

Prepared by and
when recorded return to:

Meritage Homes of the Carolinas, Inc.
8800 E. Raintree Dr, Suite 300
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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
THE MONTAGE**

**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.**

Submitted electronically by "Nexsen Pruet, LLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Wake County Register of Deeds.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MONTAGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MONTAGE ("**Declaration**") is made on the date of its recordation in the Wake County Register of Deeds ("**County Registry**") by Meritage Homes of the Carolinas, Inc. (the "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property ("**Property**") located in Wake County, State of North Carolina, described on Exhibit A attached hereto.

WHEREAS, Declarant desires to provide for the development on the Property of detached single family residences and townhome residences;

WHEREAS, this Declaration creates a planned community under the North Carolina Planned Community Act (N.C. Gen. Stat. § 47F, as amended from time to time, the "**Act**");

WHEREAS, Declarant deems it desirable for the management and administration of the planned community and for the preservation of the values and amenities of the planned community to incorporate The Montage Homeowners Association, Inc. as a nonprofit corporation under the laws of the State of North Carolina for the purposes of administering the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof and the provisions of the Act, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof and the provisions of the Act, and exercising such other powers as may be authorized by this Declaration, its Articles of Incorporation, Bylaws, or the Act.

NOW, THEREFORE, Declarant hereby declares that the Property described above shall be subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "**Covenants and Restrictions**") which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land, be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and inure to the benefit of each Owner of any portion of the Property.

ARTICLE I DEFINITIONS

Section 1.1. "Act" means and refers to the North Carolina Planned Community Act § 47F, North Carolina General Statutes, as same may be amended from time to time.

Section 1.2. “Architectural Committee” means the committee established by the Board pursuant to Section 3.4 of this Declaration.

Section 1.3. “Architectural Committee Rules” means the rules adopted by the Architectural Committee as such rules may be amended from time to time.

Section 1.4. “Articles” means the Articles of Incorporation of the Association which have been or will be filed with the North Carolina Department of the Secretary of State, as said Articles may be amended from time to time.

Section 1.5. “Assessment Lien” means the lien granted to the Association by this Declaration and codified by the Act to secure the payment of Assessments and all other amounts payable to the Association under the Project Documents.

Section 1.6. “Assessments” means the annual, special, Stormwater, and Neighborhood Assessments levied and assessed against each Lot pursuant to Article IV of the Declaration.

Section 1.7. “Association” means the North Carolina nonprofit corporation organized or to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of “The Montage Homeowners Association, Inc.”, but if such name is not available, Declarant may organize the Association under such name as the Declarant deems appropriate.

Section 1.8. “Association Rules” means the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.9. “Board” means the Board of Directors of the Association.

Section 1.10. “Builder” means a person or entity in the business of, or having an affiliate in the business of, constructing and selling homes or acting as a land banker that sells Lots to persons or entities who construct and sell homes, or which purchases a Lot or Lots without Residential Units constructed thereon for the purpose of constructing Residential Units thereon and selling such Lots and Residential Units.

Section 1.11. “Bylaws” means the bylaws of the Association, as such bylaws may be amended from time to time.

Section 1.1. “City” means the City of Raleigh, a North Carolina municipal corporation.

Section 1.2. “Common Area” means all real property owned by the Association or held in trust for the benefit of the Association or any real or personal property that the Association owns, leases or holds possessory use rights in whether now or in the future for the benefit of the Owners, including, without limitation, all Stormwater Control Facilities that serve more than one Lot and are not maintained by any governmental

authority. Such definition shall not preclude the Association from operating, maintaining or repairing any other real property for the benefit of the Owners (e.g., landscaping in public rights-of-way) or any other real property maintained by the Association pursuant to a written agreement entered into by the Association for the benefit of the Owners or pursuant to a written agreement entered into by Declarant that is assigned to and assumed by the Association for the benefit of the Owners. The Common Area shall include all real property designated as "Open Space," "Common Open Space", "Common Area", "Amenity Area" or other similar designation on the Plats of the Property and any real or personal property hereinafter designated as Common Area by Declarant or the Association in a written document recorded with the County Registry. The area defined in Section 9.15 is also Common Area.

Section 1.3. "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

Section 1.4. "County" means Wake County, North Carolina.

Section 1.5. "Declarant" means Meritage Homes of the Carolinas, Inc., and its successors and assigns, and any assignee of Declarant's rights. A Declarant may assign its rights by express recorded instrument to a subsequent Owner of all or part of the Property. At any time when there is more than one Declarant, except as otherwise expressly provided in this Declaration, any approval or other action required or permitted by the "Declarant" under this Declaration shall require the written consent of the Declarants owning a majority of all Lots then owned by all Declarants. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successive Declarant, in which event the preceding Declarant shall be released from liability. If there is more than one Declarant, the obligations and liabilities of each Declarant under this Declaration shall be limited to the obligations that relate to the Lots within the Project then owned by such Declarant at the time liabilities or obligations arose, such liability shall not be joint or joint and several, and a Declarant shall not be liable for the actions or inactions or another Declarant.

Section 1.6. "Declaration" means the provisions of this document and any amendments hereto.

Section 1.7. "Development Period" means the period of time beginning with the date on which the Declaration is recorded and ending on the earlier of the following dates to occur: (a) the date designated by the Declarant by written notice filed with the register of deeds for the county in which the Property is located, or (b) the date on which one hundred percent (100%) of Lots have been conveyed to Purchasers (hereinafter defined) and all Common Area has been conveyed to the Association.

Section 1.8. "First Mortgage" means any mortgage, deed of trust, or contract for deed on a Lot which has priority over all other mortgages, deeds of trust and contracts for deed on the same Lot. A contract for deed is a recorded agreement whereby the purchaser of a Lot acquires possession of the Lot but does not acquire legal title to the Lot until a deferred portion of the purchase price for the Lot has been paid to the seller.

Section 1.9. "First Mortgagee" means the holder of any First Mortgage.

Section 1.10. "Improvement" means buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 1.11. "Limited Common Area" means those portions of the Common Area primarily benefiting one or more, but less than all, Neighborhoods (hereinafter defined) or Lots (hereinafter defined), and which are designated as such by the Declarant, or after, by the Association.

Section 1.12. "Lot" means any residential lot shown on a Plat and includes Townhome Lots and/or Single Family Residence Lots. For purposes of voting on any issue required to receive the approval of an Owner of a Lot ("Lot Owner"), the Owner of a parcel not yet subject to the Plat but zoned for residential use shall be deemed to be the Owner of the maximum number of Lots into which such parcel may be subdivided under then applicable zoning and other legal requirements.

Section 1.13. "Neighborhood" means a group of Lots designated as a separate Neighborhood pursuant to Article II for purposes of sharing one or more Limited Common Areas or receiving other benefits or services from the Association 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.

Section 1.14. "Neighborhood Assessments" means assessments levied against Lots in a particular Neighborhood to fund Neighborhood Expenses, as described in Section 4.14.

Section 1.15. "Neighborhood Expenses" means the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration.

Section 1.16. "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.

Section 1.17. "Operating Deficit" means the difference between the total amount of the annual assessments for a fiscal year levied on all Lots and the amount of actual expenditures by the Association during the fiscal year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements and other assessments allowed in the Declaration that are not annual assessments.

Section 1.18. "Owner" means the record owner by purchase, transfer, assignment, or foreclosure, except as provided below, whether one or more persons or entities, of fee simple title to any Lot, but excluding others having an interest merely as security for the performance of an obligation. In the case of a Lot where fee simple title is vested of record in a trustee under a deed of trust, legal title shall be deemed to be in the trustor. In the case of a Lot where fee simple title is vested in a trustee pursuant to a trust agreement, the beneficiary entitled to possession shall be deemed to be the Owner.

Section 1.19. "Plat" means any recorded subdivision plat of any portion of the Property and all amendments thereto.

Section 1.20. "Project" means the Property together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

Section 1.21. "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules, Architectural Committee Rules, and Stormwater Covenant, as the same may be amended, restated, or supplemented from time to time.

Section 1.22. "Purchaser" means any person other than Declarant who, by means of a voluntary transfer, becomes the Owner of a Lot except for an Owner who purchases a Lot and then leases it to Declarant for use as a model in connection with the sale of other Lots.

Section 1.23. "Residential Unit" means any building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

Section 1.24. "Residential Use" means the occupation or use of a Single Family Residence in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

Section 1.26. "Resource Conservation Area" means portions of the Common Area, the use of which is limited or prohibited to preserve ecologically sensitive or significant areas or to comply with laws, governmental regulations or permits.

Section 1.27. "Single Family" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 1.28. "Single Family Residence" means a building, townhome, house or dwelling unit used as a residence for a Single Family, including any appurtenant garage or storage area.

Section 1.29. "Single Family Residence Lot" means any one of Lots 1 through 60, as shown on that plat prepared by CDK Geomatics, PC entitled "The Montage - Phase I", sealed on February 16, 2022, and recorded in Book of Maps 2022, Pages 316-

320, Wake County Registry, and any other Lot annexed hereunder pursuant to Section 12.5, which is intended for development, use, and occupancy as a detached Single Family Residence.

Section 1.30. “State” means the State of North Carolina.

Section 1.31. “Stormwater Covenant” means any document between or among the Declarant, the Association, and a Governmental Authority relating to Stormwater Control Facilities (hereinafter defined) or the handling of stormwater in the Subdivision, and includes all amendments and supplements thereto.

Section 1.32. “Stormwater Control Facilities” means one or more of the following devices and measures, together with associated private drainage easements utilized for conveying stormwater (however identified on a plat, map or in a recorded document) that serves more than one (1) Lot or parts of more than one (1) Lot in the Property and which are located outside of public street rights-of-way and drainage easements accepted into public use by the City, including, but not limited to, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas (and similarly designated areas shown on any recorded plat of the Properties), bio-retention areas, stream buffers, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property. Private drainage easements, however identified on a recorded plat or recorded map or in a recorded document, that serve more than one (1) Lot in the Property are deemed to be dedicated to the Association for the benefit of the Properties or applicable portions thereof.

Except as otherwise provided herein, Stormwater Control Facilities are part of the Common Area, and maintenance of Stormwater Control Facilities is a Common Expense. References in the Declaration to stormwater management include all applicable Stormwater Control Facilities and Stormwater Covenants. Notwithstanding any provision to the contrary contained in the Declaration and to the extent permitted by applicable law, the Association shall not enter into voluntary dissolution unless the Stormwater Control Facilities located on Common Area are transferred to a person or entity who assumes the maintenance obligation of the Stormwater Control Facilities as set forth in the Stormwater Covenant, and, to the extent permitted by applicable law, the Association shall not sell, convey or otherwise transfer any interest in the Common Area on which the Stormwater Control Facilities are located to any party unless the transferee assumes the maintenance obligation of the Stormwater Control Facilities as set forth in the Stormwater Covenant.

Section 1.33. “Townhome Lot” means any one of Lots 67 through 98, as shown on that plat prepared by CDK Geomatics, PC entitled “The Montage - Phase I”, sealed on February 16, 2022, and recorded in Book of Maps 2022, Pages 316-320, Wake County Registry, and any other Lot annexed hereunder pursuant to Section 12.5 below, which is intended for development, use, and occupancy as a townhome that shares one or more common walls with the intent that the Owner of such Townhome Lot acquire a fee simple interest in the ground immediately below such Townhome Lot. The boundaries of

each Townhome Lot shall be as shown on the recorded Plat or Plats; provided, however, that the side boundary of each Townhome Lot shall be a line consistent with and along the center of all firewalls separating a Townhome Lot from another Townhome Lot. In the event of any discrepancy between the boundaries of a Townhome Lot, as described herein and the boundaries of such Townhome Lot as shown on the recorded Plats, the description of the boundaries of the Townhome Lot set forth herein shall control. All of the area within the boundaries of each of the Townhomes, as herein described, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

Section 1.38. “Visible from Neighboring Property” means that an object is or would be visible to a person six feet (6’) tall standing on a neighboring Lot, neighboring Common Area, or street at an elevation not greater than the elevation at the base of the object being viewed.

ARTICLE II PLAN OF DEVELOPMENT

Section 2.1. Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the Property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general plan for the development and use of the Property and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and such shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 2.2. Neighborhoods. Declarant hereby establishes two (2) Neighborhoods within the Property. Lots 1 through 60 and 61 through 98, as shown on that plat prepared by CDK Geomatics, PC entitled “The Montage - Phase I”, sealed on January 26, 2022, and recorded in Book of Maps 2022, Pages 316, Wake County Registry, are designated as one (1) Neighborhood called the Single Family Neighborhood and all remaining Lots are hereby designated as one Neighborhood called the Townhome Neighborhood. The Declarant, in its sole discretion, may establish additional

Neighborhoods within the Property by amendment to the Declaration. While the Class B membership exists (as defined in Section 3.7), the Declarant may unilaterally amend this Declaration and any Plat from time to time to assign property to a specific Neighborhood, to re-designate Neighborhood boundaries, or to remove property from a specific Neighborhood.

Any Neighborhood may, but shall not be required to, elect a Neighborhood committee to represent the interests of the Owners in such Neighborhood when addressing the Association. No Neighborhood committee shall be formed, however, without the prior submission of a request to and written approval of the Board.

Any Neighborhood may request that the Association provide to Lots in such Neighborhood a level of service or special services that are greater than the services described in this Declaration 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 cost of such service, 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 Section 4.14.

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 this Declaration. The Association may assess the Lots within a Neighborhood for any expense incurred by the Association to correct any inconsistency or deficiency created by such Neighborhood.

Section 2.3. Common Areas and Association Property. The Declarant shall have the right to transfer and convey to the Association any portion of the Property. All portions of the Property which the Declarant shall so transfer or convey to the Association shall thereafter constitute Common Areas. Said right may be exercised by the Declarant any time, and from time to time, prior to fifteen (15) years from the date hereof. In connection with any such conveyance, the Declarant may designate the Property being conveyed as Limited Common Areas or Resource Conservation Areas and define the permissible use of such property.

