

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR SMITH FARMS OF APEX**

***THE FOLLOWING STATEMENTS ARE REQUIRED BY THE NORTH CAROLINA
PLANNED COMMUNITY ACT:***

***THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF
THE UNITED STATES OF AMERICA OR THE STATE OF NORTH CAROLINA.***

***THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL
SIGNS.***

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SMITH FARMS OF APEX**

WAKE COUNTY, NORTH CAROLINA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SMITH FARMS OF APEX (the “**Declaration**”) is made as of this _____ day of _____, 2017, by LENNAR CAROLINAS, LLC, a Delaware limited liability company (hereinafter referred to as “**Declarant**”).

RECITALS:

WHEREAS, Declarant is the owner of certain tract or parcel of land located in Wake County, North Carolina, which property is described on **Exhibit “A-1”** attached hereto (the “**Property**”);

AND WHEREAS, the Property is hereby established as a planned community and master residential subdivision community known as “Smith Farms of Apex” (which also is referred to herein as the “**Community**” or the “**Subdivision**”) under the Legal Requirements of applicable governmental entities, and which may include, but shall not be required by this Declaration to include, any one or more of the following: residential dwellings; public or private streets; utility easements; stormwater drainage systems and facilities; buffers; greenways; open space; recreational facilities and amenities; and other uses consistent with the zoning of the Property and the Governmental Authority approvals for the Subdivision;

AND WHEREAS, the Community will contain certain Common Areas that are shared Community-wide by all throughout the Community, and may (but need not) contain more distinct Neighborhoods, each with its own housing product types (including detached homes and attached townhomes), level of Assessments, services and amenities;

[AND WHEREAS, the Community is envisioned as one in which residents may have opportunities to participate in community gardening and related outdoor activities with their families and neighbors to foster a sense of community and engagement with nature;]

AND WHEREAS, as hereinafter provided in this Declaration, Declarant has retained and reserved the right, privilege and option to annex Additional Property or to withdraw Property (as the case may be) to/from the encumbrance of this Declaration, from time to time or at any time, as herein provided;

AND WHEREAS, Declarant desires, among other things, to establish a general plan of development for the Subdivision, to provide for the maintenance and upkeep of the Lots, Dwellings, and Common Elements within the Subdivision, to provide for enforcement of the Declaration and other covenants and restrictions, if any, applicable to the Subdivision, to protect the value and desirability of the Property, and, to that end, desires to subject the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Subdivision and each owner of any part or all thereof;

AND WHEREAS, in furtherance of the foregoing, Declarant has incorporated or will incorporate under the nonprofit corporation laws of the State of North Carolina SMITH FARMS OF APEX HOMEOWNERS ASSOCIATION, INC. (the “**Association**”) to own and/or maintain and/or administer Common Elements, to administer and enforce this Declaration and other covenants, restrictions, and agreements applicable to the Subdivision, and to collect and disburse the assessments and charges provided for herein;

AND WHEREAS, Declarant may elect to administer Neighborhoods (if any) either through the Association, and/or by creation of one or more Neighborhood Association under Neighborhood Declarations (both defined below), in its discretion and as described herein;

AND WHEREAS, it is intended that every Owner of any of the Lots (as defined below) automatically, and by reason of such ownership and this Declaration, become a Member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association as provided herein.

NOW, THEREFORE, Declarant hereby declares that all of the Property, together with all Additional Property, if any, subjected to the Declaration pursuant to Article II hereof and less any real property withdrawn from this Declaration, all of which together is referred to as the “**Property**”, shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of these lands and which restrictions, easements, charges, liens, conditions and covenants shall touch and concern and run with the title to the Property and which shall be binding on all parties having any right, title or interest in the Property or any portion of them, all in accordance with the North Carolina Planned Community Act, as set forth in Chapter 47F of the North Carolina General Statutes, as the same may be amended by from to time. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone who purchases or takes any interest in real property within the lands subject to this Declaration.

ARTICLE I

DEFINITIONS

The below-listed capitalized words and terms, when used in the Declaration (including the Recitals) or any amendment hereto, or in any Supplemental Declaration, unless amended or unless the context clearly indicates otherwise, are defined as follows and are subject to the provisions contained in such definitions. It should be noted that one or more definitions contain provisions in addition to the defined word or terms, and such additional provisions are part of the Declaration in the same manner and to the same extent as if they had been set out in an Article or Section of the Declaration other than this Article I.

(a) “Act” shall mean the North Carolina Planned Community Act, currently codified in Chapter 47F of the North Carolina General Statutes, as it exists from time to time, including all amendments, supplements and replacements thereof.

(b) “Additional Property” shall mean any and all real property described on **Exhibit “A-2”** attached hereto and incorporated herein by this reference, provided the Additional Property shall not be part of the Property subject to this Declaration until it has been annexed (or subjected) to this Declaration in the manner required by this Declaration.

(c) “Annexation Declaration” shall mean a document, by whatever name denominated, that is recorded for the purposes of annexing Additional Property to this Declaration and causing such Additional Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and including any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

(d) “Annual Assessment” shall have the meaning specified in Article VI of this Declaration and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against all Lots each year for the purpose of raising the funds necessary to pay the Common Expenses (it being clear and express that the Annual Assessments may vary from Lot to Lot based on Dwelling type and Neighborhood).

(e) “Architectural Control Committee” (or “ACC”) shall mean those individuals appointed to have jurisdiction over construction on or within any portion of the Property and responsibility for administration of design guidelines, as more fully described in Article VII of this Declaration.

(f) “Architectural Guidelines” shall mean any guidelines and standards, if any, that are from time to time adopted by Declarant or the ACC (as the case may be and in accordance with Article VII) and in effect with respect to Dwellings and other improvements in the Property.

(g) “Articles of Incorporation” shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

(h) “Association” shall mean Smith Farms of Apex Homeowners Association, Inc., a North Carolina nonprofit corporation.

(i) “Board of Directors” (or “Board”) shall mean the body responsible for the administration of the Association, as provided in the Bylaws.

(j) “Builder” is defined as a Person, other than the Declarant, if any, who constructs residential dwellings for resale to other Persons, and who purchases or becomes the Owner of one or more Lots within the Property for the purpose of constructing thereon one or more residential dwellings for resale to other Persons “Builders” refers to all such persons or entities collectively.

(k) “Bylaws” shall mean the Bylaws of the Association, as the same may be amended from time to time.

(l) “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, or any successor federal revenue law.

(m) “Common Area” (or “Common Property” or “Common Elements”, the terms Common Area and Common Elements and Common Property being used interchangeably herein, whether referring to Common Area or Limited Common Area) shall mean, singularly or collectively, as applicable, all real property (including all improvements and public and private streets, drives, lanes and alleyways thereon, if any, except for any of the same, that are in any event owned by or dedicated to, and in fact maintained by a Governmental Entity or other Person who provides utility services to any part or all of the Property) and personal property, including easements, which Declarant owns (prior to turnover to the Association) or which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including any additional areas, if any, which by the terms of the Governing Documents, or by any Legal Requirement, or any Plat, or by contract or agreement with any other Person, become the responsibility of the Association. The term Common Area shall include the Limited Common Area, as defined below, provided, however, that unless a Common Area is expressly identified herein or on any Plat as a Limited Common Area, then it shall simply be the broader Common Area. Declarant shall have the right to unilaterally, and without need for consent of any person or party, convey any and all portions of the Common Area to the Association. Furthermore, Declarant shall have the right to unilaterally, and without need for consent of any person or party, convey any and all portions of the Common Area that are located on any portion of the Property that is subjected to a Neighborhood

Declaration, to the applicable Neighborhood Association charged with management of the Neighborhood under the Neighborhood Declaration, if the Neighborhood Declaration identifies the Common Area as common area of the Neighborhood; provided, however, that any such Common Area (despite its ownership) shall remain subject to this Declaration but shall upon conveyance to the Neighborhood Association be deemed Limited Common Area of the Neighborhood and shall be maintained/insured as provided in the applicable Neighborhood Declaration.

(n) “Common Expenses” shall mean and include all of the expenses incurred by the Association in maintaining the Common Area, including reserves for future expenses, and in paying for all of its other operations, and obligations and liabilities under the Act, Legal Requirements, and the Governing Documents, whether or not the particular Common Expense is specifically described herein. Common Expenses also include all expenses for which the Association is liable under any contract or agreement entered into by the Association or by the Declarant on behalf of the Association as allowed herein. Expenses related to Limited Common Areas, if any, are Neighborhood Expenses, which are part of and are a subcategory of Common Expenses. Common Expenses may also include expenses associated with cultural, educational, and other events and activities that may be occasional or ongoing on Common Areas, and in any event may include any expenses, if any incurred in pursuit of establishment of a unique communal agrarian focus within the Community.

(o) “Community Farm” shall mean that certain portion of the Property (if any) which is leased or licensed to a third-party individual or entity (or operated and maintained by the Association, as applicable) for purposes of maintaining and operating a working or cultural and educational farm within the Community.

(p) “Community Garden(s)” shall mean those portions of the Common Area (or an individual portion of the Common Area, as applicable) in which Garden Beds, storage sheds and associated tools and equipment are located and made available for leasing by Owners in accordance with the terms of a Garden Bed Lease between an Owner and the Association.

(q) “Community Wide Standards” shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors or the Architectural Control Committee. The Community Wide Standards may change at any time and from time to time as development of the Property progresses and/or as the needs and desires change within the Property. During the Development Period, the Declarant has the right to establish all of the Community Wide Standards, including amending any Community Wide Standards established by the Board of Directors or Architectural Control Committee.

(r) “Deck” shall mean the deck, if any, that is constructed as part of the original construction of each Improved Lot.

(s) “Declarant” shall mean LENNAR CAROLINAS, LLC, a Delaware limited liability company, and shall include any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one “Declarant” hereunder at any one time.

(t) “Declarant Control Period” shall mean the period of time commencing on the date of recording of the Declaration and ending on the date on which the first of the following occurs:

(i) the date on which 90% of the Lots permitted by the Subdivision Plan (i) have Dwellings thereon for which certificates of occupancy have been issued and (ii) have been conveyed to Members other than Builders. Provided, until such time as the Declarant Control Period would end under any other subparagraph of this definition, without the possibility of any reinstatement, the Declarant Control Period shall be reinstated automatically in order to resurrect and extend any lapsed Declarant Control Period from time to time if the Subdivision Plan is revised to include additional Lots; or

(ii) voluntary termination of the Declarant Control Period by a written instrument executed by Declarant and recorded in the Registry; or

(iii) termination of the Declarant Control Period required by any Legal Requirement; or

(iv) 11:59 PM on December 31, 2040.

Declarant has the sole authority to resolve any issues or disputes regarding the date on which the Declarant Control Period ends or is reinstated.

(u) “Declaration” shall mean this Declaration of Covenants, Conditions, and Restrictions, as the same may be hereafter amended in accordance with the terms hereof.

(v) “Development Period” shall mean the period of time from the date of recording of this Declaration through and including 11:59 P.M. on the last of the following dates to occur.

(i) the date on which ALL of the Lots permitted by the Subdivision Plan (i) have Dwellings thereon for which certificates of occupancy have been issued and (ii) have been conveyed to Members other than Builders. Provided, until such time as the Development Period would end under any other subparagraph of this definition, without the possibility of any reinstatement, the Development Period shall be reinstated automatically in order to resurrect and extend any lapsed Development Period from time to time if the Subdivision Plan is revised to include additional Lots; or the last day on which Declarant owns any portion of the Property; or

(ii) termination of the Declarant Control Period required by any Legal Requirement;
or

(iii) 11:59 PM on December 31, 2040.

Notwithstanding the foregoing, if Declarant is delayed in the development of any part or all of the Property as a result of a sanitary sewer, water or building permit moratorium, or as the result of some other cause or event beyond Declarant's control, then the foregoing applicable time period shall be extended by the amount of time of the delay; provided, however, Declarant may terminate the Development Period at any time by recording a termination instrument in the Registry. Except in the case of voluntary termination by the Declarant, the Development Period also shall include any periods of time after the applicable termination event during which Declarant is conducting any activity within the Property that is required by Legal Requirements or for Declarant to fulfill any obligation to a Governmental Entity, the Association, or any Owner with respect to any portion of the Property. In the event of an assignment of Declarant rights, with respect to the rights assigned the Development Period shall remain in full force and effect through the applicable periods of time as they relate to the assignee rather than the original Declarant hereunder. Declarant has the sole authority to resolve any issues or disputes regarding the date on which the Development Period ends.

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

(x) “Dwelling” is defined as any building or portion thereof within the Property which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one housekeeping unit, whether by the Owner thereof or by tenants or sub-tenants of the Owner.

(y) “Exempt Property” means all portions of the Property included within any of the following categories:

(i) Common Area (provided, however, a Lot on which Common Area is located -- for example, a Lot on which there is an easement constituting Common Area -- is not exempt from assessments); and

(ii) property owned by, or dedicated to and accepted by, the Town or Wake County, or a utility, including property within the right-of-way of publicly-dedicated streets and roads, unless such property is a Lot that has a Dwelling thereon (and provided, that a Lot is not exempt from assessments because it has an easement located on it that has been dedicated to the Town or Wake County or a public utility/authority).

Exempt Property shall not be subject to the assessments provided for herein, and the Owner of such Exempt Property shall have no membership or voting rights in the Association associated with the ownership of such Exempt Property. Furthermore, unless and until such time, if any, as it loses its Exempt status, except as otherwise provided herein all Exempt Property owned by or subject to an easement in favor of the Town or a utility provider, and all Exempt Property within publicly-dedicated street rights-of-way, is exempt from all of the provisions of the Declaration, except for the provisions of the Declaration with respect to any easements over such Exempt Property reserved in the Declaration by or for the Declarant, the Association, the Town or any other Person, and except for provisions of the Declaration requiring Approved Plans for Dwellings and associated improvements.

Exempt Property that loses its status as Exempt Property (e.g., property within a publicly dedicated street right of-way that has been closed as a public street, property formerly owned by/dedicated to the Town which has been conveyed to a Person whose status does not qualify for the exemption) shall be reclassified to another type of property under this Declaration, as appropriate, and shall be subject to all of the terms and provisions of the Declaration in the same manner and to the same extent as other portions of the Property having the same classification. All issues with respect to reclassification of Exempt Property shall be resolved by the Declarant, during the Development Period, and thereafter by the Board.

(z) “Fiscal Year” shall mean the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

(aa) “First Mortgage” shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt of first priority.

(bb) “Garden Bed(s)” shall mean collectively and individually, as applicable, those individual raised beds located within a Community Garden which raised beds are intended to be used for the planting, raising, cultivating and harvesting of crops by the Owner leasing such Garden Bed or by the Association if not leased.

(cc) “Garden Bed Lease(s)” shall mean a lease (or leases) entered into between an Owner and the Association for the leasing of a Garden Bed (or multiple Garden Beds, as applicable) for such term and upon such conditions as are contained in such Garden Bed Lease, which form of lease shall be promulgated and revised from time to time or at any time by the Board of Directors in its sole and absolute discretion.

(dd) “Governing Documents” shall mean and include all of the following: this Declaration; the Articles and Bylaws of the Association; Architectural Guidelines and bulletins and Rules and Regulations of the Association; resolutions adopted by the Board; conditions of approval for development of any part or all of the property required by any Governmental Entity; Annexation Declarations; Supplemental Declarations; other declarations of restrictive or protective covenants applicable to the Property; all as the same may be amended, restated or supplemented from time to time. Any approvals granted by the Declarant under the Governing Documents shall be binding upon all successors to Declarant's approval authority.

(ee) “Governmental Authority” or “Governmental Entity” shall mean and include any and all of the following that are applicable to the particular matter or matters addressed in the Governing Documents: the Town; the County of Wake, North Carolina; the State of North Carolina; the United States of America; and all other governmental entities and quasi-governmental entities that have jurisdiction over the Property or any part thereof, including all applicable departments and agencies of any of them.

(ff) “Improved Lot” shall mean a Lot (i) upon which there is located a Dwelling for which a certificate of occupancy has been issued by the applicable governmental authority, and (ii) which is owned by Person who is not the Declarant.

(gg) “Improvement” shall mean any improvement of or on any Lot or other applicable portion of the Property, including any or all of the following: Dwellings and other buildings and structures (specifically including exterior materials, colors, size, location and architectural style); Decks; patios;; Stoops, porches; driveways; playhouse; motor vehicle and other parking areas; exterior storage areas; exterior recreational areas, equipment and facilities; mail kiosks; exterior antennae, dishes and other apparatus to receive or transmit radio, television, or microwave or other signals; fences; exterior walls; hedges; other landscaping (including planted areas, grassed areas, natural areas and the plant and other materials therein); poles; flags; exterior decorative features and items; ponds; lakes; staking, clearing, grading, filling, change in grade or slope, and other site preparation; swimming pools; coverings for windows and other glass portions of a Dwelling or other building or structure (for example, curtains, blinds, and shutters), which coverings are visible from anywhere off of the Lot or other applicable portion of the Property; exterior lights and signs; lights and signs visible inside a Dwelling or other building or structure from anywhere off of the Lot or other applicable portion of the Property; and all other items used or maintained on a Lot or other applicable portion of the Property outside of a Dwelling or building or other structure located thereon or on the exterior surfaces of a Dwelling or other building or structure on the Lot or other applicable portion of the Property. The definition of improvements stated for the purposes of this definition includes both initial improvements and all subsequent alterations, changes and additions to same. The term “initial improvements” is defined as all of the improvements constructed or placed or located on a Lot or other applicable portion of the Property, or approved for construction, placement, or location on a Lot or other applicable portion of the Property, in accordance with either Approved Plans or Architectural Guidelines existing at the time of issuance of a certificate of occupancy for the Dwelling on

such Lot or other applicable portion of the Property. The examples of improvements stated for the purposes of this definition are not inclusive of all types of improvements and do not imply that all improvements listed as examples will be allowed in the Property, and all improvements are subject to the architectural approval provisions of the Declaration. For the purposes of this definition, the word “exterior” means located on a Lot or other applicable portion of the Property outside of the Dwelling or other building or structure thereon, as well as attached to the outside of (such as on a wall or roof) a Dwelling, building, or other structure on a Lot or other applicable portion of the Property.

(hh) “Legal Requirement” shall mean and include any duly adopted and applicable law, ordinance, regulation or requirement, including any agreement entered into for compliance with the same, and including the Act, the Nonprofit Corporation Act, and the Code, of any Governmental Entity or quasi-governmental entity or agency having jurisdiction over the Property or any portion thereof, including any branch, department, division, section, branch, agency, or other subdivision of any of the foregoing Governmental Authorities or quasi-governmental authorities or agencies. Legal Requirements apply to the exercise of all rights or the taking of all actions under this Declaration by Declarant, the Association, or any other Person, whether or not this Declaration states that a specific right or action is subject to Legal Requirements or must be exercised or taken in accordance with Legal Requirements.

(ii) “Limited Common Area” shall mean, singularly or collectively, as applicable, all real and personal property, including easements, private streets and private alleys, which the Association owns, leases, or otherwise holds possessory or use rights in for the exclusive or primary and common use and enjoyment of one or more, but less than all, of the Neighborhoods or Lots in the Property, and which are designated as such by the Declarant herein, or by Declarant during the Development Period (even if originally designated as Common Area), or by the Association at any time during the Development Period, and/or including portions of the Property shown as Limited Common Area on any Plats of the Property.

(jj) “Lot” (or “Unit”) shall mean each portion of the Property shown on any of the Plats which may be independently owned and conveyed and which is intended for development, use, and occupancy, or actually is used or occupied, as an attached or detached residence for a single family. In the case of a Townhome Building containing multiple Townhome Dwellings, each individual Townhome Dwelling shall be on a separate Lot.

(kk) “Maintain”, “maintenance”, “maintaining”, or any similar term used herein shall mean and include any one or more of the following, as the context requires or allows: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

(ll) “Member” shall mean a Person subject to membership in the Association pursuant to Article V hereof.

(mm) “Mortgagee” shall mean the beneficiary or payee under any mortgage or deed of trust, and the term mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

(nn) “Neighborhood” shall mean a group of Lots designated as a separate Neighborhood pursuant to Article II for purposes of sharing one or more Limited Common Areas, and/or receiving other benefits or services from the Association (or from a Neighborhood Association if a Neighborhood Declaration is recorded), which may be common to those Lots and not provided to all Lots. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property. Neighborhood boundaries may be established and modified as provided in Article II hereof.

Neighborhoods need not be subjected to Neighborhood Declarations and may simply be administered directly by the Association and under this Declaration. In any event and without limitation, Townhome areas shall be distinct Neighborhoods from detached Dwelling areas whether or not anywhere else herein stated.

