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

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PRESENTED
FOR
REGISTRATION
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REGISTER OF DEEDS
WAKE COUNTY

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

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

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CARY GLEN (the "Declaration") is made as of this 21st day of December, 1998, by **PANTHER CREEK-RALEIGH LIMITED PARTNERSHIP**, a North Carolina limited partnership, hereinafter referred to as "Developer," who recites and provides:

RECITALS:

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

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

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

DECLARATION

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

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I. DEFINITIONS

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

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

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

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- I.P. **"Mortgage"** means any bona fide first mortgage encumbering a Lot as security for the repayment of a debt obligation in favor of a Mortgagee.
- I.Q. **"Mortgagee"** means any bank, savings and loan association, or other recognized institutional lender, any insurer or guarantor of mortgages and any holder of mortgages in the secondary market (including, without limitation, the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association), which, in the ordinary course of business, is the holder of a Mortgage now or hereafter placed upon any Lot. For purposes of this definition in this Declaration, the holder of a Mortgage executed in favor of Developer also shall be considered a Mortgagee.
- I.R. **"Owner"** means the record Owner, whether one or more persons or entities, of the fee simple title to any Lot, including the buyer under a contract for deed. Owners shall not include those having such interest merely as security for the payment or repayment of a debt obligation.
- I.S. **"Parcel"** means any group of Lots or other portion of the Property which share one or more common roads and/or is developed as a separate residential community in which the Owners of the Lots or property comprising the Parcel have a common interest separate and distinct from the interest of all of the Owners, or which is designated as a Parcel in this Declaration or any amendment or supplement. Each Parcel may be subject to a separate Parcel Declaration, and may, but is not required to, be operated by or subject to the jurisdiction of a Parcel Association.
- I.T. **"Parcel Areas"** means any property, whether improved or unimproved, or any easement or interest therein, now or hereafter owned by the Association, other than the Common Property, which is owned and/or maintained by the Association, and which are located within a Parcel and primarily benefit the Owners of the Lots and/or Residences within the Parcel, and which are declared to be Parcel Areas pursuant to this Declaration, or in any amendment or supplement, or in any deed or easement to the Association.
- I.U. **"Parcel Assessment"** means an Assessment which is assessed against the Owners within one or more, but less than all of, the Parcels.
- I.V. **"Parcel Association"** means a non-profit corporation, other than the Association, which is formed to administer a Parcel Declaration, and whose members consist of the Owners within the Parcel affected by the Parcel Declaration. For purposes of this Declaration, the Parcel affected by any Parcel Declaration shall be deemed to be operated by, and subject to the jurisdiction of, the respective Parcel Association.
- I.W. **"Parcel Declaration"** means a supplement to this Declaration or a separate and distinct Declaration of covenants and restrictions that affects one or more Parcels and which contains provisions specially relating to such Parcels, which may include provisions regarding Parcel Areas, Parcel Assessments and use and maintenance covenants and restrictions applicable to such Parcels. A Parcel Declaration may, but is not required to, establish a separate and distinct Parcel Association to administer the Parcel Declaration, or in the alternative a Parcel Declaration may assign various duties and obligations to the Association.

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

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II. ASSOCIATION

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

III. OWNER'S RIGHTS AND DUTIES

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

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III.A.4. The rules and regulations governing the use and enjoyment of the Common Property adopted by the Association.

III.A.5. All easements and restrictions of record affecting any part of the Common Property.

III.B. **Delegation of Use of Common Property.** Each Owner may delegate, subject to the Articles, Bylaws, and the Declaration, his right of enjoyment of the Common Property and facilities to the members of his family, his tenants, his guests, licensees, domestic servants, or contract purchasers who occupy the Lot.

III.C. **Damage or Destruction of Common Property.** In the event any Common Property is damaged or destroyed by an Owner or any of his guests, tenants, invitees, agents, employees, or family members as a result of negligence or misuse, the Association shall repair the damaged area or property in a good and workmanlike manner, in accordance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association. The cost of such repairs shall be the responsibility of that Owner and shall be a Lot Assessment, payable by the responsible Owner immediately upon receipt of a written invoice or statement.

III.D. **Maintenance of Lot.** Each Owner shall, at the Owner's cost and expense, keep all parts of his Lot, including the Residence, clean and free of debris, and in good order and repair. Such duties shall include, without limitation, repair or replacement of the roof, windows and doors (including glass or screens), and exterior of the Residence. Each Owner shall also maintain all landscaping on his Lot including any portion of the right of way which is bounded by his front Lot line, the continuation of his side Lot lines, and the paved portion of any road adjacent to his Lot and any land lying between the Owner's Lot line and the water's edge of any body of water, natural or man-made. The foregoing obligations shall include all maintenance, repair or replacement required because of the occurrence of any fire, wind, vandalism, theft or other casualty. All maintenance and repair shall be performed by each Owner at regular intervals as shall be necessary to keep the Lot and the Residence in an attractive condition and in substantially the same condition and appearance as existed at the time of completion of construction; subject to normal wear and tear that cannot be avoided. If an Owner fails to comply with these provisions, the Association, after ten (10) days written notice to the Owner and with the approval of the majority of the Board of Directors, shall have the right, in addition to all other rights and remedies granted under this Declaration, to enter upon such Lot to perform any needed repairs or maintenance, and the cost of same shall be a Lot Assessment, payable by the responsible Owner immediately upon receipt of a written invoice or statement therefor.

IV. **COMMON PROPERTY AND EASEMENTS**

IV.A. **Maintenance of Common Property.** It shall be the duty of the Association to manage and maintain the Common Property in a clean, attractive, sanitary and serviceable condition, and in good order and repair. The Association's duties shall commence upon the completion of any improvements upon the Common Property, irrespective of which entity holds title thereto, and shall include the management,

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operation, maintenance, repair, servicing, replacement, and renewal of all improvements, equipment, and tangible personal property installed by Developer as a part of the Common Property. The Association shall also maintain all landscaping on the Common Property, provided, however, that neither Developer nor the Association shall be deemed a guarantor of such landscaping. There shall be no absolute liability imposed on Owners for damage to Common Property or the Lots in the Property.

IV.A.1. **Compliance with Permits and Approvals.** It is acknowledged that in connection with the development of the Property various permits and approvals will be issued by various governmental and quasi-governmental authorities. If any permit or approval provides for continuing maintenance, monitoring, or other obligations, relating to the Common Property or any other portions of the Property, Developer may assign to the Association the obligation to comply with same, as set forth in Article XII hereof.

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

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

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

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

IV.B.2. **Warranties.** Any property conveyed to the Association by Developer or by any Parcel Developer will be conveyed in a "where is, as is" condition, and any such property will be conveyed and/or any improvements to the Common Properties made by Developer or any Parcel Developer without

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any warranty, including but not limited to any warranty of merchantability or of fitness for a particular purpose, or the adequacy of the size or capacity in relation to the utilization or operation thereof. However, Developer or any Parcel Developer transferring any Common Property to the Association or making any improvement to the Common Property will assign to the Association any warranties which they receive from contractors, manufacturers or suppliers.

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

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

IV.D. Easements.

IV.D.1. Blanket Development Easement. Developer reserves for itself, its successors and assigns, a nonexclusive, alienable blanket easement and right

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for the benefit of the Property and the Additional Property upon, across, over, through, and under the Property as may be reasonably required in connection with the development, construction sale, leasing and promotion of the Property (including the right to install and operate sales trailers).

IV.D.2. **Service and Utility Easements.** Easements are hereby created in favor of governmental and quasi-governmental authorities, utility companies, cable television companies, ambulance or emergency vehicle companies, mail carrier companies, and all other individuals or entities providing services to or for the benefit of the Property, over and across all roads existing from time to time within the Property, and over, under, on and across the Common Property, as may be reasonably required to permit the foregoing, and their agents and employees, to provide their respective authorized services to and for the Property, and as may be required for the installation, maintenance, repair and providing of utility services, equipment and fixtures in order to adequately serve the Property, including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, and television antenna and cable television facilities, and electronic security.

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

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

IV.E. **Special Provisions Regarding Recreational Facilities.** It is acknowledged Developer plans to construct and install the Recreational Facilities. Upon completion of the Recreational Facilities described in the first sentence of the definition of Recreational Facilities, Developer will sell and transfer such Recreational Facilities to the Association to become Common Property and the Association will purchase such Recreational Facilities from the Developer for use as Common Property. The purchase

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price not exceed the actual costs of design, construction or installation of the Recreational Facilities plus a land cost for any associated land of not more than Twenty Thousand Dollars (\$20,000) per acre. The purchase price shall be paid in cash at closing or, at the option of the Association, in the form of a promissory note in the amount of the purchase price bearing interest at a fixed rate per annum equal to the "prime rate" (as announced by NationsBank, N.A.) as of the date of closing, such note to be payable in equal monthly installments of principal and interest over a twenty (20) year term. The promissory note shall be secured by the grant of a deed of trust encumbering the Recreational Facilities. Notwithstanding anything contained herein to the contrary, Developer and/or the Association shall have the following rights with respect to the Recreational Facilities:

- IV.E.1. Developer shall have the right to use the Recreational Facilities for office or sales purposes, as may be desired by Developer in its sole discretion, so long as Developer owns any portion of the Property or Additional Property; provided that in such event Developer shall pay a reasonable rental to the Association for such use.
- IV.E.2. The Association shall have the right to impose a charge for the use of any of the Recreational Facilities, or any services offered therein, and shall have the right to permit the use of any portion thereof for private, charitable or promotional functions
- IV.E.3. The Association, shall have the right to lease or grant concessions or contract with others to provide programs or services within such Recreational Facilities to the Owners and residents of the Property, and in connection therewith may permit persons residing outside of the Property to attend or use such programs or services.
- IV.E.4. Developer so long as it owns any portion of the Property or Additional Property, and the Association, may permit persons residing outside of the Property to use the Recreational Facilities upon such conditions, and for such fees payable to the Association, as Developer or the Association may determine from time to time in their sole discretion.
- IV.F. Damage or Destruction. In the event any improvement (other than landscaping) within any Common Property is damaged or destroyed due to fire, flood, wind, or other casualty or reason, the Association shall restore, repair, replace or rebuild (hereinafter collectively referred to as a "repair") the damaged improvement to the condition the improvement was in immediately prior to such damage or destruction, unless otherwise approved by a 2/3 vote of the Board of Directors. If any landscaping within any Common Property or any other property maintained by the Association is damaged or destroyed, the Association shall only be obligated to make such repairs to the landscaping as is determined by the Board of Directors in its discretion.
- IV.G. Stormwater Management System. It is acknowledged the surface water management and drainage system for the Property may be developed as one integrated system, and accordingly shall be deemed a Common Property, and an easement is hereby created over the entire Property for surface water drainage and for the installation and maintenance of the surface water management and drainage system for

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the Property; provided, however, that such easement shall be subject to improvements constructed within the Property as permitted by controlling governmental authorities from time to time. The surface water management and drainage system of the Property shall be developed, operated, and maintained in conformance with the requirements of any applicable Permits.

- IV.G.1. Association's Maintenance Obligations. Except to the extent maintained by any governmental entity and except to the extent hereafter provided, the Association shall maintain the entire surface water management and drainage system for the Property, including but not limited to all lakes and canals, swale areas, retention areas, culverts, pipes, pumps, catch basins, and related appurtenances, and any littoral zones in any lakes or other waterway, whether natural or man-made within the Property or owned by the Association. Such maintenance shall be performed in conformance with the requirements of any controlling governmental authority.
- IV.G.2. Owners' Maintenance Obligations. The Owners of Lots adjacent to any part of the stormwater management system shall remove and dispose of trash which may accumulate in the stormwater management system, shall maintain all shoreline vegetation and the grade and contour of all embankments to the water's edge, shall keep the grass, plantings, and other lateral support of the embankments in a clean and safe manner so as to prevent erosion.
- IV.G.3. LIABILITY. NEITHER DEVELOPER, THE ASSOCIATION, NOR ANY MAINTENANCE ENTITY SHALL HAVE ANY LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY INCURRED BY OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE RETENTION AND DETENTION LAKES AND DRAINAGE EASEMENTS OR ANY PART OF THE STORMWATER MANAGEMENT SYSTEM. EACH OWNER, FOR ITSELF AND ITS GUESTS, TENANTS, OR INVITEES, RELEASES DEVELOPER, AND THE ASSOCIATION, AND ANY MAINTENANCE ENTITY FROM ANY LIABILITY IN CONNECTION WITH SUCH INJURY TO PERSONS OR DAMAGE TO PROPERTY.

NEITHER DEVELOPER, THE ASSOCIATION, ANY MAINTENANCE ENTITY, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, RETENTION AND DETENTION AREA, CANAL, CREEK, MARSH AREA, STREAM OR OTHER WATER BODY WITHIN OR ADJACENT TO THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY IS IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR ENTITY AS REFERENCED HEREIN IN ACCORDANCE WITH THE PERMITS. ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY LAKE ACKNOWLEDGE THAT THE WATER LEVELS ARE

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SUBJECT TO CHANGE BASED ON HYDROLOGICAL FACTORS. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID AREAS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED TO, OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY RELATED TO ANY CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY THEIR ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT WITHIN THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR BOTTOMS.

IV.H. Conservation Areas.

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

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

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

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

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

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

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

V. UTILITIES

V.A. **Water System.** The central water system which is to be operated and maintained by the Town provides for water service to the Property and shall be used as the sole source of potable water for all water spigots and outlets located within or on all buildings and improvements located on each Lot. Each Owner shall pay water meter charges established or approved by the supplier thereof, and shall maintain and repair all portions of such water lines located within the boundaries of his Lot. No individual water supply system or well for consumptive purposes shall be permitted on any Lot.