Section 2.4. Limited Common Areas. Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the Plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning

use of the same Limited Common Area to additional Units and/or Neighborhoods, so long as Declarant has a right to subject additional property to this Declaration pursuant to this Article II.

After the Class B membership terminates (as defined in Section 3.7), a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board, the affirmative vote of voting members representing a majority of the total Class A votes (as defined in Section 3.7) in the Association, and the affirmative vote of a majority of the Class A votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Article II, any such assignment or reassignment shall also require Declarant's written consent.

The Common Areas shall be conveyed to the Association by special warranty deed free of debt encumbrance, and subject to the rights and easements set forth in this Article, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2.5. Resource Conservation Areas. The Declarant or the Association may delineate portions of the Common Areas as Resource Conservation Areas in accordance with the procedure set out in the preceding section. Use of portions of the Common Areas designated as Resource Conservation Areas will be limited or prohibited as provided in the delineation.

Section 2.6. Owner's Rights in Association Property. Every Owner of any Lot 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(s) owned by such Owner. Such right and easement of enjoyment and use are and shall be subject to the limitations and easements which are described in this Article and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the owner of any Lot during any period in which any assessment which is due to the Association from such owner remains unpaid, and such period as the Board may consider appropriate for any infraction of its published rules and regulations. In addition, the Board may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board.

ARTICLE III THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Rights, Powers and Duties. The Association shall be a nonprofit North Carolina corporation charged with the duties and invested with the powers prescribed by the North Carolina Nonprofit Corporation Act, the Act, or other applicable law and set forth in the Project Documents together with such rights, powers and duties as

may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents or the Act specifically require a vote of the Owners, approvals, or actions to be given or taken by the Association shall be valid if given or taken by the Board. A copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 3.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws. Until termination of the Class B membership (as defined in Section 3.7), Declarant shall have the right to appoint and remove members of the Board and officers of the Association. After termination of the Class B membership, the Owners shall elect the Board as provided in the Bylaws and the Board shall appoint the officers as provided in the Bylaws.

Section 3.3. Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations, provided, however, that such Association Rules shall not be effective at any time that Declarant owns any Lot unless (i) such Association Rules have been approved by Declarant in writing or (ii) the Class B Membership (as defined in Section 3.7) still exists. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee, or lessee of such Owner except that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 3.4. Architectural Committee. The Board shall establish an Architectural Committee consisting of not less than three (3) members to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration or the Board. So long as the Declarant owns any Lot, the Declarant shall have the right to appoint and remove members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the Board shall have the right to appoint and remove members of the Architectural Committee.

Section 3.5. Membership. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his or her ownership ceases for any reason, at which time his or her membership in the Association shall automatically cease.

Section 3.6. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot (and then only to such Purchaser), intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

Section 3.7. Classes of Members. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of Declarant until the termination of the Class B membership. 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 matters such as, but not limited to, instituting judicial proceedings, use of funds following condemnation or casualty involving Common Areas, or the sale or mortgage of Common Areas.

Class A members shall be entitled to full voting privileges when the Class B membership terminates. Until such time, Class A members shall be entitled to vote only on matters for which it is provided herein or by law requiring that each and every class of membership of the Association is required to vote. When entitled to vote, each Class A member shall be entitled to cast one (1) vote for each Lot owned.

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 member shall be entitled to vote on all matters and in all events. This right includes, but is not limited to, the right to elect the members of the Board and to appoint the members of the Architectural Committee. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(i) When one hundred percent (100%) of the Lots have been conveyed to Purchasers and all Common Area has been conveyed to the Association (the end of the Development Period);

(ii) When Declarant notifies the Association in writing that it relinquishes its Class B membership; or

(iii) The thirty (30) year anniversary of the date that this Declaration is recorded.

At such time as the Class B membership automatically terminates and ceases to exist, such membership shall not be renewed or reinstated.

Section 3.8. Joint Ownership. When more than one (1) person is the Owner of any Lot, all such persons shall be members of the Association. 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 the Owner 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 3.9. Suspension of 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 Project Documents for a period of thirty (30) days or has violated any other provision of the Project Documents, said Owner's membership rights, including the right to vote as a member of the Association, may be suspended for each infraction of the Project 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 and any violations cured.

Section 3.10. Fines. The Association, acting through its Board, shall have the right to adopt a schedule of fines for violation of any provision of the Project 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 that a fine should be imposed, an additional fine not to exceed One Hundred and No/100 Dollars (\$100.00) may be imposed for such violation without further hearing for each day that is more than five (5) days after the initial fine is imposed. All fines shall constitute a lien on all Lots 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 IV.

Section 3.11. 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 (a) termination of the Class B membership, or (b) 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 3.11 shall not be subject to amendment without the written approval of Declarant.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner of a Lot, by becoming the Owner thereof (whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot), is deemed to covenant and agree to pay to the Association annual assessments, special assessments, and any applicable Neighborhood Assessments. The annual, special, and neighborhood assessments, together, with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made as provided in the Act. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent

Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 4.2. Purpose of the Assessments. Assessments levied by the Association shall be used exclusively for payment of Common Expenses, including, without limitation (i) the upkeep, maintenance and improvement of the Common Area and Yard Improvements (as defined in Section 10.3(C)), (ii) maintenance, repair, replacement, and operation of rights-of-way and easements within or immediately adjacent to the Project (e.g., landscaping and sidewalks within the rights-of-way of adjoining streets) to the extent that such actions are required by government entities or deemed appropriate by the Board, (iii) promoting the recreation, health, safety and welfare of the Owners and other lawful occupants of Lots within the Property, (iv) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents, and (v) maintaining any Stormwater Control Facilities located on portions of Common Areas to the standard required by the governmental entity or agency having jurisdiction over such areas. Notwithstanding the foregoing, Neighborhood Assessments shall be used only for the benefit of the Neighborhoods paying such assessments, shall not be used for any purpose that is covered by annual assessments or special assessments in other areas of the Property, and shall be accounted for separately from annual and special assessments.

Section 4.3. Annual Assessment.

(A) For each fiscal year of the Association commencing upon the first to occur of (i) transfer to and acceptance for maintenance by the Association of any Common Area, or (ii) conveyance of a Lot to a Purchaser, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes to be required during the ensuing fiscal year to pay all Common Expenses. Common Expenses include, but are not limited to (w) the amount required to pay the cost of maintenance, management, operation, repair and replacement of Common Areas and those parts of the Lots, if any, which the Association has the responsibility of maintaining, repairing or replacing under the Project Documents, (x) the cost of wages, materials, insurance premiums, services, supplies and maintenance or repair of the Common Areas and for the general operation and administration of the Association, (y) the amount required to render to Owners all services required to be rendered by the Association under the Project Documents, and (z) such amounts as may be required by law to provide general operating reserves and reserves for contingencies and replacement. The Board shall send written notice of a summary of the proposed budget as well as the amount of the payment due to each Owner within thirty (30) days after the adoption by the Board of such budget. To the extent required by § 47F-3-103(c) of the Act or other applicable law, such notice shall include notice of a meeting of the Owners to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by § 47F-3-103(c) of the Act, or other applicable law, the Board shall set a date for a meeting of the Owners to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at such meeting the Owners exercising ninety percent (90%) of the votes eligible to be cast at such meeting reject the budget. In

the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be increased by an amount equal to ten percent (10%) of the previous year's budget until such time as the Owners ratify a subsequent budget proposed by the Board. The failure of the Board to send, or of an Owner to receive, any budget notice shall not relieve any Owner of the obligation to pay Assessments. Notwithstanding the foregoing, such proposed budget may be increased by no more than twenty percent (20%) per year, unless approved by Owners having at least two-thirds (2/3) of the votes entitled to be cast by Owners who are voting in person or by proxy at a meeting duly called for such purpose.

(B) For each fiscal year of the Association commencing upon the first to occur of (i) transfer to and acceptance for maintenance by the Association of any Common Area, or (ii) conveyance of a Lot to a Purchaser, the total amount of the estimated Common Expenses as established by the approved budget shall be assessed by the Board. Except to the extent that this Declaration expressly provides for (x) Neighborhood Assessments only on Lots benefiting from such Neighborhood Assessments, (y) reduced assessments, or (z) exemptions from assessments, all assessments shall be equal on all Lots.

(C) Declarant shall be exempt from payment of assessments on Lots owned by Declarant. If a Lot ceases to be owned by Declarant and therefore becomes subject to assessment during the period to which an annual assessment is attributable, the assessment shall be prorated based on the basis of the number of days in the assessment period that the Lot is not owned by Declarant. Declarant may advance funds to the Association sufficient to fund any Operating Deficit, and such advances may be evidenced by promissory notes from the Association in favor of Declarant and shall be repaid to Declarant if and to the extent that sufficient funds are generated by assessments during the Development Period. Declarant may provide advancements by any combination of cash or the provision of services or materials toward satisfaction of Common Expenses, including (i) payment for such services or materials directly to the providers thereof, or (ii) payment of money to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a person other than Declarant).

(D) The Board shall adopt a proposed budget and give notice of the estimated annual assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment.

(E) If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Owners, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board.

Section 4.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal Property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Owners having at least two-thirds (2/3) of the votes entitled to be cast by Owners who are voting in person or by proxy at a meeting duly called for such purpose. Special assessments shall be levied at a uniform rate for all Lots.

Section 4.5. Notice and Quorum for Any Action Authorized Under Sections 4.3 or 4.4. Written notice of any meeting called for the purpose of obtaining the consent of the Owners for any action for which the consent of the Owners is required under Sections 4.3 and 4.4 shall be sent to all Owners no less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast ten percent (10%) of all the votes of each class of members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Subject to such guidelines and procedures as the Board may adopt, Owners and proxy holders not physically present at an Association meeting may, by means of remote communication, participate in an Association meeting and be deemed present in person and vote at such meeting, whether such meeting is to be held at a designated place or solely by means of remote communication.

Section 4.6. Date of Commencement of Annual Assessments; Due Dates. The annual assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Association's designated agent setting forth whether the Assessments on a specified Lot have been paid.

Section 4.7. Effect of Non-payment of Assessments; Remedies of the Association.

(A) Any Assessment, or any installment of an Assessment, not paid for a period of thirty (30) days or longer after the Assessment, or the installment of the Assessment, first became due shall have added to such Assessment or installment, a late payment charge not to exceed the greater of (i) ten percent (10%) of the amount of the unpaid Assessment, or (ii) Twenty and No/100 Dollars (\$20.00) per month. Any amounts paid by an Owner shall be applied first to unpaid principal and then to late charges or

interest. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made as provided in §47F-3-116 of the Act. The Assessment Lien may be recorded in the office of the County clerk of superior court by filing a claim of lien in the manner set forth in §47F-3-116 of the Act.

(B) The Assessment Lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration except for (i) Liens and encumbrances recorded prior to the recording of this Declaration; and (ii) Liens for real estate taxes and other governmental assessments. The covenant to pay assessments herein stated is and shall be a covenant running with land.

(C) Before filing a notice of claim of lien against any Lot, the Association shall make reasonable and diligent efforts to ensure that its records contain the Owner's current mailing address. The Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with late charges, interest, reasonable collection costs and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If the delinquency is not paid within fifteen (15) days after delivery of the demand, the Association may proceed with filing a claim of lien against the Lot of the defaulting Owner. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees have been paid in full. The Owner shall be notified in writing of the Association's intent to seek payment of attorneys' fees and court costs in accordance with § 47F-3-116(e) of the Act.

(D) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with late charges, interest, lien recording fees, reasonable collection costs, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner set forth in § 47F-3-116 of the Act. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 4.8. Subordination of the Lien to Mortgages. The Assessment Lien shall be subordinate to the lien of any First Mortgage or other lien pursuant to Section 4.7(B). The sale or transfer of any Lot shall not affect the Assessment Lien except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure of a first mortgage or any bona fide, good faith proceeding in lieu thereof shall extinguish the Assessment Lien as to payments which became due prior to the sale or transfer. Such unpaid Assessments shall be deemed Common Expenses collectible from all Owners, including the Purchaser at foreclosure. In addition, no sale or transfer shall relieve the Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 4.9. Exemption of Owner. No Owner of a Lot may exempt himself or herself from liability for Assessments levied against his Lot or for other amounts which he or she may owe to the Association under the Project Documents by waiver and non-use of any Common Area and facilities or by the abandonment of his or her Lot.

Section 4.10. Maintenance of Reserve Fund. Out of the annual assessments and other income, the Association shall establish and maintain a reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area. Notwithstanding anything to the contrary in this Declaration, Declarant shall have the right to be reimbursed from the reserve fund for any amounts expended for reconstruction, repair or maintenance of Stormwater Control Facilities or to provide any financial assurances for the reconstruction, repair and maintenance of Stormwater Control Facilities. Declarant and the Association may take such payments into account when determining the amounts to be funded to reserves. For the avoidance of doubt, any amounts expended by Declarant for reconstruction, repair or maintenance of Stormwater Control Facilities or to provide any financial assurances for the reconstruction, repair or maintenance of Stormwater Control Facilities, may be reimbursed as part of, or in addition to, any advanced funds as set forth in Section 4.3(C) above.