(oo) “Neighborhood Assessments” shall mean assessments levied against Lots in a particular Neighborhood to fund Neighborhood Expenses, as described in Article VI; provided, however, that there may be no Neighborhood Assessments in a particular Neighborhood if instead a Neighborhood Declaration is recorded and a Neighborhood Association instead assesses for Neighborhood level expenses.

(pp) “Neighborhood Association” shall mean a nonprofit homeowners association, if any, created by Declarant in order to own and/or maintain and/or administer Limited Common Areas of any Neighborhood, and to enforce the Neighborhood Declaration, and to collect and disburse the assessments and charges provided for therein.

(qq) “Neighborhood Declaration” shall mean an instrument, if any, recorded in the Registry which designates and/or imposes additional/other covenants, restrictions and/or obligations on only a designated Neighborhood and provides for the creation of a Neighborhood Association to own and/or maintain and/or administer Limited Common Areas of the Neighborhood, and to enforce the Neighborhood Declaration, and to collect and disburse the assessments and charges provided for therein. All Property subject to a Neighborhood Declaration shall be first in time/foremost subject to this Declaration such that any Neighborhood Declaration shall be subordinate hereto.

(rr) “Neighborhood Expenses” shall mean the actual and estimated expenses, if any, which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood, including maintenance of Limited Common Areas assigned to such Neighborhood, which expenses may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration, or in any Neighborhood or other Supplemental Declaration applicable to such Neighborhood; provided, however, that there may be no Neighborhood Expenses in a particular Neighborhood assessed under this Declaration if instead a Neighborhood Declaration is recorded establishing Neighborhood level expenses.

(ss) “Neighborhood Services” shall mean all goods, services and other provisions made by the Association for Lots, Owners, Improvements in one or more but fewer than all Neighborhoods; provided, however, that there may be no Neighborhood Services provided by the Association, if instead a Neighborhood Declaration is recorded and a Neighborhood Association is charged with providing services that would otherwise constitute Neighborhood Services under this Declaration.

(tt) “Notice and Opportunity for Hearing” or “notice and opportunity for hearing” means giving at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board or such other body or group as may be required by the Act, orally or in writing, not less than five (5) days before the effective date of the proposed action.

(uu) “Owner” shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation or as a tenant shall not be an Owner.

(vv) “Person” shall mean a natural person, corporation, trust, limited liability company, partnership or any other legal entity.

(ww) “Plans” shall mean the complete plans and specifications for a proposed improvement showing (where applicable) the size, shape, dimensions, materials, exterior finishes and colors, location on the applicable portion of the Property, driveway, parking areas, provisions for handling stormwater, landscaping, floor plans and elevations, and other items, all as specified from time to time in any applicable Architectural Guidelines or required by the Reviewer. “Approved Plans” shall mean Plans that have been approved by the Reviewer.

(xx) “Plats” shall mean all plats for any portion of the Property recorded in the Registry, including any amendments to such Plats recorded in the Registry.

(yy) “Property” or “Property” shall mean all real property subject to this Declaration, including any annexed Additional Property, as applicable. The Property initially subject to this Declaration is described on Exhibit A-1.

(zz) “Recreational Amenities” or “Recreational Amenity” shall mean, singularly or collectively, as applicable, all Common Areas, equipment and facilities, IF ANY, which Declarant owns (prior to turnover to the Association) or which is leased or possessed or owned by the Association, for the use and benefit of the Members for recreational purposes, whether active or passive recreation, or, if part of Limited Common Area, then solely for the use and benefit of the Members (and their guests, tenants and invitees) benefited by the Limited Common Area.

(aaa) “Registry” shall mean the office of the Office of the Register of Deeds for Wake County, North Carolina.

(bbb) “Reviewer” shall mean the Declarant, Board, Architectural Control Committee, or other Person who has the authority to review and approve Plans under the architectural control provisions of this Declaration.

(ccc) “Rules and Regulations” is defined as rules, regulations, requirements, prohibitions, and/or conditions with respect to any one or more of the following that are adopted by the Declarant or the Association and are in effect from time: (i) use of the Property or any part thereof, including the Common Elements, or (ii) the conduct of Persons while in or on the Property or any part thereof, including the Common Area, or (iii) implementation and enforcement of the Governing Documents, or (iv) any other matters that the Declarant or Board, as applicable, determines to adopt as part of the Association’s Rules and Regulations.

The Board may adopt, amend, modify, and enforce Rules and Regulations for the use and operation of the Common Area (including the Limited Common Area) and/or for the implementation and enforcement of the Governing Documents without having to comply with the procedures specified herein for adoption, amending, modifying, and enforcing other Rules and Regulations. Such Rules and Regulations with respect to use and operation of the Common Area and/or implementation and enforcement of the Governing Documents also may be referred to herein as “Board Policies”.

(ddd) “Special Declarant Rights” or “Declarant Rights” is defined as all rights granted to, or reserved by, or established for the benefit of, Declarant, in the Act or in this Declaration or in other Governing Documents, whether or not such rights are referred to as Special Declarant Rights or Declarant Rights in the Act, this Declaration, or other Governing Documents. Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, subject to such terms and conditions as Declarant specifies in the assignment document. Unless this Declaration or other Governing Documents specify that Special Declarant Rights may be exercised by any Person other than the Declarant or that they become rights exercisable in whole or in part by the Association at any time, or as otherwise provided in

Legal Requirements, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, executed by the assignor and assignee, and the assignment becomes effective only upon the recording of the document in the Registry or any later date specified therein. Special Declarant Rights shall be construed broadly so as to allow Declarant the greatest flexibility in development and sale of the Property.

(eee) “State” shall mean the State of North Carolina.

(fff) “Stormwater Agreement” is defined as any agreement recorded in the Registry among the Declarant, the Association, and a Governmental Entity, or between the Declarant and a Governmental Entity, or between the Association and a Governmental Entity, if any, relating to Stormwater Control Measures for the Property or any part thereof, and includes all amendments and supplements to such agreements.

(ggg) “Stormwater Control Measures” or “Stormwater Control Facilities”, such terms being used interchangeably herein and in the Stormwater Agreement, is defined as one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves any part or all of the Property: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bioretention areas, retention or detention ponds, and other devices, facilities, appurtenances and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property, and which are located outside public street rights-of-way and public drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Property, however identified on a Plat or in a document recorded in the Registry, are deemed to be dedicated to the Association for the benefit of the Property or applicable portion thereof. All Stormwater Control Measures owned by or dedicated to the Association are Common Area or Limited Common Area, as applicable.

(hhh) “Subdivision Plan” shall mean the most current land use or development plan or plans approved by the Town or by Wake County for the Property (it being recognized that there may be two or more development plans approved by the Town or by Wake County that together constitute the Subdivision Plan under this definition), whether the approval is preliminary or final, and regardless of any name other than Subdivision Plan under which it approved by the Town or by Wake County (for example, site plan, cluster unit development plan, or master plan for a planned unit development), all as the same may be revised at any time or from time to time; it being express that the Property need not be developed in accordance with any one version of the Subdivision Plan. Declarant reserves the right, in its sole discretion but subject to Legal Requirements, to modify any Subdivision Plan in whole or in part, including the addition or deletion of property and including the reconfiguration of Lots and Common Area. The fact that property is included on the Subdivision Plan does not obligate Declarant to subject it to the Declaration, nor shall Declarant be prohibited from subjecting to the Declaration any Additional Property that is not included on any Subdivision Plan.

(iii) “Supplemental Declaration” shall mean an instrument recorded in the Registry which designates and/or imposes restrictions and/or obligations on the land described in such instrument in addition to or different from (when this Declaration allows) those imposed by this Declaration. A Neighborhood Declaration and/or an “Annexation Declaration” would be a Supplemental Declaration, but not all Supplemental Declarations are necessarily either Neighborhood Declarations or Annexation Declarations.

(jjj) “Town” shall mean the Town of Apex, North Carolina.

(kkk) "Townhome" or "Townhome Dwelling" means an individual Dwelling that is attached by Party Walls (as defined in Article XIV hereof) to one or more other Dwellings.

(lll) "Townhome Building" means an Improvement consisting of two or more Townhomes notwithstanding that each Townhome therein is located on a separate Lot.

(mmm) "Townhome Services" means those goods, services, items or benefits provided by the Association (or by any Neighborhood Association if subject to a Neighborhood Declaration) for the benefit of the Townhomes and Owners thereof pursuant to this Declaration and any Supplemental Declaration, if any.

ARTICLE II PROPERTY SUBMITTED TO THIS DECLARATION; ANNEXATION; WITHDRAWAL

Section 1. Property Hereby Subjected to this Declaration. The Declarant, for itself and its respective successors and assigns, hereby submits the real property described on Exhibit A-1 to this Declaration, and such real property constitutes the "Property" initially subjected to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2. Annexation of Additional Property. The Declarant may, at any time and from time to time during the Development Period, in its sole discretion annex all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording in the Registry an Annexation Declaration describing the portion of the Additional Property being annexed. Declarant further has the right to convey to the Association (or any Neighborhood Association if applicable) additional Common Areas contained within such Additional Property, the maintenance of which may increase the Annual Assessment as provided elsewhere herein and may increase the amount of Annual Assessment which shall be levied against each Lot.

From and after such recording, the annexed Additional Property shall be part of the Property and shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such Additional Property.

No approval, consent or joinder from any Member of the Association, or from any other party whatsoever, shall be required for the Declarant to subject Additional Property to this Declaration.

Section 3. Withdrawal of Property. The Declarant may, in its sole discretion at any time and from time to time during the Development Period, withdraw any portion of the Property from the coverage of this Declaration, regardless of the fact that such actions may affect the relative voting strength of any Member or class of membership in the Association or increase or reduce the number of Owners subject to assessment under this Declaration, by recording an amendment to this Declaration describing the portion of the Property being withdrawn; provided, however, if the property is part of the Common Areas and is owned or leased by the Association, the written consent of the Association shall be required to effect such

withdrawal. From and after such recording, the withdrawn portion of the Property no longer shall be part of the Property and may be held, transferred, sold, conveyed, used, given, leased, occupied, mortgaged or otherwise encumbered free and clear of any and all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration.

Section 4. Order of Development and Annexation. Declarant contemplates that it may develop any portion of the Property it owns in accordance with a Development Plan, as modified from time to time; provided, however, but subject to Legal Requirements that provide otherwise, no Development Plan shall obligate the Declarant to develop any particular portion of the Property now or in the future, whether for the purposes shown thereon or for any other purpose, the Declarant shall not be required to follow any particular sequence or order of development of the Property, and the Declarant may annex or consent to annex Additional Property to the Declaration, and/or withdraw portions of the Property from the Declaration, before completing development of all of the Property previously subjected to the Declaration.

Section 5. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to accept title to such Lot, and to be bound by, all of the terms and provisions of this Declaration. Each Lot is subject to all burdens, and enjoys all benefits, made applicable hereunder.

Section 6. Neighborhoods. The Declarant, in its sole discretion, may establish Neighborhoods within the Property by Supplemental Declaration (including if applicable by a Neighborhood Declaration if Declarant wishes to create a Neighborhood Association rather than operating the Neighborhood thorough the Association) in order to subject such Neighborhood to additional covenants and restrictions or to benefit said Lots therein differently from other Lots on the Property. During the Development Period, the Declarant, in its sole discretion and without the joinder of any other Person, may assign portions of the Property to a specific Neighborhood, redesignate Neighborhood boundaries, remove portions of the Property from a specific Neighborhood, and/or record Neighborhood Declarations subjecting any portion of the Property thereto.

Any Neighborhood may, upon the written consent of at least fifty percent (50%) of the Owners in such Neighborhood including all Builders therein, request that the Association provide a higher level of service or special services (than are specified herein) for the benefit of Lots in such Neighborhood and upon written consent of a majority of Owners of the Lots within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The costs of such services, which may include a reasonable administrative charge in such amount as the Board may deem appropriate (provided such administrative charge shall apply at a uniform rate per Lot to all Neighborhoods receiving the same service), shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to Article V herein.

No action may be taken by a Neighborhood which is adverse to the interests of the Association or its Members or that is inconsistent with the Community Wide Standards. If a Neighborhood fails to comply with such requirements of the Association as specified by the Association in writing the Association may assess the Lots within such Neighborhood for any expense incurred by the Association to correct the inconsistency or deficiency.

ARTICLE III ASSOCIATION PROPERTY

Section 1. Common Areas. The Declarant shall have the right to transfer and convey to the Association (or any Neighborhood Association if applicable) any portion of the Property, and the

Association (or any Neighborhood Association if applicable) shall accept all such transfers and conveyances from the Declarant. All portions of the Property which the Declarant shall so transfer or convey shall thereafter constitute Common Areas or Limited Common Areas, as the case may be. Said right may be exercised by the Declarant any time, and from time to time, prior to the end of the Development Period.

Common Areas shall be conveyed to the Association (or any Neighborhood Association if applicable) by special warranty deed free of debt encumbrance, and subject to this Declaration and all applicable rights of way and easements, including the rights and easements set forth in this Article and shown on Plats, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements. Upon Declarant's written request at any time during the Development Period, the Association (or any Neighborhood Association if applicable) shall reconvey to Declarant any unimproved portions of the Common Area which Declarant originally conveyed to the same for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines or as part of the Development Plan. In addition to the foregoing, Declarant reserves the right to convert Lots it owns to Common Area or Common Area to Lots, and the right to move or relocate and the right to change the use of any Common Area, all at any time or from time to time during the Development Period, and all in Declarant's sole and absolute discretion.

Notwithstanding any other terms and provisions herein, Declarant and its assigns and/or social invitees shall have the right to use all Common Areas (including without limitation, Recreational Amenities and the Community Farm and Community Gardens) for all purposes for which they are intended.

Section 2. Member's Rights in Common Area. Except in the case of Common Areas designated as Limited Common Areas or Garden Beds leased individually and exclusively to individual Owners, each Owner shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot owned by such Owner. Where Common Areas are or become designated as Limited Common Areas, then except as otherwise provided herein, the Owners of Lots benefited by said Limited Common Areas shall have the exclusive right and easement of enjoyment and use in and to said Limited Common Areas. The right and easement of enjoyment and use of the Common Areas and Limited Common Areas are and shall be subject to the easements which are described in this Article and to the following:

(a) The Governing Documents and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The Board's right to:

(i) adopt rules regulating use and enjoyment of the Common Area, including Recreational Amenities, and including rules limiting the number of guests who may use the Common Area;

(ii) suspend an Owner's right to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent; and (ii) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing as required by the Governing Documents or the Act. Provided, however, and notwithstanding anything to the contrary appearing in any Governing Documents, (i) if ingress and egress from a public street to and from any Lot is over any part of the Common Area as shown on any Plat or described in any instrument recorded in the Registry, or (ii)

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

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in the Governing Documents and/or the Act;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any Recreational Amenity situated upon the Common Area;

(v) permit use of any Recreational Amenity by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Common Area as open for the use and enjoyment of the public; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to such approval requirements as may be set forth in the Governing Documents and/or the Act.

(d) The rights of certain Owners to the exclusive or primary use of those portions of the Common Area designated "Limited Common Areas" as described herein.

(e) The exclusive rights of lessee's under Garden Bed Leases as herein described.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

Section 3. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all mortgages encumbering any portion of the Property.

Section 4. Condemnation. For the purposes of this Section, "condemnation" or "taking" or "taken" means an acquisition of all or any part of the affected portion of the Property or of any interest therein or right accruing thereto as a result of, in lieu of, or in anticipation of, the exercise of the right of condemnation or eminent domain, or any other action by a Governmental Authority or other Person having the power of eminent domain that affects the value of the applicable portion of the Property or any part thereof so severely as to amount to a taking. In the event that any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of, and under threat of, condemnation by the Board acting on the written direction of at least eighty percent (80%) of the Class A votes and, during the Development Period, the written consent of Declarant, the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent available unless, within sixty (60) days after such taking at least eighty percent (80%) of the Class A votes and Declarant (if during the Development Period) otherwise agree. The provisions of subsection 6 of this Article III below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to

repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

Section 5. Insurance on Common Areas. The Association shall maintain and keep in good repair the Common Areas. Additionally, the Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U S Department of Housing and Urban Development, as applicable to the Common Areas. The Board shall obtain casualty insurance for all insurable improvements located on the Common Areas, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of any insurable improvement in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy with a combined single Limit of at least One Million and No/100 Dollars (\$1,000,000.00) applicable to the Common Areas covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association. An insurer that has issued an insurance policy under this Section 5 shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, Mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Section 5 may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each Mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 6. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed on account of the occurrence of any casualty, the Board shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by at least eighty percent (80%) of the Class A votes (including 100% of those to whom any Limited Common Area is allocated), and by Declarant during the Development Period, not to so repair or reconstruct such damage. In the event that it shall be so decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Class A Members, levy Special Assessments to cover the shortfall.

Section 7. Actions Requiring Owner Approval. If the U.S. Department of Housing and Urban Development is insuring the Mortgage on any Lot or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Lot, then any conveyance or mortgaging of the Common Areas by the Association shall require the consent of at least sixty-seven (67%) of the Class A votes held by Members other than the Declarant and, during the Development Period, the consent of Declarant. Notwithstanding anything to the contrary in this section, however, the Association, acting through the Board, may grant

easements over the Common Areas for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Section 8. Limited Common Area.

(a) Any Limited Common Area, if any, shall be designated as such in the deed conveying such area to the Association, or on the Plat relating to such Limited Common Area, or by the recording by Declarant of another document containing the designation (including by Declarant's recordation of a Neighborhood Declaration or other Supplemental Declaration [whether expressly or not referencing Limited Common Areas or not] designating common areas of the Neighborhood to be managed/maintained by the Neighborhood Association); provided, however, any such designation shall not preclude Declarant, at any time during the Development Period but only with the written consent of any Builder who owns any Lot or has the right to purchase any Lot from Declarant, from assigning or reassigning use of the same Limited Common Area to additional Lots and/or Neighborhoods.

Following the end of the Development Period, and only with the written consent of any Builder, if any Builder still owns or has the right to purchase any Lot from Declarant, portions of the Common Area may be designated as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Voting Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed designation or reassignment.

(b) Upon approval of a majority of Owners of Lots within a Neighborhood or other portion of the Property to which any Limited Common Area is assigned, including the written approval of any Builder who owns any Lot or has the right to purchase any Lot from Declarant in the Neighborhood, the Association may permit Owners of Lots in other Neighborhoods or portions of the Property, and/or may permit other Persons who are not Owners, to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area.

Section 9. Stormwater Management. Except for maintenance responsibilities (i) placed on Owners by the Declaration and/or Legal Requirements, or (ii) assumed or undertaken by other Persons (for example, the Town), the Association shall maintain the Stormwater Control Measures as part of the Common Expenses. As used in the immediately preceding sentence, the word "maintain" includes provision for maintenance of, which may include financial contributions toward maintenance of Stormwater Control Measures located on and/or shared with other Property not subject to the Declaration. Provided, however, such maintenance obligations shall cease and terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time as the Town or State, through a department of public works or some other agency or division, accepts responsibility to maintain, in whole or in part, the Stormwater Control Measures for the Property, or some other Person is providing the necessary maintenance therefor (for example, pursuant to an agreement which requires monetary payments by the Association to the Person who is performing the maintenance). Following any such assumption of maintenance by the Town, State or other Person, the Association may, without obligation, continue to provide maintenance to the extent that the Town, State or other Person fails to provide adequate maintenance in the opinion of the Board, or to the extent required by any Legal Requirements, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the Town, State or such other Person has not assumed maintenance responsibility, or following termination of the Town's, State's or such Person's maintenance responsibility. The Owner of any Lot on, over or through which any Stormwater Control Measures or portion thereof is located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable,

unless the Association assumes such responsibility; and (ii) removal of debris and other materials to the best of the Owner's ability, where such debris or materials has impeded or threatens to impede the free flow of stormwater on, over or through the Stormwater Control Measures located on the Lot. Such Owner's responsibility shall include notification of the Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter which the Owner reasonably believes is beyond the Owner's ability to remove, and any excessive erosion within any such Stormwater Control Measures. The Owner of a Lot on which a Stormwater Control Measure is located shall not obstruct it or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all stormwater drainage easements and stormwater management facilities located on and used exclusively in connection with such Owner's Lot or the improvements thereon, including guttering, and pipes and drains for transportation of stormwater from such Lot into any other Stormwater Control Measures. All issues as to whether a stormwater drainage easement or stormwater management facility is part of the Stormwater Control Measures for which the Association is responsible or whether it is the responsibility of an Owner shall be determined by the Declarant during the Development Period (unless Declarant assigns such right to the Board), and thereafter by the Board.

