that:

XIV.A. Until Turnover, any amendments to this Declaration (including, without limitation, any amendment which results in the annexation of additional lands into the Property, the merger or consolidation of the Association with any other property owners association, the dedication of any part of the Common Property for public use, and the conveyance, mortgaging, or encumbrance of any part of the Common Property) must have prior written approval of the FHA or VA in accordance with HUD regulations, if the FHA or VA is the insurer of any Mortgage encumbering a Lot.

XIV.B. The Board specifically reserves the absolute and unconditional right (subject only to FHA or VA approval as set forth above, if required), to amend this Declaration without the consent or joinder of any party: (i) to conform to the requirements of any holder of a Mortgage; (ii) to conform to the requirements of title insurance companies; (iii) to conform to the requirements of any governmental entity having control or jurisdiction over the Property; (iv) to clarify the provisions of this Declaration; or (v) prior to Turnover, in such other manner as Developer may deem necessary or convenient.

XV. RIGHTS OF MORTGAGEES

All Mortgagees shall have the following rights:

- XV.A. During normal business hours, and upon reasonable notice and in a reasonable manner, to inspect current copies of the Association Documents and the books, records and financial statements of the Association.
- XV.B. Upon written request to the Secretary of the Association, to receive copies of the annual financial statements for the immediately preceding fiscal year of the Association, provided, however, the Association may make a reasonable, uniform charge to defray its costs incurred in providing such copies.
- XV.C. To designate a representative to attend all meetings of the Members of the Association, who shall be entitled to a reasonable opportunity to be heard in connection with any business brought before such meeting, but in no event shall be entitled to vote thereon.
- XV.D. By written notice to the Secretary of the Association, and upon payment to the Association of any reasonable, uniform annual fee established from time to time by the Association to defray its costs, to receive: (i) any notice that is required to be given to the Members under any provision of the Association Documents; (ii) written notice of any condemnation or casualty loss affecting a material portion of the Property or any Lot encumbered by its Mortgage; (iii) any sixty (60) day delinquency in the payment of Assessment Charges imposed upon any Lot encumbered by its Mortgage; (iv) the lapse, cancellation, or material modification of any insurance coverage or fidelity bond maintained by the Association; and (v) any proposed action requiring the consent of a specified percentage of Mortgagees.

XVI. GENERAL TERMS

- XVI.A. **Duration.** This Declaration, as amended and supplemented from time to time, shall run with and bind the Property, and shall inure to the benefit of and be binding upon Developer, the Association, the Owners, and their respective legal representatives, heirs, successors or assigns, for a term of forty (40) years from the date of this Declaration is recorded in the public records of the County, after which time all of said provisions shall be extended automatically for successive periods of ten (10) years each, unless an instrument or instruments signed by the then Owners of seventy five percent (75%) of the Lots subject to this Declaration is recorded in the public records of the County, agreeing to terminate all of said provisions as of a specified date. Unless this Declaration is terminated as provided above, the Association shall rerecord this Declaration or other notice of its terms at intervals necessary under North Carolina law to preserve its effect.
- XVI.B. **Condemnation.** In the event all or part of the Common Property owned by the Association shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Board of Directors shall have the right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation affecting such Property. The damages from such condemnation shall be applied to repair and reconstruction of the improvements. If the improvements can not be repaired or restored the damages shall be deposited in Association account and be used as approved by the Board.