Section 4.11. No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

Section 4.12. Stormwater Assessments. Notwithstanding anything to the contrary in the Declaration, and in keeping with the obligation of the Association under § 47F-3-107(a) of the Act to be "responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess Owners as necessary to recover the costs of such maintenance, repair, or replacement", (i) if the Board determines for any fiscal year that the Association has insufficient funds to pay a Common Expense pursuant to any Stormwater Covenant, and (ii) the Board determines that there are not sufficient reserve funds available both to pay that Common Expense and continue to have adequate reserve funds, then the Board, without any vote of the Owners, may levy a stormwater assessment in an amount sufficient to pay for that Common Expense owed pursuant to the applicable Stormwater Covenant. The amount of such stormwater assessment shall be determined and assessed against all Lots owned by Class A members. The payment due dates for such stormwater assessment shall be as determined by the Board and shall be enforceable against Owners and their Lots in the same manner as annual assessments. Provided, however, during the Development Period, no such stormwater assessment shall be valid unless the same shall have been consented to in writing by Declarant. Further provided, except as may be necessary to account for different Stormwater Control Facilities and/or Stormwater Covenants or other agreements related to stormwater applicable to different Lots as allowed in the governing documents or under legal requirements, all stormwater assessments shall be the same for all Lots. Any stormwater assessment for excess expenses is in addition to all other assessments provided for herein.

Section 4.13. Additional Association Funding. The first Purchaser of a Lot following construction of a Residential Unit on such Lot shall pay to the Association at the time of the purchase the sum of One Thousand Dollars and No/100 (\$1,000.00). Declarant and the Association may take such payments into account when determining the amounts to be funded to reserves from other Association funds. Nothing in this section 4.13 shall be construed as prohibiting or mandating the Association making additional payments into reserve accounts from other Association funds. Payments made pursuant to this section 4.13 do not apply toward payment of annual assessments and constitute a separate obligation.

Section 4.14. Neighborhood Assessments. The Board shall have the right to impose Neighborhood Assessments against Lots in any specific area of the Property in order to provide for the repair, replacement, operation and maintenance of Common Areas within such area that are different from or in addition to the types of Common Areas in the balance of the Property and that are designed to benefit less than all of the Property (e.g., private streets, separate entryways or gates, enhanced landscaping, community centers, swimming pools). Any such determination by the Board shall be made in a writing specifying the purposes of the Neighborhood Assessment and the Lots subject thereto. Any such determination by the Board may also include an additional imposition on such Lots pursuant to Section 4.13 in order to fund a reserve account for the specific improvements intended to be maintained by the Neighborhood Assessment.

Section 4.15. Sanitation and Refuse Collection. The Association shall have the right, at its discretion and from time to time, to negotiate and execute one or more contracts with a sanitation provider (or providers) of its choice, for the collection and removal of garbage, trash, recycling materials, and other refuse from an amenity center, if an amenity center exists. In addition to the annual assessments included within Article IV, the Association may include in the annual assessment or levy in any assessment year a special assessment applicable to that year (and the same shall be charged and collected on a monthly, quarterly or yearly basis as determined by the Board) for the purpose of paying the cost of such contract(s). Each Owner therefore acknowledges and agrees that each Lot shall be subject to an assessment, either as part of the annual assessment or in addition to and apart from the annual and any other special assessments, for the purpose of paying each Lot's pro rata share of trash collection service provided to an amenity center. Each Owner shall be responsible for securing a sanitation provider(s) for the collection and removal of garbage, trash, recycling materials, and refuse from such his or her Lot(s) and paying the cost of such services directly to the sanitation provider(s).

Section 4.16. Cable / Internet Service. The Association shall have the right, at its discretion and from time to time, to negotiate and execute one or more contracts with a cable television, high speed data, and/or fiber optic internet providers of its choice, for the purpose of providing such services to an amenity center, if an amenity center exists. In addition to the annual assessments included within Article IV, the Association may include in the annual assessment or levy in any assessment year a special assessment applicable to that year (and the same shall be charged and collected on a monthly, quarterly or yearly basis as determined by the Board) for the purpose of paying the cost of providing such service to an amenity center. Each Owner therefore acknowledges and agrees that

each Lot shall be subject to an assessment, either as part of the annual assessment or in addition to and apart from the annual and any other special assessments, for the purpose of paying each Lot's pro rata share of such service provided to an amenity center. Each Owner of a Lot shall be responsible for securing its own cable and interest service providers, if desired, and paying the cost of such services directly to the providers.

Section 4.17. Declarant Audit Right. Following the termination of the Class B membership and so long as Declarant owns any Lot, the Declarant shall have the right to audit the books and records of the Association.

Section 4.18. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE V USE RESTRICTIONS

Section 5.1. Residential Use. Except as otherwise provided herein, all Lots shall be improved and used only for Residential Use. No gainful occupation, profession, trade or other commercial activity shall be conducted on any Lot; provided, however, the Declarant may use the Lots for such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale of residential units, including, without limitation, a business office, storage areas, construction yards, signs, a model site or sites, and a display and sales office. Notwithstanding the foregoing, home businesses are permitted on the Lots provided they are in accordance with applicable municipal ordinances for home business in residential districts.

Section 5.2. Building Type and Size. No building shall be constructed or permitted to remain on any Lot other than one (1) Single Family Residence not to exceed two (2) stories in height (not including any basement) and a private one to five (1 to 5) car garage. Unless otherwise approved in writing by the Architectural Committee, all buildings shall be of new construction and no prefabricated structure shall be placed upon any Lot if Visible from Neighboring Property. However, storage structures and/or a sales office may be maintained upon any Lot or Lots by the Declarant or its contractors, with the Declarant or Association's consent, for the purpose of erecting and selling dwellings on the Property or for the purpose of constructing improvements on the Common Area, but such temporary structures shall be removed upon completion of construction, selling of a dwelling, or completion of Improvements on the Common Area, whichever is later. No structure of a temporary character, including, but not limited to, trailers, tents, shacks, garages, barns or other outbuildings, shall be used on any Lot at any time as a residence, either temporarily or permanently. Declarant and contractors for Declarant shall have the right to place temporary construction trailers and store materials on the Common Areas for the purpose of constructing Improvements on the Common Areas.

Section 5.3. Signs. No sign of any kind which is Visible from Neighboring Property shall be installed or displayed on any Lot or Common Area without the prior written approval of the Association as to size, color, design, message content, number and location except: (i) such signs as may be used by Declarant in connection with the development and sale of Lots and/or Residential Units or Common Area in the Project; (ii) such signs as may be required by legal proceedings, or which by law, may not be prohibited; (iii) one (1) temporary sign per Lot no larger than thirty by twenty-four inches (30" x 24") used exclusively to advertise the Lot for sale; (iv) a maximum of one (1) political sign with maximum dimensions of twenty-four by twenty-four inches (24" x 24") (or such greater number and/or greater size of political signs permitted by ordinances if the governing body regulates the size and number of political signs on residential property) may be placed on a Lot by the Owner of that Lot; provided, however, that no political signs may be displayed pursuant to this Section 5.3 earlier than forty-five (45) days before an election day or more than seven (7) days after an election day, or (v) such signs as may be desired by Declarant or required for traffic control, construction job identification, builder identification, and subdivision identification as are in conformance with governmental requirements. All other signs must be approved in advance in writing by the Architectural Committee as provided above. All signs must conform to applicable ordinances and other governmental requirements.

Section 5.4. Noxious and Offensive Activity. No noxious or offensive activity shall be allowed on the Lots nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners and tenants of their respective Lots and Residential Units. Without limiting the generality of the foregoing, no speakers, horns, sirens or other sound devices, except security devices used exclusively for security purposes, shall be located or used on a Lot. The provisions of this section shall not apply to any activity of Declarant, its employees, agents, or contractors during the course of construction activities or sales activities upon or about the Project.

Section 5.5. Parking. Parking of Vehicles (as defined in Section 5.6) is prohibited in the front yard of Lots except on a driveway. Parking of Vehicles on any street within the Project is prohibited except that Vehicles that are too large to fit on a driveway may park on the portion of the street directly adjacent to the Owner's Lot during daylight hours only and must either be put into the garage or removed from the Property during nighttime hours. Parking of any inoperable Vehicle anywhere on a Lot so as to be Visible from Neighboring Property or anywhere on a street within the Project is prohibited. No part of any Vehicle may be parked over any part of a sidewalk because such parking may impede use of the sidewalks, particularly for persons with disabilities using the sidewalks. The provisions of this Section 5.5 shall not apply to (a) Vehicles that are exempt from this subsection under applicable law, (b) Vehicles of Declarant, its employees, agents, or contractors during the course of construction activities or sales activities upon or about the Project, or (c) Vehicles used by the Association in repairing, maintaining and replacing Common Areas and all Improvements thereon, and in performing all other rights, duties and obligations of the Association under this Declaration.

Section 5.6. Motor Vehicles.

(A) No automobile, truck, motorcycle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat trailer or other similar equipment or motor vehicle of any kind (collectively, “**Vehicles**”, and individually a “**Vehicle**”) shall be parked, kept, or maintained on the Common Area. Vehicles that exceed twenty-three feet (23’) in length, six and one-quarter feet (6 ¼’) in height or seven feet (7’) in width are prohibited on the Project unless (i) parked in the rear or side yard of a Lot in a manner that such Vehicles are not Visible from Neighboring Property or otherwise appropriately screened as approved by the Architectural Committee, or (ii) owned by any guest or invitee of any Owner or tenant and parked on a Lot only during such time as the guest or invitee is visiting the Owner or tenant, but in no event shall such a Vehicle be parked on a Lot for more than seven (7) days during any six (6) month period of time. Any Vehicle, regardless of size, that is parked in the rear or side yard of any Lot must be parked so as not to be Visible from Neighboring Property or otherwise appropriately screened as approved by the Architectural Committee.

(B) Except for emergency Vehicle repairs on a Lot, no Vehicle of any kind shall be constructed, reconstructed, or repaired on any Lot or Common Area. No inoperable Vehicle or Vehicle which, because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance is, in the sole opinion of the Architectural Committee, unsightly or detracts from the appearance of the Project shall be stored, parked or kept on any Lot so as to be Visible from Neighboring Property. All emergency repairs must be completed within two (2) days.

(C) No Vehicle classed by manufacturer rating as exceeding one (1) ton and no commercial Vehicle may be parked or stored on any area in the Project so as to be Visible from Neighboring Property; provided, however, this provision shall not apply to Vehicles that are pickup trucks of less than one (1) ton capacity with camper shells not exceeding 7 feet in height and 18.5 feet in length which are parked as provided in Section 5.5 and are used on a regular and recurring basis for transportation. For purposes of this Section 5.6, commercial Vehicles shall mean any Vehicle that (i) displays the name, tradename, telephone number or other identifying information of any business or governmental entity, or (ii) otherwise bears the appearance of a commercial Vehicle by reason of its normal contents (e.g., trade goods, extensive tools, ladders), as reasonably determined by the Architectural Committee.

(D) The provisions of this Section 5.6 shall not apply to (a) Vehicles that are exempt from this subsection under applicable law, (b) Vehicles of Declarant, its employees, agents, or contractors during the course of construction activities or sales activities upon or about the Project, or (c) Vehicles used by the Association in repairing, maintaining and replacing Common Areas and all Improvements thereon, and in performing all other rights, duties and obligations of the Association under this Declaration.

Section 5.7. Towing of Vehicles. The Association shall have the right to have any Vehicle parked, kept, maintained, constructed, reconstructed, or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the Vehicle or equipment. Any expense incurred by the Association in connection with

the towing of any Vehicle shall be paid to the Association by the owner of the Vehicle. If the Vehicle towed is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and his or her Lot, be payable on demand, and such cost shall be secured by the Assessment Lien.

Section 5.8. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use or maintenance of improvements constructed by Declarant or approved by the Architectural Committee. The provisions of this section 5.8 shall not apply to any activity of Declarant, its employees, agents, or contractors during the course of construction activities or sales activities upon or about the Project.

Section 5.9. Restrictions and Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than Declarant, and no portion less than all or an undivided interest in all of any Lot shall be conveyed or transferred by any Owner other than Declarant.

Section 5.10. Windows. Within thirty (30) days of occupancy of a Residential Unit each Owner shall install permanent suitable window treatments on all windows facing the street. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be installed or placed upon the outside or inside of any windows.

Section 5.11. HVAC. Except as initially installed by Declarant or its contractor, and except for replacement units as described below, no heating or air conditioning unit shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee. In the event a heating or air conditioning unit needs to be replaced, an Owner may install a replacement unit in the same or substantially same location as the original unit without the approval of the Architectural Committee.

Section 5.12. Garages and Driveways. The interior of all garages situated on any Lot shall be maintained in a neat and clean condition. Garages shall be used only for the parking of vehicles and the storage of normal household supplies and materials. Garages shall not be used for or converted to living quarters or the initial construction thereof altered without the prior written approval of the Architectural Committee. Garage doors shall be left open only as needed for ingress and egress.

Section 5.13. Installation of Landscaping.

(A) If not installed by Declarant, within one hundred twenty (120) days after becoming the Owner of a Lot, the Owner shall install landscaping and irrigation improvements in compliance with the Architectural Committee Rules and other applicable requirements set forth in the applicable zoning ordinances in that portion of his or her Lot that is Visible from Neighboring Property. The landscaping and irrigation improvements shall be installed in accordance with plans approved in writing by the Architectural

Committee. Prior to installation of such landscaping, the Owner shall maintain the portions of his or her Lot that is Visible from Neighboring Property in a weed-free condition.

(B) If any Owner fails to landscape the portion of his or her Lot that is Visible from Neighboring Property within the time provided for in this section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this section 5.13 shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of assessments.

(C) This Section 5.13 shall not apply to Declarant or any Builder with respect to any Lot or any other property that has not been conveyed to an Owner with a Residential Unit already constructed thereon, except that this Section 5.13 shall apply upon commencement of residential occupancy of any Lot containing a Residential Unit.

Section 5.14. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant, its agents, or contractors during the period of development, construction, performance of warranty work, sales and marketing on the Property, or any production homes, model homes and sales offices and parking incidental thereto, construction trailers, landscaping or signs deemed necessary or convenient by Declarant, in its sole discretion, to the development, construction, sale and marketing of property within the Property. The Association shall take no action that would interfere with access to or use of model homes; without limitation of the foregoing, the Association shall have no right to close private streets to access by members of the public desiring access to model homes.