Declarant, during the Development Period, and thereafter, the Association, subject to any approval required by the Town or State may grant, relocate, abandon and/or release one or more stormwater drainage easements in the Property, subject to the following: (i) the grant of any such stormwater drainage easement also must be consented to in writing by the Owners of all portions of the Property on which such stormwater drainage easement is located, unless the stormwater drainage easement is shown on a previously recorded plat of such portions of the Property, in which event the consent of the Owners is not required and the Declarant or the Association, as applicable, may grant the stormwater drainage easement by written instrument, and the required Owner consent shall not be unreasonably withheld, delayed or conditioned; (ii) no such relocation, abandonment or release shall materially adversely affect the portions of the Property on which the stormwater drainage easement then is located or the portions of the Property served thereby, or if it does have such material adverse effect it is consented to in writing by the Owners of all portion of the Property on which such stormwater drainage easement is located and which are served thereby, and the required Owner consent shall not be unreasonably withheld, delayed or conditioned; and (iii) no such grant, relocation, abandonment or release shall materially adversely affect the Stormwater Control Measures for the Property. The provisions of this paragraph also are applicable to any access easement over any portion of the Property that provides pedestrian or vehicular access from a public street right of way or other public easement or facility to and from any Stormwater Control Measures.

With respect to its obligations under this Section, the Association shall pay, post, provide for or comply with all bonds and other financial obligations under Legal Requirements, Stormwater Agreements, and/or other agreements related to Stormwater Control Measures that are executed by the Association (or, during the Development Period, by the Declarant on behalf of the Association or for later assignment to the Association), and the Association (and, during the Development Period, the Declarant on behalf of the Association) may enter into Stormwater Agreements and/or other agreements and amend, add to, or supplement existing Stormwater Agreements and other agreements (and when Stormwater Agreements or other agreements are referred to in this Section, the reference includes amendments, additions, and supplements thereto), with the Town, State another association that exists for purposes similar to those of the Association, or any other Person with respect to inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating and managing any part or all of the stormwater on, to, or from the Property and/or any or all of the Stormwater Control Measures for the Property, whether such Stormwater Control Measures are located within or outside of the Property. Such Stormwater Agreements and other agreements shall be binding on all Owners (or, with respect to Limited Common Area, all Owners to whose portion of the Property such Limited Common Area is assigned), and may require payments from the Association or the Owners whose Lots are served by the

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

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the Property (for example, because of the topography of the different Neighborhoods or phases of the Property, as different portions of the Property are developed it may be desirable for a portion of the Property to have Stormwater Control Measures separate from and/or in addition to, other Stormwater Control Measures in or serving other portions of the Property and it may be desirable for other portions of the Property to utilize Stormwater Control Measures located outside of the Property), and in further recognition of the desire of the Declarant for the provisions of the Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Property of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by the Town or State, in fulfilling its obligations under the Declaration the Association (or, during the Development Period, the Declarant on behalf of the Association or for later assignment to the Association) may enter into different Stormwater Agreements and other agreements for different portions of the Property, and/or may amend, add to, or supplement existing Stormwater Agreements (including the Town/County Stormwater Agreement, subject to all of the other terms of the Declaration. It further is recognized and contemplated by the Declaration that if such multiple Stormwater Control Measures and/or Stormwater Agreements or other agreements are determined to be necessary or desirable: (i) the costs of maintaining such Stormwater Control Measures and/or funding such Stormwater Agreements or other agreements may be different for different portions of the Property and annual assessments and/or stormwater assessments (as defined herein) may be different for Lots in different portions of the Property (for example, there may be different portions of the Subdivision that have different Stormwater Control Measures or different portions of the Subdivision that share some of the same Stormwater Control Measures but also have one or more separate Stormwater Control Measures); and (ii) some Stormwater Control Measures may be classified as Limited Common Area (and during the Development Period Declarant has the right to designate Stormwater Control Measures as Limited Common Area, including existing and new Stormwater Control Measures in the Property as well as existing and new Stormwater Control Measures associated with Additional Property).

Declarant hereby informs all Owners and other Persons who may from time to time deal with or come in contact with the Property, that as stormwater drains from the Property or other Property into any of the Stormwater Control Measures for the Property, it is possible that substances or materials that may be classified or regulated as "hazardous substances" or "toxic substances" or other regulated substances or materials under Legal Requirements relating to the environment, may flow through and/or accumulate in such Stormwater Control Measures. Accordingly, each Owner and other Person assumes the risk that such flowing through and/or accumulation may occur. In addition, each Owner further acknowledges that if it becomes necessary (as determined by Legal Requirements or by the Board) for such substances to be removed from the Stormwater Control Measures or otherwise handled in accordance with Legal Requirements, and for such Stormwater Control Measures to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling and/or clean-up are Common

Expenses, and that an additional assessment may be required to pay for such removal and/or resultant clean-up of the Stormwater Control Measures.

Declarant may assign to the Association, and the Association shall accept from Declarant the assignment of, all obligations of the Declarant under: Stormwater Agreements (including the Town/County Stormwater Agreement) and other agreements entered into by the Declarant with respect to Stormwater Control Measures for the Subdivision, provided the Declarant has performed, or made adequate provision for the performance of all obligations, if any, specifically required of the Declarant under the Stormwater Agreement or other agreement being assigned to the Association. The provisions of this Section shall be construed liberally in order to allow the Declarant and the Association, on behalf of the Subdivision and all Owners, the necessary flexibility to comply with all Legal Requirements with respect to stormwater, including the execution of Stormwater Agreements or other agreements with the Town, State or other Persons and the granting of easements to the Town, State or other Persons.

Section 10. Community Gardens. The Community Gardens (if any) shall be deemed a part of the Common Area and may, in the sole discretion of the Declarant and/or the Association, as applicable, be later designated as Limited Common Areas. The Community Gardens shall be managed and maintained by the Association or by its designee, as the Association may determine, in its sole discretion; provided, however, that each Garden Bed shall be maintained by the Owner leasing such Garden Bed to the extent and in accordance with the terms and conditions of the Garden Bed Lease associated therewith. Notwithstanding the foregoing, should any Owner leasing a Garden Bed fail to maintain such Garden Bed as proscribed in such Garden Bed Lease, the Association may (but shall not be obligated to) maintain such Garden Bed or cause such Garden Bed to be maintained on the Association's behalf and any increased cost to the Association for assuming the maintenance thereof shall be deemed a specific assessment to be assessed against the Lot of the lessee of such Garden Bed. Any rents collected under a Garden Bed Lease shall be paid to the Association (and shall be deposited in the Association's operating account for the benefit of the Association and the Community generally, such rents not to be deemed, considered or used as a profit to Declarant, the Association, the Board or any Member). Notwithstanding anything contained in this Section or in this Declaration to the contrary, the Declarant and/or the Association makes no guarantee that any Community Gardens or Garden Beds will be constructed or available to an Owner and, if such Community Gardens or Garden Beds are constructed, such Community Gardens or Garden Beds may be relocated, removed, reduced or expanded in size, or changed in use, all by Declarant during the development Period and thereafter by the Board, in either case in their sole and absolute discretion. Neither Declarant nor the Association makes any representation or warranty (express or implied) with respect to the use, condition, safety or productivity of the Community Gardens or the Garden Beds and hereby expressly disclaim any such representation or warranty which may be implied, except as may be otherwise provided herein or in a Garden Bed Lease. The Board may, in its sole and absolute discretion, and with any expenses of the same being Common Expenses of the Association collected including by assessments from all Owners and not just those leasing Garden Beds, hire/engage a community farmer or farm consultant to assist the Association and Garden Bed lessees with maintenance, operation and irrigation and cultivation on the Garden Beds. The use restrictions in Article VIII of this Declaration shall not apply to restrict the farming of any Gardens Beds, if any, including by use of irrigation and fertilizer, and including using farming equipment, in any way that would frustrate the purpose of this Section (for example the smell of fertilizer shall not constitute a nuisance).

Section 11. Community Farm. The Community Farm (if any) shall be deemed a part of the Common Area and the operation and maintenance of the thereof shall be managed by the Association, in its sole discretion (including by any farmer hired by the Association if any). The Board shall have the power and authority to lease or license the Community Farm to such individuals or entities as a designee of the Association as the Board may determine and such lessee or licensee, as applicable, shall be compensated by the Association as the Board may determine, if at all. Notwithstanding the foregoing,

any costs incurred by the Association for the operation, maintenance, leasing or licensing of the Community Farm shall be a Common Expense. The Board may, in its sole and absolute discretion, and with any expenses of the same being Common Expenses of the Association collected including by assessments from all Owners hire/engage a community farmer or farm consultant to operate the Community Farm and to host cultural/educational/promotional/other events thereon (including events such as farmer's markets and fairs). The use restrictions in Article VIII of this Declaration shall not apply to any Community Farm, if any, in any way that would limit the intended operation thereof as described herein (for example the restrictions on animals and livestock shall not apply to bar the keeping and raising of cows, pigs or horses on the Community Farm, nor shall restrictions that might bar the use of heavy farm equipment such as tractors on the Community Farm apply) EXCEPT that the Board may develop reasonable Rules and Regulations in order to keep the Community safe and to keep any farm use from rising to a nuisance.

ARTICLE IV EASEMENTS AND PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Easements and Agreements Regarding Association Property. All Common Areas, including Limited Common Areas, shall be subject to, and Declarant and the Association do hereby reserve or grant, as applicable, the following easements:

(a) Use of Common Areas. An easement in favor of Declarant and any Builder for the exclusive use of such portions of the Common Areas, including, but not limited to any Recreational Amenities, Community Gardens or Community Farms on the Common Area, as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the marketing or sale of; any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by any and all Persons whom the Declarant or any Builder shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers, and their subcontractors, of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant or any Builder. Such easements in favor of Declarant or any Builder shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate two (2) years after the later of the end of the Development Period or the date that all of the Lots are Improved Lots. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(b) Declarant Activities. Notwithstanding any provision contained in the Governing Documents to the contrary, or any amendments thereto, until the expiration of the Development Period, Declarant expressly reserves for itself, and any Builder, and any Person authorized by Declarant or any Builder, in the sole discretion of the Declarant or Builder (as applicable) and without payment of any fee or charge or compensation to any Person for doing so, the right to do any and all of the following, which right also includes the right of vehicular and pedestrian access, ingress, egress and regress over any portion of the Property reasonably necessary for the exercise of the right to: (i) tie into any portion of the Property with driveways, parking, areas, and walkways; (ii) tie into and/or maintain any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; (iii) carry on sales, marketing, and promotional activities on the Property; (iv) construct and operate business offices, signs, construction trailers, and model residences; (v) maintain and carry on, upon such portion of the Property as Declarant or any Builder (as applicable) may deem necessary, such facilities and activities as may reasonably be desired by the Declarant, Builder, and such authorized Persons; and (vi) take any corrective actions as may be necessary or desirable to complete development and build-out under the Subdivision Plan. The rights of Declarant, Builder, and any Person approved by Declarant under this subsection shall

further specifically include, without limitation, the right to keep entrances to the Property unlocked and open during the sales office hours.

Section 2. Easements Over All Lots. Without limiting any other rights of Declarant, the Association or any Builder hereunder, the Lots shall be subject to, and the Declarant does hereby grant, the following non-exclusive easements for the enjoyment of Declarant, the Association, any Builders, and any subcontractors authorized by Declarant or Builder, the Members, the Owners, and the successors-in-title of each, which shall run perpetually except that to the extent they run in favor of Declarant they shall run until expiration of the Development Period (unless otherwise expressly stated):

(a) Easements Shown on Plats. Each portion of the Property shall be subject to all easements, borders, setbacks, buffers and other matters which are shown and depicted on the Plats as affecting and burdening such portion of the Property.

(b) Entrance Monuments. Any Lot on which an entrance monument, sign, or other improvement (including landscaping, walls, fences) related to such entrance monument or sign is located, or on which there is an easement reserved for any such entrance monument, sign, or other improvement, shall be subject to a perpetual easement in favor of the Association (and during the Development Period the Declarant) for maintenance of such entrance monument or sign and related improvements which are or will be located on said Lot. The Owners of these Lots shall not remove, camouflage, damage or otherwise alter in any way said entrance monuments or sign and related improvements. These same Lots shall also be subject to a temporary easement for real estate sales signs which shall be exercisable by any and all persons who the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and Builders of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant. Such temporary easement shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate thirty (30) days after all Lots in the Community are Improved Lots.

(c) Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration.

(d) Encroachments. Reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, are hereby established between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(e) Maintenance. Each Lot shall be subject to a perpetual easement in favor of the Association and its contractors for the maintenance of the Lots as provided for in the Articles IX and XIV regarding maintenance by the Association.

(f) Private Streets. All Lots shall be subject to a perpetual easement in favor of the Association and all other Lot Owners for maintenance, management, repair, landscaping, and non-exclusive use and enjoyment of the private streets, lanes, drives and alleyways (including those that have been dedicated to public but not yet accepted for maintenance and maintained) which are located on the Property, as shown

on the Plats, whether said streets and drives are located in the Common Areas or are located on Lots. This easement right includes the right of contractors engaged by the Association to enter upon the Lots from time to time as necessary in order to perform such repair and maintenance work. The Owners of the Lots shall not impair access to, or otherwise alter in any way, said street and drives. The Association shall also have the right, but not the obligation, to cut, remove and plant trees, shrubbery and flowers along said streets, drives and alleyways.

(g) Slope Control. Each Lot shall be subject to an easement in favor of the Declarant, the Association, Builders, and subcontractors, as well as any Governmental Entity for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(h) Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over and across such Lot.

(i) Utilities. Each Lot shall be subject to a perpetual easement in favor of the Declarant, the Association, Builders, and subcontractors, as well as any Governmental Entity or public utility company who installs, provides, or maintains such services, for the erection, installation, construction and maintenance of wires, lines, conduits, attachments, and other facilities and equipment, both above and below ground, in connection with the transmission of electricity, gas, water, telephone, community antennae or satellite dish, television cables, systems for sending and receiving data and/or other electronic signals, security and similar systems, and other utilities. The easement rights to which the Lots shall be subject shall include the right of employees, agents or contractors engaged by the Declarant, or any Builder, the Association, the Town, or the applicable utility company, to enter upon said Lots from time to time as necessary in order to perform repair and maintenance work and to read utility meters. The Association shall be responsible for the maintenance and management of the private water and sewer facilities, if any, located on or under the Common Areas.

(j) Corrections. Without limitation, easements and related rights: (i) to inspect, monitor, test, redesign, and correct any structure, improvement, or condition (including any wall, swale or lack thereof) which may exist on any portion of the Property, including on Lots, and (ii) a perpetual, nonexclusive easement of access throughout said Property, all as and to the extent reasonably necessary to exercise the rights described in this subsection (j) or otherwise in this Declaration. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a house shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise

Section 3. Specific Easements. Declarant reserves for itself, during the Development Period, the non-exclusive right and power to grant and record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any portion of the Property. The Association (with respect to Common Area) or the Owner of any Lot to be burdened by any easement granted pursuant to this subsection shall be given written notice in advance of the grant and if any such easement burdens any portion of the Property owned by a Builder, then such Builder's written consent shall be required to grant such easement. The location of the easement shall be subject to the written approval of the Association or other Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

Section 4. Minimal Interference. All work associated with the exercise of the easements described in this Article shall be performed in such a manner as to minimize interference with the use and enjoyment of the portions of the Property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the affected portions of the Property, to the extent reasonably possible, to the same or better condition in which it was in immediately prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into any Dwelling or other structure on any Lot or the Common Area, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Section 5. Easements for Maintenance, Emergency, and Enforcement. Easements are hereby established for the Association over the Property as may be reasonably necessary to enable the Association to fulfill its maintenance responsibilities under the Declaration. The Association also shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. The Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

ARTICLE V THE ASSOCIATION

Section 1. The Association. Declarant has caused or will cause the Association to be formed, and the Association does or will exist under its Articles of Incorporation and Bylaws. The Association is and shall be responsible for the maintenance of the Common Area including all Limited Common Area (unless otherwise provided in a Neighborhood Declaration), the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association under the Governing Documents or as the Board of Directors shall deem to be in the best interests of the Members or applicable portion of Members of the Association. The Association shall have all rights and powers reasonably necessary to provide the services and perform the obligations and functions required of it by the Governing Documents.

Section 2. Membership. Each and every Owner of a Lot is a Member of the Association, with classes of membership as provided herein, and, by execution of the Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association and to be subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Lot. An Owner's membership in the Association automatically terminates whenever such Person ceases to be an Owner, and Declarant shall be the Class B Member at all times that Declarant owns at least one (1) Lot (or any unsubdivided land that is part of the Property if Declarant owns no other Lots in the Property). Termination of membership shall not release or relieve any such Owner from any liability or obligation incurred under the Declaration during the period of such Owner's membership in the Association, nor impair any rights or remedies which the Association or any other Owner has with respect to such former Owner.

Section 3. Classes of Membership Voting Rights. The Association initially shall have two classes of voting membership: Class A and Class B.

(a) Class A. The Class A Members shall be all those Persons holding an interest required for membership in the Association, as specified in this Article, except for those Persons who are Class B Members. Until such time as the Class A Members shall be entitled to full voting privileges, as hereinafter specified, the Class A Membership shall be a non-voting membership except as to such matters and in

such events as are hereinafter specified.

Except that Class Members may vote for Directors upon expiration of the Declarant Control Period, the Class A Members shall be entitled to full voting privileges as and where required by the Act, and otherwise on the earlier of the following dates to occur: (i) the date which the Declarant may so designate by notice in a writing delivered to the Association, or (ii) the end of the Development Period. Provided, however, prior to entitling Class A Members to full voting privileges, in any such notice delivered by Declarant to the Association, Declarant may entitle Class A Members to limited voting privileges, subject to such terms and conditions as Declarant, in its sole discretion, determines (provided, however if not sooner granted, the Class A Members shall have full voting privileges upon the expiration of the Development Period). Until the earlier of these dates occurs, the Class A Members shall be entitled to vote only on matters for which it is provided by law that approval of each and every class of membership of the Association is required. When entitled to vote, a Class A Member shall be entitled to cast one (1) vote for each Lot owned by said Class A Member, and where more than one Person owns a Lot, each shall be a Member but there shall only be a single vote allocated to their Lot and exercisable by the Members together; in no event will more than one (1) vote be cast per Lot.

(b) Class B. Declarant shall be the only Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Members shall be entitled to vote on all matters and in all events. During all times that the Class B membership exists the Class B Member is the only Member eligible to vote on Association matters, unless a Legal Requirement requires that all Members have a right to vote. With respect to each Association matter on which all Members are eligible to vote, the Class B Member has ten (10) votes for each Lot owned by Declarant and ten (10) votes for each Lot owned by a Person other than Declarant. Any one or more times that the Class B membership terminates because Declarant owns no Lots, and Declarant later acquires ownership of one or more Lots, the Class B membership shall be reinstated until such time as Declarant again owns no Lots. With respect to any Additional Property annexed to this Declaration by Declarant, Declarant may provide for such additional Class B Member votes in the Association as Declarant determines, in its sole discretion, and such additional Class B Member votes in the Association shall be added to the other Class B Votes in the Association possessed by Declarant to determine the total number of Class B Member votes in the Association. Provided, however, if no specific Class B Member votes is provided by Declarant for Additional Property annexed to this Declaration, Declarant shall have ten (10) votes for each Lot owned by Declarant and ten (10) for each Lot owned by a Person other than Declarant. At such time as the Class A Members shall be entitled to full voting privileges, as provided in paragraph (a) hereof, the Class B membership shall automatically terminate and cease to exist, and the Class B Member shall be and become a Class A Member insofar as it may then hold any interest required for membership.

Section 4. Joint Ownership. When more than one Person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 5. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Governing Documents for a period of thirty (30) days, said Owner's right to vote as a Member of the Association may be suspended for each infraction of the Governing Documents after Notice and Opportunity for Hearing, and if

suspended after Notice and Opportunity for Hearing shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

Section 6. Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Governing Documents by any Owner or such Owner's licensees and invitees. No fine shall be imposed unless the Owner is provided Notice and Opportunity for Hearing. If it is decided after Notice and Opportunity for Hearing that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation without further hearing for each day more than five (5) days after the decision that the violation occurs. All fines shall constitute a lien on all Lots or Units owned by the Owner and shall be paid within thirty (30) days following imposition. Except as otherwise limited by the Act or other applicable law, failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any assessments under Article VI of this Declaration.