V.B. **Sewage System.** The central sewage system which is to be operated and maintained by the Town provides for service to the Property and shall be used as the sole sewage system for each Lot. Each Owner shall maintain and repair all portions of such sewer improvements and lines located within the boundaries of his Lot, and shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal services made by the operator thereof. No sewage shall be discharged into the open ground or in to any marsh, lake, pond, park, ravine, drainage ditch, canal or roadway.

V.C. **Cable Television/Security System.** The Developer or the Association shall have the right, but not the obligation, to enter into a "bulk rate contract" for cable television

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and/or security system monitoring, and if such contract is entered into, the Association shall pay the contractual charges for all Lots within the Property as a common expense of the Association. If home security monitoring services are provided under contract with the Association, Developer and the Association will have no liability of any kind or nature due to the failure of the company providing such service to detect or react to fire, unauthorized entry or any other security problem in a Residence.

VI. COVENANTS FOR MAINTENANCE ASSESSMENTS

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

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

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

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

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

c) Notwithstanding the foregoing, if any Owner or purchaser of a Lot or Residence elects to use the Recreational Facilities prior to the completion of the Residence within the Property, thereafter such Owner or purchaser will be required to

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pay an Annual Assessment based upon an Assessment Value of 1.00 per Lot or Residence.

- VI.B. Parcel Assessments. In addition to any other Assessments payable by Owners, each Owner shall be responsible for the payment of Parcel Assessments, if applicable, established as set forth herein.
- VI.C. Special Assessments. In addition to the Annual Assessments, the Association may levy, by majority vote of the Board of Directors, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto. Where any such funds are only required for any Parcel Expenses, the Special Assessments shall only be made against the applicable Parcel(s) as special Parcel Assessments. Special Assessments shall be levied in the same manner as hereinbefore provided for Annual Assessments and shall be payable in one lump sum or as otherwise determined by the Board in its sole discretion and as stated in the notice of any Special Assessment.
- VI.D. Emergency Assessments. The Association may also levy an Emergency Assessment at any time by a majority vote of the Board of Directors, for the purpose of defraying, in whole or in part, the cost of any extraordinary or emergency matters that affect all or a portion of the Common Property or Members of the Association, including, after depletion of any applicable reserves, any unexpected expenditures not provided for by the Budget or unanticipated increases in the amounts budgeted. Any Emergency Assessment shall be due and payable at the time and in the manner specified by the Board of Directors.
- VI.E. Lot Assessments. In addition to the Annual and Special Assessments authorized above, the Board of Directors, by majority vote, may from time to time levy a Lot Assessment against a particular Lot and the Owner thereof for the purpose of defraying, in whole or in part, the cost of any repair, maintenance or restoration as provided herein; for the construction, reconstruction, repair, or replacement of a capital improvement upon or serving the specific Lot, including any additional special services to such Lot, the cost of which is not included in the Annual Assessment; or to reimburse the Association for any costs it incurs as a result of the Owner's failure to comply with this Declaration or any damage to the Common Property. If the Association levies a fine in the manner set forth hereinafter, such fine shall also be deemed a Lot Assessment enforceable in accordance herewith.
- VI.F. Commencement of Annual Assessments. The Annual Assessments provided for herein shall commence with respect to each Lot on the date of conveyance of the Lot to an Owner, other than Developer. The initial Annual Assessment on any Lot subject to Assessment shall be collected at the time title to such Lot is conveyed by Developer. During the initial year of ownership, each Owner shall be responsible for the pro rata share of the Annual Assessment charged to each Lot, prorated from the day of closing to the end of the calendar year on a per diem basis; provided that any builder (an Owner who purchases a Lot for the purposes of building a Residence thereon for resale to an Owner who intends to dwell in the Residence or who intends to rent or otherwise permit someone to dwell in the Residence) who purchases a Lot at a time when there are less than six months left in the calendar year shall, at the discretion of Developer,

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prepay six months Annual Assessment at the time of acquisition of title from Developer (with an appropriate portion of such prepayment credited against the following year's Annual Assessment).

VI.G. Nonpayment of Assessments: Remedies of the Association.

VI.G.1. Creation of Lien. The Assessment Charge is a charge and continuing lien upon each Lot subject to this Declaration. The lien provided for in this paragraph shall be perfected by the filing of a notice of lien in the public records of the County, in favor of the Association.

VI.G.2. Owner's Acceptance. The Assessment Charge is also the personal obligation of the person or entity which was the Owner of such Lot at the time when the Assessment was levied, and of each subsequent Owner thereof. Each Owner of a Lot, by acceptance of a deed or other transfer document therefor, whether or not it shall be so expressed in such deed or transfer document, is deemed to covenant and agree to pay to the Association the Assessments established or described in this Article. Each Owner, by his acceptance of title to a Lot, expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such Assessment Charge as a debt and to enforce the aforesaid by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner is deemed to have granted to the Association a power of sale in connection with such lien. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of his Lot or waiver of the use of the Common Property. In the event of a sale or transfer of a Lot, both the new Owner and the prior Owner shall be jointly and severally liable for all Assessments, interest, and other costs and expenses owed to the Association which are attributable to any Lot purchased by or transferred to such new Owner.

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

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

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any Lot at such foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

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

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

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

VII. Budget.

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

VII.2. Preparation and Approval of Annual Budget. Commencing December 1st of the year in which a Lot is first conveyed to an Owner other than Developer, and on or before December 1 of each year thereafter, the Board of Directors shall adopt a budget for the coming year containing an estimate of the total amount which it considers necessary to pay the cost of all expenses to be incurred by the Association to carry out its responsibilities and obligations, including, without limitation, the cost of wages, materials, insurance premiums, services, supplies, and other expenses for the rendering to the Owners of all services required or permitted hereunder and such other items as provided in the ByLaws. Such budget may also include such reasonable amounts as the Board of Directors considers necessary to provide working capital for the Association, and to provide for a general operating reserve and reserves for contingencies and replacements. The Board of

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Directors shall send to each Owner a copy of the budget, in a reasonably itemized form which sets forth the amount of the Annual Assessments payable by each Owner, or a written notice that a copy of the budget is available to each Owner upon request with no charge, on or before December 15 preceding the fiscal year to which the budget applies. From time to time during the fiscal year, the Board may modify the budget of the Association for the fiscal year, and pursuant to the revised budget or otherwise, the Board may, upon written notice to the Owners, change the amount, frequency and/or due dates of the Annual Assessments.

- VII.3. **Amount of Annual Assessment.** Upon establishing the annual budget, the Board shall establish the per Lot Annual Assessment. To calculate the Annual Assessment, the Board shall calculate the Assessment Value for all Lots within the Property as of the commencement of the fiscal year and may consider any Additional Property or Lots anticipated to be added during the fiscal year. The total estimated expenses for the fiscal year shall be divided by the total Assessment Value. The amount of each Owner's Annual Assessment will be determined from time to time by multiplying the total amount to be assessed by a fraction, the numerator of which will be the total Assessment Value assigned to the Owner's Property, and the denominator of which will be the total Assessment Value assigned to all of the Property. The Annual Assessment may increase each year, but the increase in any year (for any Lot which does not have a change in Assessment Value) may not be more than fifteen percent (15%) above the Annual Assessment for the previous year unless approved by a majority of votes cast, in person or by proxy, at duly constituted meeting of the members of the Association or by written consent.
- VII.4. **Reserves.** The Association may, in its discretion, maintain such reserves as it deems reasonable or necessary for (i) working capital, (ii) contingencies, (iii) replacements, and (iv) the performance of such other coordinating or discretionary functions not contrary to the terms of this Declaration which the Board of Directors may from time to time approve. The amount and manner of collection of reserves shall be as determined by the Board of Directors, in its sole discretion. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless approved by a majority of the votes cast, in person or by proxy, at a duly constituted meeting of the Association or by written consent. If the reserves are inadequate for any reason, including nonpayment of any Owner's Assessment, the Board of Directors may, at any time, levy a Special Assessment in accordance with the provisions of this Article, which may be payable in a lump sum or in installments as the Board of Directors may determine. In the event there is a balance of reserves at the end of any fiscal year and the Board of Directors so determines, any excess reserves may be taken into account in establishing the next year's budget and may be applied to defray general expenses incurred thereunder.

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

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

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

VII. Assessments on Non-Uniform Basis. Notwithstanding anything contained herein to the contrary, pursuant to any amendment or supplement to this Declaration made or approved by Developer so long as Developer owns any portion of the Property or any portion of the Additional Property, any portion of the Property may be (i) only liable for a share of certain specified common expenses, or (ii) assessed on a different basis than the other Property, and, in such event, the Owner of such portion of the Property shall only be liable for Annual Assessments in accordance with the provisions of such amendment or supplement.

VI.K. Exempt Property. The following properties subject to this Declaration shall be exempted from the Assessments, Assessment Charges, and liens created herein: (a) all properties dedicated to and accepted by a governmental body, agency or authority; and (b) all Common Property. Moreover, all Lots owned by the Developer shall be exempt from payment of Assessments for so long as Developer funds any deficit in the annual budget. A deficit shall have occurred if in any fiscal year of the Association the expenses of the Association exceed the Assessments plus other income receivable by the Association. Developer shall fund such expenses only as they are actually incurred by the Association during the period that Developer is funding the deficit. Developer's obligation to fund any deficits shall terminate at such time as Developer, in its sole discretion, elects to pay the Assessment for each Lot owned by it which has been subjected to the Declaration, or after Turnover, whichever shall first occur. Developer may, but is not obligated to, assign this exemption right to any entity it may determine, including without limitation any Parcel Developer or any builder owning lots solely for the purpose of constructing Residences intended to be sold to ultimate purchasers. Any such assignment of Developer's exemption shall have no effect on Developer's exemption hereunder. Notwithstanding the foregoing, in the event the Association

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incurs any expense not ordinarily anticipated in the day-to-day management and operation of the Property, including but not limited to expenses incurred in connection with lawsuits against the Association or in connection with damage to property, or injury or death to any person, which are not covered by insurance proceeds, the liability of Developer for such expenses during the period Developer is funding the deficit shall not exceed the amount that it would be required to pay if it were liable for Annual Assessments as any other Owner, and any excess amounts payable by the Association shall be assessed to the other Owners.

- VII.L. **Parcel Expenses.** Any obligation of a Parcel Developer to fund any Parcel Assessments or any deficits in any Parcel Expenses may be established pursuant to any Parcel Declaration, and in that event the Parcel Declaration shall control over any conflict with the provisions of this Paragraph. In addition, Developer shall not be liable for any Parcel Assessments or Parcel Expenses relating to any Parcel except to the extent Developer is the Parcel Developer of the Parcel or an Owner within the Parcel.
- VII.M. **Parcel Association.** If any Parcel is subject to the jurisdiction of a separate Parcel Association, then at the request of the Parcel Association the Association may agree to include in the Assessments against the Owners within the Parcel any Parcel Assessments and remit such funds to the Parcel Association as same are collected. Furthermore, at the request of the Association, the Parcel Association shall collect all Assessments assessed by the Association against the Owners within the Parcel and remit the Assessments to the Association on or before the date when same are due.
- VII.N. **Real Estate Taxes.** In the event the Common Property is taxed separately from the Lots, the Association shall include such taxes as part of the Annual Assessment. In the event the Common Property is taxed as a component of the value of the Lot owned by each Owner, it shall be the obligation of such Owner to promptly pay such taxes prior to their becoming a lien on the Property.
- VII.O. **Certificate of Payment.** The Treasurer of the Association, or the management company authorized by the Board of Directors, upon demand of any Owner liable for an Assessment, shall furnish to such Owner a certificate in writing setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge for the services involved in preparing such certificate may be assessed by the Association or management company, as applicable.

VII. **ARCHITECTURAL CONTROL**

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

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VII.B. Construction Subject to Architectural Control.

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

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

VII.B.3. Procedures.

VII.B.3.1. **Application.** The Approving Party shall establish uniform procedures for the review of applications, including the assessment of review costs and fees, if any, to be paid by the applicant, and the requirement of a security deposit, the time and place of meetings, and the posting of a compliance bond to ensure the full and timely compliance by the applicant with the conditions imposed by the Approving Party. Included in any fee that may be charged to any applicant is, if appropriate, the fee of any architect or engineer hired by the Approving Party. The documents, materials and items to be submitted for approval shall include two (2) sets of the following: (i) the construction plans and specifications, if any, including a detailed landscape plan; (ii) an elevation or rendering of all Proposed Improvements, if any, (iii) samples of materials or paint colors and (iv) such other items as the Approving Party may deem appropriate.

VII.B.3.2. **Basis for Decision.** Approval shall be granted or denied by the Approving Party based upon compliance with the provisions of this Declaration, as supplemented and amended from time to time, and any guidelines established pursuant thereto, the quality of workmanship and materials, the harmony of external design

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with its surroundings, the effect of the construction on the appearance from surrounding Lots, and all other factors, guidelines and standards promulgated from time to time, including purely aesthetic considerations, which, in the sole opinion of the Approving Party, will affect the desirability or suitability of the construction.

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

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

VII.B.4. Architectural Guidelines. The Board of Directors and the Approving Party may, from time to time, adopt and amend Architectural Guidelines; provided, however, that same shall not apply to any previously existing and approved improvements.

VII.B.5. Construction by Licensed Contractor. If a building permit is required for any improvement made by any Owner or Parcel Association, then the improvement must be installed or constructed by a licensed contractor unless otherwise approved by the Approving Party, and in any event must be constructed in a good and workmanlike manner.

VII.B.6. Enforcement. The Board of Directors shall have the authority and standing on behalf of the Association to enforce, in courts of competent jurisdiction, the decisions of the Approving Party. Without limiting the foregoing, the landscaping of the Lot shall be completed in accordance with the landscaping plan prior to the initial occupancy of the Residence or in the case of a Proposed Improvement, which require additional landscaping, the landscaping must be completed within thirty (30) days from completion of

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the Proposed Improvement. In the event that the landscaping is not completed as provided herein, the Association or the Developer shall have the right to enter upon the Lot and complete the landscaping in accordance with the approved plans, in the same manner as exterior maintenance may be performed by the Association or Developer in accordance with the terms hereof.