Section 5.15. Leasing Restrictions. All tenants shall be subject to the terms and conditions of this Declaration and the Project Documents. Each Owner shall cause its tenants or other occupants to comply with this Declaration and the Project Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or occupants, notwithstanding the fact that such tenants or occupants are also fully liable for any violation of each and all of those documents. No Lot may be leased for a period of less than twelve (12) months. The provisions of this Section 5.15 shall not apply to Declarant's use of Lots owned by or leased to Declarant as a model home or for marketing purposes.

Section 5.16. Animals. No animals, insects, livestock, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure thereon except that dogs, cats or other common household pets (types and breeds limited to those determined to be acceptable by the Board) may be kept on or within the Lots, provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers as determined by the Architectural Committee. Notwithstanding the foregoing, no animals or fowl may be kept on any Lot which results in a nuisance to, is an annoyance to, or is obnoxious to other Owners or tenants in the vicinity. All pets must be kept within a fenced

yard or on a leash under the control of the Owner at all times. No structure for the care, housing or confinement of any animal or fowl shall be maintained so as to be Visible from Neighboring Property

Section 5.17. Drilling and Mining. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on any Lot. No derrick or other structure designed for use in boring for or removing water, oil, natural gas or other minerals shall be erected, maintained or permitted upon any Lot.

Section 5.18. Refuse. All refuse, including without limitation all animal wastes, shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Until removal from the Lots, refuse shall be placed in closed refuse containers with operable lids so that such containers are not open to the air. Refuse containers shall be kept clean, sanitary and free of noxious odors. Refuse containers shall be maintained so as to not be Visible from Neighboring Property, except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection.

Section 5.19. Antennas and Satellite Dishes. This section 5.19 applies to antennas, satellite television dishes, and other devices ("**Receivers**"), including any poles or masts ("**Masts**") for such Receivers, for the transmission or reception of television or radio signals or any other form of electromagnetic radiation.

(A) As of the date of recordation of this instrument, Receivers one meter or less in diameter are subject to the provisions of Title 47 § 1.4000 of the Code of Federal Regulations ("**Federal Regulations**"). "Regulated Receivers" shall mean Receivers subject to Federal Regulations as such regulations may be amended or modified in the future or subject to any other applicable federal, state or local law, ordinance or regulation ("**Other Laws**") that would render the restrictions in this section 5.19 on Unregulated Receivers (hereinafter defined) invalid or unenforceable as to a particular Receiver. "Unregulated Receivers" shall mean all Receivers that are not Regulated Receivers. Notwithstanding the foregoing, a Regulated Receiver having a Mast in excess of the size permitted under Federal Regulations or Other Laws for Regulated Receivers shall be treated as an Unregulated Receiver under this section 5.19.

(B) No Unregulated Receivers shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening and fencing as such Committee may require; provided, however, that Regulated Receivers may not be placed on the roof for Townhome Lots since the Association maintains Townhome Lots' roofs unless, after receiving approval from the other Owner of the shared roof, the Owner agrees in writing, in a form acceptable to the Association, to assume installation costs, maintenance and repair costs, maintenance responsibilities for the roof, and liability for any damage or injury caused by the Regulated Receiver. Unregulated Receivers must be ground mounted and not Visible from Neighboring Property.

(C) Regulated Receivers shall be subject to the following requirements:

(i) If permitted by applicable Federal Regulations or Other Laws, no Regulated Receiver shall be permitted outdoors on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee to ensure for the safety of residents that the installation will be secure, and with such screening and fencing as such Committee may require. If such restriction is not so permitted, the provisions of subsections (ii) and (iii) below shall apply.

(ii) A Regulated Receiver and any required Mast shall be placed so as not to be Visible from Neighboring Property if such placement will not (a) unreasonably delay or prevent installation, maintenance or use of the Regulated Receiver, (b) unreasonably increase the cost of installation, maintenance or use of the Regulated Receiver, or (c) preclude the reception of an acceptable quality signal.

(iii) Regulated Receivers and any required Masts shall be placed on Lots only in accordance with the following descending order of locations, with Owners required to use the first available location that does not violate the requirements of parts (a) through (c) in subsection (ii) above: (1) a location in the backyard of the Lot where the Receiver will be screened from view by landscaping or other improvements; (2) an unscreened location in the backyard of the Lot; (3) on the roof, but completely below the highest point on the roofline with respect to Single Family Residence Lots; provided, however, that Regulated Receivers may not be placed on the roof for Townhome Lots unless the provisions in the above section (B) are met; (4) a location in the side yard of the Lot where the Receiver and any pole or mast will be screened from view by landscaping or other improvements; (5) on the rear roof above the roofline with respect to Single Family Residence Lots; provided, however, that Regulated Receivers may not be placed on the roof for Townhome Lots unless the provisions in the above section (B) are met; (6) an unscreened location in the side yard; and (7) a location in the front yard of the Lot where the Receiver will be screened from view by landscaping or other improvements.

Notwithstanding the foregoing order of locations, if a location stated in the above list allows a Receiver to be placed so as not to be Visible from Neighboring Property, such location shall be used for the Receiver rather than any higher-listed location at which a Receiver will be Visible from Neighboring Property, provided that placement in such non-visible location will not violate the requirements of parts (a) through (c) in subsection (ii) above.

(iv) Owners shall install and maintain landscaping or other improvements around Receivers and Masts to screen items that would otherwise be Visible from Neighboring Property ("**Screening**") unless such requirement would violate the requirements of parts (a) through (c) in subsection (ii) above, if an Owner is not required to install and maintain Screening due to an unreasonable delay in installation of the Receiver that such Screening would cause, the Owner shall install such screening within 30 (thirty) days following installation of the Receiver and shall thereafter maintain such Screening, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (ii) above. If an Owner is not required to install

Screening due to an unreasonable increase in the cost of installing the Receiver caused by the cost of such Screening, the Association shall have the right, at the option of the Association, to enter onto the Lot and install such Screening and, in such event, the Owner shall maintain the Screening following installation, unless such Screening installation or maintenance will violate the provisions of parts (a) through (c) in subsection (ii) above.

The provisions of this section 5.19 are severable from each other; the invalidity or unenforceability of any provision or portion of this section 5.19 shall not invalidate or render unenforceable any other provisions or portions of this section 5.19, and all such other provisions or portions shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portions of this section 5.19 to a particular type of Receiver or Mast or to a particular Receiver or Mast on a particular Lot shall not invalidate or render unenforceable such provisions or portions regarding other Receivers or Masts on other Lots.

Section 5.20. Utility Services. All lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, internet/data, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Architectural Committee. Temporary power or telephone structures incident to construction activities approved by the Architectural Committee are permitted.

Section 5.21. Diseases and Insects. No Owner or resident shall permit any thing or condition to exist upon a Lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 5.22. Architectural Control. Responsibility for the review of all applications under this section 5.22 shall be vested in the Architectural Committee, as defined in Section 3.4.

(A) No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee. Each Owner altering any grading or drainage on a Lot shall ensure that such alterations comply with all requirements of any grading or drainage plan approved by any governmental entity having jurisdiction over the Property and that such alterations do not alter or impede the flow of storm water from the manner existing prior to such alterations; approval of plans or proposed improvements by the Architectural Committee shall not constitute a waiver of this requirement or a warranty that such plans or improvements are consistent with this requirement or any other requirement of this Declaration, Association Rules, or Architectural Committee Rules, any governmental requirement or construction industry standard.

(B) No Improvements shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

(C) No addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Lot (e.g., the exterior color scheme), or the

Improvements located thereon, shall be made or done without the prior written approval of the Architectural Committee.

(D) Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of the Improvement, shall submit to the Architectural Committee a written request (in the form and manner established by Association Rules) for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or replacement of any Improvement which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit any additional information, plans and specifications which the Architectural Committee may request. The Architectural Committee shall, within a reasonable time after request by an Owner, provide a written response stating whether the request is in compliance with the provisions of this section 5.22 and the Association Rules; provided, however, that Owner hereby acknowledges that review and approval of design conformity is inherently subjective. Such writing shall be conclusive as to the request's compliance. If the request is not compliant, the Architectural Committee will deny the request and the Owner shall have the right to revise and resubmit the request for approval.

(E) The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this section 5.22 shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

(F) Upon receipt of written approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practical and within such time as may be prescribed in writing by the Architectural Committee. 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.

(G) The approval of the Architectural Committee required by this section 5.22 shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Project.

(H) If work is undertaken without the Architectural Committee's approval, the Association may, in its sole discretion, (i) seek a prohibitory injunction preventing the Owner from completing the work; (ii) seek a mandatory injunction for the Owner to restore the Residential Unit to its prior condition or complete the construction work; (iii) restore the Residential Unit to the condition that existed before construction

began, or (iv) complete construction, all at the Owner's costs and with lien rights created herein and under North Carolina law.

(I) The provisions of this section 5.22 shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

(J) In no event shall the Association, the Architectural Committee or any member of the Architectural Committee have any liability for any action or inaction by the Architectural Committee or its members, including without limitation any approval or disapproval of plans by the Architectural Committee. The sole remedy for an Owner asserting that the Architectural Committee has improperly withheld approval or has improperly granted approval shall be an action to compel the Architectural Committee to take appropriate action. In no event shall any damages of any nature be awarded against the Association, the Architectural Committee or any member of the Architectural Committee of any nature arising from any action or inaction described in this Section 5.22.

(K) Each Owner is strongly advised to consult with independent architects and engineers to ensure that all improvements or alterations made by such Owner are safe and in compliance with applicable governmental requirements. No approval by the Architectural Committee shall constitute a guaranty or warranty by the Association, the Architectural Committee or any member of the Architectural Committee that the matters approved will comply with this Declaration, any Association Rules or Architectural Committee Rules, or any applicable governmental requirements or that any plans or improvements are safe or properly designed. The Owner constructing or altering any improvements shall indemnify, defend, and hold the Association harmless from (i) any claims or damages of any nature arising from such improvements or alterations or any approval thereof by the Architectural Committee and (ii) any claim that the Association, the Architectural Committee or any member of the Architectural Committee breached any duty to other Owners in issuing approval of such Owner's improvements or alterations.

Section 5.23. Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot so as to be Visible from Neighboring Property.

Section 5.24. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight feet (8') without the prior written approval of the Architectural Committee.

Section 5.25. Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the approved drainage plans on file with the City, County, or other governing body in which the Project is located. In addition, no Owner or other Person shall

change the grade or elevation of a Lot in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the approved drainage plans.

Section 5.26. Basketball Goals and Backboards. No basketball backboard, hoop or similar structure or device shall be permitted except in accordance with the Architectural Committee Rules.

Section 5.27. Playground Equipment. No jungle gyms, swing sets or similar playground equipment which would be Visible from Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Architectural Committee.

Section 5.28. Lights. Except as initially installed by the Declarant, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Architectural Committee.

Section 5.29. Flags. The official flag of the United States and/or the State of North Carolina may be displayed on any Lot provided (i) such flag is displayed in the manner required under the applicable federal or state flag code from a pole attached to a Residential Unit on the Lot, (ii) the pole is no higher than the top of the Residential Unit, (iii) the pole is no longer than ten feet in length and does not extend more than ten feet (10') from the edge of the Residential Unit, (iv) the flag is no more than twenty-four square feet (24') in size, (v) any flag lighting does not violate Section 5.28 of this Declaration, and (vi) the flag is maintained in good condition. The flag of another nation may be displayed in lieu of or in addition to the United States Flag on national holidays of such nation provided such display complies with the requirements for displaying the United States Flag.

Section 5.30. Yard Sales. Owners may hold "yard sales" to sell personal property of such Owners only in compliance with the following requirements: (i) yard sales shall be limited to two (2) days per year on any Lot, (ii) no yard sale shall commence prior to 6 AM Eastern Time, or continue after 5 PM Eastern Time, (iii) no Owner shall post any signs advertising any yard sale anywhere on the Project except that a temporary sign may be posted on such Owner's Lot on the day that a yard sale is being held, and (iv) if the Association ever adopts standard yard sale dates for the Project, yard sales shall be held only on such dates. The Association shall give reasonable notice to all Owners if it adopts standard yard sale dates for yard sales on the Project.

Section 5.31. Holiday Displays. Owners may display holiday decorations which are Visible from Neighboring Property only if the decorations are of the kinds normally displayed in single family residential neighborhoods, are of reasonable size and scope, and do not disturb other Owners and residents by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Holiday decorations may be displayed between October 1 and January 31 of each year and, during other times of year, from one (1) week before to one (1) week after any nationally recognized holiday.

Section 5.32. Firearms. The discharge of firearms within the Property is prohibited except as permitted by law for self-defense. The term “firearms” includes, but is not limited to, pistols, rifles, “B-B” guns, pellet guns, cross-bows and other firearms of all types, regardless of size. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration but shall have no obligation to exercise self-help to prevent or stop any such discharge.

Section 5.33. Fences. No fences shall be permitted on any Townhome Lot. With respect to the Single Family Lots, all fences shall be subject to the requirements of the Architectural Committee Rules.

Section 5.34. Solar Collectors.

(A) This section 5.34 applies to solar collectors (“**Solar Collectors**”) that gather solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for the residential Unit that it serves.

(B) As of the date of recordation of this instrument, Solar Collectors are subject to the provisions of N.C. Gen. Stat. §22B-20 (“**State Regulations**”). “Regulated Solar Collectors” shall mean Solar Collectors subject to State Regulations as such regulations may be amended or modified in the future or subject to any other applicable federal, state or local law, ordinance or regulation (“**Other Laws**”) that would render the restrictions in this section 5.34 on Unregulated Solar Collectors (hereinafter defined) invalid or unenforceable as to a particular Solar Collector. “Unregulated Solar Collectors” shall mean all Solar Collectors that are not Regulated Solar Collectors.