Section 7. Limitation on Claims. No claim arising against Declarant or any officer, director, member, manager, employee or other representative of Declarant, including without limitation any claims arising from Declarant's exercise of any right arising from Declarant's Class B membership or arising from any action or inaction by any person in such person's capacity as an officer, director, member or manager of the Association, shall be asserted by the Association more than six (6) months following the later of termination of the Class B membership or the termination of such person's service as an officer or director of the Association. All claims that are not filed in a proper court within the foregoing time period shall be deemed forever waived and released. This section shall not be subject to amendment without the written approval of the Declarant.

Section 8. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is otherwise required by the Legal Requirements or otherwise specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B Member) shall be personally liable to any Owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever while acting in the capacity of a member of the Board, officer of the Association, or member of a committee appointed by the Board, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud. The foregoing shall not preclude such Person who also is the Owner of a Lot from being liable for matters in the same manner and to the same extent as Owners of other Lots with respect to matters not related to such Person's actions as a member of the Board, officer of the Association, or member of a committee appointed by the Board.

Section 9. Professional Management. The Association may, but shall not be obligated to, as a Common Expense, obtain and pay for the services (inclusive of and other related expenses) of any Person to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association. The Board may delegate such authority to such Person, and authorize such Person to act on behalf of the Association, as the Board determines in the exercise of its discretion.

Section 10. Community Farmer. The Association may, but shall not be obligated to, , as a Common Expense, obtain and pay for the services (inclusive of and other related expenses) of any Person to assist and advise the Association and the lessee's under Garden Bed Leases with all farming operations either on the Community farm or over the Garden Beds, and to procure and stock supplies as needed in association with the same.

Section 11. Period of Declarant Control. During the Development Period, the Declarant shall be entitled to appoint, remove, and replace all of the directors of the Board and the officers of the Association, from time to time or at any time, or Declarant may authorize one (1) or more directors of the Board to be elected by the Class A Members of the Association, upon such terms and conditions as Declarant, in its sole discretion, determines. Quorum and meeting requirements are not applicable to Declarant's right to appoint, remove, or replace directors and officers, with no meeting being necessary for Declarant to exercise these rights.

ARTICLE VI ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for a Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such Person in accordance with the terms and provisions of the Act and/or the Governing Documents as applicable. All assessments and charges shall be established and collected as hereinafter provided. All assessments and charges remaining unpaid for a period of thirty (30) days or longer, together with the costs of collection thereof, including reasonable attorneys' fees, shall constitute a lien on the Lot against which they are assessed or charged from the time of the filing of a lien in the office of the Clerk of Superior Court of Wake County, North Carolina, and shall be the personal and continuing obligation of the Person who was the Owner of such Lot at the time when the assessment or other charge first became due and payable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid, as the covenant to pay assessments herein stated is and shall be a covenant running with land.

No Owner shall be exempt from liability for any assessment provided for herein by reason of non-use of the Common Area or such Owner's Lot, or abandonment of a Lot, or temporary unavailability of the use or enjoyment of the Common Area; provided, however that Declarant shall be exempted from paying assessments as herein provided. No Owner shall be relieved of, or released from, the obligation to pay assessments and other charges under the Governing Documents because of any resignation or attempted resignation by such Owner of membership in the Association while such Owner owns a Lot, or because of any suspension of such Owner's membership or membership rights in the Association as allowed under the Governing Documents.

If necessary to establish the right to collect reasonable attorneys' fees under the Declaration, any obligation of an Owner to pay assessments or other charges or monetary obligations under the Declaration shall constitute evidence of indebtedness for the purpose of establishing under Section 6-21.2 of the North Carolina General Statutes (or any successor statute) the right to collect reasonable attorneys' fees in any action or proceeding to enforce or collect payment of such obligation. Provided, however, the foregoing sentence specifically is intended to supplement, and not to interfere, limit, invalidate or be in conflict with, any provisions of the Act with respect to reasonable attorneys' fees, and in fact this entire Section 1 supplements all provisions of the Act relative to establishment and enforcement of assessment liens, all of which apply as if repeated herein.

Section 2. Purposes of Assessments. The assessments levied by the Association pursuant to this Article shall be used to pay the Common Expenses and other charges as required or allowed by the Declaration. Without limiting the generality of the foregoing, the Association may assess the following types of assessments for payment of the Common Expenses: (i) annual assessments; (ii) working capital assessment; (iii) stormwater assessments; (iv) special assessments for capital improvements or other

matters as set forth herein; (v) specific assessments levied against an Owner to reimburse the Association for maintenance expenses resulting from the failure of such Owner to maintain adequately that Owner's Lot, or for damages to Common Elements, or for such other purposes as stated herein; (vi) architectural review fees and costs as specified herein; (vii) fines for violations of Restrictions and Rules and/or Association rules and regulations with respect to use of the Common Elements; (viii) late payment penalties and interest on unpaid assessments and other charges; and any other assessments, if any, for any/all of the following purposes: (1) costs and expenses incurred by the Association in connection with the maintenance of the Common Area and the Association's other operations and Common Expenses; (2) payment of the premiums for all fidelity bonds which shall be obtained by the Association; (3) the payment of the fees of such management firms as the Board of Directors shall employ; (4) payment of fees for the provision of such professional or other services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting, architectural, property management and farming and farming consultant services; (5) loans to the Association for construction of the Recreational Amenities; and (6) the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; (7) other charges imposed under authority contained in the Act (specifically including all fees allowed under Section 47F-3-102 of the Act) or Governing Documents (architectural review fees, fines, penalties, interest and other fees and charges all being referred to herein collectively as "other charges"), and, in addition to such assessments and other charges, to pay all costs, fees and expenses, including reasonable attorneys' fees, incurred by the Association in enforcing or collecting any of the foregoing assessments or other charges against such Owner or the Lot of such Owner; and (8) such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its Members.

All assessments and other charges collected by the Association shall be the separate property of the Association. As assessments and other charges are paid to the Association by Owners, such funds may be commingled with assessments and other charges paid to the Association by other Owners. No Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer, such Member's interest in the assets of the Association, except as an appurtenance to the Lot owned by such Member. When any Owner ceases to be a Member of the Association, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association or any portion thereof which may have been paid to the Association by such Owner or acquired with any funds paid to the Association by such Owner.

Section 3. Commencement and Liability for Payment. The assessments provided for herein shall commence as to a Lot on the date that a Lot becomes an Improved Lot and is owned by a Person who is not the Declarant or a Builder (it being expressly provided herein that Builders shall pay no assessments of any kind hereunder for Lots owned by Builders except on Improved Lots they own, if any) with all Improved Lots owned by the same class of Members of the Association being assessed equally, except for any additional assessments that may be required to pay Neighborhood Expenses associated with a Lot which such assessments shall only be assessed against those Lots in the Neighborhood benefitted by the Neighborhood Expenses; including, but not limited to, as provided in Article XIV hereof. The Annual Assessment for any Lot that first commences with respect to such Lot on any day other than the first day of the applicable fiscal year of the Association is determined for that first fiscal year by multiplying the applicable Annual Assessment amount by a fraction whose numerator is the number of days remaining in that fiscal year from and after the day on which it becomes a Lot and whose denominator is the total number of days in that fiscal year.

Section 4. Operating Budget and Annual Assessment. For the fiscal year beginning on such date as the Board shall determine in its sole discretion and for subsequent fiscal years, the Board shall adopt for each fiscal year a proposed "annual operating budget", also referred to herein as the "budget",

containing an estimate of the total amount believed to be necessary to pay all of the Common Expenses for that fiscal year (including, at the Board's discretion, estimated amounts for unexpected contingency items). Based on such proposed budget, the Board shall determine the amount to be assessed against each Lot for that fiscal year to fully fund the proposed budget, such amount being referred to herein as the "annual assessment". In adopting a proposed budget and annual assessment, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the applicable fiscal year. In the Board's discretion, a proposed budget may include a provision that allows the Board to assess and collect from the Owners during the applicable fiscal year, without the necessity of revising the budget and holding a meeting of the membership of the Association to vote on ratification of the revised budget, one or more additional annual assessments, not to exceed a total amount as specified by the Board, as necessary to pay for Common Expenses that exceed the budgeted amount and/or new or unexpected additional Common Expenses incurred during the applicable fiscal year.

Within thirty (30) days after adoption of the proposed budget, the Board shall provide a copy or summary of the proposed budget and annual assessment to all Members (a copy or summary provided to any one (1) of multiple Owners of a Lot is deemed to be provided to all Owners of such Lot), together with a notice of the annual or special meeting of the Association at which ratification of such proposed budget will be considered, including a statement that the proposed budget may be ratified without a quorum for the meeting. The annual or special meeting at which ratification of the proposed budget is to be considered shall be held not less than ten (10) days nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting at which ratification of the proposed budget is to be considered (although if other matters are to be considered at such meeting applicable quorum requirements are in effect with respect to those other matters). The budget is deemed ratified unless rejected at that meeting as follows: (i) if the proposed annual assessment does not exceed the annual assessment for the immediately preceding fiscal year by more than 20%, or if any increase over and above a 20% increase from the prior year results from non-controllable expenses (defined below) then the budget is deemed ratified unless 90% of the total votes of the members paying the assessment are cast to reject the budget; (ii) if the proposed annual assessment per Lot exceeds the actual annual assessment per Lot for the immediately preceding fiscal year by more than twenty percent (20%) and the increase is not due to an increase in non-controllable expenses, then budget must be approved by vote of 67% of the votes of the Members paying the increased assessments or it is deemed rejected. In the event that the proposed budget is or deemed rejected in accordance herewith, the budget for the immediately preceding year shall be in effect until such time as the Members ratify a subsequent budget proposed by the Board is adopted by the Members. For purposes hereof, "non-controllable expenses" shall mean all those expenses which are both essential to the operation of the Association and the Community all as herein contemplated and which are set based on rates which are beyond the control of the Association; for example costs to insure the Common Areas, taxes levied on the Common Areas, security for the Common Areas (if applicable) and utilities for the Common Areas (including irrigation costs for the Common Areas) are non-controllable expenses.

Beginning with the annual assessment for the first fiscal year of the Association, as initially established by the Board, the annual assessment shall be set at \$1,200.00 per Lot on which a detached single-family Dwelling is built and at \$2,580.00 per Townhome Lot. Following the expiration of the first fiscal year of the Association, the failure of the Board to establish the amount of any annual assessment or send timely notice as required herein shall not constitute a violation, waiver or modification of the provisions of the Declaration, or a waiver of the Board's right to establish and collect the annual assessment at any time during the fiscal year to which it is applicable, or a release of any Member from the obligation to pay the assessment or any installment thereof for that or any subsequent fiscal year. Until the Board has established an annual assessment for a fiscal year, the annual assessment for the immediately preceding fiscal year shall continue in effect, but when the new annual assessment is established, it shall

be retroactive to the first day of the applicable fiscal year, and notice of same shall be sent to the Members not less than thirty (30) days in advance of the payment due date specified in the notice. If the annual assessment for any fiscal year has not been established by the last day of the immediately preceding fiscal year, the Board may send a notice of assessment to the Members for the amount of the immediately preceding fiscal year's annual assessment, together with notice that a new assessment may be established for that fiscal year that may require an additional payment. Once the new annual assessment is established, any additional amount owed is due and payable by the payment due date specified in a supplemental notice to the Members sent not less than thirty (30) days in advance of the payment due date specified in the supplemental notice.

During any fiscal year, the Board may revise the budget and adjust the annual assessment (including the maximum amount of any additional annual assessment), subject to the same notice and ratification requirements as those applicable to the initial budget for that fiscal year. Upon ratification of a revised budget, it shall replace all previously ratified budgets for the applicable fiscal year.

Section 5. Special Assessments. In addition to other authorized assessments, the Association may levy "special assessments" during any fiscal year to pay for any or all of the following: (i) unbudgeted Common Expenses; (ii) Common Expenses in excess of those budgeted; or (iii) the costs of any capital improvements or capital repairs. No special assessment shall be imposed unless approved by the affirmative vote of fifty percent (50%) of the votes of those who would pay the assessments are cast by said Members at a meeting of the Association and, during the Development Period, including the written consent of the Declarant. Notices for all meetings of the Association at which there is to be a vote on a special assessment shall include notice of the purpose and amount of the proposed special assessment. A special assessment is effective on the later of the date it is approved by the Members or Declarant (if such approval is required), or such later date adopted by the Members in the vote approving the special assessment, and is due and payable as established by the vote of the Members approving the special assessment, or, if not established by such vote of the Members, as established by the Board. Each Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section.

Section 6. Specific Assessments. The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Area, or of any monument, landscaping, detention pond or other thing maintained by the Association, which is occasioned by the acts of individual Owners(s) and not the result of ordinary wear and tear or (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder; provided, that Declarant shall not be obligated to pay any specific assessments. Failure of the Board to exercise its authority under this section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Board shall send written notice of the amount and due date of such specific assessment to the affected Owner (s) at least thirty (30) days prior to the date such specific assessment is due.

Section 7. Neighborhood Assessments. The Board may specifically assess Owners of Lots within Neighborhoods for Neighborhood Expenses as follows: (a) expenses of the Association which benefit all of the Lots in a Neighborhood but not the Lots in other Neighborhoods may be specifically assessed equitably among all of the Lots in such Neighborhood according to the benefit received; and (b) expenses of the Association which benefit all Lots in a Neighborhood, but which do not provide an equal

benefit to all such Lots, may be assessed equitably among all Lots in the Neighborhood according to the benefit received. By way of example, casualty insurance carried by the Association for Townhomes under Article XIV is a Neighborhood Assessment assessed exclusively against Townhome Lots.

Neighborhood Expenses shall be budgeted and Neighborhood Assessments shall be determined subject to the same procedures in this Declaration for establishing budgets for Common Expenses and determining annual assessments and special assessments to pay for Common Expenses; provided, however, that some or all Neighborhoods may instead be administered through Neighborhood Associations and under Neighborhood Declarations if established by Declarant, all as herein provided.

Section 8. Working Capital Contribution. Upon the closing of any sale of any Improved Lot by Declarant or by any Builder, to a homeowner, and only upon such initial sale, the Owner shall pay to the Association a one-time initial capital contribution in the amount of \$500.00 for each detached Dwelling Lot and \$800.00 for each Townhome Lot; any difference in the two being attributable to the fact that there are different levels of capital maintenance required one type of Dwelling to another. This contribution shall be collected at the applicable closing and shall be part of the general operating funds of the Association. It shall be the obligation of every purchaser to verify with the Association the amount of the working capital amount due at the Lot closing. Such sum is and will remain distinct from the annual assessment and will not be considered advance payment of the annual assessment. The working capital receipts may be used by the Association in covering operating expenses or any operating short-fall, as well as any other expense or capital outlay incurred by the Association pursuant to this Declaration and the Bylaws.

Section 9. Reserve Funds. The Association shall establish and maintain one or more reserve funds, as the Board shall determine, for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Property which the Association may be obligated or deem desirable to maintain. Such reserve funds shall be established out of regular annual assessments in accordance with standard accounting practices and procedures for Common Area replacements and maintenance in the initial budget of the Association. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in at least the amount of reserves established in the initial budget unless a lower level of reserves is approved by the vote or written consent of greater than fifty percent (50%) [CONFIRM] of all votes in the Association. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without the vote or written consent of greater than fifty percent (50%) [CONFIRM] of all votes in the Association, except that if the Board determines that funds held in reserve for a particular purpose exceed an amount reasonably required as a prudent reserve for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund established by the initial budget or any later-adopted budget of the Association and expended for the purpose for which such other reserve fund has been established.

Section 10. Collection of Assessments; Penalties for Late Payment.

(a) Assessments may be collected on a monthly, quarterly, annual or other basis, as determined from time to time by the Board, with the payment due date to be specified in the notice of the applicable assessment. The billing schedule and payment due date shall be the same for all Owners. Provided, however, the Board has the power, in its sole discretion and upon such terms as the Board deems appropriate, to allow percentage discounts to Owners who pay assessments earlier than the payment due date therefor; provided, however, all such discounts shall be made available and applied uniformly to all Owners.

(b) Subject to any limitations contained in the Declaration, other Governing Documents, or any

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

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

Section 11. Certification of Assessments Paid. The Association, or any property manager or agent authorized by the Association, upon written request, shall furnish to any Owner or such Owner's authorized agents, a certificate signed by an officer of the Association or other Person authorized by the Board to give such certificate setting forth whether or not and through what date the assessments and other charges against that Owner's Lot have been paid, and the amount of any unpaid assessments or charges. The certificate shall be furnished within ten (10) business days after receipt of the request therefor and is binding on the Association, the Board and every Owner. The Association or property manager or agent authorized to furnish the certificate may charge a reasonable fee for furnishing the certificate as established or approved by the Board.

Section 12. Assessment Lien and Foreclosure. The assessments and other charges provided for herein shall be the personal and individual debt of each Person who, at the time of the assessment or other charge, is an Owner of the Lot against which they are assessed or charged. Any assessment or other charge not paid on or before the payment due date and remaining unpaid for a period of thirty (30) days or longer, together with the fines, penalty and interest charges as provided in the Declaration, plus the costs of collection (including reasonable attorneys' fees), shall be a charge and continuing lien on the Lot against which they are assessed or charged from and after the date on which a claim of lien is filed by the Association in the office of the Clerk of Court of the County in which the Lot is located. Except as otherwise provided in the Declaration or by Legal Requirements, such lien shall be superior to all other liens and charges against the Lot. The Board shall have the power, in its sole discretion, to subordinate the Association's lien to any other lien. The claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed. In addition to the claim of lien, the Association may execute, issue or record such other evidence of the lien as the Board deems necessary. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under a power of sale or in any other manner allowed or required by Legal Requirements, and/or the Association may institute suit against the Owner personally obligated to pay the assessment or charge, and/or the Association may seek any other available remedy or relief. In any foreclosure proceeding, the Association shall have the right to appoint a trustee or commissioner (or other appropriately named Person) to implement the foreclosure, and the defaulting Owner shall be required to pay the costs, expenses, trustee's (or commissioner or other) fees, and reasonable attorneys' fees incurred by the Association. The Association shall have the power to bid on and purchase the Lot at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal therewith. The remedies against a defaulting Owner and such Owner's Lot are cumulative and not mutually exclusive, and the Association may seek none, or any one or more of such remedies, separately or simultaneously, as deemed appropriate by the Board.

Section 13. Lien Priority. The lien for unpaid assessments and other charges provided for herein is prior to all liens and encumbrances on a Lot except (i) liens for ad valorem taxes on the Lot; (2) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording

of this Declaration; (3) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot; and (4) the lien of any mortgage given by any Builder or other Person to secure payment of any sum owed to the Declarant, whether or not Declarant is the seller of the Lot liens and encumbrances. Provided, however, this Section does not affect the priority of mechanic's or materialmen's liens. A lien for unpaid assessments and other charges is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing of the claim of lien in the office of the County Clerk of Court of the County in which the Lot is located. Where the holder of a First Mortgage, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a First Mortgage or deed or other proceeding in lieu of foreclosure, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Owners, including such purchaser, its heirs, successors, and assigns in the event that the Association is unable to collect, or chooses not to pursue collection, from the Person who was the Owner of the Lot during the time the assessments were assessed against the Lot.

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

Section 15. Declarant's Obligation; Lots owned by Declarant or Builder. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Lot owned by the Declarant shall be subject to any assessment provided for in this Article VI. Rather, all Lots owned by the Declarant shall be exempt from the payment of all assessments for so long as such Lots are owned by the Declarant. However, in the event the Declarant shall pay any amount(s) necessary to cover any shortfalls or deficits in the budget or to pay any expenses that should have been paid from the Annual Assessments, such amount(s) so paid by the Declarant shall be credited against the Declarant's obligations to pay any further assessments, if such obligation to pay assessments were imposed upon the Declarant by law. At such time as any Lot which is owned by the Declarant shall be conveyed or transferred by the Declarant then all liens and assessments provided for in this Article VI shall be thereafter due and payable as herein provided. The amount of each Annual Assessment which shall become so payable with respect to any Lot shall be prorated according to the respective portions of the fiscal year that such Lot was owned by the Declarant and by such successor owner.

For each Lot owned by any Builder (other than Declarant), Builder shall pay twenty-five percent (25%) of all assessments for each Lot owned by such Builder until such time as the Lot becomes an Improved Lot. At such time as the Lot becomes an Improved Lot, Builder shall commence paying the full amount of the assessments for such Lot.

ARTICLE VII ARCHITECTURAL CONTROL

Section 1. Architectural Control.