- VII.B.7. **Remedy for Violations.** In the event any Proposed Improvement is constructed without first obtaining the approval of the Approving Party or is not constructed in strict compliance with any approval given or deemed given by the Approving Party or the provisions of this Article are otherwise violated, the Approving Party shall have the specific right to injunctive relief to require the Owner to stop, remove, and alter any improvements in order to comply with the requirements hereof, or the Approving Party may pursue any other remedy available to it, including without limitation, the right to assess a fine. In connection with this enforcement paragraph, the Approving Party shall have the right to enter into any Lot or Residence and make any inspection necessary to determine compliance with the provisions of this Declaration. The failure of the Approving Party to object to any Proposed Improvement prior to its completion shall not constitute a waiver of the Approving Party's right to enforce this Article. The foregoing rights shall be in addition to any other remedy set forth herein for violations of this Declaration.
- VII.B.8. **Variances.** The Approving Party may authorize a variance from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardships, or aesthetic or environmental consideration require the same. A variance shall be evidenced by a document signed by the Approving Party. If such a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions this Declaration for any purpose except as to the particular Lot and the particular provisions of this Declaration covered by the variance, nor shall it affect in any way the Owners' obligation to comply with all governmental laws and regulations, including, but not limited to, zoning ordinances and set back lines or requirements imposed by any governmental or municipal authority.
- VII.B.9. **Reservation of Right to Release Restrictions.** In each instance where a structure has been erected, or construction thereof has substantially advanced, in such a manner that some portion of the structure encroaches on any Lot line, setback line, or easement area, Developer reserves the right to release such Lot from the encroachment and to grant a variance to permit the encroachment without the consent or joinder of any person, irrespective of who owns the burdened Lot or easement areas, so long as Developer, in the exercise of its sole discretion, determines that the release or a variance will not materially or adversely affect the value of the adjacent Lot and the overall appearance of the Property. This reserved right shall automatically

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pass to the Association when Developer no longer owns any portion of the Property. Upon granting of an exception to an Owner, the exception shall be binding upon all subsequent Owners of the affected Lots. Any such grant shall also be subject to any requirements of governmental entities.

- VII.B.10. **No Liability.** Notwithstanding anything contained herein to the contrary, the Approving Party shall merely have the right, but not the obligation, to exercise architectural control, and shall not be liable to any Owner, its successors, assigns, personal representatives, or heirs, due to the exercise or non-exercise of such control or the approval or disapproval of any Proposed Improvement. Furthermore, the approval of any plans and specifications or any Proposed Improvements shall not be deemed to be a determination or warranty that such plans and specifications or Proposed Improvements are complete, do not contain defects, or in fact meet any standards, guidelines, or criteria of the Approving Party, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and neither the Approving Party, the Association, nor Developer shall be liable for any defect or deficiency in such plans and specifications or Proposed Improvements, or any injury to persons or property resulting therefrom.
- VII.B.11. **Effect of Parcel Association.** If a Parcel Association is also granted the right to exercise architectural or similar control pursuant to a recorded Declaration with respect to any portion of the Property, then any Owner seeking architectural approval from the Approving Party shall first be required to obtain such approval in writing from the Parcel Association; however, no approval given by any Parcel Association shall be binding upon the Approving Party.
- VII.B.12. **Approval by Parcel Developer.** So long as a Parcel Developer of any Parcel owns any Property within the Parcel, the Parcel Developer shall also have the right to approve any improvement pursuant to the provisions of this Article, and the Approving Party shall not approve any improvement until such Parcel Developer has approved same in writing.
- VII.B.13. **Committee.** Notwithstanding anything contained herein to the contrary, the Approving Party may assign any right to exercise architectural control or approve any other matter which may be approved by the Approving Party to a committee or committees. Separate committees may be established for each Parcel, and the committee for any Parcel may be assigned the right to exercise architectural control or approve any other matter which may be approved by the Approving Party and which relate to the Parcel. Such assignment to a Parcel committee may provide that after the Parcel committee has approved any matter, such matter must be further approved by the Approving Party or a master committee.

VIII. PROTECTIVE COVENANTS

In order to keep the Property a desirable place to live for all Owners, the following protective covenants are made a part of the Declaration. The Owner of any Property shall be responsible for complying with

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

- VIII.A. Access. Owners shall allow the Board of Directors or the agents and employees of the Association to enter any Lot for the purpose of maintenance, inspection, repair, replacement of the improvements within the Lot, or in case of emergency, for any lawful purpose, or to determine compliance with this Declaration.
- VIII.B. Air Conditioning Residences. Only central air conditioning Residences are permitted without the prior written consent of the Approving Party.
- VIII.C. Basketball Backboards. Only professionally manufactured basketball backboards are permitted, which must be installed on black poles, with a white or clear backboard, and must be approved by the Approving Party. No garage or roof mounted basketball backboards are permitted.
- VIII.D. Beaches/Lake Banks. No Owner shall create any beach or sandy area contiguous to any lake or canal within the Subject Property without the approval of the Approving Party and any controlling governmental authorities, and all lake banks shall be sodded after the development of the Property adjacent thereto is completed, unless otherwise approved by the Approving Party.
- VIII.E. Boat Docks. No boat docks or boat launching facilities shall be permitted other than those located within any recreational areas within the Common Property.
- VIII.F. Clothes Lines and Outside Clothes Drying. No outdoor clothes drying shall be permitted.
- VIII.G. Common Property and Parcel Areas. Nothing shall be stored, constructed, placed within, or removed from any Common Property or any Parcel Area by any Owner other than Developer or a Parcel Developer, unless approved by the Approving Party.
- VIII.H. Fences and Walls. Fences and walls shall not be permitted in the front of any Residences. No fence or wall shall be installed without the consent of the Approving Party as to the location, height, type, and materials of the fence or wall. In approving any fence or wall, the Approving Party may give due consideration to such matters as easements, drainage, berms, or other physical characteristics of the applicable Lot or Property, and the effect of the fence or wall on the surrounding community. All fences and walls must be maintained in good condition at all times.
- VIII.I. Firearms. The use or discharge of firearms, including but not limited to BB guns and pellet guns, is prohibited.

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- VIII.J. Garages. No garage shall be permanently enclosed, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage area, without the prior written consent of the Approving Party. All garage doors shall remain closed when not in use. If any garage is enclosed, the garage door shall not be removed and the enclosure shall be performed in a manner such that from the outside of the Residence it appears the Residence still contains a garage.
- VIII.K. Garbage and Trash Containers. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste must be kept in sanitary containers and placed in trash enclosures and further disposed of in accordance with the applicable rules of the County in its collection procedures.
- VIII.L. Garbage Containers, Oil and Gas Tanks, Air Conditioners. All garbage and refuse containers, air conditioning Residences, oil tanks, bottled gas tanks, and all permanently affixed swimming pool equipment and housing shall be underground or placed in walled-in or landscaped areas, and shall be appropriately landscaped, as approved by the Approving Party so that they will be substantially concealed or hidden from any eye-level view from any street or adjacent Property.
- VIII.M. Hazardous Materials. No hazardous or toxic materials or pollutants shall be discharged, maintained, stored, released or disposed of in or under the Property, except in strict compliance with applicable rules and regulations. Flammable, combustible or explosive fluids, materials or substances for ordinary household use may be stored or used on the Property, subject to strict safety codes and shall be stored in containers specifically designed for such purposes.
- VIII.N. Insurance. Nothing shall be done or kept in any Residence, Lot, or in the Common Property which will increase the rate of insurance for the Property or any other Lot, or the contents thereof, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Residence, on his Lot, or in the Common Property which will result in the cancellation of insurance on the Property or any other Lot, or the contents thereof, or which would be in violation of any law.
- VIII.O. Lakes. No swimming or motor boating will be allowed in any lake.
- VIII.P. Landscaping. All Property containing a Residence, or owned in conjunction with the Ownership of a Residence or owned and/or operated by a Parcel Association, shall be tastefully landscaped in accordance with any criteria established by the Approving Party, to the waterline of any abutting lake and to the pavement edge of any abutting road or parking area. Lawns shall be primarily grass, and shall not be paved or covered with gravel, artificial turf or other covering unless permitted by the Approving Party. All diseased or dead sod, plants, shrubs or flowers shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be removed. All landscaping shall be regularly maintained in first-class condition and appearance, including mowing, trimming, fertilization, irrigation, and weed, insect and disease control.
- VIII.Q. Lot Resubdivision. No Lot shall be further subdivided, replatted, or separated into smaller Lots by any Owner without the prior written consent of the Approving Party. Provided however, this restriction shall not prohibit corrective deeds or similar

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corrective instruments. Developer or a Parcel Developer shall have the right to reconfigure Lots or modify subdivision plats of the Property if Developer or such Parcel Developer owns all the Lots within the legal description of the Property to be subjected to the replat, or if all Owners of Lots which are included within the portion of the plat so modified consent to such modification, which consent shall not be unreasonably withheld or delayed. Further, Developer may resubdivide Lots to be used for streets.

VIII.R. **Maintenance.** All Residences, buildings and other improvements existing under, upon or over any Property from time to time shall at all times be maintained in accordance with all applicable governmental requirements, in first class condition and good working order, and in a neat and attractive manner. Exterior maintenance, including painting, shall be periodically performed as reasonably required. Paint colors shall not be materially changed without the consent of the Approving Party, and all paint colors shall be harmonious with other improvements within the Subject Property. No excessive and/or unsightly mildew, rust deposits, dirt, or deterioration shall be permitted to accumulate on any building or improvement. All sidewalks, roads, streets, driveways, parking areas, and other paved or hard-surfaced areas intended for use by vehicular or pedestrian traffic shall be cleaned and kept free of debris; and cracks, damaged and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary. All curbing and bumper stops shall be repaired or replaced if damaged. All striping, including but not limited to, parking space, traffic lane and directional markings, within any road, street, or parking area, shall be repainted as necessary, so that same will be clearly visible at all times.

VIII.S. **Motor Vehicles and Parking.** Except as specifically set forth in paragraph VIII.H, no vehicles, except four wheeled passenger automobiles or standard sized pick up trucks not exceeding one-ton capacity, with no lettering or signage thereon, shall be placed, parked or stored upon any Lot, unless totally contained within a garage or appropriately screened from view of the neighboring Owners and from the street or unless being utilized in the construction of a Residence on the Lot. The sufficiency of such screening shall be determined solely in the discretion of the Approving Party. No maintenance or repair of the type of vehicles permitted hereunder, which necessitates putting the vehicle on blocks or otherwise extends for a period of greater than three daylight hours may be performed upon any such vehicle on any Lot unless with the written approval of the Approving Party, except within a garage, totally isolated from public view.

VIII.T. **Nuisances; Other Improper Use.** No nuisance shall be permitted to exist on any Lot or Common Property so as to be detrimental to any other Lot in the vicinity thereof or its occupants, or to the Common Property. Any activity on a Lot which interferes with television, cable, or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. No immoral, offensive, or unlawful use shall be made of the Property or any part thereof. All laws, zoning ordinances, orders, rules, regulations, and requirements of any governmental agency having jurisdiction relating to any portion of the Property shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property. No waste will be committed upon the Common Property. Owners hereby acknowledge that construction activity on or about the Property during

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daylight hours shall not be deemed to be a nuisance. The determination of the Board of Directors as to what may be or become a nuisance shall be conclusive.

- VIII.U. **Offstreet Motor Vehicles.** No motorized vehicles including, without limitation, two, three and four wheel all terrain vehicles or "dirt bikes" may be operated off of paved roadways and drives except as specifically approved in writing by the Approving Party or if utilized for the purpose of maintenance, construction, security or other similar purposes.
- VIII.V. **Oil and Mining Operations.** No oil drilling, oil development, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or on the Property.
- VIII.W. **Open Space.** All open space within the Property as required by the Town or any other applicable governmental authority shall be preserved and maintained as open space, and the development thereof shall be restricted to open space purposes, in accordance with the requirements of the Town or any other applicable governmental authority, unless otherwise permitted by the Town or any other applicable governmental authority. With the exception of lawns owned solely by a the Owner of a Lot, all other open space areas will be preserved or maintained by the Owner thereof, a Parcel Association, or the Association so that its use and enjoyment as open space will not be diminished or destroyed, except as permitted by the Town or any other applicable governmental authority.
- VIII.X. **Outside Antennas.** No outside antennas or signal-receiving or sending dishes or devices are permitted which are visible from the exterior of a Residence without the prior written consent of the Approving Party, except for digital satellite dishes not exceeding 18" in diameter which are located in the rear of the home on the Lot and not visible from adjoining streets or Lots.
- VIII.Y. **Outside Storage of Personal Property.** The personal Property of any resident of the Property shall be kept inside the resident's Residence or a fenced or a walled-in yard, except for tasteful patio furniture and accessories, Bar-B-Q grills, playground equipment approved by the Approving Party, and other personal Property commonly kept outside, which must be kept in the rear of the Lot and must be neat appearing and in good condition.
- VIII.Z. **Personal Services.** The employees of the Association shall not be required to attend to any personal matters or business of Owners, nor shall they be permitted to leave the Property on any private business of Owners. The uses and functions of such employees shall be governed by the Board of Directors. In the event personal services are provided to Owners by any employees of the Association, the Association will not assume any responsibility or be liable for, in any manner, the quality of such services or work provided, nor shall it warrant such services or work. In addition, the Association shall not be liable for any injury to persons or damage to property resulting from any act or omission by those performing such personal work or services for Owners.