(C) Unless installed by Declarant, no Unregulated Solar Collectors shall be permitted on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, with such screening as such Committee may require. Unregulated Solar Collectors must be façade or roof mounted and not visible from areas open to common or public access. Notwithstanding the foregoing, no Unregulated Solar Collectors shall be permitted on a Townhome Lot.

(D) Regulated Solar Collectors that are not installed by Declarant shall be subject to the following requirements:

(i) If permitted by applicable State Regulations or Other Laws, no Regulated Solar Collector shall be permitted on any Lot, whether attached to a building or structure or on any Lot, unless approved in writing by the Architectural Committee, in a location or with such Screening as such Committee may require. If such restriction is not so permitted, the provisions of subsections (ii) and (iii) below shall apply with respect to Single Family Lots. Notwithstanding the foregoing, no Regulated Solar Collectors shall be permitted on a Townhome Lot unless, after receiving approval from the other Owner of the shared roof, the Owner agrees in writing, in a form acceptable to the Association, to assume installation costs, maintenance and repair costs, maintenance responsibilities for the roof, and liability for any damage or injury caused by the Regulated Solar Collector.

(ii) A Regulated Solar Collector shall be placed so as not to be visible by a person on the ground (a) on the façade of a structure that faces areas open to common or public access, (b) on a roof surface that slopes downward towards the same areas open to common or public access that the façade faces, or (c) within an area set off by a line running across the façade of the structure extending to the property boundaries on either side of the façade, and those area of common or public access faced by the structure.

(iii) A Regulated Solar Collector shall be placed and screened as directed by the Architectural Committee if such placement and screening will not have the effect of preventing the reasonable use of a Solar Collector.

(iv) Owners shall install and maintain Screening around Solar Collectors to screen items that would otherwise be Visible from Neighboring Property unless such requirement would violate the requirements of subsection (iii) above, if an Owner is not required to install and maintain Screening due to an unreasonable delay in installation of the Solar Collector that such Screening would cause, the Owner shall install such screening within thirty (30) days following installation of the Solar Collector and shall thereafter maintain such Screening, unless such Screening installation or maintenance will violate the provisions of subsection (iii) above. If an Owner is not required to install Screening due to an unreasonable increase in the cost of installing the Solar Collector caused by the cost of such Screening, the Association shall have the right, at the option of the Association, to enter onto the Lot and install such Screening and, in such event, the Owner shall maintain the Screening following installation, unless such Screening installation or maintenance will violate the provisions of subsection (iii) above.

The provisions of this section 5.34 are severable from each other; the invalidity or unenforceability of any provision or portion of this section 5.34 shall not invalidate or render unenforceable any other provisions or portions of this section 5.34, and all such other provisions or portions shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portions of this section 5.34 to a particular type of Solar Collector or to a particular Solar Collector on a particular Lot shall not invalidate or render unenforceable such provisions or portions regarding other Solar Collectors on other Lots.

ARTICLE VI

RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time, without the consent of other Owners, to resubdivide and replat any Lot or Lots that the Declarant then owns and has not sold, and any Common Area.

ARTICLE VII PARTY WALLS

Section 7.1. General Rules of Law to Apply. Each wall or fence, any part of which is placed on a dividing line between separate Lots shall constitute a "Party Wall". Each adjoining Owner's obligation with respect to party walls shall be determined by these Covenants and Restrictions and, if not inconsistent, by North Carolina law.

Section 7.2. Sharing Repair and Maintenance. Each Owner shall maintain the exterior surface of a party wall facing his or her Lot. Except as provided in this Article VII, the cost of reasonable repair shall be shared equally by adjoining Lot Owners.

Section 7.3. Damage by One Owner. If a Party Wall is damaged or destroyed by the act of one adjoining Owner, or his guests, tenants, licensees, agents or family members (whether or not such act is negligent or otherwise culpable), then that Owner shall immediately rebuild or repair the party wall to its prior condition without cost to the adjoining Owner and shall indemnify the adjoining Owner from any consequential damages, loss or liabilities. No Owner shall violate any of the following restrictions, and any damage (whether cosmetic or structural) resulting from violation of any of the following restrictions shall be considered caused by the Owner causing such action or allowing such action to occur on such Owner's Lot:

(i) No Owner shall allow sprinklers to spray or other water sources to deliver water within five feet (5') of any wall, excluding rainfall that falls directly on such area (i.e., an Owner shall not collect rainfall from other portions of the Lot and deliver it within five feet (5') of any wall);

(ii) No Owner shall allow any plant to attach themselves to any wall (e.g., ivy);

(iii) No Owner shall allow any tree to grow within six feet (6') of any wall (with such distance measured from the above-ground part of the tree that is nearest to the wall within five feet (5') of the ground level of the tree, including any portion of the root system that is not completely covered by dirt);

(iv) No Owner shall allow attachment of anything to any wall;
and

(v) No Owner shall allow water to be provided (by sprinkler, drip line, hose, hand delivery or otherwise) to any plant located within five feet (5') of any wall, excluding rainfall that falls directly on such plant (i.e., an Owner shall not collect rainfall from other portions of the Lot and deliver it to any plant within five feet (5') of any wall).

Section 7.4. Other Damage. If a Party Wall is damaged or destroyed by any cause other than the act of one of the adjoining Owners, his or her agents, tenants, licensees, guests or family members (including ordinary wear and tear and deterioration

from lapse of time), then the adjoining owners shall rebuild or repair the Party Wall to its prior condition, equally sharing the expense; provided, however, that if a Party Wall is damaged or destroyed as a result of an accident or circumstances that originate or occur on a particular Lot, (whether or not such accident or circumstance is caused by the action or inaction of the Owner of that Lot, or his or her agents, tenants, licensees, guests or family members) then in such event, the Owner of that particular Lot shall be solely responsible for the cost of rebuilding or repairing the party wall and shall immediately repair the Party Wall to its prior condition.

Section 7.5. Right of Entry. Each Owner shall permit the Owners of adjoining Lots, or their representatives, to enter his or her Lot for the purpose of installations, alteration, or repairs to a Party Wall on the Property of such adjoining Owners, provided that other than for emergencies, requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner of the adjoining Lot. An adjoining Owner making entry pursuant to this section 7.5 shall not be deemed guilty of trespassing by reason of such entry. Such entering Owner shall indemnify the adjoining Owner from any consequential damages sustained by reason of such entry.

Section 7.6. Right of Contribution. The right of any Owner to contribution from any other Owner under this Article VII shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7.7. Consent of Adjoining Owner. In addition to meeting the requirements of this Declaration and of any applicable building code and similar regulations or ordinances, any Owner proposing to modify, alter, make additions to or rebuild (other than rebuilding in a manner materially consistent with the previously existing wall) the Party Wall, shall first obtain the written consent of the adjoining Owner, which shall not be unreasonably withheld or conditioned.

Section 7.8. Walls Adjacent to Streets or Common Area. A wall that is adjacent to any streets or Common Area shall be treated as though the wall is a Party Wall with the street or common area constituting a Lot owned by the Association, except that any portion of such wall consisting of decorative metal-work that was originally on such wall (or any replacement thereof) shall be the sole responsibility of the Association (subject to an Owner's liability for repairs that would be such Owner's sole responsibility under Sections 7.3 or 7.4). Notwithstanding the foregoing, (a) the provisions in Sections 7.3 and 7.4 regarding an Owner's sole liability for repair of damage caused by such Owner's guests or licensees shall not apply to damage resulting from guests or licensees of the Association and such damage shall be considered caused by unrelated third parties and (b) the rule in Section 7.4 regarding damage arising from events occurring on a particular Owner's Lot shall not apply to damage arising from events occurring on streets or Common Areas. Notwithstanding the foregoing, any damage to a wall that is covered by the Association's casualty insurance shall, to the extent of proceeds actually received from such insurance, be paid for by the Association.

Section 7.9. Walls Forming Part of Residential Unit. If a Lot contains a wall that is (i) an exterior wall of a Residential Unit (including any garage associated

with a Residential Unit), and (ii) located on or immediately adjacent to the Lot boundary line, the provisions of this Article VII shall apply subject to the following:

(A) The wall shall have a perpetual easement for encroachments onto any adjoining Lot or Common Area of up to one foot (1'); provided, however, that such easement shall only apply to initial construction of the wall and any replacements of the wall that do not encroach further than the original wall.

(B) Any roof improvements (including gutters and similar related improvements) above such wall shall have a perpetual easement for encroachments onto any adjoining Lot or Common Area of up to four feet (4'); provided, however, that such easement shall only apply to initial construction of the roof improvements and any replacements of the roof improvements that do not encroach further than the original roof improvements.

(C) The Owner of the Lot adjacent to such wall shall not, without the written approval of the Owner of the Lot on which the Residential Unit is located, do any of the following:

- (i) use the wall for recreational purposes (e.g., bouncing balls);
- (ii) use the wall as part of an enclosure for pets; or

(iii) otherwise take any action regarding the wall that a reasonable person would conclude has a substantial likelihood of disturbing the peaceful and undisturbed use of the interior of the other Residential Unit of which the wall forms a part.

(D) Notwithstanding Section 7.7, the Owner of the Residential Unit shall not be required to obtain permission from the adjoining Lot Owner to rebuild the wall in the same manner as originally constructed.

ARTICLE VIII MAINTENANCE BY OWNER

Unless maintained by the Association pursuant to Article X, each Owner shall maintain his or her Residential Unit and Lot in good repair. The yards and landscaping on all improved Lots shall be neatly and attractively maintained and shall be cultivated and planted to the extent required to maintain an appearance in harmony with other improved Lots in the Property. If any sidewalk is partially or completely located on an Owner's Lot and third parties have an easement to use such sidewalk, then the Association (and not the Owner) shall be responsible for the maintenance and repair of such sidewalk. During prolonged absence, an Owner shall arrange for the continued care and upkeep of his or her Lot to the extent not maintained by the Association pursuant to Article X. Except for areas owned by the Association, or to be maintained by the Association pursuant to Article X, or that the Association has elected in writing to maintain, which election may be terminated by the Association at any time, each Owner shall also maintain in good condition and repair any landscaping and sidewalk improvements that are within the portion of any adjacent

right of way that is located between such Owner's Lot and the curb of the adjacent street. If an Owner fails to fulfill maintenance and repair obligations under this Article VIII or in the event an Owner fails to landscape his or her Lot as required by Section 5.13 above, the Architectural Committee may have said Lot and Residential Unit landscaped, cleaned and repaired and may charge the Owner for said work in accordance with the provisions of said section. An Owner shall not allow a condition to exist on his or her Lot that will adversely affect any other Lots and Residential Units or other Owners. Any repainting or redecorating of the exterior surfaces of a Residential Unit that alters the original appearance of the Residential Unit will require the prior approval of the Architectural Committee.

ARTICLE IX EASEMENTS

Section 9.1. Owner's Easements of Enjoyment.

(A) Every Owner, and any person residing with such Owner, shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot and Parcel, subject to the provisions of the Act and to the following provisions:

(i) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Area.

(ii) The right of the Association after Notice and Opportunity for Hearing to suspend the voting rights and right to the use of the recreational facilities, if any, located upon Common Area by any Owner for any period during which any Assessment against his or her Lot remains delinquent or Owner has violated Association Rules, pursuant to Section 3.9.

(iii) Subject to §47F-3-112 of the Act, the right of the Association to convey or encumber all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board; provided, however, that any such action taken at any time that Declarant owns any Lot shall be subject to the approval of Declarant. If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of the Common Area shall be subject to the Lot Owner's easement of ingress and egress.

(iv) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit or limit access to such portions of the Common Area, such as landscaped rights-of-way, not intended for use by the Owners or other lawful occupants of a Residential Unit.

(B) If a Lot is leased or rented by the Owner thereof, the tenant and the members of his family residing with such tenant pursuant to the lease shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

(C) The guests and invitees of any Owner or other person entitled to use the Common Area pursuant to this Declaration may use any recreational facility located on the Common Area provided they are accompanied by an Owner or other person entitled to use the recreational facilities pursuant to this Declaration. The Board shall have the right to limit the number of guests and invitees who may use the recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

Section 9.2. Drainage Easements. There is hereby created a blanket stormwater management easement for drainage of ground water on, over and across each Lot in such locations as Stormwater Control Facilities are located. An Owner shall not at any time hereafter fill, block or obstruct any Stormwater Control Facilities on his or her Lot and each Owner shall repair and maintain all Stormwater Control Facilities located on his or her Lot. No structure of any kind shall be constructed, and no vegetation shall be planted or allowed to grow within the drainage easements which may impede the flow of water under, over or through the easements or which may materially increase the flow of water onto another Lot. All drainage areas shall be maintained by the Owner of the Lots on which the easement area is located.

Section 9.3. Utility Easements. Except as installed by the Declarant or approved by the Architectural Committee, no lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, cable, internet/data, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No structure, landscaping or other improvements shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities. Such public utility easement areas, and all improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless the utility company or a county, municipality or other public authority maintains said easement area. There is hereby created a blanket easement upon, across, over and under the Property for ingress to, egress from and the installation, replacing, repairing and maintaining of all utility and service lines and systems including, but not limited to, water, sewer, gas, telephone, electricity, cable or communication lines and systems, such as utilities are installed in connection with the initial development of each Lot. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Lots and Common Areas and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings thereon. Notwithstanding anything to the contrary contained in this section 9.3, no electrical lines, water lines, or other utility or sewer lines may be installed or relocated within the Property except as initially created or approved by Declarant without the prior written approval of (i) in the case of a Common Area, the Association and the Architectural Committee, or (ii) in the case of a Lot, the Owner of such Lot and the Architectural Committee. Nothing contained herein shall entitle Declarant or any utility in exercising the rights granted herein to disturb any Residential Unit constructed in accordance with the requirements hereof. Declarant further reserves temporary

construction easements for utility lines, maintenance of storage tanks and facilities and access to and from such facilities.