(a) Except for ordinary and routine maintenance to an existing Improvement, and excluding routine planting and maintenance of flowers, bushes, grass and trees that do not result in any material change in the landscaping approved as part of the Approved Plans ("material" being as determined from time to time by the Reviewer) or allowed by any Architectural Guidelines without the necessity of obtaining Approved Plans, and except as otherwise provided herein (for example, portions of the Property exempt from architectural review), no improvement, and no alteration, addition to, or changes to any Lot shall be commenced, nor shall any of the same be placed, altered or allowed to remain, until the Reviewer has approved in writing the Plans therefore, or the Architectural Guidelines allow the improvement

without the necessity of obtaining Approved Plans.

(b) No structure or Improvement shall be constructed, placed at or installed upon any Lot in a location without the prior written approval of the ACC, which approval may be withheld in the sole discretion of the ACC. No fence shall be constructed or erected upon any Lot in any location without the prior written approval of the ACC. No chain link fences shall be erected or maintained on any Lot or other portion of the Property.

Section 2. Combination/Subdivision of Lots. No Contiguous Lots may not be combined together, nor may any Lot be subdivided into more than one Lot, without prior written consent of the Declarant, during the Development Period, and thereafter by the Board of Directors. Where two Lots are combined they shall be assessed as two Lots and where one Lot is subdivided into two Lots each resulting Lot shall be assessed as any other Lot.

Section 3. Architectural Review.

(a) Until the later of the end of the Development Period or the date on which one hundred percent (100%) of the Lots are Improved Lots and are owned by Persons other than the Declarant, the Declarant has the sole right under the Declaration to serve as the Reviewer with respect to all improvements. In reviewing and acting upon any request for approval of Plans for improvements, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant, in its sole discretion, may designate one or more Persons to act on its behalf in reviewing Plans. Declarant may, at any time and from time to time, temporarily or permanently, but without any obligation to do so, delegate all or any portion of its rights reserved under this Article to an ACC. Prior to the end of the Development Period, Declarant may modify or terminate any or all its rights reserved under this Article in whole or in part, at any time and from time to time, temporarily or permanently, by recording an instrument in the Registry describing the action taken by Declarant.

(b) Upon delegation by Declarant during the Development Period, and upon the end of the Development Period, the Association, acting through an ACC appointed by the Board, shall assume jurisdiction and responsibility for architectural review under this Article. The members of any ACC need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals. The number, qualifications, composition, jurisdiction, procedures (including appeal of its decisions to the Declarant or Board), and compensation of the members, if any, of the ACC shall be established from time to time by the Declarant or Board, as applicable.

(c) The Declarant or the Board, as applicable, may establish and charge reasonable fees for review of applications and Plans hereunder and may require such fees to be paid in full prior to review thereof. Such fees may include the reasonable costs incurred in having any Plans reviewed by architects, engineers or other professionals. If any such fees are required in connection with any review, no Plans submitted for review shall be complete until such fees are paid.

Section 4. Review Procedures. When Approved Plans are required for commencement of any improvement, the required number of sets of Plans for the proposed improvement (as determined by the Reviewer), together with any application or request for approval and review fees required by the Reviewer, shall be submitted to the Reviewer by the Person requesting the approval or such Person's authorized representative. The Architectural Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application. All of the foregoing together constitutes a "complete application", and no time period within which any Reviewer under this Declaration is required to complete the review shall commence until the Reviewer has received a complete

application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review (except with respect to appeals to the Declarant or Board as may be authorized by the Declarant or Board) so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application within 30 days after receipt by the Reviewer of a complete application. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer shall notify the applicant in writing of the final determination on any application within five days after making the determination. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond in a timely manner to a complete application, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the US Postal Service and addressed to the applicant at the mailing or residence address indicated on the application for review. However, personal delivery of such written notice shall be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Section 5. Architectural Guidelines. Declarant may (but need not) prepare initial Architectural Guidelines, which may contain general provisions applicable to all of the Property as well as specific provisions which vary from Neighborhood to Neighborhood. Any Architectural Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Architectural Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Architectural Guidelines does not guarantee approval of any application. Declarant shall have sole and full authority to put in place and implement and amend the Architectural Guidelines during the Development Period, notwithstanding a delegation of reviewing authority to the ACC or any other Person, unless Declarant also delegates the power to amend the Architectural Guidelines to the ACC. Upon termination or delegation of Declarant's right to amend, the ACC shall have the authority to amend the Architectural Guidelines with the consent of the Board, and the Board shall have the authority to amend the Architectural Guidelines following the end of the

Development Period.

Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

Upon request, the Reviewer shall make the Architectural Guidelines available to Owners and Builders who seek to engage in development or construction within the Property In Declarants discretion, such Architectural Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

Section 6. No Waiver of Future Approvals. Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future Approval of Plans, granting of variances, or other approvals given in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

Section 7. Legal Requirements. Approval by the Architectural Control Committee of any Plans shall not relieve the Owner, Builder, or applicant from any obligation to obtain all required Town and State approvals and permits, and shall not relieve the Owner, Builder, or applicant of the obligation and responsibility to comply with all Legal Requirements with respect to such improvements.

Section 8. Variances. The Reviewer may authorize variances from compliance with any of the applicable Architectural Guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration; (c) preclude the Reviewer from denying a variance in any other circumstances; or (d) be contrary to any Legal Requirements. For purposes of this Section, the inability to obtain approval of any Governmental Authority, the issuance of any permit or the terms of any financing shall not be considered a hardship warranting a variance.

Section 9. Limitation of Liability. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; they do not create any duty to any Person. Review and approval or denial of approval or conditioning of approval of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, the ACC, or member of any of the foregoing shall not be held liable for any of the following: soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder or their failure to comply with Legal Requirements; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any

contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a builder in the Property or anywhere else; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any improvement. In all matters, the Association shall indemnify the Board, the ACC, and the members of each as provided in the Governing Documents.

Section 10. Certificate of Compliance. Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Reviewer shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall preclude the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

Section 11. Violation. When Approved Plans are required under this Article prior to the commencement of the construction, installation, alteration, addition, removal, or maintenance of any improvement, in the event that any such construction, installation, alteration, addition, removal, or maintenance commences, or is undertaken or performed in the absence of Approved Plans or in violation of Approved Plans, the Person upon whose portion of the Property such activity was undertaken or performed may be required by the Declarant (during the Development Period) or by the Board to restore to its original condition, at such Person's sole expense, the portion of the Property upon which the activity was undertaken or performed. Upon the failure or refusal of any Person to perform the restoration required herein, the Declarant or Board, as applicable, or their authorized agents or employees, may, after fourteen (14) days' prior notice to such person, enter upon such portion of the Property and make such restoration as the Declarant or Board, as applicable, in the exercise of its discretion, may deem necessary or advisable. The Owner of the portion of the Property upon which such restoration work shall have been performed shall be personally liable to the Declarant or Association, as applicable, for all direct and indirect costs which the Declarant or Association incurs in the performance of such restoration work, including without limitation attorney's fees and court costs related to the collection of such costs from the Owner, and the liability for such costs shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration.

Section 12. Declarant and Association Exemption. NOTWITHSTANDING ANYTHING STATED TO THE CONTRARY HEREIN, NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED AS PROHIBITING OR LIMITING ANY CONSTRUCTION, INSTALLATION, ALTERATION, ADDITION, REMOVAL, OR MAINTENANCE OF ANY IMPROVEMENT, BY DECLARANT OR AT THE DIRECTION OF DECLARANT, OR BY ANY BUILDER WHO HAS WRITTEN APPROVAL FOR SUCH ACTIVITIES BY DECLARANT; THIS ARTICLE SHALL NOT APPLY TO ANY SUCH ACTIVITIES AND NO APPROVALS UNDER THIS ARTICLE ARE REQUIRED THEREFOR.

ARTICLE VIII USE OF THE PROPERTY

In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the provisions in this Article; EXCEPT THAT this Article shall not apply in any way limited development, construction, corrections, sales and marketing efforts, activities and signage of Declarant (or as approved in writing by Declarant) during the Development Period, and EXCEPT THAT this Article shall not apply in frustration of any express allowances for special use of Common Areas under Article III, Sections 10 and 11 herein:

Section 1. Residential Use. Except as otherwise provided in this Declaration, all the Lots are hereby restricted to residential uses only and for single-family occupancy, and no business or business activity shall be carried on or upon any Lot at any time, except with the prior written approval of the Board of Directors and in accordance with the terms and conditions set forth hereinbelow. When used herein, “single-family occupancy” shall mean occupancy by (a) an individual and the individual’s children and/or parents, or (b) two or more persons related by blood, marriage, adoption, guardianship, or duly-authorized custodial relationship and their children and/or parents, or (c) any two unrelated persons and the children and/or parents related to either of them, or (d) a group of no more unrelated persons than the number of bedrooms in the residence located on the lot, living together as a single housekeeping unit. A group of unrelated persons will be deemed to be living together as a “single housekeeping unit” when the occupants have a family-like structure, and/or a sharing of responsibility associated with the household such as equitable rent, use of space, etc. This definition is intended to exclude (i) any group whose association is temporary or seasonal in nature, such as a group of college students sharing a house, and (ii) any group providing a framework for transients or transient living.

(a) Business Activity. Nothing herein shall prevent the Declarant or any Builder of homes in the Subdivision who is approved by Declarant from using any Lot owned by Declarant or such Builder for the purpose of carrying on business related to the development, improvement and sale of property in the Subdivision; and provided, further that, to the extent allowed by applicable zoning laws, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling. Except as provided in this Declaration, no Owner shall use or cause or permit his Lot to be used for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose, except with the approval of the Board or ACC empowered by the Board to do so, and provided that:

(i) The existence or operation of the business is not apparent or detectable by sight, sound or smell from outside the dwelling;

(ii) The business activity conforms to all zoning requirements for the Subdivision;

(iii) The use of a portion of a residence as an office by an Owner or an occupant will not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic;

(iv) The business activity does not involve door-to-door solicitation of residents in the Subdivision; and

(v) The business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, a hazardous or offensive use or threaten the security or the safety of other residents of the Subdivision, as may be determined in the sole discretion of the Board of Directors of the Association.

The term “business” and “trade” as used in this Section shall be construed to have the ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether:

(A) such activity is engaged in full or part time;

- (B) such activity is intended or does generate a profit; or
- (C) a license is required therefor.

This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Lots that it owns within the Subdivision.

Sections 2. Sales Offices; Model Homes. Notwithstanding the provisions of Section 1 of this Article or any other provision of this Declaration, Declarant, for itself and its successors or assigns, hereby reserves the right to maintain sales offices and model homes for sales of Lots throughout the Property. Declarant, its successors or assigns, shall have the right to relocate, and to discontinue and re-establish, sales offices and model homes within the Property from time to time until all of the Lots have been conveyed to Owners other than Declarant. Declarant, its successors and assigns, also shall have the right to change the use or combination of uses of such offices or model homes. Model homes are those homes constructed by Declarant, as well as by any Builder of homes in the Subdivision approved by Declarant to build model homes, which are used for the purpose of inducing the sale of other homes in the Subdivision. Declarant, its successors or assigns, also reserves the right to erect and maintain signs on the Common Area advertising the Property until all of the Lots have been conveyed to Owners other than Declarant or Builder.

Section 3. Minimum Square Footage. The minimum square footage of each home constructed upon a Lot shall be not less than **one thousand two hundred (1,200) [CONFIRM]** square feet of heated space; provided, however, that the aforesaid square footage requirement shall be based on interior floor space, exclusive of basements, garages, porches, decks, balconies and overhangs.

Section 4. Temporary Structures. Except as provided in this Declaration, no residence or structure of a temporary nature (unless approved by the Board or ACC empowered by the Board to perform such review and approval) shall be erected or allowed to remain on any Lot, and no boat, truck, trailer, camper, shack, tent, barn, detached garage, recreational vehicle or any other building or vehicle of a similar nature shall be used as a residence on any Lot, either temporarily or permanently; provided, however that this Section shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

Section 5. Accessory Structures; Sheds and Barns. No metal carport, free standing metal garage, or free-standing metal utility building shall be erected on any Lot or attached to any residence located on the Lot. Any accessory structure which is approved for construction shall comply with the architectural requirements of this Declaration and the Board or the ACC so empowered by the Board, and shall be made of similar material and colors to match the existing home. All accessory structures must be located on any Lot so that it is directly behind the residence as viewed from a point on a line of sight along the side of the house perpendicular to the street right-of-way. Such structure shall not exceed 100 square feet, unless the Board or ACC so empowered by the Board approves a greater square footage.

Notwithstanding the foregoing, and consistent with the communal focus on farming and similar outdoor activities in the Community, the Board shall maintain a list (compiled and maintained in its sole and absolute discretion) of allowable barns, sheds and animal coups which may be allowed (one of each on each Lot) subject to Reviewer approval as to location and screening on any Lot. **[DO WE WANT TO REQUIRE THEM TO BUY THESE FROM HOA OR THROUGH HOA?]**

Section 6. Outdoor Living Space. The Declarant/Builder reserves the right to build an outdoor living space to be designed at its discretion. Homeowners must submit an architectural approval request

for any additions or changes being made to the exterior of their property as noted in Article VII of this Declaration.

Section 7. Mailboxes. Declarant may install one (1) or more cluster mailboxes on the Property and may assign a single box in each cluster to each Lot. If cluster mailboxes are installed and assigned to a Lot then the Owner of said Lot may not install any additional mailbox on its Lot. The Association shall be responsible for the maintenance, repair and replacement (if necessary) of all cluster mailboxes, with any and all costs associated with the same being a Common Expense (or a Neighborhood Expense, as applicable, if only for use by Townhome Units). Declarant may install, maintain, repair and/or replace cluster mailboxes on any portion of the Common Area or in any easement area shown on any record plat (including any easement on a Lot if applicable). Notwithstanding the foregoing, if at the time of any conveyance, cluster mailboxes are located on any portion of any Lot, the Association shall have an easement over said Lot as reasonably necessary for maintenance, repair and replacement of the same, regardless of whether or not said easement is shown on a record plat. Except that the Association shall maintain, repair and replace any cluster mailboxes so as to keep the same in good working order (with each Owner having the duty to report any problems with its mailbox to the Board), neither the Association, the Board, nor Declarant shall have any liability relative to condition, operation or access of/to the cluster mailboxes (or any events/actions/occurrences arising from the same or lack of the same) AND BY ACCEPTANCE OF THE DEED FOR ANY LOT, EACH OWNER THEREBY WAIVES ANY OR ALL CLAIMS, ACTIONS AND/OR DAMAGES REGARDING OR ARISING OUT OF THE SAME, AGAINST THE BOARD, THE ASSOCIATION OR THE DECLARANT.

Section 8. Obstructions. No part of any structure or the lower branches of trees or other vegetation shall be permitted to obstruct the view at street intersections. No doorways, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency.

(a) Removal of Obstructions.

(i) The Declarant, its successors or assigns, or the Association, without notice, may remove any obstructions of any nature located within road rights-of-way (including, but not limited to, trees, shrubs, fences, basketball goals and mailboxes) which, in the opinion of the Declarant, its successors or assigns, or the Association, either might produce a hazard or might interfere with the ability or willingness of the State or any municipality (or agency or department thereof) to take over the responsibility for maintenance of the roads.

(ii) The Declarant, its successors or assigns, or the Association, shall have the right, in its sole discretion, to charge the actual cost of removing obstructions to the Lot Owner who, directly or through his agents, contractors or invitees, caused or permitted the obstruction to be placed in the road right-of-way, and such Lot Owner shall indemnify and save the Declarant, its successors or assigns, and the Association, harmless from all liability, claims, damages and expense imposed upon the Declarant, its successors or assigns, or the Association, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-way and its removal. In the event that the Lot Owner responsible for such charge or liability fails and refuses, after demand by the Declarant, its successors or assigns, or the Association, to pay said charge or liability, then the Declarant, its successors or assigns, or the Association, shall have the right to levy a specific assessment against the Lot of that Owner for the violation or non-compliance. The amount of a specific assessment may include any cost to remedy the violation or non-compliance, and/or to enforce compliance (including attorney's fees) and any costs of collection and/or enforcement.

Section 9. No Timeshares. No part of the Property subject to this Declaration, including any improvements thereon or to be built thereon, will be used for or subject to any type of Time Share Program

or Time Share Project as defined by the North Carolina Time Share Act, N.C. Gen. Stat. 93A-41 (1983), or any subsequent laws of this State dealing with that or similar type of ownership by a Lot Owner, or which is used for, in conjunction with and/or as an advertised part of any time share exchange program which makes available as accommodations the Lot and which is not otherwise registered as a Time Share Program or Time Share Project or which utilizes the Lot as accommodations for time share sale prospects of any person.

Section 10. No Offensive and Unlawful Activity. No noxious, offensive or unlawful activities shall be conducted on any Lot, on the Common Area, or in any other part of the Subdivision. Nothing shall be done within the Subdivision that is, or becomes an unreasonable annoyance, inconvenience or nuisance to other residents of the Subdivision, or which unreasonably interferes with the quiet enjoyment of occupants of Lots. For avoidance of doubt, if a use is expressly allowed hereunder but might otherwise in and of itself constitute a nuisance use (such as raising of hens on Lots or use of tractors on the Community Farm for example which might be deemed a nuisance in some communities), then so long as said use is carried out in accordance with all restrictions herein, such use shall not constitute a nuisance under this Section.

Section 11. Parking. Without limitation, the Board may enforce this Section 11 by towing vehicles (or having them towed) at the sole cost and expense of the Owner of the Lot being visited or serviced by the vehicle that is improperly parked. The following parking restrictions apply in the Community:

(a) Commercial vehicles are prohibited within the Community except as expressly provided in this Section. For purposes of this Declaration, a “commercial vehicle” shall include any vehicle having a carrying capacity and/or size designation greater than or equal to three-fourths (3/4) ton; any vehicle other than a law enforcement vehicle bearing a company name or logo; any vehicle with ladders on top or in a truck bed; and any “box” van or truck. The Board shall have the authority to further define the term “commercial vehicles” in the Rules and Regulations to include other vehicles used primarily for commercial purposes other than commuting to and from the workplace.

(b) Unless otherwise permitted by the Rules and Regulations, no boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or left (a) on any part of the Common Area, except such portions of the Common Area (if any) as may have been designated by the Board for such purpose; (b) in any driveway or (c) on any other part of a Lot, (d) or otherwise in the Community unless the same are fully enclosed within the garage located on the Lot and the garage door closed when not entering and exiting the garage.

(c) Restrictions contained in this Section shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant and such Builders as may be designated by Declarant and their agents, invitees and contractors in the conduct of their business prior to Completion of Sales.

(d) No boat, truck, trailer, pre-manufactured home, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Community. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Community, except in the case of emergency and except as may be permitted by the Rules and Regulations. No unlicensed, wrecked or inoperable vehicles may be left on a Lot outside an enclosed structure.

(e) Street-side parking (meaning parking along any street or road in the Community) of any vehicles is prohibited; provided, however, that temporary street-side parking by guests or invitees visiting or providing services to any Owner at its Lot is allowed so long as: (i) the visiting/servicing

vehicle is parked directly in front of the benefitted Lot, (ii) the street-side parking does not inhibit or materially impede traffic and/or create an unsafe condition within in the Community; and (iii) the street-side parking does not continue for more than 8 consecutive hours or 8 hours in any single calendar day.

No provisions of this Section shall be restrict the use of farming vehicles and equipment, including tractors, within the Community Gardens and the community Farm.

Section 12. Garages. Garage doors are required for garages. All ducts, pipes and wiring in garages shall be concealed from view above the level of the finished ceiling. For aesthetic purposes, all garage doors shall remain closed whenever possible. Carports are not allowed within the Community.

Section 13. Signs, Curtains and Flags. No advertising signs or billboards shall be erected on any Lot. This restriction shall not apply to signs used to identify and advertise the Subdivision as a whole, nor to signs for selling Lots and/or houses during the development and construction period or for the re-selling of houses, provided such signs are approved by the Board or ACC empowered by the Board to do so. Also, the provisions of this Article shall not apply to notices posted in connection with judicial or foreclosure sales conducted with respect to a mortgage.

(a) No Owner shall place on or about any window any metallic foil or other coating, substance or material which acts as a reflector of light and no Owner shall display, hang, store or use any signs (including, without limitation, political signs), curtains, draperies, shades, stained glass, flags (including, without limitation, flags of the United States of America or the State) or other articles whatsoever outside of the Dwelling on any Lot so as to be visible from outside the Lot, excluding seasonal decorations, the flag of the United States of America or the State, and political signs, provided that such seasonal decorations, flags of the United States of America, flags of the State, and political signs, conform with the requirements of this Section, and with all Regulations.