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VIII.AA. Pets. No animals, livestock, or poultry shall be raised, bred, or kept anywhere within the Property, except that not more than three dogs, cats, or caged birds (or any combination thereof), not exceeding three animals, may be kept by an Owner or occupant of a Lot, but only if such permitted pets do not constitute a nuisance on the Property. Pitbull terriers are permitted only with prior written approval of the Association, which approval may be withheld in its sole discretion. All pets must be held or kept leashed or otherwise appropriately restrained at all times they are on the Common Property, and all Owners of pets shall be held strictly responsible to immediately collect and properly dispose of the wastes and litter of their pets. The Association reserves the right to designate specific areas within the Common Property where pets may be walked on leashes by their Owners. The Association further reserves the right to demand that an Owner permanently remove from the Property all pets which create disturbances or annoyances that constitute nuisances, in the sole determination of the Board of Directors. The decision of the Board of Directors in such matters is conclusive and shall be enforced by the Association.

VIII.BB. Recreational Vehicles. No travel trailer, mobile home, boat, tent, storage building, garage, barn or outbuilding shall be, at any time, used as a residence temporarily, or permanently; provided, however, that recreational vehicles such as travel trailers, mobile homes, motor homes, tents, trailers, boats, etc., not exceeding eight feet (8') in height and twenty-five feet (25') in length, may be stored on a Lot at the rear of the Residence situated thereon upon the following conditions:

- i. All such vehicles shall bear current registration or inspection tag.
- ii. No such vehicle shall be permitted anywhere within the yard of any Lot which is adjacent to a lake.
- iii. All such vehicles must be screened from view, and all screening material shall be subject to review and approval by the Approving Party.

VIII.CC. Residential Use. Each Lot shall be used, improved and devoted exclusively to single family residential use, and for no commercial purpose. No time share ownership of Lots shall be permitted without Developer's approval. Nothing herein shall be deemed to prevent any Owner from leasing a Residence, subject to all of the provisions of the Declaration, Articles, and Bylaws, nor to prevent Developer from converting the use of a platted Lot to a road for ingress and egress from an adjacent Lot or land. The foregoing restriction shall not operate to prevent Developer or its designees from using one or more Residences as model homes or sales centers during the development and sale of the Property. No other business or commercial use may be made of any part of the Property. Provided, however, an occupant of a Residence who maintains a personal or professional library, keeps personal or professional books or accounts, conducts personal business (provided that such use does not involve customers, clients, employees, licenses or invitees regularly visiting the Residence), or makes professional telephone calls or correspondence in or from a Residence is engaging in a residential use and shall not be deemed to be in violation of this paragraph by reason thereof.

VIII.DD. Signs. No sign of any kind shall be displayed to public view on any Lot except one sign of not more than two (2) square feet advertising such Lot for sale or rent. The foregoing restriction shall not apply to the Developer or any designee of the Developer during the period of time that the Developer or its designees are constructing improvements or marketing within the Community.

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- VIII.EE. Solar Collectors. Solar collectors are permitted, provided that the Approving Party shall have the right to approve the specific location where solar collectors may be installed on a roof with an orientation to the south or within 45 degrees east or west of due south, provided that such determination does not impair the effective operation of the solar collectors.
- VIII.FF. Soliciting. No soliciting will be allowed at any time within the Property.
- VIII.GG. Swimming Pools. No above-ground swimming pools, spas, or the like, shall be installed without the consent of the Approving Party.
- VIII.HH. Temporary Structures. Unless first approved in writing by the Approving Party, no structures of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, except that the Developer or its designees, may install sales trailers or other approved temporary structures on a Lot for use as a sales office or construction office during any development within the Community.
- VIII.II. Tree Preservation. No trees measuring four inches (4") or more in diameter at a point which is three feet (3') above ground level may be removed without the written approval of the Developer, unless located within ten feet (10') of the Residence or accessory building or within ten feet (10') of the approved site for such building. No tree shall be removed from any Lot without the consent of the Developer until the Owner shall be ready to commence construction, except Lot clearing contracted for by Developer or a builder. Developer may designate the right to approve tree removal to the Association at any time. Unless sooner designated, Developer's authority to approve tree removal shall automatically vest in the Association at such time as Developer no longer owns any portion of the Property.
- VIII.JJ. Utility Lines and Services. All utility lines and services shall be maintained in good working condition.
- VIII.KK. Visibility at Street Intersections. No hedge, shrub, or planting which obstructs the site lines and elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and the line connecting them at points twenty five feet (25') from the intersection of the street lines or in the case of a rounded property corner from the intersection of the street lines as extended. The same site line limitation shall apply to any Lot within ten feet (10') from an intersection of street property lines with the edge of a driveway or alley pavement. No tree shall be permitted to remain within the above described limits of the intersections unless the foliage line is maintained at or above six feet (6') above the roadway intersection elevation to prevent the obstruction of sight lines.
- VIII.LL. Window Treatments. Window treatments shall consist of drapery, blinds, shutters, decorative panels, or other tasteful window covering, of the type customarily found in single family homes, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding 2 weeks after an

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Owner or tenant first moves into a Residence or when permanent window treatments are being cleaned or repaired.

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

IX. INSURANCE

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

- IX.A. Hazard Insurance protecting against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and all other perils customarily covered for similar types of projects, including those covered by the standard all-risk endorsement, covering 100% of the current replacement cost of all Common Property and property owned by the Association, excluding land foundations, excavations and other items normally excluded from insurance coverage, or such reduced coverage as is approved by the Board. The Association shall not use hazard insurance proceeds for any purpose other than repair, replacement or reconstruction of any damaged or destroyed property, until such repair, replacement or reconstruction is completed, without the approval of a 2/3 vote of the Owners.
- IX.B. Comprehensive General Liability Insurance protecting the Association from claims for bodily injury, death or property damage providing for coverage of at least \$1,000,000.00 for any single occurrence. Notwithstanding the foregoing, if the Board determines that it is impossible or unduly expensive to obtain \$1,000,000.00 of general liability insurance, then the Board may, upon a unanimous vote of the directors, obtain a lower amount of general liability insurance.
- IX.C. Blanket Fidelity Bonds for anyone who handles or is responsible for funds held or administered by the Association, covering the maximum funds that will be in the custody or control of the Association or any managing agent, which coverage shall be at least the sum of three (3) months Assessments on all Residences plus reserve funds.
- IX.D. Such other insurance as may be desired by the Association, such as flood insurance, errors and omissions insurance, workman's compensation insurance, or any other insurance.
- IX.E. All insurance purchased by the Association must include a provision requiring at least ten (10) days written notice to the Association before the insurance can be canceled or the coverage reduced for any reason.
- IX.F. Any deductible or exclusion under the policies shall be an expense of the Association and shall not exceed \$2,500.00 or such other sum as is approved by a majority of the Board.
- IX.G. Upon request, each Mortgagee shall have the right to receive a copy or certificate of the insurance purchased by the Association and shall have the right to require at least ten (10) days written notice to the Mortgagee before any insurance can be canceled or

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the coverage reduced for any reason. Each Mortgagee shall have the right upon notice to the Association to review and approve, which approval shall not be unreasonably withheld, the form, content, issuer, coverage and deductibles of all insurance purchased by the Association, and to require the Association to purchase insurance complying with the reasonable and customary requirements of the Mortgagee. In the event of a conflict between the Mortgagees, the requirements of the Mortgagee holding mortgages encumbering Residences which secure the largest aggregate indebtedness shall control.

X. ASSOCIATION LIABILITY

- X.A. Disclaimer of Liability.** Notwithstanding anything contained in this Declaration, in the Articles or Bylaws, or in any other document governing or binding the Association (collectively, "Association Documents"), neither Developer nor the Association shall be liable or responsible for, or shall be deemed in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant, or user of any portion of the Property, including, without limitation, Owners, occupants, tenants, and their families, guests, invitees, agents, servants, contractors or subcontractors, nor for any property of such persons.
- X.B. Specific Provisions.** Without limiting the generality of the foregoing:
- X.B.1.** It is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern and regulate the use of the Property have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof.
 - X.B.2.** Neither Developer nor the Association is empowered, nor have they have been created, to act as an entity which enforces or insures compliance with the laws of the United States of America, the State of North Carolina, the County, the Town, or any other jurisdiction, or prevents tortious or criminal activities.
 - X.B.3.** The provisions of the Association Documents setting forth the uses of Assessments which may relate to health, safety, or welfare shall be attributed and implied only as limitations on the usage of such funds, and not as creating an obligation of the Association or Developer to protect the health, safety or welfare of any persons.
- X.C. Owner Covenant.** Each Owner, for himself and his heirs, legal representatives, successors and assigns (by virtue of his acceptance of title of his Lot), and every other person or entity having an interest in or a lien upon, or making use of, any portion of the Property (by virtue of accepting such interest or lien or making use thereof), shall be bound by this Article and shall be deemed to automatically waive all rights, claims, demands, and causes of action against the Association or Developer arising from or connected with any act or omission for which the liability of the Association or Developer has been described in this Article.

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**XI. PROPERTY SUBJECT TO THIS DECLARATION
AND ANNEXATIONS THERETO**

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

XII. DEVELOPMENT APPROVALS

- XII.A. **In General.** The Community is a development within the Town limits in the County intended to be developed in phases in accordance with the permits and approvals issued by the City, County and government agencies ("Development Approvals") which govern its overall development.
- XII.B. **Scope and Effect.** No portion of the Property shall be used for any purpose or in any manner inconsistent with the Development Approvals. Any violation of the Development Approvals shall be a violation hereof, and the Developer shall have the right to enforce the provisions hereof regarding the Development Approvals against any person in violation thereof.

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

XIII. ENFORCEMENT OF NON-MONETARY COVENANTS

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

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

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Owner or tenant to have vehicular and pedestrian access to and from the Owner's Residence); and/or

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

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

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

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

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

XIII.C. Fines and Suspensions.

XIII.C.1. The amount of any fine shall not exceed any amount as is permitted by law. Notwithstanding the foregoing, if any violation of this Declaration or the Rules and Regulations is of a continuing nature, and if the Parcel Association, Owner or tenant fails to cure any continuing violation within 30 days after written notice of such violation, or if such violation is not capable of being cured within such 30 day period, if the Parcel Association, Owner or tenant fails to commence action reasonably necessary to cure the violation within such 30 day period or shall thereafter fail to diligently proceed to cure the violation as soon as is reasonably practical, in addition to the initial fine a daily fine may be imposed until the violation is cured in an amount not to exceed \$10.00 per day, to the extent not prohibited by law.

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

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

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

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

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

XIII.E. Responsibility of an Owner for Occupants, Tenants, Guests, and Invitees. Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Residence, and for all guests and invitees of the Owner or any such resident. Any violation of any of the provisions of this Declaration, of the Articles, or the Bylaws, by any resident of any Residence, or any guest or invitee of an Owner or any resident of a Residence, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

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

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

XIV. AMENDMENT OF DECLARATION

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

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

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

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XV. RIGHTS OF MORTGAGEES

All Mortgagees shall have the following rights:

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

XVI. GENERAL TERMS

- XVI.A. Duration. This Declaration, as amended and supplemented from time to time, shall run with and bind the Property, and shall inure to the benefit of and be binding upon Developer, the Association, the Owners, and their respective legal representatives, heirs, successors or assigns, for a term of forty (40) years from the date of this Declaration is recorded in the public records of the County, after which time all of said provisions shall be extended automatically for successive periods of ten (10) years each, unless an instrument or instruments signed by the then Owners of seventy five percent (75%) of the Lots subject to this Declaration is recorded in the public records of the County, agreeing to terminate all of said provisions as of a specified date. Unless this Declaration is terminated as provided above, the Association shall rerecord this Declaration or other notice of its terms at intervals necessary under North Carolina law to preserve its effect.
- XVI.B. Condemnation. In the event all or part of the Common Property owned by the Association shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Board of Directors shall have the right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation affecting such Property. The damages from such condemnation shall be applied to repair and reconstruction of the

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improvements. If the improvements can not be repaired or restored the damages shall be deposited in Association account and be used as approved by the Board.

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

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

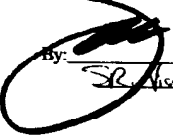
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IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed in its name, the day and year first above written.

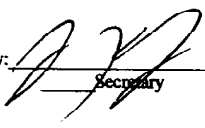
**PANTHER CREEK-RALEIGH LIMITED
PARTNERSHIP**, a North Carolina limited partnership

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

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

By:  Vice President

ATTEST:

By:  Secretary

[Corporate Seal]



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STATE OF CALIFORNIA
 COUNTY OF SAN FRANCISCO

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

WITNESS my hand and official stamp or seal, this 31st day of December, 1998.

Deborah Holstedt
 Notary Public

My Commission Expires:

11/28/01
 (Notary Public)



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of

Deborah Holstedt

Notary(y)(ies) Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

LAURA M. RIDDICK, Register of Deeds

By P. Anne Reed
 Asst./Deputy Register of Deeds

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EXHIBIT "A"

Property

Lots 101 through 165 of Phase SF-1A and SF-1B of CARY GLEN, according to plat thereof recorded in the public records of Wake County, North Carolina in Map Book 1998 at Pages 2368 and 2369;

Lots 49 through 61 of Phase SF-5 of CARY GLEN, according to plat thereof recorded in the public records of Wake County, North Carolina in Map Book 1998 at Page 2371; and

All parcels labeled as "Common Open Space" shown in the plats referenced above.

Developer's interest in all areas shown in the plats referenced above as public rights of way.