Section 9.4. Encroachments. The Lots shall be subject to an easement for overhangs and encroachments by walls, fences or other structures upon adjacent Lots as constructed by the original builder or as reconstructed or repaired in accordance with the original plans and specifications or as a result of the reasonable repair, shifting, settlement or movement of any such structure.

Section 9.5. Declarant's Easement. Easements over the Lots for the installation and maintenance of electric, telephone cable, communications, water, gas, drainage and sanitary sewer or similar or other lines, pipes or facilities: (i) as shown on the recorded Plat or (ii) as may be hereafter required or needed to service any Lot are hereby reserved by the Declarant, together with the right to grant and transfer the same; provided, however, no utility other than a connection line to a Residential Unit served by the utility shall be installed in any area upon which a Residential Unit has been or may legally be constructed on the Lot.

Section 9.6. Easements to Facilitate Development. Declarant hereby reserves to itself, and its successors and assigns the right to: (i) use any Lots owned or leased by such party, any other Lot with written consent of the Owner thereof, or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction, construction offices, customer service offices or sales office parking areas; and (ii) install and maintain on the Common Area, any Lot owned or leased by such party, or any other Lot with the consent of the Owner thereof, such marketing, promotional or other signs which Declarant deems necessary for the development, sale or lease of the Property.

Section 9.7. View Impairment. Neither Declarant nor the Association guarantees or represents that any view over and across the open space from adjacent Residential Units or other property will be preserved without impairment. Without limiting the foregoing, neither Declarant nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in Article V above. Any express or implied easements for view purposes and/or for the passage of light and air are hereby expressly disclaimed.

Section 9.8. Easement to Inspect and Right to Correct.

(A) Easement. Declarant reserves for itself and such other persons as it may designate, perpetual, non-exclusive easements throughout the Project, to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, correcting, or improving any portion of the Project, including Residential Units and Common Areas. Declarant shall have the right to redesign, correct, or improve any part of the Project, including Residential Units and Common Areas.

(B) Right of Entry. In addition to the above easement, Declarant reserves a right of entry onto a Residential Unit upon reasonable notice to the Owner;

provided, in an emergency, no such notice need be given. Entry into a Residential Unit shall be only after Declarant notifies the Owner (or occupant) and agrees with the Owner regarding a reasonable time to enter the Residential Unit to perform such activities. Each Owner agrees to cooperate in a reasonable manner with Declarant in the exercise of the rights provided to it by this Section 9.8.

Entry onto the Common Areas and into any improvements and structures thereon may be made by Declarant at any time, with advance notice given to the Association; provided, in an emergency, no notice need be given.

(C) Damage. Any damage to a Residential Unit or Common Area resulting from the exercise of the easement and right of entry described in subsections (A) and (B) of this Section 9.8 shall promptly be repaired by, and at the expense of, Declarant. The exercise of these easements shall not unreasonably interfere with the use of any Residential Unit and entry onto any Residential Unit shall be made only after reasonable notice to the Owner or occupant.

Section 9.9. Dedications and Easements Required by Governmental Authority. Declarant hereby reserves to itself and its successors and assigns the right to make any dedications and to grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of a Common Area.

Section 9.10. Mailbox Easements. Mailbox structures shall be installed at such locations within the Property as Declarant and the U.S. Postal Service determine to be appropriate. If mailbox structures benefiting more than a single Residential Unit are constructed or installed on Lots, an easement shall be deemed to exist over such portion of the Lot(s) on which such structures are constructed or installed so as to facilitate the use of such mailbox structure by the U.S. Postal Service, the Owners of the Residential Units to be served by such structures, and the Association. All such common mailbox structures shall be Common Areas.

Section 9.11. Duration of Development Rights; Assignment. The rights and easements reserved by or granted to Declarant pursuant to this Article IX shall continue so long as Declarant owns one (1) or more Lots or holds an option to purchase one (1) or more Lots. Declarant may make limited temporary assignments of its easement rights under this Declaration to any person or entity performing construction, installation or maintenance on any portion of the Property.

Section 9.12. Easement for Maintenance and Enforcement. The Association and its directors, officers, agents, contractors and employees, the Architectural Committee and any other persons and entities authorized by the Board are hereby granted the right of access over and through any Lots (excluding the interior of any Residential Unit), for (i) exercising and discharging their respective powers and responsibilities under the Project Documents; (ii) making inspections to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Architectural Committee and that all Improvements are

properly maintained as required by the Project Documents; (iii) correcting any condition originating in a Lot or Common Area threatening another Lot or portion of a Common Area; (iv) installing or maintaining utilities, landscaping or other improvements located on the Lots for which the Association is responsible for maintenance; or (v) correcting any condition that violates the Project Documents.

Section 9.13. Rights of Declarant. Notwithstanding any other provision of this Declaration to the contrary, Declarant has the right to maintain construction trailers, model homes, and sales offices on Lots owned or leased by such party and to construct and maintain parking areas for the purpose of accommodating persons visiting such construction trailers, model homes, and sales offices as well as employees and contractors of such party.

Section 9.14. Stormwater Control Easement to City. Declarant hereby grants to the City an easement for ingress, egress and regress over and across the Common Area on which the Stormwater Control Facilities exist for the purpose of inspecting the Stormwater Control Facilities and exercising the other rights of the City that are provided for by the Stormwater Covenant.

Section 9.15. Retaining Wall and Sidewalk Easement. Pursuant to a Declaration of Easement to be recorded concurrently herewith, Declarant shall reserve for itself and such other persons as it may designate, perpetual easements to construct and maintain a retaining wall and sidewalk, and to maintain such improvements, together with any required landscaping in an easement area that will abut the northern and southern boundaries of lots 302 and 303, the southern boundaries of lots 4 and 5, the western boundary of Diversity Way, and the northern boundary of lot 7, as shown on the plat titled "Montage Subdivision Phase 1, Right-of-way, Easements, Tree Conservation Area, & Lot 314 Tree Conservation Area Plat for Meritage Homes of the Carolinas" and recorded in the Wake County Registry at Book of Maps 2022, Pages 316 through 320 (the "**Easement Area**"). Such Easement Area shall constitute Common Area unless and until such time that any portion thereof has been conveyed by Declaration or the Association to a third party in accordance with this Declaration.

ARTICLE X MAINTENANCE

Section 10.1. Maintenance by the Association. The Association shall be responsible for the maintenance, repair and replacement of Common Areas and may, without any approval of the Owners, do any of the following:

(A) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

(B) Construct, reconstruct, repair, replace or refinish any portion of Common Areas used as a road, street, walk, driveway and parking area;

(C) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(D) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(E) Construct, maintain, repair and replace landscaped areas on any portion of Common Areas;

(F) Maintain any portion of Common Areas on which Stormwater Control Facilities are located;

(G) Maintain any multiple-residence mailboxes used for delivery of personal mail within the Property; provided, however, that each Owner shall be responsible for repair or replacement of locks and/or keys for each Owner's mailbox; and

(H) Do all such other and further acts which the Board deems necessary to preserve and protect Common Areas and the appearance thereof, in accordance with the general purposes specified in this Declaration.

Neither Declarant nor any Builder within the Property shall be responsible for maintenance, repair or replacement of Common Areas or improvements thereon previously transferred to the Association, except that (i) the installer of any landscaping on Common Areas shall provide a ninety (90) day warranty period for such landscaping, and (ii) any express or implied warranties provided by any provider of labor or materials in connection with improvements shall be deemed assigned to the Association concurrently with such transfer. This paragraph shall not be subject to amendment without the written approval of the Declarant.

Section 10.2. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefore under North Carolina law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

Section 10.3. Townhome Lot Maintenance by the Association The Association shall be responsible for the maintenance, repair and replacement of the Townhome Lots, without any approval of the Owners, as follows:

(A) All exterior surfaces of Residential Units on the Townhome Lots, including, but not limited to, exterior siding materials, shutters, painting, and roofs; excluding, however, windows, doors, light fixtures and fences each of which shall be maintained by the Owner.

(B) Termite and wood-infestation treatment and bond and other pest treatment on the Townhome Lots (except to the extent termite or pest infestation is caused by the Owner).

(C) The Association shall maintain the grass, plants, shrubs, trees, and landscaping installed by the Declarant or the Association on the Townhome Lots (the “**Yard Improvements**”) but is not obligated to replace any plant, shrub, or tree for any reason. The Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental authority. Owners shall maintain any Yard Improvements they install with the prior approval and consent of the Architectural Committee; provided, however, that if such Yard Improvements are not maintained by an Owner, the Association may charge the Owner for the cost of such maintenance.

(D) If a common irrigation system that provides irrigation for the Townhome Lots is installed by Declarant, the Association shall maintain, repair and operate such system in good condition, subject to the requirements of the applicable governmental authorities, including, but not limited to, any restrictions imposed or recommended during periods of drought. If individual irrigation systems are installed to serve the Townhome Lots individually, the Association may set the times at which such irrigation systems will water a Townhome Lot’s landscaping, the duration of such watering and may control an Owner’s use of such system, all without incurring any cost for water or other utility charge. This paragraph shall not be subject to amendment without the written approval of Declarant during the Development Period, and the written approval of the Association thereafter.

Section 10.4. Payment of Utility Charges. Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. If a common irrigation system that provides irrigation for the Lots is installed by Declarant, the cost of water and electrical service to such common irrigation system shall be a Common Expense of the Association and shall be included in the budget of the Association. The cost of water, sewer and electrical service to the Common Area shall be a Common Expense of the Association and shall be included in the budget of the Association.

Section 10.5. Maintenance by Governmental Entities. No municipality or other governmental entity is responsible for or will accept maintenance for any private facilities, landscaped areas, or Common Areas within the Project.

Section 10.6. Landscaping Replacement. Landscaping originally planted on the Common Areas may exceed the landscaping that is ultimately planned for Common Areas due to over-planting in anticipation of normal plant losses. The Board is hereby granted the authority to remove and not replace dead or damaged landscaping if, in the reasonable discretion of the Board, (i) the remaining landscaping is acceptable to the Board, and (ii) the remaining landscaping is generally consistent in quality and quantity with the landscaping shown on approved landscaping plans filed with governmental

entities in connection with Property, even if the location of specific plants is different than the locations shown on such approved landscaping plans. Declarant reserves the right to substitute plants and trees planted on the Property or shown on approved landscaping plans with equivalent or better landscaping materials. Neither Declarant nor any other installer of landscaping in Common Areas shall be responsible for replacement of landscaping that dies more than ninety (90) days following installation or that requires replacement due to vandalism, lack of proper watering or maintenance by Association, or damage due to negligence. The Association shall be solely responsible for such replacement, subject to potential recovery by the Association from any vandal or negligent person.

Section 10.7. Alteration of Maintenance Procedures. Following the termination of the Class B membership and so long as Declarant owns any Lot, the Association shall not, without the written approval of Declarant, alter or fail to follow the maintenance and repair procedures recommended by the Association's management company as of the termination of the Class B membership unless such alteration will provide for a higher level of maintenance and repair. Declarant shall have the right, but not the obligation, to perform any required maintenance or repair not performed by the Association within ten (10) business days following notice from Declarant that such maintenance or repair is required under this section 10.7; if Declarant performs such maintenance or repair, the costs incurred by Declarant shall be reimbursed by the Association within thirty (30) days following written demand for reimbursement accompanied by copies of invoices for such costs. This section 10.7 shall not be subject to amendment without the written approval of Declarant during the Development Period, and the written approval of the Association thereafter.

ARTICLE XI INSURANCE

Section 11.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(A) Property insurance on Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured Property, exclusive of land, excavations, foundations, and other items normally excluded from a Property policy,

(B) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than One Million and No/100 Dollars (\$1,000,000.00). Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverages with cost liability

endorsements and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

(C) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of North Carolina;

(D) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

(E) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) Each Owner is an insured owner under the policy to the extent of the Owner's insurable interest.

(ii) That there shall be no subrogation with respect to the Association, its agents, and employees, with respect to Owners and members of their households;

(iii) No act or omission by any Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iv) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(v) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(vi) The Association shall be named as the insured; and

(vii) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty (30) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

(F) If the property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended;

(G) "Agreed Amount" and "Inflation Guard" endorsements.

Section 11.2. Insurance on Townhome Lots. To the extent available at reasonable cost, the Association may maintain as an Association expense insurance commonly known as “master condominium/townhome insurance”, which insurance may cover the following property, regardless of ownership: the roofs, exterior shells of the buildings, fixtures, improvements and alterations that are part of the buildings, and the stoops, decks, driveways and patio areas. The Association’s insurance policy may exclude improvements and betterments made by an Owner and may exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the finished home (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet, and any floor covering). If the Association’s insurance policy excludes any of the items listed in the foregoing sentence, the Owner of each Townhome Lot shall be required to insure such of those items as are located on the Owner’s Townhome Lot and the Association may require the townhome Owners insure such items through an insurance company selected by the Association. If the Association obtains insurance on the Townhome Lots, the premiums and all other costs associated with such insurance shall be Neighborhood Expenses assessable against the Townhome Lots as, or a part of, a Neighborhood Assessment.

Section 11.3. Certificates of Insurance. An insurer that has issued an insurance policy under this Article XI 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 XI 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 11.4. Fidelity Bonds.

(A) The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association as well as all other persons handling or responsible for funds of or administered by the Association, including, but without limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of fidelity bond maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the amount equal to one hundred percent (100%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, or (iii) the sum equal to three (3) months’ assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

- (i) The fidelity bonds shall name the Association as an obligee;
- (ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees” or similar terms or expressions; and

(iii) The bonds shall provide that they may not be canceled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

(B) The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to subsection (A) of this section 11.4. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

Section 11.5. Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Article XI shall be a Common Expense included in the budget of the Association and shall be paid by the Association.

Section 11.6. Insurance Obtained by Owners. Each Owner shall be responsible for obtaining property insurance for his or her own benefit and at his or her own expense covering his or her Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his or her expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his or her Lot.