(b) Flagpoles for seasonal decorations, the flag of the United States of America, and/or the flag of the State must be attached to the main Dwelling, shall be no more than five (5) feet in length and shall not be mounted on the roof of any Dwelling. Only one flag (whether a seasonal decoration, the flag of the United States of America, the flag of the State, or any other flag) may be displayed on any Lot at any given time. No flag (whether a seasonal decoration, the flag of the United States of America, the flag of the State, or any other flag) may exceed the size of three feet by five feet.

(c) No more than two (2) political signs may be displayed on any Lot at any one time, unless the applicable municipal or County ordinance allows more than two signs, in which event no more signs than are allowed by the applicable municipal or County ordinance shall be displayed on any Lot at any one time. Political signs may not be displayed any earlier than 45 days before the day of the election for which the political sign is being displayed or later than 7 days after an election day for which the political sign is being displayed. No political sign may exceed the dimensions of 24 inches by 24 inches, unless the applicable municipal or County ordinance allows a greater size, in which case no political sign shall exceed the dimensions set forth in such municipal or County ordinance. For purposes of this Section, “political sign” means a sign that attempts to influence the outcome of an election including supporting or opposing a candidate or an issue on the election ballot.

(d) Notwithstanding the anything contained in this Section 13 to the contrary, one professionally manufactured sign of not more than five (5) square feet advertising a Lot for sale or rent may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. The

prohibitions in this Section shall not apply to Declarant or its agents, who may erect such signs or flags as Declarant deems desirable to promote the sale of Lots.

(e) Holiday decorative lighting shall be allowed from Thanksgiving to January 15 of each calendar year; provided, however, the Board may adopt Regulations limiting the type, intensity and number of decorative lights so allowed. Other seasonal decorations are approved two weeks prior to the event until two weeks after the event.

(f) Except as approved in writing by the Declarant, all exterior and landscape lighting shall be approved in writing by the Board of Directors or ACC empowered by the Board to do so prior to installation.

Section 14. Antennas and Dishes. No radio or television transmission or reception towers, antennas, satellite dishes or disks or similar transmission equipment shall be erected on any structure or on any Lot or within the Property, except in accordance with the Telecommunications Act of 1996 and the implementing rules therefor issued by the Federal Communications Commission and by the Board or the ACC empowered by the Board to do so in compliance with the Regulations adopted therefor.

Section 15. Laundry. No laundry or wash shall be dried or hung upon the exterior of any Lot or any place visible within the Subdivision from outside such Lot.

Section 16. Perimeter and Privacy Fences. No perimeter fence or wall shall be erected on any Lot closer to the street than the rear back corner of the Dwelling or the side street setback for corner Lots. However, Declarant has the right to grant a fence location variance on any particular Lot due to the particular character of said Lot. All proposed perimeter or privacy fences shall be subject to review and approval by Architectural Review Committee and subject to such terms, conditions and design standards as may be established therefor, from time to time. Unless otherwise required or allowed in the Architectural Guidelines, all perimeter fencing shall be picket fencing and decorative metal or PVC only, four feet (4') or five feet (5') in height, and any other fencing, including chain link, split rail, wood privacy, or other type of metal fencing, is expressly prohibited. The spacing between the pickets of perimeter fencing shall not be less than one and one-half (1½") inches and all such pickets shall be installed on the exterior of the supporting fence posts. However, Declarant and any Builder expressly permitted in writing by the Declarant may install any fencing make or style and may install temporary decorative fencing on a model home. No perimeter fence or wall shall be erected on any berm of dirt which was placed on side or rear Lot line by the Declarant. All fencing shall be colored taupe or black.

(a) Lots with Rear Property Lines Adjacent to Parcel Located Outside Community. Unless otherwise required or allowed in the Architectural Guidelines, Owners of Lots with rear property lines adjacent to parcels located outside of the Community may install a fence along the rear Lot line, provided such fence shall not exceed six feet (6') in height and shall be painted taupe; any other fencing, including chain link, split rail, wood privacy, or other type of metal fencing, is expressly prohibited. The foregoing applies only to Lots adjacent to parcels outside of the Community and shall not apply to Lots that back up to another Lot, to a Common Area or to a road within the Community.

(b) Wall or Fence Forming a Courtyard. Notwithstanding the restrictions provided in this Section 16, an Owner may install a fence or wall generally parallel with the side of a residence that forms an enclosed courtyard with that portion of the residence set back from the remainder of the side of the

residence with which the fence or wall runs parallel, and subject to terms, conditions and design standards from time to time adopted therefor and the written approval of its location by the Board or the ACC.

(c) Townhome Lots. Notwithstanding any terms and provisions herein, except for any installed during initial construction by Declarant or any Builder, there shall be no fences allowed on any Townhome Lots.

Section 17. Pets; Animals.

(a) Except as otherwise expressly permitted herein, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other small household pets may be kept or maintained, subject to applicable leash laws, and provided that they are not kept, bred or maintained for commercial purposes. The number of household pets shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience, nuisance or threat to any other Owner, or creates or causes unsanitary conditions. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience, nuisance, threat or creates an unsanitary condition, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience, nuisance, threat or creates an unsanitary condition, the Board may require that such animal be removed from the Subdivision. All animals shall be kept on a leash when in the Common Area or any other area within the Subdivision other than a fenced area on a Lot. Owners shall be required to properly remove any excrement deposited by a pet on any Lot and/or any portion of the Property and dispose of same properly and in accordance with any Regulations pertaining thereto. Owners shall also be responsible for repairing any damage caused to any Lot and/or any portion of the Property by a pet. Violations by an Owner or an Owner's pet under this Section may subject an Owner to an Assessment for Non-Compliance.

Notwithstanding the foregoing or anything else contained herein to the contrary and consistent with the communal focus on farming and similar outdoor activities in the Community, each Owner (excluding, in all circumstances, an Owner of a Townhome Lot, which Owners shall not be permitted to maintain or keep any livestock or poultry on their Lot) shall be permitted to keep or maintain a maximum of [] (NUMBER) hens on its Lot (it being understood and agreed that roosters and other larger livestock are strictly prohibited from being kept or maintained on a Lot); provided, however, that each Owner shall keep such hens restrained on such Lot in a Board approved coup, and shall not permit any hen to encroach upon or enter another Owner's Lot without such Owner's express permission. Any such hen kept or maintained on an Owner's Lot shall remain subject to the Rules and Regulations promulgated by the Board and shall further be subject to the provisions contained in this Section with regards to unreasonable annoyance, inconvenience, nuisance, threat to any other Owner, unsanitary conditions, requirements to remove any excrement deposited by such hens and the responsibility of such Owner to repair any damage caused to any Lot and/or any portion of the Property by such hen(s).

(b) The Board may adopt Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that animals be restricted from designated areas within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing in the Subdivision at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an

unreasonable annoyance, inconvenience, nuisance, threat or creating unsanitary conditions be removed from the Subdivision.

(c) Notwithstanding that the provisions of this Section 17 shall not bar the keeping and raising of cows, pigs, horses [other?] in any Community Farm operated on any Common Area, the Board may nevertheless adopt reasonable restrictions on how such animals are kept and on any other types of animals that may be kept.

Section 18. Trash and Vegetation.

(a) Trash. No trash, rubbish, garbage, debris or waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in an appropriate area screened and concealed from view of neighboring Lots and streets, except on the day of collection when such containers may be moved on the Lot to the location designated for its collection. Trash cans and recycle bins shall never be store on the side of Dwellings. Trash cans and recycle bins may be stored in the garage or directly behind the Dwelling and shall be screened from neighbor's view.

(b) Landscaping. Only Bermuda grass shall be used in the Subdivision. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Subdivision shall be kept trimmed, and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. No weeds or dead or dying vegetation shall be permitted to accumulate on any Lot or any portion of the Subdivision which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the Owners or occupants of any property in such vicinity. Trees, shrubs, vines and plants which die shall be promptly removed. If any Owner, after Notice and Opportunity for Hearing, fails to maintain such Owner's Lot in the manner provided by this Section, the Association, at the expense of such Owner, may take such steps as are necessary in order to remedy such condition, including cutting and removing of weeds, vegetation, rubbish, debris, garbage, waste materials and other accumulations on any Lot at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a Special Assessment against such Owner to obtain reimbursement of the cost therefor as provided in this Declaration, or, after Notice and Opportunity for Hearing, levy a fine against such Owner.

(c) Raised Beds. Notwithstanding anything contained in this Section or elsewhere herein to the contrary, each Owner shall be permitted to keep and maintain on its Lot a raised bed [or raised beds] for gardening or farming purposes ("Raised Bed(s)"). Each such Raised Bed shall be kept and maintained on such Lot in such a manner as to not permit the same to become overgrown or unsightly and each such Raised Bed shall be maintained completely on such Owner's Lot. [INCLUDE RESTRICTIONS SUCH AS NUMBER/SIZE/WHAT CAN GROW? SCREENING?]

Section 19. Above Ground Pools. No above ground pools shall be erected or installed on a Lot.

Section 20. Window Air Conditioners. No window air conditioners are allowed in any window of the Dwelling.

Section 21. Construction Material. The storage of construction material, equipment and/or other objects on a Lot in a manner that is unsightly or for a period that is deemed inappropriate by the Declarant, the Board and/or the ACC is prohibited.

Section 22. Play and Exercise Equipment. All swing sets, play structures, basketball goals and similar equipment must be located within the applicable building setback lines and comply with the Rules and Regulations, and the location thereof must be approved in writing by the Board or the ACC in

accordance with the provisions of this Declaration and subject to terms and conditions from time to time established therefor. No metal swing sets shall be allowed. In addition, permitted basketball goals must be portable, with no permanent poles, and shall be stored in the garage or out of view of the street when not in active use. Portable basketball goals shall only be used on the Lot's driveway and at no time within the street or a Common Area. No trampolines shall be permitted on any Lot.

Section 23. Changing Elevations. No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted on any Lot which materially affects surface grades of surrounding Lots or any drainage or other water discharge from or to a Lot, unless approved in advance in writing by the ACC.

Section 24. Completion of Construction and Condition of Site.

(a) Construction of any "primary" improvements on any Lot (such as a Dwelling and the initial installation of walls and landscaping therefor) shall proceed consistently and diligently and shall, unless a variance is granted by the Declarant during the Declarant Control Period, and thereafter by the Board or the ACC, be completed within one (1) year from the date of commencement of construction. An Owner shall be solely responsible for securing from the governmental entity with jurisdiction over the Property, and at the Owner's sole cost and expense, such permits and approvals as shall be required prior to any construction or installation governed thereby.

(b) The period that is appropriate for the completion of "secondary" improvements (such as walls, fences, paving, landscaping, etc. or the modification to an existing structure), shall be determined by the Declarant or the Board (when such authority is transferred to the Board by the Declarant), or by an ACC established by either.

(c) During construction, the Owner shall, at all times, maintain the construction site in accordance with any standards and Regulations established by the Declarant and/or the Board and/or the ACC. The Board shall have the right to take appropriate legal action, whether at law or in equity, or to levy specific assessments, to compel the immediate completion of any primary improvements not completed within eighteen (18) months from the date of commencement of construction or any secondary Improvements not completed by the deadline set out in the approval for the modification provided to the Owner of the Lot. The Declarant, the Board and/or the ACC shall have the right, but not the obligation, to extend any time period for completion, but any such extension must be in writing and a copy kept on file with the corporate records of the Association.

(d) If an Owner or their builder, agents, representatives, employees, family members, and/or contractors store construction material, equipment and/or other objects on a Lot in a manner that is unsightly or for a period that is deemed inappropriate by the Declarant, the Board and/or the ACC, the Declarant, Board and/or the ACC may impose an Assessment for Non-Compliance on the Owner of the Lot.

(e) No building or other structure shall be placed or permitted to remain on any Lot which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the drainage, water and/or sewer facilities and appurtenances thereto serving the Subdivision. No Owner shall perform, or permit to be performed, any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area, except to the extent such alteration in drainage pattern is approved in writing by the Association, Declarant and all public (or quasi-public) authorities having jurisdiction. All drainage, water and sewer facilities and appurtenances shall at all times be accessible to Declarant until the Subdivision is completed and shall at all times be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities and appurtenances. Declarant may, from time

to time, present for recordation in the official records of the County plats, engineering plans, and/or other instruments showing the approximate locations of subsurface storm drainage facilities, subsurface groundwater drainage facilities, water and sewer lines and appurtenant facilities. If, for any reason, any such instrument is not accepted for recording, Declarant may deliver such instrument to the Association, and the Association shall maintain the same as part of its permanent records. In either event, each Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in such instrument.

Section 25. Sewage System. Sewage disposal shall be through the municipal system or, a type approved by appropriate State and local agencies. No Owner shall construct, place or permit to remain on any Lot any building or other structure which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the sewer lines, facilities and appurtenances thereto serving any portion of the Subdivision.

Section 26. Water System. Water shall be supplied through the municipal system or, a type approved by appropriate State and local agencies. No Owner shall construct, place or permit to remain on any Lot any building or other structure which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the water lines, facilities and appurtenances thereto serving any portion of the Subdivision.

Section 27. Utility Facilities. Declarant reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including but not limited to water, telephone, electric, cable, natural gas and sewage systems, which may be in variance with these restrictions. No Owner shall construct, place or permit to remain on any Lot any building or other structure which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the utility lines, facilities and appurtenances thereto serving any portion of the Subdivision.

Section 28 Dog Pens and Runs; Chicken Coups. No dog pen or dog runs are permitted; provided, however, dog houses are permitted as long as they are located in the rear yard of a Dwelling and not visible from the street. In addition to other requirements of this Declaration applicable to pets, pets must be on a leash or restrained at all times. Each Owner of a Lot with a single family detached Dwelling shall be permitted to maintain a chicken coup on its Lot for the maintenance and keeping of hens (as restricted in this Article); provided, however, the design and materials of such chicken coup shall be limited as provided in the Rules and Regulations or as otherwise approved by the Board or the ACC [ANY OTHER RESTRICTIONS TO INCLUDE? LOCATION ON LOT?].

Section 29. Exterior Changes. All exterior changes for improvements to any Lot shall first be approved in writing by the Board or the ACC empowered by the Board to review and approve such change, and as further provided in this Declaration. All exterior colors must conform to the original, approved scheme incorporated into the original construction, unless otherwise approved by the Declarant, the Board or the ACC, as applicable. Shutters and doors must complement the approved exterior color scheme and conform to the original, approved colors incorporated into the original construction, unless otherwise approved by the Declarant, the Board or the ACC, as applicable. When submitted a request for a color change, color chips and siding examples shall be attached to the architectural approval request form.

Section 30. Storm Doors. Storm doors are permitted provided that prior written approval is granted therefor by the Board, or by the ACC empowered by the Board, following review and approval of a request therefor using the standard form of request adopted for architectural review submissions.

Permitted storm doors shall be full-view glass or glass/screen and must match the existing façade color scheme. Door hardware shall also match the existing hardware (i.e. brass handle for brass lights, etc.).

Section 31. Window Boxes and Planters. Window boxes and planters shall be allowed; provided, however, window boxes and planters must be of a color and material complementary to the residence exterior and shall be maintained in a neat and attractive manner. Dead, dying and diseased plants and all weeds shall be promptly removed. Statues and figurine planters, however, shall not be allowed.

Section 32. If Rule or Regulation Requiring Irrigation Adopted. If the Association enacts any rule or Regulation requiring the irrigation of landscaping, such requirement to irrigate landscaping shall be suspended during periods of mandatory water conservation measures as provided in § 47F-3-122. No Owner may drill or use a private well for irrigation, nor draw water from any pond or other body of water within the Community.

Section 33. Unintentional Violations; Waiver of Setbacks, Building Lines and Building Requirements. In the event of the unintentional violation of any of the building setback line restrictions set forth herein, Declarant reserves the right to change or grant variances for the setbacks, location of Lot lines, and easements; provided, however, that such changes shall not be in violation of any provisions of the zoning provisions of the appropriate governmental authority. The Declarant, or the ACC, may, for good cause, waive unintentional violations of the setbacks and minimum square footages provided for in this Declaration. Such waiver shall be in writing and recorded in the Registry. A document executed by the Declarant or the ACC shall be, when recorded, conclusive evidence that the Owner of a Lot has met the requirements of this Declaration regarding such violation. The Declarant or the ACC may also handle violations of setbacks and boundary lines by amending the any plat of the Subdivision showing the amendment or adjustment. Nothing contained herein shall be deemed to allow the Declarant or the ACC to waive violations, which must be waived by an appropriate governmental authority.

ARTICLE IX

GENERAL MAINTENANCE AND NEIGHBORHOOD MAINTENANCE

(Townhomes separately and specifically addressed in Article XIV hereof and in Neighborhood Declarations, if Applicable)

Section 1. Association's General Maintenance Responsibility. The Association shall keep in good condition, order and repair the Common Area, including but not limited to the private (and public if not yet accepted for maintenance by the applicable Governmental Entity) streets, drives and alleyways as shown on the Plats, sidewalks and rights of way, curbing, detention/retention ponds, bulkheads, all entry features and entry landscaping, whether or not such features and landscaping are on a Lot, privately owned property or in the right of way and all street signage and street lights, and any other or any Common Areas and Limited Common Areas (except as otherwise provided in any Neighborhood Declaration, if at all). The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such responsibility is assumed and carried out by any local, state or federal government or quasi-governmental entity accepting responsibility for such maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is desirable or necessary to maintain the Community Wide Standards. In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the occupant, family member, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed against the Owner as a specific assessment.

The Board of Directors, in its sole discretion, may leave portions of the Common Area as undisturbed natural areas and may change the landscaping on the Common Area at any time and from

time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers. Any common irrigation system installed by the Declarant or the Association for the use by the Association shall be operated, maintained, repaired and replaced by the Association.

If and to the extent the following portions of the Common Area are not maintained adequately (in the opinion of the Board) by a governmental entity, the Association shall also maintain the following Common Area (whether or not constituting Common Areas), including: (a) entry features to the Property; (b) streets, parking areas and sidewalks; (c) perimeter fencing; and (d) landscaping within public street rights-of-way abutting or within the Property; (e) Stormwater Control Measures; and (f) Recreational Amenities. Additionally, the Association has the right, but not the obligation, to maintain the front, rear and side yards of Lots and to provide for trash and debris removal.

In the event that the Association determines that any maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the occupant, family member, guest, invitee or lessee of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof not paid for by insurance shall be assessed against the Owner as a specific assessment.

Section 2. Maintenance by Owners.

Except where the Association has the express obligation to do so under this Article IX or under Article XIV (Townhomes), each Owner, at all times, shall maintain, repair and otherwise be responsible for the condition and maintenance of his Lot and all Improvements thereon. Without limiting the generality of the foregoing, and subject to the requirements of this Declaration, an Owner shall be responsible for maintaining in good condition, the paint on the exterior of his Improvements, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawns, trees, shrubs, driveways, walks, and other exterior improvements, as well as those areas on a Lot or adjacent thereto which the Association requires a Lot Owner to maintain at his expense; replacement and reconstruction of improvements on an Owner's Lot required because of damage or destruction by fire or other casualty, maintenance, repair and replacement of the surface and subsurface drainage facilities and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of his Lot and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the Association, County or other Governmental Entity. Landscaping for each Lot as set forth in the landscaping plan required under Article VII shall be installed and completed within thirty (30) days of occupancy of the Dwelling and shall not be substantially modified without the prior written consent of the Board or ACC so empowered by the Board.

(a) The Association reserves the right, in its sole discretion, to plant, install, cut, edge and seed grass, cut or trim shrubbery and trees, install pine needles and/or to require certain Lots from time to time to be grassed, cut, trimmed, and maintained, all of which shall be at the expense of the particular Lot Owner. If the Association manages lawn maintenance in a particular section of the Subdivision, Owners with fences will be required to make arrangements to leave the gate open on lawn servicing dates; otherwise the Owner will be responsible for the portion of their yards enclosed by such fences.

(b) Each Owner shall maintain his Lot such that no activities, buildings, structures, or other Improvements thereon shall be placed or permitted to remain on any Lot which may damage or interfere with the surface and subsurface drainage facilities and appurtenances located on his Lot, and/or damage or interfere with the use, maintenance, repair or replacement of such drainage facilities and appurtenances. No Owner shall do any work, construct any Improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area, except to the extent such alteration in drainage pattern is approved in writing an

in advance by the Association, Declarant and all public (or quasi-public) authorities having jurisdiction over the Property. All such drainage facilities and appurtenances shall at all times be accessible to Declarant until all Lots in the Subdivision have been sold and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing the approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities. If for any reason any such instrument is not accepted for recording, Declarant may deliver such instrument to the Association, and the Association shall maintain the same as part of its permanent records. In either event, each Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in any such instruments.

Section 3. Failure of Owner to Maintain.