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EXHIBIT "B"

Additional Property

TRACT 1

BEGINNING at a point located in the northerly margin of S.R. 1624, said point having N.C. Grid Coordinates of N=754,421.143 and E=2,030,340.068; thence running from said Beginning Point along the northerly margin of S.R. 1624 in ten calls as follow: (1) North 840 12' 49" West 76.45 feet to a point; thence (2) North 840 06' 19" West 100.15 feet to a point; thence (3) North 840 25' 02" West 99.86 feet to a point; thence (4) North 840 39' 31" West 50.22 feet to a point; thence (5) North 880 11' 09" West 50.84 feet to a point; thence (6) South 890 25' 02" West 50.84 feet to a point; thence (7) South 880 22' 53" West 50.19 feet to a point; thence (8) South 860 52' 17" West 100.07 feet to a point; thence (9) South 850 57' 20" West 100.45 feet to a point; thence (10) South 850 13' 29" West 66.08 feet to a point; thence leaving S.R. 1624 and continuing North 000 51' 05" West 1151.21 feet to an iron pin; thence North 000 51' 05" West 28.32 feet to a point in the center line of Morris Branch; thence continuing along the center line of Morris Branch in nine calls as follow: (1) South 460 48' 12" West 59.68 feet to a point; thence (2) South 650 31' 41" West 34.55 feet to a point; thence (3) South 820 09' 24" West 33.24 feet to a point; thence (4) South 710 58' 54" West 66.69 feet to a point; thence (5) North 830 49' 54" West 75.04 feet to a point; thence (6) South 730 22' 21" West 83.83 feet to a point; thence (7) North 430 59' 18" West 159.18 feet to a point; thence (8) North 270 20' 39" West 26.47 feet to a point; thence (9) North 460 47' 36" West 25.87 feet to a point on the southeasterly margin of S.R. 1625 (soil road); thence continuing along the southeasterly margin of S.R. 1625 in six calls as follow: (1) North 190 13' 46" East 118.58 feet to a point; thence (2) North 200 48' 35" East 110.06 feet to a point; thence (3) North 200 09' 33" East 112.88 feet to a point; thence (4) North 210 45' 44" East 109.47 feet to a point; thence (5) North 200 31' 26" East 117.20 feet to a point; thence (6) North 230 24' 24" East 53.44 feet to a point; thence leaving S.R. 1625 and continuing North 880 16' 09" East 2.08 feet to a point; thence North 880 16' 09" East 476.53 feet to an iron pin; thence North 010 49' 16" West 299.97 feet to an iron pin; thence South 880 10' 44" West 325.84 feet to a point in the southeasterly margin of S.R. 1625; thence continuing along the southeasterly margin of S.R. 1625 in three calls as follow: (1) North 250 16' 00" East 61.74 feet to a point; thence (2) North 240 41' 01" East 113.69 feet to a point; thence (3) North 250 56' 28" East 196.66 feet to a point; thence leaving S.R. 1625 and continuing North 860 59' 00" East 907.20 feet to an iron pin; thence South 070 14' 48" East 144.63 feet to an iron pin; thence South 400 50' 41" East 81.62 feet to an iron pin; thence North 870 40' 43" East 763.34 feet to an iron pin; thence North 870 40' 43" East 126.69 feet to an iron pin in the westerly margin of the NCDOT Proposed Outer Loop; thence continuing with the westerly margin of the NCDOT Proposed Outer Loop the following three calls as follow: (1) South 100 55' 04" West 892.72 feet to an iron pin; thence (2) South 030 27' 21" East 221.71 feet to an iron pin; thence (3) South 030 27' 21" East 50.00 feet to a point in the center line of Morris Branch; thence leaving the NCDOT Proposed Outer Loop and continuing along the center line of Morris Branch in fourteen calls as follow: (1) South 320 26' 52" West 39.81 feet to a point; thence (2) North 770 54' 17" West 110.27 feet to a point; thence (3) North 470 19' 07" West 134.81 feet to a point; thence (4) South 410 26' 02" West 102.74 feet to a point; thence (5) North 560 05' 40" West 117.84 feet to a point; thence (6) South 730 37' 54" West 34.47 feet to a point; thence (7) South 260 59' 06" West 128.80 feet to a point; thence (8) South 590 21' 29" West 77.04 feet to a point; thence (9) North 850 08' 52" West 99.34 feet to a point; thence (10) South 590 32' 02" West 95.10 feet to a point; thence (11) North 430 56' 23" West 74.71 feet to a point; thence (12) South 430 48' 31" West 58.28 feet to a point; thence (13) South 820 01' 06" West 148.44 feet to a point; thence (14) South 490 50' 30" West 23.44 feet to an iron pin; thence leaving the center line of Morris Branch and continuing South 010 02' 36" West 1047.11 feet to the point or place of Beginning, all as shown as Tract 1 (77.189 acres) on a survey entitled "Tract Survey of PANTHER CREEK SUBDIVISION" by Kenneth Close, Inc., Land Surveying, dated June 21, 1996.

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TRACT 2

BEGINNING at a point located in the southerly margin of S.R. 1624, said Beginning Point being located South 010 02' 36" West 60.21 feet from N.C. Grid Coordinates of N=754,421.143 and E=2,030,340.068; thence running from said Beginning Point along the southerly margin of S.R. 1624 in ten calls as follow: (1) North 840 12' 49" West 81.48 feet to a point; thence (2) North 840 06' 19" West 100.04 feet to a point; thence (3) North 840 25' 02" West 99.57 feet to a point; thence (4) North 840 39' 31" West 48.24 feet to a point; thence (5) North 880 11' 09" West 47.74 feet to a point; thence (6) South 890 25' 02" West 49.04 feet to a point; thence (7) South 880 22' 53" West 48.86 feet to a point; thence (8) South 860 52' 17" West 98.80 feet to a point; thence (9) South 850 57' 20" West 99.58 feet to a point; thence (10) South 850 13' 29" West 69.81 feet to a point; thence leaving S.R. 1624 and continuing South 000 51' 05" East 9.02 feet to a point; thence North 850 13' 29" East 70.37 feet to a point; thence North 850 57' 20" East 99.45 feet to a point; thence North 860 52' 17" East 98.61 feet to a point; thence North 880 22' 53" East 48.66 feet to a point; thence North 890 25' 02" East 48.77 feet to a point; thence South 880 11' 09" East 16.15 feet to a point; thence with the arc of a circular curve to the right having a radius of 40.00 feet (and a chord course and distance of South 450 50' 08" East 53.89 feet) an arc distance of 59.13 feet to a point; thence South 030 29' 06" East 70.49 feet to a point; thence with the arc of a circular curve to the left having a radius of 800.00 feet (and a chord course and distance of South 060 09' 24" East 74.58 feet) an arc distance of 74.61 feet to a point; thence South 080 49' 42" East 32.72 feet to a point; thence with the arc of a circular curve to the right having a radius of 800.00 feet (and a chord course and distance of South 060 09' 24" East 74.58 feet) an arc distance of 74.61 feet to a point; thence South 030 29' 06" East 101.88 feet to a point; thence with the arc of a circular curve to the right having a radius of 365.00 feet (and a chord course and distance of South 160 22' 14" West 247.94 feet) an arc distance of 252.98 feet to a point; thence South 360 13' 34" West 156.70 feet to a point; thence North 750 39' 43" West 443.38 feet to a point; thence North 230 28' 29" West 298.62 feet to an iron pin; thence North 890 22' 05" West 367.12 feet to a point in the easterly right of way of S.R. 1625 (soil road); thence along the easterly margin of S.R. 1625 in ten calls as follow: (1) South 070 31' 18" West 3.52 feet to a point; thence (2) South 070 06' 28" West 70.19 feet to a point; thence (3) South 050 05' 09" West 110.09 feet to a point; thence (4) South 040 21' 53" West 102.50 feet to a point; thence (5) South 020 16' 32" West 96.76 feet to a point; thence (6) South 000 39' 24" West 408.02 feet to a point; thence (7) South 010 00' 00" West 101.07 feet to a point; thence (8) South 000 49' 15" East 101.53 feet to a point; thence (9) South 010 51' 38" East 204.89 feet to a point; thence (10) South 010 21' 14" East 162.49 feet to a point; thence leaving S.R. 1625 and continuing North 210 09' 24" East 143.41 feet to an iron pin; thence North 300 13' 43" East 123.56 feet to an iron pin; thence South 870 28' 21" East 508.51 feet to an iron pin; thence South 000 31' 04" West 213.06 feet to an iron pin; thence South 880 24' 39" East 527.54 feet to an iron pin; thence North 030 38' 09" West 1020.59 feet to an iron pin; thence South 880 46' 05" East 1035.90 feet to an iron pin having N.C. Grid Coordinates of N=753,646.099 and E=2,031,064.876; thence North 090 58' 28" West 509.15 feet to an iron pin; thence South 880 41' 44" West 249.79 feet to an iron pin; thence North 890 42' 24" West 392.02 feet to a point; thence North 010 02' 36" East 8.48 feet to a point; thence North 880 59' 35" West 223.23 feet to a point; thence with the arc of a circular curve to the right having a radius of 800.00 feet (and a chord course and distance of North 010 09' 10" East 19.70 feet) an arc distance of 19.70 feet to a point; thence North 010 51' 30" East 32.72 feet to a point; thence with the arc of a circular curve to the left having a radius of 800.00 feet (and a chord course and distance of North 000 48' 48" West 74.58 feet) an arc distance of 74.61 feet to a point; thence North 030 29' 06" West 45.55 feet to a point; thence with the arc of a circular curve to the right having a radius of 40.00 feet (and a chord course and distance of North 460 02' 56" East 60.86 feet) an arc distance of 69.16 feet to a point; thence South 840 25' 02" East 4.09 feet to a point; thence South 840 06' 19" East 100.02 feet to a point; thence South 840 12' 49" East 82.24 feet to a point; thence North 010 02' 36" East 9.83 feet to the point

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and place of Beginning, all as shown as Tract 2 (38.678 acres) on a survey entitled "Tract Survey of PANTHER CREEK SUBDIVISION" by Kenneth Close, Inc., Land Surveying, dated June 21, 1996.

TRACT 3

BEGINNING at a point located in the northeasterly margin of S.R. 1716 (soil road), said Beginning Point being located South 860 11' 32" West 1136.97 feet from N.C. Grid Coordinates of N=749,036.331 and E=2,026,167.413, and running thence from said Beginning Point along the northeasterly margin of S.R. 1716 in six calls as follow: (1) North 440 57' 51" West 914.40 feet to a point; thence (2) North 430 19' 41" West 50.22 feet to a point; thence (3) North 430 31' 14" West 50.10 feet to a point; thence (4) North 410 21' 50" West 50.08 feet to a point; thence (5) North 390 49' 36" West 48.35 feet to a point; thence (6) North 380 15' 24" West 34.11 feet to a point; thence leaving S.R. 1716 and continuing North 010 30' 31" East 3.18 feet to an iron pin; thence North 010 30' 31" East 1012.44 feet to an axle; thence South 870 26' 11" East 400.30 feet to a bolt; thence North 000 43' 55" East 628.32 feet to an iron pin; thence South 890 03' 05" East 104.25 feet to an iron pin; thence North 000 00' 05" East 1367.90 feet to an iron pin; thence South 790 07' 52" East 1084.82 feet to an iron pin; thence North 000 47' 15" East 764.19 feet to a point; thence North 000 26' 32" East 79.21 feet to an iron pin; thence South 760 53' 26" East 1181.70 feet to a point; thence North 160 14' 27" East 520.08 feet to an iron pin; thence South 890 05' 45" East 946.55 feet to an iron pin; thence North 720 52' 40" East 607.94 feet to an iron pin; thence South 860 06' 52" East 218.34 feet to a point in the westerly margin of S.R. 1625 (soil road); thence along the westerly margin of S.R. 1625 in the fifteen calls as follow: (1) South 040 21' 53" West 55.65 feet to a point; thence (2) South 020 16' 32" West 98.70 feet to a point; thence (3) South 000 39' 24" West 408.69 feet to a point; thence (4) South 010 00' 00" West 101.84 feet to a point; thence (5) South 000 49' 15" East 103.02 feet to a point; thence (6) South 010 51' 38" East 205.17 feet to a point; thence (7) South 010 21' 14" East 233.69 feet to a point; thence (8) South 020 10' 13" West 110.62 feet to a point; thence (9) South 030 59' 40" West 98.28 feet to a point; thence (10) South 070 41' 39" West 98.21 feet to a point; thence (11) South 100 30' 34" West 390.82 feet to a point; thence (12) South 100 47' 18" West 968.71 feet to a point; thence (13) South 080 59' 30" West 103.13 feet to a point; thence (14) South 030 40' 42" West 100.85 feet to a point; thence (15) South 030 43' 13" West 80.01 feet to an iron pin; thence leaving S.R. 1625 and continuing North 880 08' 29" West 609.00 feet to an iron pin; thence South 000 25' 58" West 894.88 feet to an iron pin; thence North 890 15' 03" West 1201.42 feet to an axle; thence North 890 02' 17" West 586.62 feet to an iron pin; thence South 000 59' 21" West 777.13 feet to an iron pin having N.C. Grid Coordinates of N=749,036.331 and E=2,026,167.413; thence South 860 11' 32" West 1085.05 feet to an iron pin; thence South 860 11' 32" West 51.92 feet to the point or place of Beginning, all as shown as Tract 3 (347.912 acres) on a survey entitled "Tract Survey of PANTHER CREEK SUBDIVISION" by Kenneth Close, Inc., Land Surveying, dated June 21, 1996.

LESS AND EXCEPT the property described on Exhibit "A" which has already been submitted to this Declaration as part of the Property.

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EXHIBIT "C"

**ARTICLES OF INCORPORATION
OF
CARY GLEN PROPERTY OWNERS ASSOCIATION, INC.**

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**ARTICLES OF INCORPORATION
OF
CARY GLEN PROPERTY OWNERS ASSOCIATION, INC.**

PREAMBLE:

Panther Creek-Kaleigh Limited Partnership, hereinafter referred to as "Developer", owns certain property in Wake County, North Carolina. Developer intends to record a Declaration of Covenants, Conditions, Restrictions and Easements for Cary Glen (the "DECLARATION") which will affect the property. This Association is being formed to administer the Declaration and to perform, among other things, the duties and exercise the powers pursuant to the Declaration, as and when the Declaration is recorded in the Public Records of Wake County, North Carolina, with these Articles attached as an Exhibit. All of the definitions contained in the Declaration shall apply to these Articles, and to the Bylaws of the Association. Until such time as the Declaration is so recorded, the incorporator shall be the sole member of the Association.