Section 11.7. Payment of Insurance Proceeds. With respect to any loss to Common Area covered by property insurance obtained by the Association in accordance with this Article XI, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 11.8, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

Section 11.8. Repair and Replacement of Damaged or Destroyed Property. Any portion of Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) this Declaration is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild, including one hundred percent (100%) approval assigned to the Limited Common Area (if any) not to be rebuilt as provided in the Act. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed in accordance with the provisions of §47F-3-113(g) of the Act. Notwithstanding the provisions of this subsection, §47F-2-118 of the Act governs the distribution of the insurance proceeds if this Declaration is terminated.

ARTICLE XII
TERM AND ENFORCEMENT

Section 12.1. Enforcement. Subject to the provisions of Section 12.4 and Article XIII, the Association, the Architectural Committee or any Owner shall have the right (but not the obligation) to enforce the Covenants and Restrictions in this Declaration and any amendment thereto. Failure by the Association, the Architectural Committee or any Owner to enforce the Covenants and Restrictions shall in no event be deemed a waiver of the right to do so thereafter. Deeds of conveyance of the Property may contain the Covenants and Restrictions by reference to this Declaration, but whether or not such reference is made in such deeds, each and all such Covenants and Restrictions shall be valid and binding upon the respective grantees. Violators of any one or more of the Covenants and Restrictions may be restrained by any court of competent jurisdiction and damages awarded against such violators; provided, however, that a violation of these Covenants and Restrictions or any one or more of them shall not affect the lien of any first mortgage or first deed of trust. If the Architectural Committee enforces any provision of the Project documents, costs of the enforcement shall be paid by the Association, and the Association shall be entitled to recover such costs. In addition to any enforcement rights otherwise available to the Association, the Association shall have the right to enforce any provision of this Declaration by directly taking action necessary to cure or remove a breach of this Declaration, including without limitation, removal, repair or replacement of any improvement, sign or landscaping on any portion of the Property; in such event, the Association shall be entitled to recover the costs incurred by the Association in connection with such cure. Pursuant to such cure or removal right of the Association, the Association or its authorized agents may, upon reasonable written notice (or immediately, for willful and recurrent violations, when written notice has previously been given), enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot; the Association and its agents are granted an easement for such purpose pursuant to Section 9.9. Such expenses and fines as may be imposed pursuant to the Project Documents shall constitute and be secured by an Assessment Lien upon such Lot enforceable in accordance with the provisions of this Declaration. All remedies available at law or equity shall be available in the event of any breach of any provision of this section 12.1 by any Owner, tenant, or other person.

Section 12.2. Term. This Declaration shall remain in force and shall run with and bind the Property until terminated in accordance with §47F-2-118 of the Act.

Section 12.3. Amendment. Except as otherwise expressly provided herein, this Declaration may be amended or modified at any time by the vote or written consent of Owners having sixty-seven percent (67%) of the votes entitled to be cast in the Association; provided, however, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Owners is required pursuant to this Section 12.3 shall become effective when an instrument executed by the Owners voting for such amendment or modification is recorded in the County Registry; provided, however, such an amendment or modification, in lieu of being executed by the

Owners voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Owners, as provided in this Section 12.3. A properly executed and recorded amendment may alter the restrictions in whole or in part applicable to all or any portion of the Property and need not be uniform in application to the property.

Notwithstanding the terms of the immediately preceding paragraph of this Section 12.3, until the termination of the Class B membership, Declarant, without obtaining the approval of any Owner or Owners, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provisions of this Declaration.

Any action to challenge the validity of an amendment adopted under this Section 12.3 must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

Section 12.4. Approval of Litigation. Except for any legal proceedings initiated by the Association to (i) enforce the use restrictions contained in this Declaration; (ii) enforce the Association Rules; (iii) enforce the Architectural Committee Rules; (iv) collect any unpaid Assessments levied pursuant to this Declaration, or (v) enforce a contract entered into by the Association with vendors providing services to the Association, the Association shall not incur litigation expenses, including without limitation, attorneys' fees and costs, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, without the prior approval of a majority of the members of the Association entitled to cast a vote who are voting in person or by proxy at a meeting duly called for such purpose, excluding the vote of any Owner who would be a defendant in such proceedings. The costs of any legal proceedings initiated by the Association which are not included in the above exceptions shall be financed by the Association only with monies that are collected for that purpose by special assessment, and the Association shall not borrow money, use reserve funds, or use monies collected for other Association obligations. Each Owner shall notify prospective Purchasers of such legal proceedings initiated by the Board and not included in the above exceptions and must provide such prospective Purchasers with a copy of the notice received from the Association in accordance with Section 13.3 of this Declaration.

Nothing in this section 12.4 shall preclude the Board from incurring expenses for legal advice in the normal course of operating the Association to (i) enforce the Project Documents; (ii) comply with the statutes or regulations related to the operation of the Association; (iii) amend the Project Documents as provided in this Declaration; (iv) grant easements or convey Common Area as provided in this Declaration, or (v) perform the obligations of the Association as provided in this Declaration. Subject to the exceptions in the first sentence of this section 12.4, with respect to matters involving property or improvements to property, the Association or Board additionally shall not initiate legal proceedings or join as a plaintiff in legal proceedings unless (x) such property or improvement is owned either by the Association or jointly by all members of the

Association, (y) the Association has the maintenance responsibility for such property or improvements pursuant to this Declaration, or (z) the Owner who owns such property or improvements consents in writing to the Association initiating or joining such legal proceeding.

Section 12.5. Annexation of Additional Property. Until the later of (i) ten (10) years following recordation of this Declaration, or (ii) termination of the Class B membership, Declarant shall have the right to annex any real property that is within one (1) mile of any real property that is then subject to this Declaration. Annexation shall be effective upon recordation by Declarant of a signed and acknowledged declaration of annexation with the County Registry stating that such real property has been annexed to this Declaration. No consent or approval of such annexation by the Board or members of the Association shall be necessary for an annexation by Declarant. Upon annexation, the annexed real property shall be deemed to be part of the Project and shall have the same rights, privileges and obligations as the Project originally subject to the terms of this Declaration, including membership in the Association, except that such rights, privileges and obligations shall not include matters arising or accruing prior to annexation; annual assessments shall be prorated for annexed property through the date of annexation.

Upon annexation, the Owners of Lots within the annexed property shall have no obligation to pay Assessments until the first Lot within the annexed property is conveyed to a Purchaser, or the first common area within the annexed property is transferred to and accepted for maintenance by the Association; further provided, that if the supplemental declaration of annexation divides such annexed property into phases, then the Lots within each phase will be subject to assessment when the first Lot in the phase is conveyed to a Purchaser or the first common area in the phase is transferred to and accepted for maintenance by the Association. Any area within the annexed property designated by a Plat as Common Area or similar designation shall be conveyed to the Association, and the Association shall accept such conveyance, upon the completion of the improvements to such common area in accordance with the approved plans. Such Common Area shall be conveyed to the Association, free of all monetary encumbrances (including mechanics' and materialmen's liens), except current real and personal property taxes and other easements, conditions, reservations and restrictions then of record, including without limitation, this Declaration.

Section 12.6. De-Annexation of Property. Declarant shall have the right from time to time, in its sole discretion and without the consent of any person (other than consent of the owner of the property being de-annexed), to remove from the Project and from the effect of this Declaration one or more portions of the Project; provided, however, that a portion of the Project may not be removed from this Declaration unless at the time of such removal no Residential Units or material Common Area improvements have been constructed thereon (unless the de-annexation is for the purpose of accomplishing minor adjustments to the boundaries of Lots or the Project). No removal of property shall occur if such removal would act to terminate access to any right-of-way or utility line unless reasonable alternative provisions are made for such access. No removal of property shall affect the Assessment Lien on the removed property for Assessments accruing prior to

removal. Any removal of property hereunder shall be made by Declarant recording a notice thereof.

ARTICLE XIII CLAIM AND DISPUTE RESOLUTION/LEGAL ACTIONS

It is intended that the Common Area, each Lot, and all Improvements constructed on the Property by persons (“**Developers**”) in the business of constructing improvements will be constructed in compliance with all applicable building codes and ordinances and that all Improvements will be of a quality that is consistent with the good construction and development practices in the area where the Project is located for production housing similar to that constructed within the Project. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility therefor. It is intended that all disputes and claims regarding alleged defects (“**Alleged Defects**”) in any Improvements on any Lot or Common Area will be resolved amicably, without the necessity of time-consuming and costly litigation. Accordingly, all Developers (including Declarant), the Association, the Board, and all Owners shall be bound by the following claim resolution procedures. In the event of a conflict between the terms and provisions of this Article XIII and any agreement entered into by and between a Developer and an Owner, the terms and provisions of such agreement shall prevail. For the avoidance of doubt, Developers shall have independent standing to enforce the provisions set forth in this Article XIII.

Section 13.1. Right to Cure Alleged Defect. If a person or entity (“**Claimant**”) claims, contends, or alleges an Alleged Defect, each Developer shall have the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

Section 13.1.1. Notice of Alleged Defect. If a Claimant discovers an Alleged Defect, within fifteen (15) days after discovery thereof, Claimant shall give written notice of the Alleged Defect (“**Notice of Alleged Defect**”) to the Developer constructing the Improvement with respect to which the Alleged Defect relates.

Section 13.1.2. Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by a Developer of a Notice of Alleged Defect, or the independent discovery of any Alleged Defect by a Developer, Developer shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into the Common Area, areas of Association responsibility, any Lot or Residential Unit, and/or any Improvements for the purposes of inspecting and/or conducting testing and, if deemed necessary by Developer at its sole discretion, repairing and/or replacing such Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Section 13.2. No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article XIII shall be construed to impose any obligation on a Developer to inspect, test, repair, or replace any item or Alleged Defect for which such

Developer is not otherwise obligated under applicable law or any warranty provided by such Developer in connection with the sale of the Lots and Residential Units and/or the Improvements constructed thereon. The right reserved to Developer to enter, inspect, test, repair and/or replace an Alleged Defect shall be irrevocable and may not be waived or otherwise terminated with regard to a Developer except by a written document executed by such Developer and recorded in the County Registry.

Section 13.3. Legal Actions. All legal actions initiated by a Claimant shall be brought in accordance with and subject to Section 13.4 and Section 12.4 of this Declaration. If a Claimant initiates any legal action, cause of action, regulatory action, proceeding, reference, mediation, or arbitration against a Developer alleging (i) damages for costs of repairing Alleged Defect (“**Alleged Defect Costs**”), (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. If the Association as a Claimant recovers any funds from a Developer (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid in to the Association’s reserve fund. If the Association is a Claimant, the Association must provide a written notice to all Owners prior to initiation of any legal action, regulatory action, cause of action, proceeding, reference, mediation or arbitration against a Developer(s) which notice shall include at a minimum (i) a description of the Alleged Defect; (ii) a description of the attempts of the Developer(s) to correct such Alleged Defect and the opportunities provided to the Developer(s) to correct such Alleged Defect; (iii) a certification from an architect or engineer licensed in the State that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such architect or engineer; (iv) the estimated Alleged Defect Costs; (v) the name and professional background of the attorney retained by the Association to pursue the claim against the Developer(s) and a description of the relationship between such attorney and member(s) of the Board or the Association’s management company (if any); (vi) a description of the fee arrangement between such attorney and the Association; (vii) the estimated attorneys’ fees and expert fees and costs necessary to pursue the claim against the Developer(s) and the source of the funds which will be used to pay such fees and expenses; (viii) the estimated time necessary to conclude the action against the Developer(s); and (ix) an affirmative statement from a majority of the members of the Board that the action is in the best interests of the Association and Owners.

Section 13.4. Alternative Dispute Resolution. Any dispute or claim between or among (a) a Developer (or its brokers, agents, consultants, contractors, subcontractors, or employees) on the one hand, and any Owner(s) or the Association on the other hand; (b) any Owner and another Owner; or (c) the Association and any Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to (i) the rights or duties of the parties under this Declaration; (ii) the design or construction of any portion of the Project, or (iii) an Alleged Defect, but excluding disputes relating to the payment of any type of Assessment (collectively, a “**Dispute**”), shall be subject first to negotiation, then mediation,

and then arbitration as set forth in this Section 13.4 prior to any party to the Dispute instituting litigation with regard to the Dispute.

Section 13.4.1. Negotiation. Each party to a Dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving a Dispute by good faith negotiation. Upon receipt of a written request from any party to the Dispute, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion the Board believes its efforts will be beneficial to the parties and to the welfare of the community. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such negotiation.

Section 13.4.2. Mediation. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 13.4.1 above within such time period as may be agreed upon by such parties (the "**Termination of Negotiations**"), the party instituting the Dispute (the "**Disputing Party**") shall have thirty (30) days after the termination of negotiations within which to submit the Dispute to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other independent entity providing similar services upon which the parties to the Dispute may mutually agree. No person shall serve as a mediator in any Dispute in which such person has a financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. If the Disputing Party does not submit the Dispute to mediation within thirty (30) days after Termination of Negotiations, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to persons or entities not a party to the foregoing proceedings.

Section 13.4.2.1. Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute shall submit a brief memorandum setting forth its position with regard to the issues to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute shall attend unless otherwise agreed. The mediation shall commence within ten (10) days following submittal of the memoranda to the mediator and shall conclude within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute mutually agree to extend the mediation period. The mediation shall be held in the County where the property is located or such other place as is mutually acceptable by the parties to the Dispute.

Section 13.4.2.2. Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties to the

Dispute agree to obtain and assume the expenses of obtaining such advice as provided in Subsection 13.4.2.5. The mediator does not have the authority to impose a settlement on any party to the Dispute.

Section 13.4.2.3. Exclusion Agreement. Any admissions, offers of compromise, or settlement negotiations or communications at the mediation shall be excluded in any subsequent dispute resolution forum.