(a) In the event that the Owner neglects or fails to maintain his Lot and/or the exterior of his or her Dwelling in the Subdivision, or any easement areas and/or improvements required by the Association to be maintained by the Owner of that Lot, the Association may, but shall not be obligated to, provide such maintenance at the Owner's expense. Other than where such maintenance, repair and replacement pertains to a vacant or unimproved Lot or where, in the sole determination of the Board of Directors, such failure to maintain, repair or replace constitutes a significant nuisance or hazard to other Owners, the Association shall first be required to provide such non-complying Owner with written notice: (a) of the required maintenance, repair and/or replacement to be performed by that Owner and of the time frame for compliance; and (b) where applicable, of the Association's intent to remedy such violation by providing such maintenance, repair and/or replacement at the Owner's expense, should such maintenance, repair and/or replacement not be performed by the Owner by the deadline set out in the notice. The determination as to whether an Owner has neglected or failed to maintain his Lot and/or Dwelling in a manner consistent with other Lots and Dwellings in the Subdivision and what constitutes a significant hazard or nuisance to other Owners shall be made by the Board, in its sole discretion. In order to enable the Board to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access, egress and regress over and upon each Lot at all reasonable times to perform the maintenance, repair and/or replacement, as provided in this Article.

(b) If any Owner, after Notice and Opportunity for Hearing, fails to maintain their Lot and the improvements thereon, the Association, at the expense of such Owner, may, but shall not be obligated to, perform such maintenance, repair and/or replacement, and the Board, without the vote or written consent of Members, may levy a specific assessment against such Owner in an amount to be determined by the Board, which shall be added to and become a part of the Assessment to which such Lot is subject, and constitute the Association's lien upon that Lot.

Section 4. Work Required by Owner's Willful or Negligent Act. In the event that the Association determines that any need for maintenance, repair and/or replacement, is caused through the willful or negligent act of an Owner or the family, guests, lessees, or invitees of any Owner, then the Association may, but shall not be obligated to, perform such maintenance, repair and/or replacement at such Owner's sole cost and expense, and all costs thereof, together with a penalty determined by the Board, shall be added to and become a part of the specific assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

Section 5. Rights of Entry.

(a) By Declarant and Association.

This Declaration hereby reserves unto the Declarant, the Association and their successors, agents, representatives, employees, and contractors an easement for ingress, egress, access and

regress and for maintenance, repair and replacement over, upon and through every Lot and the Common Area, when necessary, practical or desired, in order to inspect, repair, maintain, construct, and/or replace improvements or to bring a Lot into compliance with this Declaration, the Architectural Guidelines or the Regulations for which the Association is responsible for enforcing, and each Owner accepting title to a Lot in the Subdivision takes title subject to such right of access of the Association and Declarant and their successors, agents, representatives, employees, and contractors.

(b) By Safety and Emergency Personnel.

In addition, this Declaration reserves unto any police, fire, paramedic and other safety and emergency personnel, and to such governmental agencies having jurisdiction over the Subdivision, their agents and employees, the right of immediate access to the Common Area and the Lots at all times for emergency situations, and for the preservation of public health, safety and welfare.

Section 6. Individual Insurance. Except where the Association has the express obligation to insure under Article XIV (Townhomes), each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner will carry at all times all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

ARTICLE X MORTGAGEE PROVISIONS

Section 1. Obligation of Association to First Mortgagees. So long as any First Mortgagee shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such First Mortgagee, upon timely written request to the Association, shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board, such financial statement or report to be furnished by April 15 of each calendar year;

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration, the Articles of Incorporation, or the Bylaws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association;

(c) To receive notice of any condemnation or casualty loss affecting the Common Areas or any portion thereof;

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(e) To have the right to approve any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association; and

(f) To be given notice of any delinquency in the payment of any Assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the First Mortgagee, such notice to be given in writing and to be sent to the principal office of such First Mortgagee, or to the place which it may designate in writing.

Section 2. Requirements of First Mortgagee. Whenever any First Mortgagee desires to avail itself of the provisions of this Article, it shall furnish written notice thereof by certified mail, postage prepaid, return receipt requested, to the Association at the Registered Agent's address registered with the Secretary of State for the State identifying the Lot or Lots upon which any such First Mortgagee holds any first lien or identifying any Lot or Lots owned by such First Mortgagee and such notice shall designate the place to which notices, reports or information are to be given by the Association to such First Mortgagee.

Section 3. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any mortgage which is made in good faith and for value. The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage recorded prior to the date any such Assessment becomes due. This subordination shall apply only to Assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid Assessments or charges against the Lot which have accrued prior to the time such mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for Assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due Assessments upon such Lot; and provided further, that except as otherwise provided in this Section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, Assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

ARTICLE XI AMENDMENT

Section 1. Amendment by Declarant. Until the expiration of the Development Period, Declarant may, in its sole discretion, and unilaterally, without the requirement of approval, joinder or consent of the Owners or any other party, amend this Declaration as long as such amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or use of the Common Area (not including Limited Common Area where the right has otherwise been reserved for Declarant to unilaterally re-allocate/convey/move/convert/change the use of the same pursuant to a Neighborhood Declaration or otherwise herein) as set forth in this Declaration and the amendment does not adversely affect the title to any Lot owned by any party other than Declarant, unless such Owner shall consent in writing thereto, which consent shall be filed with such amendment. Any amendment to the Declaration adopted by the Declarant shall be effective upon the later of the effective date contained therein or the date of its recording in the Registry.

Declarant may (in Declarant's sole discretion) also amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association, or other similar agency, or to comply with any applicable Legal Requirements. Any such amendment must be with the consent and approval of such agency and must be recorded in the office of the Register of Deeds for the County.

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

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

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to the Declaration is to be voted on, together with at least a summary description of the proposed amendment, shall be given to all Members not less than ten (10) days and not more than sixty (60) days in advance of the date of such meeting.

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

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

Section 3. Consent of Mortgagees. No consent of any Mortgagee to any amendment of the Declaration is required unless (i) the amendment adversely affects the rights of Mortgagees under the Declaration, or (ii) a Legal Requirement requires the consent of Mortgagees or a percentage of Mortgagees, or (iii) the mortgage held by such Mortgagee specifically requires the Mortgagee's consent with respect to the portion of the Property subject to the mortgage, and if either (ii) or (iii) is applicable, the Mortgagee has notified the Association of its rights regarding consent to amendments in the same manner required for an Mortgagee to notify the Association in the Article of the Declaration dealing with

Mortgagee Provisions. If the amendment is adopted by the required percentage of Members exclusive of the Member or Members who own portions of the Property for which consent of a Mortgagee is required under this Section, then the amendment is valid whether or not the necessary Mortgagees have consented to the amendment.

Section 4. Prohibited Effects of Amendment. Notwithstanding the provisions of Sections 1, 2 and 3 of this Article allowing amendments to the Declaration, no amendment to the Declaration, whether adopted by the Declarant, by the Association, or by the Members or any applicable group of Members of the Association, shall do or result in any of the following:

(a) without the written consent of Declarant, diminish, impair, or in any way affect the rights of Declarant, including Declarant's rights to develop any part or all of the Property in accordance with a Subdivision Plan;

(b) without the written consent of Declarant, impose additional obligations upon Declarant;

(c) diminish or impair the express rights of Mortgagees under the Declaration without the prior written approval of a majority of the Mortgagees who have requested the exercise of such rights as provided herein;

(d) terminate or revise any easement established by the Declaration, without the written consent of the Person benefitted by the easement or by the Owner of the portion of the Property benefitted (and/or, with respect to a revision, burdened) by the easement, whichever is applicable;

(e) violate any provision of any Stormwater Agreement in effect, if any;

(f) alter or remove or attempt to alter or remove any otherwise applicable Legal Requirement.

ARTICLE XII DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION

Section 1. Duration. Unless sooner terminated as required by Legal Requirements, the Declaration shall run with and bind the Property and each Owner, and shall inure to the benefit of the Association, and each other Owner of any portion of the Property, and their respective heirs, successors, and assigns, from and after the recording of the Declaration in the Registry and in perpetuity or until such time as it is terminated by a written termination agreement, executed or ratified in the same manner as a deed, by those Members who hold eighty percent (80%) or more of the total number of votes in the Association, and also with the written consent of Declarant during the Development Period. Execution or ratification by any one of multiple Owners of a Lot is sufficient for that Lot unless, prior to the time the termination agreement is recorded in the Registry, any other Owner of that Lot files with the Association a written objection to the termination of the Declaration (in which event the vote allocated to that Lot shall be considered as not having been exercised). The termination agreement shall specify a date after which it will be void unless it is recorded in the Registry before that date. The termination agreement may not be recorded in the Registry unless and until the requisite number of signatures have been obtained as provided herein, and it shall be effective only upon recording. If, pursuant to the termination agreement, any real estate in the Property is to be sold following termination of the Declaration, the minimum terms of the sale shall be set forth therein.

Section 2. Dissolution of the Association. The Association shall be dissolved upon the termination of the Declaration. Provided, however, until any sale of the Common Property authorized by the termination agreement or approved by the Owners in the same manner as required for approval of the

termination agreement is completed and the sale proceeds distributed, the Association shall continue in existence with all of the powers it had before termination. The Association, on behalf of the Owners, may contract for the sale of the Common Property, but the contract is not binding unless such sale has been authorized in the termination agreement or it has been approved by the Owners in the same manner as required for approval of the termination agreement or otherwise as/if required by the Act. Proceeds of the sale of Common Property shall be distributed to the Owners and lienholders as their interests may appear, as provided in the termination agreement or other agreement approved by the Owners in the same manner as required for approval of the termination agreement. If the Common Property is not to be sold following termination of the Declaration, title to the Common Property vests in the Owners upon termination, as tenants in common in proportion to their respective interests as provided in the termination agreement.

Upon dissolution of the Association or upon loss of ownership of all of the Common Property by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Property as allowed by the Declaration, or by reason of merger and/or consolidation with any other association as allowed by the Declaration), except as otherwise provided in the termination agreement, other agreement approved by the Owners in the same manner as required for approval of the termination agreement, or Legal Requirements (in particular, Section 47F-2-118 of the Act, or any successor Section of the Act), any portion of the Common Property not under the jurisdiction of and being maintained by another association substantially similar to the Association, together with all other assets of the Association, first shall be offered to the Town (or, if the Town refuses such offer, then to some other appropriate Governmental Entity or public agency as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Property and such assets were required to be devoted by the Association. If the Town or such other appropriate Governmental Entity or public agency accepts the offer of dedication, such portion of the Common Property and assets shall be conveyed by the Association to the Town or such other appropriate Governmental Entity or public agency, subject to the superior right of an Owner to an easement (if necessary) for reasonable ingress and egress to and from such Owners Lot and the public or private street(s) on which that Lot is located, subject to all other applicable rights of way and easements, and subject to ad valorem property taxes subsequent to the date of such conveyance.

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

ARTICLE XIII

DISCLOSURES AND WAIVERS

The following are in addition to any other disclosures and waivers in the Declaration, and do not in any way limit the same or otherwise limit the rights of Declarant hereunder, and each Owner by acceptance of any deed for any Lot in the Community acknowledges and agrees to all the following disclosures and waivers.

Section 1. Construction Activities. All Owners and other Persons who use the Property hereby are placed on notice that Declarant, Builders and/or their respective agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting,

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

Section 2. Conveyance of Common Property. Declarant may convey or transfer all Common Property, including all improvements thereon, to the Association in an "AS IS, WHERE IS" condition. Declarant hereby disclaims and makes no representations, warranties or other agreements, express or implied, by law or fact, with respect to the Common Property and improvements thereon, including, without limitation, representations or warranties of merchantability regarding the condition, construction, accuracy, completeness, design, adequacy of size or capacity thereof in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials, furniture, or equipment used therein. Neither the Association nor any Owner or any other Person shall make any claim against Declarant, its successors and assigns, relating to the condition, operation, use, accuracy or completeness of the Common Property, or for incidental or consequential damages arising therefrom.

Declarant shall transfer and assign to the Association, without recourse, all warranties received from manufacturers and suppliers relating to any of the Common Property or improvements thereon, or relating to any personal property transferred by Declarant to the Association, which exist at the time of transfer and are assignable, but Declarant's failure to do so shall not constitute any grounds for any claim, cause of action or other legal recourse against Declarant for failing to do so, other than to compel Declarant to transfer or assign same.

Section 3. Liability for Association Operations. The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant, its successors and assigns, and its shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of Common Property and the collection of assessments.

Section 4. Public Facilities and Services. Certain facilities and areas within and adjoining the Property may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: the Community Farm, greenways, trails and paths, parks, and other neighborhood areas conducive to gathering and interaction, roads, sidewalks, and medians. In addition to any such facilities and areas that are open for use and enjoyment of the public pursuant to Legal Requirements, Declarant may designate facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Common Property or the Board may so designate at any time thereafter. Without

limitation any Community Farm, if any, might be opened to the public for farmer's markets, fairs and other cultural and educational events.

Section 5. Agrarian Nature of Community. Certain types of agrarian uses are/may be allowed within the Community that may make the Community unique and may cause certain conditions to be present within the Community that are not typical in other nearby or otherwise similar communities (such as farming and livestock raising activities on Common Areas, farming in raised beds on Lots, raising of hens on Lots, Community Gardens). These activities may result in smells and sounds that differ from what might be found in other planned communities in the general vicinity of the Community.

Section 6. Safety and Security. Each Owner and occupant of a Dwelling, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the level of safety or security which each Person provides for himself or herself or itself and his or her or its property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, not that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing such Owner's tenants and all occupants of its Dwelling that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Property assumes all risks of personal injury and loss or damage to property, including Dwellings and the contents of Dwellings, resulting from acts of third parties.

Section 7. View Impairment. None of Declarant, any Builder or the Association guarantee or represent that any view from, over, or across any portion of the Property will be preserved without impairment. None of Declarant, any Builder or the Association shall be obligated to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement, if any. The Association (with respect to the Common Property) has the right to add or remove trees and other landscaping to and from the Common Property, subject to Legal Requirements. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 8. Water Management. Each Owner and any other Person who uses any portion of the Property acknowledges and agrees that any or all bodies of water (including lakes, ponds, creeks, streams, and wetlands in the Property), together with any dams or other facilities or devices that contain, control, or direct such waters, may be designed as water management areas (including designation as Stormwater Measures) and not designed solely as aesthetic features, and that, with respect to those that are water management areas, due to fluctuations in ground water elevations within the immediate area and/or the receipt or discharge of stormwater, the water level of such lakes, ponds, and wetlands may rise and fall. Each Owner and other such Person further acknowledges and agrees that Declarant has no control over such elevations. Therefore, each Owner and other such Person releases and discharges Declarant, and its successors, assigns, contractors, subcontractors, shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water elevations.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the

perpetual, non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the adjoining the Property to do any or all of the following: (i) install, operate, maintain, and replace pumps to supply irrigation water to the Common Areas; (ii) construct, maintain, and repair structures and equipment used for retaining water; and (iii) maintain such areas in a manner consistent with the Community Wide Standard.

Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and Lots (but not the Dwellings thereon) adjacent to or within 50 feet of bodies of water within or adjoining the Property, in order to do any or all of the following: (i) temporarily flood and back water upon and maintain water over such portions of the Property; (ii) alter in any manner and generally maintain the bodies of water within and adjoining the Property; and (iii) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage to a Lot resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

Owners and other Persons who use any portions of the Property shall not alter, modify, expand, or fill any lakes, ponds, or wetlands located in the Property without the prior written approval of the local permitting authority, the Town, the Association, the Declarant, the U.S. Army Corps of Engineers (to the extent it has authority), and such other governmental entities as may have relevant jurisdiction over such matters.

ARTICLE XIV TOWNHOMES

In order to provide for the typical level of Association services for Townhomes in the Community in accordance with the Community Wide Standards and in recognition of the dependent nature of Townhome construction and day-to-day living, the terms, provisions and restrictions in this Article XIV apply to all Townhomes in the Community, in addition to (and without limiting) all other terms, provision and restrictions in this Declaration.

Section 1. Association Maintenance. The Association shall provide exterior building maintenance for the Townhomes and Townhome Buildings as follows: paint, stain, repair, replace, and maintain of the exterior surfaces of Townhomes and the Townhome Buildings, including the painting of entry doors and the repair of siding and boots around vents (but excluding repair and replacement of entry doors and garage doors and their appurtenant hardware; excluding the repair of wall sheathing; and further excluding all exterior glass including windows and patio doors, all of which are the responsibility of the Owner at its sole cost and expense); repair, replace, and maintain roof flashing, fascia, soffit, and shingles (but excluding maintenance, repair and replacement of other portions of the roof such as trusses, joints and structural elements which are the responsibility of the Owner at its sole cost and expense); repair and replace gutters and downspouts. Notwithstanding the foregoing and for avoidance of doubt, each Owner and not the Association shall be responsible, at the Owner's sole cost and expense for the following: maintenance of Decks, exterior lighting, electrical and mechanical systems on/in its Dwelling, HVAC, interior repairs caused by leaks, pest control, interior and exterior plumbing (as applicable), structural components and foundations of Dwellings, and water lines outside of foundation walls and from meter wall to interiors. Furthermore, and notwithstanding any other terms and provisions in this Declaration, including in Article IX, the Association shall likewise maintain all yards, lawn areas and grassy areas, and landscaped features and areas (including but not limited to plants, flowers, trees and bushes) located on the Townhome Lots and the same within all adjacent Common Areas and without limitation within the street rights of way. The required maintenance shall include grass mowing, removal of weeds and grass

clippings, fertilization and aeration, all to be performed in manner and frequency as determined by the Board of Directors. The cost of providing the repair and maintenance work described above, as well as reserves for the same shall be assessed against the Townhome Lots as part of the Common Expenses under this Declaration and shall be allocated as a Neighborhood Expense. Except to the extent provided by the Association as a Neighborhood Service, Owners, and not the Association, shall be responsible for watering their own lawns and landscaping on their Townhome Lots, and are subject to special individual assessment for failure to do so and for any resulting replacement costs incurred as a result of such failure.

Section 2. Storage or Use of Open-Flame Devices. All Owners and other Persons occupying any Townhome (including their Guests) shall at all times be in compliance with the Fire Code of the North Carolina State Building Code and any rule, restriction, or regulation adopted by the Association or the Declarant for storage or use of open-flame devices (including grills) upon Lots and Townhome Dwellings. Furthermore, the storage or use of any devices that have an open-flame, including but not limited to cooking, heating, or decorative devices fueled by charcoal, wood, or liquefied petroleum (LP), butane, kerosene, oil, or propane gas is strictly prohibited on any Townhome stoop, deck, or balcony, or otherwise within 10 feet of the Townhome Building. The storage and use of any open-flame grills or LP gas container having a capacity greater than 2.5 pounds is a fire hazard and is strictly prohibited on any Townhome stoop, deck, balcony, or otherwise, within ten feet (10') of a Townhome Building or combustible building materials. "Decorative devices" shall include but not limited to tiki torches, and "grills" shall be defined to include charcoal or gas fueled cooking devices.

Section 3 Townhome Casualty Insurance - Association. Notwithstanding any terms and provisions in the Declaration and in any event in addition to the same, the following shall apply:

(a) The Association shall obtain and maintain a casualty insurance policy or policies on all Townhomes and Townhome Buildings for the benefit of the Owners of the same and their Mortgagees, as their interests may appear, and provisions shall be made for the issuance of certificates or Mortgagee endorsements to Owners and to Mortgagees of Owners upon request therefor by any Owner or Mortgagee. Each Townhome and Townhome Building shall be insured in an amount equal to one hundred percent (100%) of its insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended overage, vandalism and malicious mischief, and

(ii) such other risks as from time to time shall be reasonably required by the Association.

(b) Premiums for all insurance policies purchased by the Association under this Declaration shall be assessed against the Townhomes and shall be included as a Neighborhood Assessment, to be paid together with the Annual Assessments. Deductibles shall likewise be paid as Neighborhood Assessments.

(c) All insurance policies purchased by the Association for the benefit of Owners shall be for the benefit of the Owners and their Mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee hereunder. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their Mortgagees in the following shares:

(i) If the insured casualty shall occur resulting in damage to a Townhome and Townhome Building, proceeds from insurance shall be held in undivided shares for the affected Owners

in proportion to the cost of repairing the damage insured against in said policy, which cost shall be determined by the Association.

(ii) In the event a mortgagee endorsement has been issued for a Townhome Lot, the share payable towards the improvements to such Townhome Lot shall be held in trust for the mortgagee and other Owners of as their interests may appear.