ARTICLE I - NAME AND ADDRESS

The name of the corporation is: CARY GLEN PROPERTY OWNERS ASSOCIATION, INC. (hereinafter referred to as the "Association"). The initial address of the principal office of the Association and the initial mailing address of the Association is 1000 Park Forty Plaza, Suite 300, Durham, Durham County, North Carolina 27713.

ARTICLE II - PURPOSE

The purposes for which the Association is organized are as follows

- A. To operate as a nonprofit corporation pursuant to Chapter 55A of the North Carolina General Statutes.
- B. To administer, enforce and carry out the terms and provisions of the Declaration, as same may be amended from time to time.
- C. To administer, enforce and carry out the terms and provisions of any other Declaration of covenants and restrictions, or similar document, submitting property to the jurisdiction of, or assigning responsibilities, rights or duties to the Association, and accepted by the Board.
- D. To promote the health, safety, welfare, comfort, and social and economic welfare of the members and residents of the Property, as authorized by the Declaration, by these Articles, and by the Bylaws.

ARTICLE III - POWERS

The Association shall have the following powers:

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A. All of the common law and statutory powers of a nonprofit corporation under the laws of the State of North Carolina which are not in conflict with the terms of these Articles.

B. All of the powers, express or implied, granted to the Association by the Declaration or which are reasonably necessary in order for the Association to administer, enforce, carry out and perform all of the acts, functions, rights and duties provided in, or contemplated by, the Declaration.

C. To make, establish and enforce rules and regulations governing the use and maintenance of the Property.

D. To make and collect Assessments against the members to defray the costs, expenses, reserves and losses incurred or to be incurred by the Association and to use the proceeds thereof in the exercise of the Association's powers and duties.

E. To own, purchase, sell, mortgage, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.

F. To purchase insurance for the protection of the Association, its officers, directors, the members, and such other parties as the Association may determine to be in the best interests of the Association.

G. To operate, maintain, repair, and improve all Common Property, and such other portions of the Property as may be determined by the Board from time to time.

H. To exercise architectural control over all buildings, structures and improvements to be placed or constructed upon any portion of the Property pursuant to the Declaration.

I. To provide, purchase, acquire, replace, improve, maintain and/or repair such buildings, structures, street lights and other structures, landscaping, paving and equipment, both real and personal, related to the health, safety and social welfare of the members and residents of the Property as the Board in its discretion determines necessary or appropriate.

J. To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the Association and/or to contract with others for the performance of such obligations, services and/or duties.

K. To operate and maintain the surface water management and drainage system for the Property as permitted by any controlling governmental authority, including all lakes, retention areas, culverts, and related appurtenances.

L. To sue and be sued.

ARTICLE IV - MEMBERS

A. Members

1. **Owners.** Each Owner shall be a member of the Association, except as otherwise provided in the Declaration. Such memberships shall be initially established upon the recording of these Articles and the Declaration among the public records of the county in which the Property is located. Notwithstanding the foregoing, no governmental authority or utility company shall be deemed a member

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unless one or more Residences actually exist upon the Property owned by such governmental authority or utility company, in which event the governmental authority or utility company will be a member only with respect to the Property owned in conjunction with such Residence(s).

2. Developer and Parcel Developers. Developer and each Parcel Developer shall be a member of the Association so long as they own any Property.

B. Transfer of Membership. In the case of an Owner, transfer of membership in the Association shall be established by the recording in the Public Records of the county in which the Property is located, of a deed or other instrument establishing a transfer of record title to any Property for which membership has already been established as herein above provided, the Owner designated by such instrument of conveyance thereby becoming a member, and the prior Owner's membership thereby being terminated. In the event of death of an Owner, his membership shall be automatically transferred to his heirs or successors in interest. Notwithstanding the foregoing, the Association shall not be obligated to recognize such a transfer of membership until such time as the Association receives a true copy of the deed or other instrument establishing the transfer of ownership of the Property, and it shall be the responsibility and obligation of the former and new Owner of the Property to provide such true copy of said instrument to the Association.

C. Voting Rights. The voting rights shall be as set forth in the Bylaws.

ARTICLE V - DIRECTORS

A. The affairs of the Association shall be managed by a Board consisting of not less than three (3) directors, and which shall always be an odd number. The number of directors shall be determined in accordance with the Bylaws. In the absence of such determination, there shall be three (3) directors so long as Developer has the right to appoint any director.

B. The directors of Association shall be elected by the members, except that Developer shall have the right to appoint all of the directors of the Association so long as Developer owns any Lot or any Property which is planned to contain a Residence or any Additional Property. If any law limits Developer's right to appoint the directors of the Association, Developer shall have the right to appoint the maximum number of directors as may be permitted by law. Notwithstanding the foregoing, if any mortgage encumbering any Lot is guaranteed or insured by the Federal Housing Administration or by the Veterans Administration, then upon written notice of same to the Association by either such agency, the majority of the directors shall be elected by the members when 75% of the Lots within the Property and Additional Property have been conveyed by Developer. The event at which the majority of directors are elected by the Class A Members is referred to as "Turnover".

C. All of the duties and powers of the Association existing under Chapter 55A of the North Carolina General Statutes, the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board, its agents, contractors or employees, subject to approval by the members only when specifically required.

D. Directors may be removed and vacancies on the Board shall be filled in the manner provided by the Bylaws, however, any director appointed by Developer may only be removed by Developer so long as Developer has the right to appoint the director, and any vacancy on the Board shall be appointed by Developer if, at the time such vacancy is to be filled, the number of remaining directors appointed by

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Developer is less than the maximum number of directors which may, at that time, be appointed by Developer as set forth above.

E. The names and addresses of the directors who shall hold office until their successors are elected or appointed, or until removed, are as follows:

Tom Liebrecht	1000 Park Forty Plaza, Suite 300	Durham, NC 27713
J. Thomas Gillette, III	200 South Orange Avenue, Suite 2150	Orlando, FL 32801
Amy H. Goldin	2601 South Bayshore Drive	Miami, FL 33133

ARTICLE VI - OFFICERS

The officers of the Association shall be a President, Vice President, Secretary, Treasurer and such other officers as the Board may from time to time by resolution create. The officers shall serve at the pleasure of the Board, and the Bylaws may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers. The names of the officers who shall serve until their successors are designated by the Board are as follows:

President	J. Thomas Gillette, III
Vice President	Thomas Liebrecht
Vice President/Assistant Secretary	Joel K. Goldman
Vice President/Treasurer	Paula Cook
Secretary	Joy Wayman

ARTICLE VII - INDEMNIFICATION

A. The Association shall indemnify any person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, employee, officer, or agent of the Association, or a member of any committee thereof, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if (i) he acted in good faith and (ii) in the case of conduct in his official capacity with the Association, in a manner he reasonably believed to be in the best interest of the Association and in all other cases, in a manner he reasonably believed was not opposed to the best interests of the Association, and (iii) with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect to any claim, issue or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

B. To the extent that a director, officer, employee or agent of the Association, or a member of any committee thereof, has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall

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be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

C. Any indemnification under Paragraph VII.A. above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, agent, or committee member is proper under the circumstances because he has met the applicable standard of conduct set forth in Paragraph 1 above. Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, by a majority vote of a committee duly designated by the Board (in which designation directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding, or (c) by special legal counsel selected by the Board or its committee in the manner prescribed in (a) or (b) above or if a quorum of the Board cannot be obtained and a committee cannot be designated, then selected by a majority vote of the full Board (in which selection directors who are parties may participate), or (c) by a majority vote of the members.

D. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

E. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of members or otherwise; and as to action taken in an official capacity while holding office, shall continue as to a Person who has ceased to be a director, officer, employee, agent, or committee member and shall inure to the benefit of the heirs, executors and administrators of such a Person.

F. The Association shall have the power to purchase and maintain insurance on behalf of any Person who is or was a director, officer, employee or agent of the Association, or a member of any committee thereof, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

ARTICLE VIII- BYLAWS

The first Bylaws shall be adopted by the Board, and may be altered, amended or rescinded in the manner provided by the Bylaws.

ARTICLE IX - AMENDMENTS

Amendments to these Articles shall be proposed and adopted in the following manner:

A. A majority of the Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

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B. Written notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the Bylaws for the giving of notice of a meeting of the members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

C. At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of at least 2/3rds of the votes of the entire membership of the Association.

D. Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

E. In addition to the above, so long as Developer appoints a majority of the directors of the Association, Developer shall be entitled to unilaterally amend these Articles and the Bylaws. Furthermore, no amendment shall make any changes which would in any way affect any of the rights, privileges, power or options herein provided in favor of, or reserved to, Developer, unless Developer joins in the execution of the amendment.

F. Upon the approval of an amendment to these Articles, Articles of Amendment shall be executed and delivered to the Department of State as provided by law, and a copy certified by the Department of State shall be recorded in the public records of the county in which the Property is located.

ARTICLE X - TERM

The Association shall have perpetual existence.

ARTICLE XI - INCORPORATOR

The name and street address of the incorporator is:

James H. Clarke, 2200 West Main Street, Suite 800, Durham, North Carolina 27705.

ARTICLE XII

INITIAL REGISTERED OFFICE ADDRESS AND NAME OF INITIAL REGISTERED AGENT

The initial registered office of the Association shall be at:

1000 Park Forty Plaza, Suite 300, Durham, Durham County, North Carolina 27713.

The initial registered agent of the Association at that address is
Tom Liebrecht.

ARTICLE XIII - DISSOLUTION

The Association may be dissolved as provided by law, provided that any such dissolution shall require the affirmative vote of 2/3rds of all of the Members. In the event of dissolution or final liquidation of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the Association. In the event that such dedication is

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refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization, to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the Association. No such disposition of Association properties shall be effective to divest or diminish any right or title of any Owner vested under the Declaration unless made in accordance with the provisions of such Declaration.

ARTICLE XIV-MERGERS

A. By Developer.

Developer shall have the right, but not the obligation, until Turnover, from time to time, within its sole discretion, to merge or consolidate this Association with any other property owners association. Notwithstanding the foregoing, until Turnover, such merger or consolidation must have the prior written approval of the Veterans Administration ("VA") and Federal Housing Administration ("FHA") in accordance with the regulations of the U.S. Department of Housing and Urban Development ("HUD"), if the FHA or VA is the insurer of any Mortgage encumbering a Lot.

B. By Owners.

After Turnover, the Association may be merged with another association if approved by two-thirds of Members of the Association present in person or by proxy at a duly constituted meeting or by written consent.

C. Effect. Upon a merger or consolidation of the Association with another property owners association, the Association's Common Property, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or alternatively, the Property, rights and obligations of another property owners association may, by operation of law, be added to the Common Property, rights and obligations of the Association, as a surviving corporation pursuant to a merger. To the greatest extent practicable, the surviving or consolidated property owners association shall administer the covenants, conditions, easements and restrictions established by this Declaration within the Property, together with any surviving covenants and restrictions established upon any other properties as one scheme, but with such differences in the method or level of Assessments to be levied upon the Property and the other properties as may be appropriate, taking into account the different nature or amount of services to be rendered to the owners thereof by the surviving or consolidated association. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration, except as expressly adopted in accordance with the terms hereof.

ARTICLE XV - FHA/VA

For so long as the Developer appoints the majority of the Directors on the Board of the Association, the annexation of additional properties, except for any portion of the Additional Property, mortgaging of any part of the Common Property, any amendment to the Articles, the merger or consolidation of the Association with other property owners associations, and the dissolution of the Association shall require the prior written approval of the Federal Home Administration ("FHA") and the Veterans' Administration ("VA"), if the FHA or VA is the insurer of any Mortgage encumbering any Lot within the Property.

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IN WITNESS WHEREOF, for the purpose of forming this Association under the laws of the State of North Carolina, the undersigned has executed these Articles of Incorporation this _____ day of December, 1998.

James H. Clarke, Incorporator

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EXHIBIT "D"

**BYLAWS
OF
CARY GLEN
PROPERTY OWNERS ASSOCIATION, INC.**

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**BYLAWS
OF
CARY GLEN
PROPERTY OWNERS ASSOCIATION, INC.,
a North Carolina nonprofit corporation**

ARTICLE I - IDENTITY

These are the Bylaws of CARY GLEN PROPERTY OWNERS ASSOCIATION, INC., hereinafter referred to as the "Association," a nonprofit corporation formed under the laws of the State of North Carolina. The Association has been organized for the purposes stated in the Articles of Incorporation, and shall have all of the powers provided in these Bylaws, the Articles of Incorporation, the Declaration of Covenants, Conditions, Restrictions and Easements for Cary Glen (hereinafter referred to as the "Declaration"), and any other statute or law of the State of North Carolina, or any other power incident to any of the above powers.

ARTICLE II - LOCATION

The principal office of the Association shall be at such place as the Board may determine from time to time.

ARTICLE III - FISCAL YEAR

The fiscal year of the Association shall be the calendar year beginning on the 1st day of January and ending on the 31st day of December.

ARTICLE IV - SEAL

The seal of the Association shall have inscribed upon it the name of the Association, the year of its incorporation and the words "Nonprofit Corporation." Said seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or otherwise reproduced upon any instrument or document executed in the name of the Association.

ARTICLE V - INSPECTION OF BOOKS AND RECORDS

The records of the Association shall be open to inspection by the Members, and all holders, insurers, or guarantors of any first mortgage encumbering any Property, upon request, during normal business hours or under other reasonable circumstances. Such records of the Association shall include current copies of the Declaration, Articles, Bylaws, any Rules and Regulations of the Association, and any amendments thereto, any contracts entered into by the Association, and the books, records and financial statements of the Association. The Association shall be required to make available to prospective purchasers of any Property or Residence current copies of the Declaration, Articles and Bylaws, and the most recent annual financial statement of the Association.

ARTICLE VI - DEFINITIONS

Unless the context otherwise requires, all terms used in these Bylaws shall have the same meaning as are attributed to them in the Declaration and the Articles.

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ARTICLE VII - MEMBERSHIP

VII.A. Qualification: The qualification of Members, the manner of their admission to membership and the termination of such membership shall be as set forth in the Articles.