Section 13.4.2.4. Parties Permitted at Sessions. Persons other than the parties to the Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Dispute or by witnesses in the course of the mediation shall be kept confidential. There shall be no written or oral record of the mediation process.

Section 13.4.2.5. Expenses of Mediation. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear its own attorneys' fees and costs in connection with such mediation.

Section 13.4.3. Final and Binding Arbitration. If the parties cannot resolve their Dispute pursuant to the procedures described in Subsection 13.4.2, the Disputing Party shall have thirty (30) days following termination of mediation proceedings (as determined by the mediator) to submit the Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as modified or as otherwise provided in this Section 13.4. If the Disputing Party does not submit the Dispute to arbitration within thirty (30) days after termination of mediation proceedings, the Disputing Party shall be deemed to have waived any claims related to the Dispute and all other parties to the Dispute shall be released and discharged from any and all liability to the Disputing Party on account of such Dispute; provided, however, nothing herein shall release or discharge such party or parties from any liability to a person or entity not a party to the foregoing proceedings.

The existing parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Developer shall be required to participate in the arbitration proceeding if all parties against whom a Developer would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 13.4, the arbitrator shall have the authority to try all issues, whether of fact or law.

Section 13.4.3.1. Place. The arbitration proceedings shall be heard in the County.

Section 13.4.3.2. Arbitration. A single arbitrator shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the American Arbitration Association with experience in relevant matters which are the subject of the Dispute. The arbitrator shall not have any relationship to the parties or interest in the Project. The parties to the Dispute shall meet to select the arbitrator within ten (10) days after service of the initial complaint on all defendants named therein.

Section 13.4.3.3. Commencement and Timing of Proceeding. The arbitrator shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

Section 13.4.3.4. Pre-hearing Conferences. The arbitrator may require one (1) or more pre-hearing conferences.

Section 13.4.3.5. Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Dispute, including, but not limited to, destructive or invasive testing; and (vi) trial briefs. The Developer shall also be entitled to conduct further tests and inspections as provided in Section 13.1. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

Section 13.4.3.6. Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive or consequential damages; however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for in the Uniform Arbitration Act, N.C. Gen. Stat. §1-569, et seq., or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

Section 13.4.3.7. Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.

Section 13.4.3.8. Expenses of Arbitration. Each party to the Dispute shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall

share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties.

Section 13.5. Statute of Limitations. Nothing in this Article XIII shall be considered to toll, stay, or extend any applicable statute of limitations.

Section 13.6. Enforcement of Resolution. If the parties to a Dispute resolve such Dispute through negotiation or mediation in accordance with Subsection 13.4.1 or 13.4.2, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Subsection 13.4.3 and any party to the Dispute thereafter fails to comply with such resolution or award, then the other party to the Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Article XIII. In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys' fees and court costs.

ARTICLE XIV GENERAL PROVISIONS

Section 14.1. Severability. Judicial invalidation of any part of this Declaration shall not affect the validity of any other provisions.

Section 14.2. Construction. The Article and section headings have been inserted for convenience only and shall not be considered in resolving questions of interpretation or construction. All terms and words used in this Declaration regardless of the number and gender in which they are used shall be deemed and construed to include any other number, and any other gender, as the context or sense requires. In the event of any conflict or inconsistency between this Declaration, Stormwater Covenant, the Articles, and/or the Bylaws, the provisions of Stormwater Covenant shall control over the provisions of this Declaration, the provisions of this Declaration shall control over the provisions of the Articles and the Bylaws, and the provisions of the Articles shall prevail over the provisions of the Bylaws.

Section 14.3. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail, postage prepaid; if to an Owner, addressed to that Owner at the address of the Owner's Lot, or if to the Architectural Committee, addressed to that Committee at the normal business address. If notice is sent by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage pre-paid. If personally delivered, notice shall be effective on receipt. Notwithstanding the foregoing, if application for approval, plans, specifications and any other communication or documents shall not be deemed to have been submitted to the Architectural Committee, unless actually received by said Committee. Any vote, election, consent or approval of any nature by the Owners or the Board, whether hereunder or for any other purpose, may, in the discretion

of the Board and in lieu of a meeting of members, be held by a mail-in ballot process pursuant to such reasonable rules as the Board may specify.

Section 14.4. Tract Declaration. Declarant shall have the right to impose on any portion of the property owned by Declarant a “**Tract Declaration**” in such form as may be approved in writing by Declarant. A Tract Declaration may modify the provisions of Section 12.4 or Article XIII of this Declaration and, to the extent that any Tract Declaration is inconsistent with such provisions of this Declaration, the provisions of such Tract Declaration shall take priority over and control over such provisions of this Declaration. A Tract Declaration may also impose other covenants, conditions, restrictions, easements or other matters to the extent not inconsistent with the provisions of this Declaration.

Section 14.5. Prices. Declarant shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for new Residential Units and/or Lots.

Section 14.6. Restriction of Traffic. Declarant reserves the right, until the conveyance of title to Purchaser of the last Residential Unit in the Property, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Property, in Declarant’s sole discretion, to accommodate Declarant’s construction, sales, and marketing activities; provided that no Residential Unit shall be deprived of access to a dedicated street adjacent to the Property.

Section 14.7. Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by applicable North Carolina law, further reserves all other rights, powers, and authority, in Declarant’s sole discretion, of a declarant under applicable North Carolina law, including, without limitation, all special declarant rights under the Act.

Section 14.8. Disclaimers and Releases. By acceptance of a deed to a Residential Unit, each purchaser or Owner, for itself and all persons claiming under such purchaser or Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant specifically disclaims any and all representations and warranties, express and implied, with regard to any of the disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) to fully and unconditionally release Declarant and the Association, and their respective officers, managers, agents, employees, suppliers and contractors, and their successors and assigns, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, occurrences described herein.

ARTICLE XV
SPECIAL PROVISIONS

Section 15.1. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the property safer than they otherwise might be. However, neither the Association, the Board, the management company of the Association, any neighborhood committee, Declarant nor any land entity shall in any way be considered insurers or guarantors of security within the property, nor shall any of the above-mentioned parties 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 (or onsite roving patrol or resources, if applicable) cannot be compromised or circumvented, nor 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 covenants to inform all occupants of its Residential Unit, and their respective families and invitees, that neither the Association, the Board, committees, neighborhood associations, nor any other person involved with the governance, maintenance, and management of the Property, including Declarant, are insurers of safety or security within the Property. All Owners and occupants, and their respective families and invitees, assume all risks of personal injury and loss or damage to persons, units, and the contents of units, and further acknowledge that neither the Association, its Board and committees, the management company of the Association, any neighborhood association, Declarant nor any land entity have made representations or warranties regarding any attended or unattended entry gate, patrolling of the property, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Property. All Owners and occupants, and their respective families and invitees, further acknowledge that they have not relied upon any such representations or warranties, expressed or implied.

Section 15.2. Supplemental Declarations. Supplemental declaration(s) may, but need not necessarily, be recorded from time to time by Declarant (or with the express prior written consent of Declarant, in its sole discretion). A supplemental declaration shall be supplemental to this Declaration, and may create a sub-association and/or impose supplemental obligations, covenants, conditions, or restrictions, or reservations of easements, with respect to a particular portion of the Project or other land described in such instrument. This Declaration and any supplemental declaration shall be construed to be consistent with each other to the greatest extent reasonably possible; however, in the event of any irreconcilable conflict, the provisions of this Declaration shall prevail. Any purported supplemental declaration recorded by a person other than Declarant, without the express prior written consent of Declarant, shall be null and void.

Section 15.3. Sub-Associations. Sub-associations may be created from time to time, to administer to particular portions of the Project; provided that no sub-association may be validly organized except pursuant to the authority and jurisdiction of a supplemental declaration as set forth in Section 14.4. A duly created sub-association shall

be a supplemental homeowners association, organized pursuant to the authority and jurisdiction of a supplemental declaration, with concurrent and supplemental jurisdiction (subject and subordinate to this Declaration and the other Project Documents) with the Association with respect to a particular portion of the Project.

A sub-association shall have the power to establish standards and conduct activities for the property under its responsibility, subject to the Project Documents and any documents created in connection with the creation and ongoing operations of the sub-association. Notwithstanding the foregoing, the Association shall have the power and authority to veto any action taken or contemplated to be taken by any sub-association which the Board reasonably determines to be in violation of the Project Documents, or adverse or detrimental to the best interests of the Association, or Owners. The Association also shall have the power to reasonably require specific action to be taken by any sub-association in connection with the sub-association's obligations and responsibilities (for example, without limitation, requiring specific maintenance or repairs, or requiring that a proposed sub-association budget include certain items and that expenditures be made therefor). A sub-association shall take appropriate action required by the Association by written notice, within the reasonable time frame set forth in such notice. If the sub-association fails to so comply, the Association shall have the power and authority to effectuate such action on behalf of the sub-association and to levy special assessments, pursuant to Article IV of this Declaration, to cover the reasonable costs thereof.

Section 15.4. Freeway/Roadways. The Property is or may be located adjacent to or nearby expressways and/or arterial or major roadways, and subject to levels of traffic thereon and noise, dust, and other nuisance from such roadways and vehicles. These road systems improvements are subject to expansion, modifications and improvements made by the City, County or State. For example, alignments may be changed, proposed extensions may be deleted or changed and roadway improvements within the vicinity of the Property may be added. Owners and occupants of Residential Units may experience noise from use of these roads as well as other problems associated with traffic congestion in the area of the Project. Also, each Residential Unit is located in proximity to streets and other Residential Units within the Project, and subject to substantial levels of sound and noise.

Section 15.5. Airplane Traffic. The Property is or may be located within or nearby certain airplane flight patterns or clear zones, and/or subject to significant levels of airplane traffic and noise.

Section 15.6. Future Development. Declarant presently plans to develop only those Lots which have already been released for construction and sale, and Declarant has no obligation with respect to future phases, plans, zoning, or development of other real property contiguous to or nearby the Lots presently planned for development. The Owner of a Residential Unit may have seen proposed or contemplated residential and other developments which may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no

obligation to construct such future or planned developments or units, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same. An Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the foregoing provisions.

Section 15.7. Construction Nuisances. Residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, traffic, and other construction-related “nuisances.” Each Owner acknowledges and agrees that it is purchasing a Residential Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial level of construction-related “nuisances” until the subdivision (and other neighboring portions of land being developed) have been completed and sold out.

Section 15.8. Model Homes. Model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant to deliver the Residential Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded carpet, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to a purchaser unless an authorized officer of Declarant has specifically agreed in a written addendum to the purchase agreement to make specific items a part of the purchase agreement.

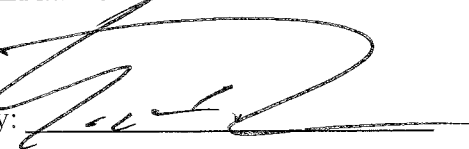
Section 15.9. Trails, Greenways and Amenities. Trails and greenways are located within the Common Area, which are open to the public. The users may produce noise, leave trash, loiter in the area and create other disturbances which may result in inconvenience and disturbances to, and potential privacy, safety and security issues for, Owners and occupants of Residential Units.

[SIGNATURE PAGE FOLLOWS]

Date: January 25, 2023

DECLARANT:

MERITAGE HOMES OF THE CAROLINAS, INC.

By: 

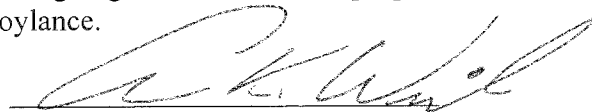
Name: Scott Roylance

Its: Division President

Wake County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Scott Roylance.

Date: 1/25/2023

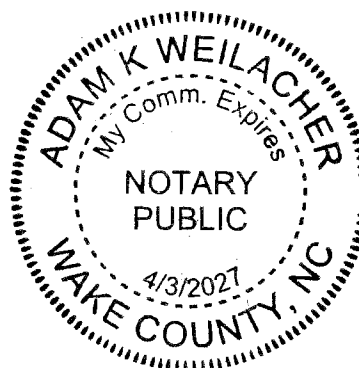


Notary Public

My Commission Expires:
4/3/2027

Print Name: ADAM K. WEILACHER

[Affix Notary Stamp or Seal below]



Date: January 23, 2023

Owner of Lot 48, The Montage, signing to consent to and acknowledge the Declaration of Covenants, Conditions and Restrictions for The Montage:

Travis Sayer (SEAL)

Leonardo Sevilla (SEAL)

Wake County, North Carolina

I certify that the following persons personally appeared before me this day and acknowledged to me that they voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **Travis Sayer and Leonardo Sevilla**

Date: 1-23-2023

My Commission Expires:
11-5-2025

David Hasenauer
Notary Public

Print Name: David Hasenauer

[Affix Notary Stamp or Seal below]

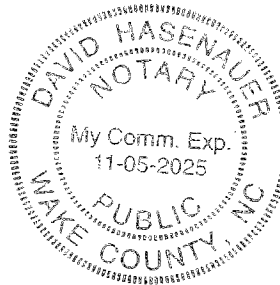


EXHIBIT A
LEGAL DESCRIPTION

BEING all of that New Lot 1, containing approximately 27.394 acres, as shown on a map entitled "Final Plat of recombination of 3123 Poole Road survey for Meritage Homes of the Carolinas, Inc." prepared by CDK Geomatics, and recorded in Book of Maps 2021, Page 2365, Wake County Registry.

LESS AND EXCEPT ALL of those certain parcels labeled "Lot 302 – Open Space," containing approximately .096 acres, and ALL of that certain parcel labeled "Lot 303 – Open Space," containing approximately .155 acres as shown on a plat entitled "The Montage – Phase I, Right-of-Way, Tree Conservation Area, & Lot 314 Tree Conservation Area Plat" prepared by CDK Geomatics, PC, and recorded in Book of Maps 2022, Pages 316-320, Wake County Registry.