- XVI.C. **Notices.** Any notice required to be sent to the Owner of any Lot under the provisions of this Declaration shall be deemed to have been properly sent when hand delivered or mailed, postage prepaid, to the Lot and to the last known address of the person who appears as Owner of such Lot on the records of the Association at the time of such mailing, if different.
- XVI.D. **Interpretation.** Unless the context expressly requires otherwise, the use of the singular includes the plural and vice versa; the use of all genders includes all genders; the use of the terms "including" or "include" is without limitation; and the use of the terms "will", "must", and "should" shall have the same effect as the use of the term "shall". Wherever any time period is expressed in days, if such time period ends on a Saturday, Sunday, or legal holiday, it shall be extended to the next succeeding calendar day that is not a Saturday, Sunday, or legal holiday. The terms "Lot" and "Property" mean all or any portion applicable to the context, and include all improvements, fixtures, trees, vegetation, and other property from time to time situated thereon, and the benefit of all appurtenant easements. The terms of this Declaration shall be liberally construed in favor of the party seeking to enforce its provisions to effectuate their purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a uniform and consistent plan for the development and enjoyment thereof. Headings and other textual divisions are for convenience only and are not to be used to interpret, construe, apply, or enforce any substantive provisions. The provisions of this subparagraph apply also to the interpretation, construction, application, and enforcement of all the Association Documents.
- XVI.E. **Invalidity.** The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of the Declaration which shall remain in full force and effect.
- XVI.F. **Rules and Regulations.** All Owners shall comply with the rules and regulations adopted and amended from time to time by the Board of Directors, the Approving Party and this Declaration. Such rules and regulations shall be for the purpose of elaboration and administration of the provisions of this Declaration and shall relate to the overall development of the Property, and shall not in any way diminish the powers of self-government of the Association.
- XVI.G. **Litigation.** No judicial or administrative proceedings shall be commenced or prosecuted by the Association unless the same is approved by a vote or written consent of the Owners of seventy five percent (75%) of the Lots subject to this Declaration. This paragraph shall not apply, however, to: (a) actions brought by the Association to enforce and provisions of this Declaration (including, without limitation, foreclosure of lien), (b) imposition of Assessments as provided herein, (c) proceedings involving challenges, to any taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. Notwithstanding the provisions of this Paragraph, this Paragraph shall not be amended unless such Amendment is approved by Developer or is approved by the percentage vote pursuant to the same procedures as are necessary to institute proceedings and provided above.
- XVI.H. **Legal Fees and Costs.** The prevailing party in any dispute arising out of the subject matter of this Declaration or its subsequent performance shall be entitled to reimbursement of its costs and attorney's fees, whether incurred before or at trial, on

appeal, in bankruptcy, in post-judgment collection, or in any dispute resolution proceeding, and whether or not a lawsuit is commenced.

- XVI.I. **Law to Govern.** This Declaration shall be governed by and construed in accordance with the laws of the State of North Carolina, both substantive and remedial.
- XVI.J. **Tax Deeds and Foreclosure.** All provisions of the Declaration relating to a Lot which has been sold for taxes or special Assessments survive and are enforceable after the issuance of a tax deed or upon a foreclosure of an Assessment, a certificate or lien, a tax deed, tax certificate or tax lien, to the same extent that they would be enforceable against a voluntary grantee of title before such transfer.
- XVI.K. **Assignment of Developer Rights.** Developer may assign all or only a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Property. In the event of such a partial assignment, the assignee shall be deemed to be the Developer only as to such rights of Developer specifically assigned to it. In addition, in the event that any person or entity obtains title to Property owned by Developer as a result of foreclosure or deed in lieu thereof, such person or entity may elect to become the Developer by written election recorded in the public records of the County, and regardless of the exercise of such election, such person or entity may appoint the Developer or assign any rights of Developer to any other party which acquires title to all or any portion of the Property by written appointment recorded in the public records of the County. In any event, no subsequent Developer shall be liable for any actions or defaults of, or obligations incurred by, any prior Developer, except as the same may be expressly assumed by the subsequent Developer.
- XVI.L. **Dedications.** Developer, each Parcel Developer, and the Association (with the consent of Developer so long as Developer owns any portion of the Property or Additional Property) shall have the right to dedicate, grant or convey any portion of the Property owned by them, or any interest or easement therein, to any governmental or quasi-governmental agency or private or public utility company. In addition Developer, so long as it owns any portion of the Property or Additional Property, shall have the right to direct the Association to likewise dedicate, grant or convey any Common Property, or any interest or easement in any Common Property, whereupon the Association shall execute such documents as will be necessary to effectuate such dedication. Any Property which is conveyed to any governmental or quasi-governmental agency or private or public utility company shall not be subject to the covenants and restrictions contained within this Declaration, unless the instrument so conveying such Property specifically provides that same is subject to this Declaration.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed in its name,
the day and year first above written.

**PANTHER CREEK-RALEIGH LIMITED
PARTNERSHIP**, a North Carolina limited partnership

By: Panther Creek-Raleigh GP, L.L.C.,
a North Carolina limited liability company
General Partner

By: Hearthstone Advisors, Inc.,
a California corporation
Manager

By: _____
 ____ President

ATTEST:

By: _____
 ____ Secretary

[Corporate Seal]

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that (s)he is Secretary of HEARTHSTONE ADVISORS, INC., manager of PANTHER CREEK-RALEIGH GP, L.L.C., the sole general partner of PANTHER CREEK-RALEIGH LIMITED PARTNERSHIP, a limited partnership, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by _____ as its Secretary, on behalf of the said limited liability company on behalf of said limited partnership.

WITNESS my hand and official stamp or seal, this ____ day of _____, 1998.

Notary Public

My Commission Expires:

(Notary Public)

EXHIBIT "A"

Property

EXHIBIT "B"

Additional Property

EXHIBIT "C"

Articles of Incorporation

EXHIBIT "D"

Bylaws