VII.B. Changes in Members: Change of membership in the Association shall be as provided in the Articles.

VII.C. Membership Voting:

VII.C.1. Voting Rights.

(a) **Class A.** Class A Members shall be all Owners, with the exception of Developer while the Class B Membership exists. Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they shall determine among themselves, but in no event shall more than one vote be cast with respect to any Lot. When title to a Lot is in a corporation, partnership, Association, trust, or other entity (with the exception of Developer), such entity shall be subject to the applicable rules and regulations contained in the Articles and Bylaws. Provided, however, if an Owner owns a Reconfigured Lot, for so long as such Reconfigured Lot is used consistent with the definition of a Reconfigured Lot, the Owner thereof shall have only one vote in Association matters.

(b) **Class B.** The Class B Member shall be Developer and shall be entitled to the sole right to vote in Association matters until the occurrence of the earliest of the following events ("Turnover"):

(1) Three (3) months after seventy-five percent (75%) of the Lots in the Property that will ultimately be operated by the Association have been conveyed to Class A Members.

(2) Ten (10) years from the date of recording this Declaration.

(3) Such earlier date as Developer, in its sole discretion, may determine in writing.

After Turnover, the Class A Members may vote to elect the majority of the members of the Board. After Turnover, for so long as Developer owns at least five percent (5%) of the Lots within the Property, the Developer may appoint the minority of members of the Board, or not less than one (1) Director. After Turnover, the Developer shall be a Class A Member with respect to the Lots which it owns, and shall have all the rights and obligations of the Class A Members, except that it may not cast its votes for the purpose of reacquiring control of the Association or selecting the majority of the members of the Board.

VII.C.2. Majority Vote and Quorum Requirements. The acts approved by a majority of the votes cast in person or by proxy at a meeting of the Members at which a quorum is present shall be binding upon all Members for all purposes, except where otherwise provided by law, in

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the Declaration, the Articles or in these Bylaws. Unless otherwise so provided or required by law, at any regular or special meeting, the presence in person or by proxy of persons entitled to cast a 25% of the votes of the entire membership at the time of such vote shall constitute a quorum.

VII.C.3. Determination as to Voting Rights. If the Property associated with the membership of any Member is owned by more than one person, or by a corporation, partnership, trust, or other entity, the votes of the Member may be cast at any meeting by any Co-Member, as hereafter defined, but if when the vote is to be cast, a dispute arises between the Co-Members as to how the vote will be cast, they shall lose the right to cast the votes of the Member on the matter being voted upon, but their votes shall continue to be counted for purposes of determining the existence of a quorum. For purposes of this Paragraph, the partners, trustees, or other principals of any entity other than a corporation shall be deemed "Co-Members," the directors and officers of a corporation shall be deemed "Co-Members," if title to any Lot is held by husband and wife, husband and wife shall be "Co-Members," and if title to any Lot is held by tenants in common, all tenants in common shall be "Co-Members."

VII.C.4. Proxies. Every Member entitled to vote at a meeting of the Members, or to express consent or dissent without a meeting, may authorize another person to act on the Member's behalf by a proxy. To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. Any such proxy shall be delivered to the Secretary of the Association, or the person acting as secretary at the meeting, at or prior to the time designated in the order of business for so delivering such proxies. A proxy is effective only for the specific meeting for which originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given. Every proxy shall be revocable at any time at the pleasure of the person who executes it. If the proxy form so provides, any proxy holder may appoint, in writing, a substitute to act in his place.

VII.D. Membership Meetings:

VII.D.1. Who May Attend. Any Member or Co-Member may attend any meeting of the Members. However, the votes of any Co-Member shall be cast in accordance with the provisions of Paragraph VII.C.3 above. Any person not expressly authorized to attend a meeting of the Members, as set forth above, may be excluded from any meeting of the Members by the presiding officer of the meeting. Institutional Lenders have the right to attend all meetings of the Members.

VII.D.2. Place. All meetings of the Members shall be held at the principal office of the Association or at such other place and at such time as shall be designated by the Board and stated in the notice of meeting.

VII.D.3. Notices. Written notice stating the place, day and hour of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each Member not less than 10 nor more than 60 days before the date of the meeting, either personally or by first class mail, by or at the direction of the President, the Secretary or the officer or persons calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail, addressed to the Member at the Member's address as it appears on the records of the Association, unless such Member shall have filed a written request

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with the Secretary of the Association stating that notices to him be mailed to some other address. For the purpose of determining Members entitled to notice of, or to vote at, any meeting of the Members, or in order to make a determination of the Members for any other purpose, the Board shall be entitled to rely upon the Member register as same exists ten days prior to the giving of the notice of any meeting, and the Board shall not be required to take into account any changes in membership occurring after that date but may, in their sole and absolute discretion, do so. Notwithstanding the foregoing, only one notice shall be required to be given with respect to any membership, which may be sent to any one Co-Member. Notwithstanding anything contained herein to the contrary, as to completed Residences, any notice to a Member owning a completed Residence may be sent to the mailing address of the Residence without naming the Member, unless the Member notifies the Association that notices to the Member are to be sent to another address.

VII.D.4. Waiver of Notice. Whenever any notice is required to be given to any Member under the provisions of the Articles or these Bylaws, or as otherwise provided by law, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a Member at a meeting shall constitute a waiver of notice of such meeting, except when the Member objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

VII.D.5. Annual Meeting. The annual meeting for the purpose of electing directors and transacting any other business shall be held in the first calendar quarter of each year as shall be selected by the Board and as is contained in the notice of such meeting. If the Board fails to call such meeting by the end of the first calendar quarter of any year, then within thirty (30) days after the written request of any Member, or any officer or director of the Association, the Secretary shall call an annual meeting. During the period when Developer appoints a majority of the directors, no annual meetings will be required.

VII.E.6. Special Meetings. Special meetings of the Members may be requested at any time by written notice to the Secretary by any director, the President, or by written petition signed by at least 25 Members, or as otherwise provided by law. Such request shall state the purpose of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of meeting. Notice of any special meeting shall be given by the Secretary, or other officer of the Association, to all of the Members within thirty (30) days after same is duly requested, and the meeting shall be held within forty-five (45) days after same is duly requested.

VII.D.7. Adjournments. Any meeting may be adjourned or continued by a majority of the votes present at the meeting in person or by proxy, regardless of a quorum, or if no Member entitled to vote is present at a meeting, then any officer of the Association, may adjourn the meeting from time to time. If any meeting is adjourned or continued to another time or place, it shall not be necessary to give any notice of the adjourned meeting, if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted at the original meeting. If the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, notice of the adjourned meeting may be given to Members not present at the original meeting, without giving notice to the Members which were present at such meeting.

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VII.D.8. Organization. At each meeting of the Members, the President, the Vice President, or any person chosen by a majority of the Members present, in that order, shall act as chairman of the meeting. The Secretary, or in his absence or inability to act, any person appointed by the chairman of the meeting shall act as Secretary of the meeting.

VII.D.9. Minutes. The minutes of all meetings of the Members shall be kept in a book available for inspection by the Members or their authorized representatives, and the Members of the Board, at any reasonable time. The Association shall retain these minutes for a period of not less than seven (7) years.

VII.D.10. Actions Without a Meeting. Any action required or permitted to be taken at any annual or special meeting of the Members may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted. Within ten (10) days after obtaining such authorization by written consent, notice shall be given to those Members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. The consent for any Member need only be signed by one Co-Member.

ARTICLE VIII - BOARD OF DIRECTORS

VIII.A. Number of Directors. The affairs of the Association shall be managed by a Board comprised of not less than three directors. So long as Developer is entitled to appoint a majority of the directors pursuant to the Articles or in accordance with applicable law, the number of directors will be determined, and may be changed from time to time, by Developer by written notice to the Board. Thereafter, the number of directors shall be determined from time to time by the Board (but not less than three).

VIII.B. Election of Directors by Members. Election or selection of directors shall be conducted in the following manner:

VIII.B.1 While Developer Still Appoints the Directors. Prior to Turnover, when Developer is entitled to elect or appoint all directors, all directors may be appointed and removed, with or without cause, from time to time by Developer. Directors appointed by Developer need not be Members of the Association.

VIII.B.2. After Turnover. After Turnover, there shall be an election of the directors by all Members; provided that so long as the Developer has the right to appoint the minority of members of the Board, the Members (other than Developer) shall elect only a majority of the members of the Board.

VIII.B.3. Method of Nomination and Election For Vote by Class A Members. Not less than sixty (60) days before a scheduled election at which directors are to be elected by the Class A Members as set forth above, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each Owner, a first notice of the date of the election. The notice shall provide that any Member who wishes to be a candidate for the Board may notify the Secretary of the Board in writing, provided that such notice of intention to be a candidate, stating the full name and address of the candidate, is received by the Secretary no later than 40 days prior to the

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scheduled election. Any Member providing such notice shall be placed on the ballot. The Board may also provide notice of a Board meeting to be held no fewer than 40 days before the scheduled election to accept additional nominations. At such meeting of the Board, any Member may nominate himself or may nominate another person, if he has permission in writing to nominate the other person or if the nominee is present in person and accepts the nomination. Any nomination at the meeting of a person who is not a Member of the Association must be seconded by another Member to be valid.

Not less than thirty (30) days before the election, the Association shall mail or deliver a second notice of the election to all Owners entitled to vote therein, together with a ballot which shall list all candidates. The ballot shall indicate the Lot owned by the candidate. Upon request of a candidate, the Association shall include an information sheet, no larger than 8½ inches by 11 inches, containing typing or information on one (1) side only, which must be furnished by the candidates not less than thirty-five (35) days before the election, to be included with the mailing of the ballot, with the costs of mailing and copying to be born by the Association. However, the Association has no liability for the contents of the information sheets prepared by the candidates. The ballot may include other matters to be voted upon by the Owners at the discretion of the Board.

Each Owner shall cast his ballot by checking the names of not more than the number of directors to be elected. The ballot may be mailed or delivered to the Association prior to the election. Each ballot shall be signed by the Owner casting the ballot, unless secret ballots are required by the Board or by law. If secret ballots are required the Board shall adopt a reasonable method for the Owners to be able to mail or deliver their ballots to the Association prior to the meeting and which will ensure that no ballots are improperly duplicated and that no Owner casts more than one (1) ballot.

Elections shall be decided by a plurality of those ballots cast. Unless otherwise provided by law, there shall be no quorum requirement incident to the conduct of the election of Directors. Use of proxies and powers of attorney for the election of Directors is prohibited. The Board may establish a method of staggering the terms of the Directors.

The regular election by Class A Members shall occur on the date of the annual meeting of the Owners. Notwithstanding the provisions of this subparagraph, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board. Directors appointed by Developer need not be Members of the Association.

VIII.B.4. NOTWITHSTANDING THE FOREGOING, THE ELECTION OF DIRECTORS BY THE MEMBERS SHALL BE DONE IN CONFORMANCE WITH ANY APPLICABLE MANDATORY STATUTORY REQUIREMENTS HEREAFTER ADOPTED, AS SAME MAY BE AMENDED FROM TIME TO TIME, AND SAME SHALL CONTROL OVER ANY CONFLICTING PROVISIONS OF THESE BYLAWS.

ARTICLE IX - MEETING OF DIRECTORS

IX.A. Organizational Meeting: The newly elected or selected Board shall meet for the purposes of organization, the election of officers and the transaction of other business immediately after their election or selection or within ten days of same at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary.

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IX.B. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the directors. The Board shall notify all Members as to scheduled dates of the Board's regular meetings, but will not be required to send notices of each meeting to the Members. The Board shall place notices of regular meetings at conspicuous places on the Property, including all guardhouses, as reasonably determined by the Board at least 48 hours before any regular meeting, except in the case of an emergency.

IX.C. Special Meetings. Special meetings of the Board may be called by any director, or by the President, at any time. The Board shall place notices of special meetings at conspicuous places on the Property, including all guardhouses, as reasonably determined by the Board at least 48 hours before any special meeting, except in the case of an emergency.

IX.D. Notice of Meetings. Notice of each meeting of the Board shall be given by the Secretary, or by any other officer or director, which notice shall state the day, place and hour of the meeting. Notice of such meeting shall be delivered to each director either personally or by telephone or telegraph, at least 24 hours before the time at which such meeting is to be held, or by first class mail, postage prepaid, at least three days before the day on which such meeting is to be held. Notice of a meeting of the Board need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place, the time or the manner in which the meeting has been called or convened, except when a director or states, at the beginning of the meeting, an objection to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in any notice or waiver of notice of such meeting.

IX.E. Attendance at Board Meetings. All meetings of the Board shall be open to all Members and Institutional Lenders. A director may appear at a Board meeting by telephone conference, but in that event a telephone speaker shall be attached so that any discussion may be heard by the directors and any Members present as in an open meeting.

IX.F. Quorum and Manner of Acting. A majority of the Board determined in the manner provided in these Bylaws shall constitute a quorum for the transaction of any business at a meeting of the directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number of directors is required by statute, the Declaration, the Articles or by these Bylaws.

IX.G. Adjourned Meetings. A majority of the directors present at a meeting, whether or not a quorum exists, may adjourn any meeting of the Board to another place and time. Notice of any such adjourned meeting shall be given to the directors who are not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors. Any business that might have been transacted at the meeting as originally called may be transacted at any adjourned meeting without further notice.

IX.H. Presiding Officer. The presiding officer of the directors' meetings shall be the Chairman of the Board if such an officer is elected, and if none, the President of the Association shall preside if the President is a director. In the absence of the presiding officer, the directors shall designate one of their Members to preside.

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IX.I. Minutes of Meetings. The minutes of all meetings of the Board shall be kept in a book available for inspection by the Members, or their authorized representatives, and the directors at any reasonable time.