(d) Proceeds of insurance policies for the benefit of Owners that are received by the Association as insurance trustee shall be distributed in the following manner: First, to all expenses of the insurance trustee shall be paid or provision made thereof; next to defray the cost of the covered repairs/improvements; and finally, if applicable, any proceeds remaining after defraying such costs shall be held in undivided shares for the affected Owners in proportion to the costs of repairing the damage or injuries suffered by each Owner, the cost of which shall be determined by the Association. If the insurance proceeds received by the Association (along with any reserves on hand) are insufficient to cover the cost of repair/replacements/damage to person and/or property, the Board may levy a special assessment against the Owners affected to cover the deficiency, and in any event, the Owners shall pay their respective shortfalls all so that the restoration/repairs may be completed.

Section 4. Owners to Obtain Insurance. Each Owner of a Townhome shall procure and maintain, at such Owner's sole cost and expense, insurance coverage as follows:

(a) such public liability insurance over its Townhome Lot as is appropriate, in each Owner's sole discretion.

(b) insurance on the contents of its Townhome, with limits no less than the replacement value of such contents.

Neither the Association nor Declarant shall be liable in any manner for the safekeeping or condition of or damage to any personal property belonging to or used by any Owner or such Owner's family, guests or invitees, where Owner is responsible for insuring the same under this Section 4.

Section 5. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, Mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each Mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 6. Restoration After Casualty.

(a) The plans and specifications for any restoration shall be prepared by an architect licensed in the State of North Carolina. All plans and specifications required in connection with any restoration shall be subject to review and approval by the Board or the Architectural Control Committee, if so empowered, and otherwise as required by this Declaration. Unless the Association and a majority of the voting interests of the Owners of the damaged Townhomes shall otherwise agree, plans and specifications for any restoration shall be consistent with the then existing building plans.

(b) If an Owner fails to cause the removal of debris and restoration of Improvements to be timely accomplished to comply with this Declaration, the Association shall provide written notice of such deficiency to such Owner. If deficiency has not been remedied within a reasonable time (as determined by the Board of Directors), the Association shall have authority to cause such restoration to be performed,

and any expenses incurred by the Association in connection therewith shall be charged to such Owner and shall be a special individual assessment against such Owner's Lot.

(c) The rights granted to the Association in this Article in the event of any loss, damage or destruction of a Townhome constitute reasonable protections of property values and aesthetic appearance of the Townhomes, and each Owner agrees to comply with such terms, conditions and procedures as Association may impose.

(d) "Restoration Costs" means the cost of repairing, replacing, restoring or reconstructing all loss, damage or destruction to the applicable portion of the Lot and Townhome (including the deductible under any applicable insurance policies) or any part thereof, including all costs of adjusting the loss; inspections, investigations and reports as to the damage; permit and inspection fees, architectural and engineering fees; demolition, removal and disposal fees; costs of securing and protecting the portions of the Lot and Townhome to be restored; accounting fees and costs; and attorneys' fees and costs; construction costs, and the Association's fees and costs for reviewing the plans for the restoration and holding and disbursing the insurance proceeds and other funds.

Section 7. Party Walls.

(a) Wherever one Townhome is separated from another Townhome by a common, shared or party wall ("Party Wall"), the obligations of each Owner with respect to its Party Walls shall be governed by this Section 7. Each Party Wall shall be the joint obligation of each of the Owners of the adjoining Townhomes ("Party Wall Co-Owners"). Each Party Wall Co-Owner shall be responsible for the maintenance of the surface portion of the Party Wall which is contained within its Townhome. Any maintenance and the like, including repairs to the paint, plaster or drywall or gypsum wall board on the surface portion of the Party Wall which is contained within a Townhome, shall be the obligation of that Owner. Each Party Wall Co-Owner shall have the right to use the side of the Party Wall within the Owner's Lot and Townhome in any lawful manner, including attaching structural or finishing materials to it; however, an Owner shall not create windows or doors or place heating or air conditioning equipment in the Party Wall without the consent of the other Party Wall Co-Owner. Any consent given to a Party Wall Co-Owner to create openings in the Party Wall shall be subject to the right of the other Party Wall Co-Owner to revoke its consent on 60 days' prior written notice and close up such openings and/or remove such heating or air conditioning equipment. The Party Wall Co-Owners shall be jointly responsible for the structure of the Party Wall; i.e., maintenance and restoration of concrete block, rebar, mortar, tie beam, and all other elements of the Party Wall.

(b) Each Party Wall Co-Owner hereby grants to the other Party Wall Co-Owner, its successors and assigns, a perpetual non-exclusive easement and right of entry over and across its respective Lot and Townhome for the purposes of performing maintenance and restoration to the Party Wall, provided that any such easement is exercised after prior notice and during reasonable hours.

(c) To the extent not inconsistent with the provisions hereof, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto. A Party Wall Co-Owner shall perform restoration of its Party Wall whenever a condition exists which may result in damage or injury to person or property if the restoration work is not undertaken. The cost of reasonable repair or maintenance of a Party Wall shall be shared by the Party Wall Co-Owners on each side of such Party Wall. If a Party Wall is destroyed or damaged by fire or other casualty, a Party Wall Co-Owner on either side of the Party Wall may restore it, and if the Party Wall Co-Owner on the other side thereafter makes use of the Party Wall, such other Party Wall Co-Owner shall contribute to the cost of restoration thereof in proportion to such use; provided that the forgoing provision shall not prejudice the right of any Party Wall Co-Owner to seek a larger contribution from the other under

any rule of law regarding liability for negligent or willful acts or omission. Any amounts due and unpaid under this Section 7 shall bear interest at the rate of 18% per annum from the date due until paid in full.

(d) If at any time any Owner (hereinafter in this Subsection, the “Non Performing Owner”) shall not be proceeding diligently with any restoration required of it under this Declaration, then the other Owner(s) shall give written notice to the Association specifying the respect in which such Non Performing Owner is not proceeding diligently with his or her restoration work. If, upon expiration of 30 days after the giving of notice, the restoration work is not proceeding diligently, then the Association may perform such restoration in accordance with the then existing building plans and may take all appropriate steps to carry out the same, including entry onto the Lot of any Owner to the extent necessary to perform the restoration work. The Association shall be entitled to impose an individual assessment on the Party Wall Co-Owners responsible for the cost of such restoration.

(e) Each Owner agrees to indemnify the Declarant, the Association and the other Party Wall Co-Owner for injury or personal or property damage, when such injury or damage shall result from, arise out of, or be attributable to its failure to perform or comply with its duties and obligations under this Section 7.

(a) In any transfer of title to a Townhome, the Owner of such Townhome (“Grantor”) and the purchaser (“Grantee”) of such Townhome shall be jointly and severally liable for all unpaid amounts pertaining to the Party Walls accrued up to the date of the conveyance without prejudice to the rights of the Grantee against the Grantor, but the Grantee shall be exclusively liable for those accruing after the conveyance. The lien rights of any Owner against another Townhome for amounts due under this Section 7 shall be subordinate to the lien of any Mortgagee and any assessment by the Association. If the Mortgagee or other purchaser acquires title as a result of a foreclosure or deed in lieu of foreclosure of a First Mortgage, the purchaser and any successors and assigns shall not be liable for the amounts which became due prior to the acquisition of title in the foreclosure action. Any unpaid amounts which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be divided between Party Wall Co-Owners, payable by and a lien against both Lots sharing the Party Wall, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

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ARTICLE XV MISCELLANEOUS

Section 1. Enforcement. The Declarant, the Association, each Owner, and, when enforcement rights are granted by the Declaration, a Mortgagee, shall have the right, but not the obligation, to enforce the Declaration by any proceeding at law or in equity (or otherwise, as provided in the Declaration) against any Person who has violated, is violating, or is attempting to violate, any part of the Declaration, either to restrain the violation, recover damages, or seek other available legal or equitable remedies. Any failure by the Declarant, the Association, an Owner, or any other Person to enforce the Declaration or seek any applicable remedy with respect to any specific violation or lien shall not constitute a waiver of the right to do so thereafter, nor shall it constitute a waiver of the right to enforce the Declaration at any other time with respect to the same or substantially similar matter. All rights, remedies and privileges granted to the Declarant, the Association, any Owner, or any other Person herein are cumulative, and the exercise of any one or more of such rights, remedies or privileges shall not constitute an election of remedies or preclude subsequent exercise of other rights, remedies and privileges.

Section 2. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of the Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent and final jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of the Declaration shall continue in full force and effect and shall not be affected thereby. To the extent that any provision of the Governing Documents is determined to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision without destroying its intent, then the narrower or partially enforceable provision shall be applied and, to the extent lawful, shall be enforced. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 3. Notice. Except as otherwise provided herein, whenever written notice to any Person (including Owners and Members) is required hereunder; such notice may be hand delivered to such Person, or given by first class United States mail, postage prepaid, or given in such other manner specifically allowed or required by Legal Requirements, or given in such other manner determined by the Board to be proper and which does not violate any Legal Requirements, addressed to the address of such Person appearing on the records of the Association or to the address for such Person appearing in the records of the Wake County Tax Collector. Properly addressed notice shall be deemed to have been given by the Association as follows: (i) in the absence of any delays in delivery by the United States Postal Service resulting from acts of war or terrorism, on the third day following the date the notice was deposited in the United States mail, first class postage prepaid; or (ii) on the date of personal delivery to the Person or an adult residing with the Person, as evidenced by a receipt signed by the Person or such other Person; or (iii) on the delivery date indicated on a return certified or registered mail receipt, or (iv) on the date indicated by the records of a national, regional or local same day or overnight courier service, or (v) on the date acknowledged in writing by the recipient Person or other adult residing with such Person, or (vi) upon execution of a written waiver of such notice by the Person. Notice to the Association may be given and shall be deemed to have been given in the same manner as notice to a Person, when addressed to the principal business office of the Association or the property manager employed by the Association. It shall be the duty of each Owner and Member to keep the Association informed of such Owner's or Member's current mailing address and telephone number. If an Owner or Member has not provided the Association with such current mailing address the Association may use as the mailing address the street address of the Lot owned by such Owner or Member or the address for such Owner or Member in the records of the Wake County Tax Collector. If no address for an Owner or Member is reasonably available to the Association, the Association shall not be required to give notice to such Owner or Member. Notice given to any one of multiple Owners of any portion of the Property shall be deemed to have been given to all of such Owners.

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

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

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

Section 7. Consent. Except as otherwise may be specifically required by the Governing Documents or Legal Requirements, where the consent of the Owner of a Lot is necessary, and such Lot is owned by more than one Person, the consent of any one of such Owners is sufficient.

Whenever the written consent of Declarant is required for the effectiveness of some action under the Declaration in addition to any required vote of the Members of the Association, the votes in the Association allocated to Declarant shall be counted in determining the vote of the Members, the written consent requirement being in addition to the voting requirement, whether or not Declarant actually participates in the voting.

Section 8. Subdivision Combination of Lots; Plat Re-recording. A Lot may be subdivided, and the boundaries of a Lot may be altered, only with the written consent of the Owner thereof and the Declarant (during the Development Period and, thereafter, the Board), and with any prior approval required of the Town. Provided, however, and notwithstanding the foregoing sentence, such written consent of the Declarant is not required for leases, deeds of correction, deeds to resolve boundary line disputes or similar corrective instruments, or deeds or other instruments granting any easement, right-of-way or license to Declarant, the Association, the Town or a public utility provider, provided that the number of then existing Lots in the Property is not changed by any such action.

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

Nothing contained herein shall prohibit or restrict the right of Declarant, during the Development Period to (i) subdivide, combine, re-subdivide or recombine, or to record or rerecord Plats relating to, any portion of the Property owned by Declarant, or (ii) to approve or disapprove such activities with respect to portions of the Property owned by other Owners. The provisions of the immediately preceding paragraph with respect to the effects of subdivision or combination of Lots are applicable to subdivision or combination of Lots owned by the Declarant unless the Declarant otherwise indicates on the plat of such subdivision or combination recorded in the Registry or in an instrument recorded in the Registry prior to the end of the Development Period.

Section 9. Exclusive Rights to Use Name of Subdivision. During the Development Period, no Person shall use the name "Smith Farms of Apex," or any derivative of such name in any logo or depiction, in any printed or promotional material without Declarant's prior written consent; except that Builders may use such names in conjunction with any and all marketing, sales and construction efforts without need for consent of Declarant. Furthermore, and notwithstanding the foregoing, all Owners may also use the name "Smith Farms of Apex," in printed or promotional matter where such term is used solely

to specify that a particular Lot is located within the Property, and the Association shall be likewise be entitled to use such names in its name and in Association materials.

Section 10. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases which affect or relate to the Property or any part thereof and which (i) are entered into prior to the time that the first Board elected by the Members takes office, and (ii) are not bona fide or were unconscionable to the Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the first Board elected by the Members takes office, upon not less than ninety (90) days written notice to the other parties to the contract or lease (or any different minimum time period provided for in the Act), and all such commas and leases are terminable as provided in this Section, whether or not the right of the Association to terminate is stated therein.

Section 11. Conflicts. Whenever there exists a conflict among the Governing Documents of the Association, the provisions of the Declaration and thereafter, any applicable Supplemental Declaration or Subdivision Declaration, shall control, except as to matters of compliance with the Nonprofit Corporation Act, in which event the Articles shall control. Whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control. The provisions of the Bylaws shall control over any conflicting provision of any rules and regulations, Board resolutions, or Architectural Guidelines. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act, the Nonprofit Corporation Act and the Code shall in all cases control over any construction inconsistent therewith.

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

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

Section 12. Assignment. Declarant specifically reserves the right, in Declarant's sole discretion, to assign temporarily or permanently any or all of its rights, privileges, powers and/or obligations under the Declaration or under any Supplemental Declaration or Subdivision Declaration, including assignment of any or all of same as security for any obligation of Declarant to any Person. Except as otherwise provided in this Section, no such assignment shall be effective unless (i) it is in writing, (ii) it is executed

by the assignee, (iii) it is recorded in the Registry or other governmental entity office required under Legal Requirements, with the date of recording or such later effective date stated in the assignment being the effective date thereof (and the terms of the recorded assignment shall be conclusive and binding as to the matters assigned), and (iv) if it purports to assign any obligations of the Declarant to complete initial capital improvements within the Subdivision required by the Subdivision Plan or other Legal Requirements, it describes the specific obligations assigned.

Upon Declarant's request, the Association shall execute any such assignment by Declarant to the Association, but Declarant may not assign to the Association any obligation to complete initial capital improvements within the Property required by the Subdivision Plan or other Legal Requirements. With respect to assignments described in any instrument under which Declarant rights specifically or impliedly are given as security for an obligation of Declarant, the terms of such instrument shall control over the provisions of this Section, including execution and recording requirements and the matters assigned thereby. Upon any completed foreclosure sale pursuant to any instrument under which the Declarant rights become security for an obligation, or the recording or filing of a deed or other instrument in lieu of foreclosure, the purchaser at the foreclosure sale, or the grantee under any deed or other instrument in lieu of foreclosure, shall receive the rights, privileges, powers and/or obligations that were assigned as security for the Declarant's obligation, unless the foreclosure documents or conveying document specifically exclude such rights, privileges, powers and/or obligations.

Notwithstanding anything to the contrary in this Section, with respect to the Common Area (including Common Property and Stormwater Control Measures) and utilities in the Property, Declarant may assign to the Association, and the Association shall accept assignment of and execute the assignment document with respect to, any or all of the following in whole or in part, including the costs thereof: all rights, duties, liabilities, obligations and indemnities of the Declarant under all permits issued by the Town or any provider of utilities to any part or all of the Property, and/or under all agreements between the Declarant and the Town or any provider of utilities to any part or all of the Property, with respect to maintenance of the Common Area and/or utilities in the Property. Provided, however, and notwithstanding the foregoing, Declarant may not assign to the Association any of its obligations or liabilities or indemnities directly related to the improvements for the initial installation of Common Property, Stormwater Control Measures and/or utilities and/or publicly dedicated street in the Subdivision as required by the Town or a utility provider for development of the Property in accordance with a Subdivision Plan, including warranties for construction of such improvements, if any, required by any governmental entity or utility provider prior to its acceptance of maintenance responsibility, if any, for such improvements (it being recognized that one or more of such improvements may not be of a type that are accepted for maintenance by a governmental entity or utility provider). Declarant shall have the authority to resolve any dispute as to what rights, duties, liabilities, obligations and/or indemnities can be assigned to the Association pursuant to this paragraph.

Section 13. Costs and Reasonable Attorneys' Fees. In any action to enforce the provisions of any Governing Documents, the court may award reasonable attorneys' fees to the prevailing party, even if such action is settled prior to any trial, judgment or appeal. It also is the specific intent of this Section that it constitutes the allowance of the award of reasonable attorneys' fees as required under Section 47F-3-120 of the Act.

Section 14. Actions Against Declarant. The affirmative vote or consent of the Members that is equal to or greater than sixty seven percent (67%) of the total number of votes in the Association first shall be required prior to the Association doing any or all of the following with respect to the Declarant or any successor Declarant, regardless of whether such Person is the Declarant at the time the Association takes the action or obtains the necessary vote or consent required to take such action: (i) file a complaint, on account of any act or omission of Declarant, with any governmental entity which has regulatory or judicial

authority over the Property or any part thereof; or (ii) assert a claim against Declarant or sue Declarant in any court of law or equity or before any administrative or other board or committee or branch of any Governmental Entity, or request legal or equitable relief against Declarant.

Section 15. Rule Against Perpetuities. As provided in Section 47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, or the Bylaws, rules, or regulations adopted pursuant to Section 47F-3-102(1) of the Act. In the event of the absence of the protection of Section 47F-2-103(b) of the Act, if the Declaration or any provision thereof violates any applicable Rule Against Perpetuities, the Declaration or such provisions shall be deemed reformed to continue in effect for the maximum period of time that the Declaration or such provision could exist without violating such applicable Rule Against Perpetuities.

Section 16. Reserved Rights. Whenever the Declaration reserves a right for, or requires or authorizes a consent, approval, variance or waiver by, Declarant during the Declarant Control Period or Development Period, and thereafter confers such right upon, or requires or authorizes such approval or waiver by, the Association or Board, the applicable right may be exercised, or the applicable approval or variance or waiver may be given, only by Declarant (or its assigns, which may include the Board) during the applicable period, and, thereafter; only by the Board or its authorized designee (unless a vote or consent of the Members of the Association also is required or alone is required).

Section 17. Legal Requirements. All Governing Documents shall be subject to and construed in accordance with all Legal Requirements, including all applicable provisions of the Code. It shall be the responsibility of each Owner to comply with all Legal Requirements, whether or not any approval, disapproval, waiver or variance of the terms of any Governing Documents has been given by Declarant, the Association or the ACC. It is the express intention of the Governing Documents to comply with the Act, and any provisions of the Governing Documents that are not in compliance with the Act shall be deemed reformed from time to time to comply therewith. Provided, however, it also is the intention of the Governing Documents that, unless its provisions violate the Act, such provisions shall control, and, insofar as reasonably possible, the provisions of the Governing Documents shall be construed in such manner as to be consistent with, and not in violation of, the Act.

Section 18. Public Water System; No Private Individual Wells, Irrigation Restrictions. All water supplies necessary to serve the Community with potable drinking [and irrigation] water (the "Water System"), and all water mains, pipes and other equipment necessary for the operation and maintenance of the Water System within the Community shall be public systems, owned, operated, repaired and maintained by a public utility company duly licensed and operating under the authority granted by the North Carolina Department of Public Utilities Commission. All Owners shall connect to the Water System for domestic water service including for irrigation. No well may be dug or constructed on any Lot for the purpose of providing domestic water supply including for irrigation. Neither Declarant nor the Association nor their successors or assigns shall in any manner be liable for any interruption in Water Systems services. Furthermore, each Owner agrees to release and discharge the Declarant and the Association from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to the Water System.

Section 19. Marketable Title Act. It is the intention of the Declarant that the Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or replacement statute or any other Legal Requirement that would or could terminate the Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may re-record in

the Registry the Declaration or some memorandum or other notice hereof in order to continue the Declaration in full force and effect and/or to qualify the Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other Legal Requirement.

[The remainder of this page is intentionally left blank. Signature page immediately follows.]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year notarized below.

LENNAR CAROLINAS, LLC, a Delaware
limited liability company

By: _____

Name: _____

Title: Vice President

STATE OF NORTH CAROLINA
COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____.

Date: _____

Official Signature of Notary Public

Notary Public Printed Name:

_____ County, NC

[OFFICIAL SEAL]

My commission expires: 9/11/21

Exhibit “A-1”

Legal Description of Property

Exhibit “A-2”

Additional Property

Being all or any real property that either is contiguous to any boundary of the Property or is located within five (5) miles of any boundary of the Property as such boundaries are constituted at the time of the annexation of such real property to this Declaration.

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