IX.J. Committees. The Board may, by resolution duly adopted, appoint committees. Any committee shall have and may exercise such powers, duties and functions as may be determined by the Board from time to time, which may include any powers which may be exercised by the Board and which are not prohibited by law from being exercised by a committee.

IX.K. Resignation. Any director of the Association may resign at any time by giving written notice of his resignation to the Board or Chairman of the Board or the President or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time when such resignation is to become effective is not specified therein, immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

IX.L. Directors Appointed by Developer. Notwithstanding anything contained herein to the contrary, Developer shall have the right to appoint the maximum number of directors in accordance with the privileges granted to it pursuant to the Articles and these Bylaws. All directors appointed by Developer shall serve at Developer's pleasure, and Developer shall have the absolute right, at any time, and in its sole discretion, to remove any director appointed by it, and to replace such director with another person to serve on the Board. Developer may waive its right to appoint one or more directors which it has the right to appoint at any time upon written notice to the Association, and thereafter such director(s) shall be elected by the Members.

IX.M. Compensation. The directors shall not be entitled to any compensation for serving as directors unless the Members approve such compensation, provided however the Association may reimburse any director for expenses incurred on behalf of the Association without approval by the Members.

ARTICLE X - POWERS AND DUTIES OF THE BOARD OF DIRECTORS

X.A. Powers and Duties. The directors shall have the right to exercise all of the powers and duties of the Association, express or implied, existing under these Bylaws, the Articles, the Declaration, or as otherwise provided by statute or law. Such powers and duties of the directors shall include, without limitation (except as limited elsewhere herein), the following:

- i) The operation, care, upkeep and maintenance of the Common Property, and any other portion of the Property determined to be maintained by the Board.
- ii) The determination of the expenses required for the operation of the Association.
- iii) The collection of Annual Assessments from the Members.
- iv) The employment and dismissal of personnel.
- v) The adoption and amendment of rules and regulations covering the details of the operation and use of Property owned and/or maintained by the Association.
- vi) Maintaining bank accounts on behalf of the Association and designating signatories required therefor.
- vii) Obtaining and reviewing insurance for Property owned and/or maintained by the Association.
- viii) The making of repairs, additions and improvements to, or alterations of, Property owned and/or maintained by the Association.

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ix) Borrowing money on behalf of the Association; provided, however, that (i) a 2/3 vote of the Members present in person or by proxy, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these Bylaws, shall be required; and (ii) no lien to secure repayment of any sum borrowed may be created on any Property without the consent of the Owner of such Property.

x) Contracting for the management and maintenance of Property owned and/or maintained by the Association authorizing a management agent or company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules, and maintenance, repair and replacement of the Common Property with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by all Association documents and the Declaration, including, but not limited to, the making of Assessments, promulgation of rules, and execution of contracts on behalf of the Association.

xi) Exercising all powers specifically set forth in the Declaration, the Articles, these Bylaws, and as otherwise provided by statute or law, and all powers incidental thereto or implied therefrom.

xii) Entering into and upon any portion of the Property, including Residences, when necessary to maintain, care and preserve any Property in the event the respective Parcel Association or Owner fails to do so.

xiii) Collecting delinquent Assessments by suit or otherwise, abating nuisances, and enjoining or seeking damages from the Owner for violations of these Bylaws and the terms and conditions of the Declaration or of the Rules and Regulations of the Association.

xiv) Acquiring and entering into agreements whereby the Association acquires leaseholds, memberships, and other possessory or use interests in lands or facilities, whether or not contiguous to the lands operated by the Association, intended to provide for the enjoyment, recreation, or other use and benefit of the Members and declaring expenses in connection therewith to be common expenses; all in such form and in such manner as may be deemed by the Board to be in the best interest of the Association, and the participation in the acquisition of any interest in lands or facilities for the foregoing purposes may be direct or indirect, meaning, without limiting the generality of the foregoing, by direct ownership of land or acquisition of stock in a corporation owning land.

ARTICLE XI - OFFICERS AND THEIR DUTIES

XI.A. Members and Qualifications. The officers of the Association shall include a President, a Vice President, a Treasurer and a Secretary, all of whom shall be elected by the directors of the Association and may be pre-emptively removed from office with or without cause by vote of the directors at any meeting by concurrence of a majority of the directors. Any person may hold two or more offices except that the President shall not also be the Secretary. The Board may, from time to time, elect such other officers and designate their powers and duties as the Board shall find to be appropriate to manage the affairs of the Association from time to time. Each officer shall hold office until his successor shall have been duly elected and shall have qualified, or until his death, or until he shall have resigned, or until he shall have been removed, as provided in these Bylaws.

XI.B. Resignations. Any officer of the Association may resign at any time by giving written notice of his resignation to any director, the President or the Secretary. Any such resignation shall take effect at the time specified therein, or if there is no time specified therein, immediately upon its receipt; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make such resignation effective.

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XI.C. Vacancies. A vacancy in any office, whether arising from death, resignation, removal or any other cause may be filled for the unexpired portion of the term of the office which shall be vacant in the manner prescribed in these Bylaws for the regular election or appointment of such office.

XI.D. The President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of president of an Association or corporation including, but not limited to, the power to appoint committees from among the Members from time to time, as he may in his discretion deem appropriate to assist in the conduct of the affairs of the Association.

XI.E. The Vice-President. The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also assist the President generally and exercise such other powers and perform such other duties as may be prescribed by the Board.

XI.F. The Secretary. The Secretary shall prepare and keep the minutes of all proceedings of the directors and the Members. He shall attend to the giving and serving of all notices to the Members and directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly executed. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of secretary of an Association, and as may be required by the Board or the President.

XI.G. The Treasurer. The Treasurer shall have custody of all Property of the Association, including funds, securities, and evidences of indebtedness. He shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board for examination at reasonable times. He shall submit a Treasurer's Report to the Board at reasonable intervals and shall perform all other duties incident to the office of treasurer. He shall collect all Assessments and shall report promptly to the Board the status of collections.

XI.H. Compensation. The officers of the Association shall not be entitled to compensation unless the Board specifically votes to compensate them. However, neither this provision, nor the provision that directors will not be compensated unless otherwise determined by the Members, shall preclude the Board from employing a director or an officer as an employee of the Association and compensating such employee, nor shall they preclude the Association from contracting with a director for the management of Property subject to the jurisdiction of the Association, or for the provision of services to the Association, and in either such event to pay such director a reasonable fee for such management or provision of services.

ARTICLE XII - FINANCES AND ASSESSMENTS

XII.A. Adoption of the Budget.

XII.A.1 Prior to the commencement of any fiscal year of the Association, the Board shall adopt a budget for such calendar year, necessary to defray the common expenses of the Association for such calendar year. The common expenses of the Association shall include all expenses of any kind or nature whatsoever incurred, or to be incurred, by the Association for the operation of the Property owned and/or operated by the Association, and for the proper operation of the Association itself, including, but not limited to, the expenses of the operation,

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maintenance, repair, or replacement of the Common Property; costs of carrying out the powers and duties of the Association; all insurance premiums and expenses, including fire insurance and extended coverage; reasonable reserves for purchases, deferred maintenance, replacements, betterments, and unknown contingencies; and all other expenses intended to be common expenses by these Bylaws, the Declaration, the Articles, or any other applicable statute or law of the State of North Carolina. If pursuant to any agreement entered into by the Association, any expense of the Association is to be shared with any person(s), then the annual budget of the Association shall contain a separate classification for such expense(s). In the event the Board fails to adopt an annual budget for any year, the prior year's budget shall remain in effect until a new budget is adopted or the existing budget is amended or revised.

XII.A.2 If, after the adoption of any budget, it shall appear that the adopted budget is insufficient to provide adequate funds to defray the common expenses of the Association for the fiscal year in which the adopted budget applies to, the Board may adopt an amended budget to provide such funds. All of the above provisions shall apply to the adoption of an amended budget.

XII.B. Assessments and Assessment Roll.

XII.B.1. As soon as practicable after the adoption of a budget, or an amended budget, the Board shall fix and determine the amount and frequency of the Annual Assessments, pursuant to the Declaration, the Articles and these Bylaws. Such Annual Assessments shall be due not more frequently than monthly, and shall each be in an amount no less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Any periodic Annual Assessments, whether quarterly, monthly or otherwise, shall be equal unless the Board determines unequal Assessments are required to provide funds in advance for the expenses of the Association. As soon as practicable after the determination of the Annual Assessments, the Association shall notify each Member, in writing, of the amount, frequency and due date of such Member's Assessments, provided, however, that no Assessment shall be due in less than (10) days from the date of such notification.

XII.B.2. In the event the expenditure of funds by the Association is required that cannot be paid from the Annual Assessments, the Board may make Special Assessments, which shall be levied in the same manner as hereinbefore provided for Annual Assessments and shall be payable in the manner determined by the Board. Each Member's share of any Special Assessment shall be in the same proportion as the Member's share of the Annual Assessments.

XII.B.3. The Association shall maintain an Assessment roll for each Member, designating the name and current mailing address of the Member, the amount of each Assessment payable by such Member, the dates and amounts in which the Assessments come due, the amounts paid upon the account of the Member, and the balance due.

XII.C. Depositories. The funds of the Association shall be deposited in such banks and depositories as may be determined and approved by appropriate resolutions of the Board from time to time. Funds shall be withdrawn only upon checks and demands for money signed by such officers, directors or other persons as may be designated by the Board. Fidelity bonds as required by the Declaration shall be required of all signatories on any accounts of the Association.

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XII.D. Application of Payments and Commingling of Funds. All sums collected by the Association from Assessments may be commingled in a single fund or divided into more than one fund, as determined by the Board.

XII.E. Accounting Records and Reports. The Association shall maintain accounting records according to good accounting practices. The records shall be open to inspection by Members and all Institutional Lenders, or their authorized representatives, at reasonable times. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) the Assessment roll of the Members referred to above. The Board may, and upon the vote of a majority of the Members shall, conduct a review of the accounts of the Association by a certified public accountant, and if such a review is made, a copy of the report shall be made available to each Member and Institutional Lender, upon written request to the Association.

XII.F. Parcel Expenses and Parcel Assessments. The provisions of this Article VII shall be equally applicable with respect to Parcel Expenses and Parcel Assessments, and separate budgets, Assessments, Assessment Rolls, accounts, and books and records shall be established for same.

ARTICLE XIII - PARLIAMENTARY RULES

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these Bylaws.

ARTICLE XIV - AMENDMENTS

Except as otherwise provided, these Bylaws may be amended in the following manner:

XIV.A. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

XIV.B. Initiation. A resolution to amend these Bylaws may be proposed by any director, or by a petition signed by Members having at least 25 votes.

XIV.C. Adoption of Amendments.

XIV.C.1. A resolution for the adoption of the proposed amendment shall be adopted either: (a) by a majority of all of the directors of the Association, and by a vote of a majority of the Members present in person or by proxy at a meeting called to approve the amendment, without any quorum requirement; or (b) by a 2/3 vote of all of the Members. Any amendment approved by the Members may provide that the Board may not further amend, modify or repeal such amendment.

XIV.C.2. Notwithstanding the foregoing, so long as Developer owns any portion of the Property or any Additional Property, Developer shall have the right to unilaterally amend these Bylaws without the joinder or approval of any directors or any Member, and no amendment to these Bylaws may be made without the written consent of Developer. Thereafter, so long as there is at least one Parcel Developer, no amendment to these Bylaws may be made without the written consent of the Parcel Developers.

XIV.D. No amendment shall make any changes in the qualification for membership nor in the voting rights or Property rights of Members without approval of 2/3 of all the Members, unless the

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amendment is made to conform these Bylaws to applicable law. No amendment shall be made that is in conflict with the Declaration, the Articles or these Bylaws. So long as Developer or any Parcel Developer owns any Property or Additional Property, or holds any mortgage encumbering any Property other than a Residence, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Developer or any Parcel Developer, unless Developer or any Parcel Developer so affected shall join in the execution of the amendment.

XIV.E. Execution and Recording. No modification of, or amendment to, these Bylaws shall be valid unless recorded in the public records of the county in which the Property is located.

XIV.F. FHA/VA Approval. As long as Developer appoints the majority of directors to the Board, any amendment hereto are subject to approval of the Veteran's Administration and the Federal Housing Administrator if either has guaranteed a mortgage on a Lot.

ARTICLE XV - RULES AND REGULATIONS

The Board may, from time to time, adopt, or amend previously adopted, Rules and Regulations concerning the use of the Common Property and concerning the use, operation and maintenance of other portions of the Property in order to further implement and carry out the intent of the Declaration, the Articles, and these Bylaws. The Board shall make available to any Member, upon request, a copy of the Rules and Regulations adopted from time to time by the Board.

ARTICLE XVI - MISCELLANEOUS

XVI.A. Tenses and Genders. The use of any gender or of any tense in these Bylaws shall refer to all genders or to all tenses, wherever the context so requires.

XVI.B. Partial Invalidity. Should any of the provisions hereof be void or become unenforceable at law or in equity, the remaining provisions shall, nevertheless, be and remain in full force and effect.

XVI.C. Conflicts. In the event of any conflict, any applicable North Carolina statute, the Declaration, the Articles, these Bylaws, and the Rules and Regulations of the Association shall govern, in that order.

XVI.D. Captions. Captions are inserted herein only as a matter of convenience and for reference, and in no way are intended to or shall define, limit or describe the scope of these Bylaws or the intent of any provisions hereof.

XVI.E. Waiver of Objections. The failure of the Board or any officers of the Association to comply with any terms and provisions of the Declaration, the Articles, or these Bylaws which relate to time limitations shall not, in and of itself, invalidate the act done or performed. Any such defect shall be waived if it is not objected to by a Member within thirty (30) days after the Member is notified, or becomes aware, of the defect. Furthermore, if such defect occurs at a general or special meeting, the defect shall be waived as to all Members who received notice of the meeting and failed to object to such defect at the meeting.

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THE FOREGOING was adopted as the Bylaws of the Association at the first meeting of the Board on the ____ day of December, 1998.

Secretary