

WAKE COUNTY, NC 208
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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DECLARATION
FOR
LYNNWOOD BLUFF

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THE UNITED STATES OF AMERICA AND/OR THE FLAG OF THE STATE OF
NORTH CAROLINA

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY
OF POLITICAL SIGNS

THIS DOCUMENT PREPARED IN
PART BY AND MAIL AFTER
RECORDING TO:

Alison R. Cayton
Manning, Fulton & Skinner, P.A.
(Box 133)

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LYNNWOOD BLUFF

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DECLARATION
FOR
LYNNWOOD BLUFF

THIS DECLARATION FOR LYNNWOOD BLUFF (this "Declaration") is made this ____ day of May, 2013, by **FOREVERHOME-LYNN, LLC**, a North Carolina limited liability company (the "Declarant") upon all or a portion of the real property described on **Exhibit A** attached hereto and made a part hereof (the "Property"), who hereby declares that the Property and all parts thereof, including, without limitation, all Lots and other subdivisions thereof, shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, liens, and all other matters set forth in this Declaration which shall be deemed to be covenants running with the title to the Property and shall be binding upon the Declarant and all parties having or acquiring any right, title or interest in the Property or any part thereof

ARTICLE I
MUTUALITY OF BENEFIT AND OBLIGATION

Section 1.1 **Mutuality.** The covenants, restrictions, and agreements set forth in this Declaration are made for the mutual and reciprocal benefit of every parcel within the Property, and are intended to create mutual equitable servitudes upon each such parcel in favor of the other parcels, to create reciprocal rights among the respective Owners, and to create privity of contract and an estate between the grantees of each and every parcel within the Property, their heirs, successors and assigns.

Section 1.2 **Benefits and Burdens.** Every person who is an Owner does by reason of taking title to land located within the Property agree to all the terms and provisions of this Declaration and shall be entitled to its benefits and subject to its burdens.

ARTICLE II
DEFINITIONS

The following words, when used in this Declaration shall have the following meanings:

Section 2.1 **Association.** The Lynnwood Bluff Owners Association, Inc., a North Carolina non-profit corporation. This is the Declaration to which the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") of the Association make reference.

Section 2. **Association Property.** Association Property means the Open Space, the Entrance Facilities, Pedestrian Trails, Common Retaining Walls and Reinforcement Zones, and any other lands, systems, facilities, personal property, equipment, rights and easements which may be deeded, leased, granted, reserved, assigned or transferred to the Association, as described in this Declaration, together with all improvements thereon and equipment, facilities and rights associated therewith.

Section 2.3 **Board.** The Board of Directors of the Association.

Section 2.4 **Common Area.** All real property (including easements, licenses and rights to use real property) and personal property located within or adjacent to the Property, if any, which is owned by the Declarant, or by the Association, and which the Declarant has designated for the common use of the Owners by reference to this Section 2.4, or by recording a Supplemental Declaration, pursuant to the terms of Section 5.3 hereof, together with all improvements constructed therein by Declarant, but not owned or maintained by a public or private utility company. A portion of the Common Area may also constitute Permanent Open Space or Limited Common Areas.

Section 2.5 **Reinforcement Zone.** Any structural reinforcement system incorporated into the back-fill behind a Retaining Wall that stabilizes the soil pressure on the wall and is concealed from view by the material used for compaction as described in any plans, specification, site plans or plats.

Section 2.6 **Intentionally Deleted.**

Section 2.7 **Declarant.** Foreverhome-Lynn, LLC and its successors and such of its assigns as to which the rights of the Declarant hereunder are specifically assigned. Declarant may assign all or only a portion of such rights in connection with portions of the Property. In the event of such a partial assignment, the assignee may exercise such rights of the Declarant as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. Reference in this Declaration to Foreverhome-Lynn, LLC as the Declarant of the Property is not intended and shall not be construed, to impose upon Foreverhome-Lynn, LLC any obligations, legal or otherwise, for the acts or omissions of third parties who purchase lots or parcels within the Property from Foreverhome-Lynn, LLC and develop and resell the same.

Section 2.8 **Limited Common Areas.** Those portions of the Common Areas primarily benefiting one or more, but less than all, Lots, and which are designated as Limited Common Areas by the Association, or, if during the Development Period, by the Declarant, as more particularly described in Article III.

Section 2.9 **Lot.** Any platted Lot or any other parcel of real property located within the Property that is intended for development, use and occupancy as an attached or detached residence for a single family.

- Section 2.10 **Owner.** The record owner or owners of any Lot.
- Section 2.11 **Patio Area.** The poured concrete area extending from the rear of the Townhomes as part of the original construction of each such Townhome.
- Section 2.12 **Permanent Open Space.** The Common Area maintained for forestry, agriculture, or active recreational uses or passive recreational uses. Permanent Open Space shall not include public or private roads within the Property. The Permanent Open Space and the uses permitted thereof shall be designated on a plat or plats of the Property. All Permanent Open Space may be subjected to easements for utilities installation and maintenance and for ingress and egress.
- Section 2.13 **Property or Subdivision.** The real property described on the attached Exhibit A and such additions and deletions thereto as may be made in accordance with the provisions of Sections 3.2 and 3.3 of this Declaration.
- Section 2.14 **Stoop.** The front stoop that is constructed as part of the original construction of each Townhome.
- Section 2.15 **Supplemental Declaration.** An instrument filed with the Register of Deeds which imposes additional restrictions and/or obligations on the land described in such instrument.
- Section 2.16 **Surface Water or Stormwater Management System.** A system which is designed and constructed or implemented within the Property to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to applicable laws, rules, and regulations. For purposes of this Declaration, the Surface Water or Stormwater Management System shall be deemed to be a part of the Common Area and shall include any drainage swales located within the Property and any drainage easements set forth on any recorded plat of the Property.
- Section 2.17 **Townhome.** One unit of a multi-unit single family attached residence, located on a Lot as shown on the Plat.

ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION:
ADDITIONS AND DELETIONS

Section 3.1 **No Implied Extension of Covenants.** Each Owner and each tenant of any improvements constructed on any Lot, by becoming an Owner or tenant, shall be deemed to have agreed that (a) the Property described on Exhibit A and such additional property as may be annexed pursuant to Section 3.2 hereof shall be the only Property subject to this Declaration, (b) that nothing contained in this Declaration or in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development, shall be construed as

subjecting, or requiring the Declarant to subject any other property now or hereafter owned by the Declarant to this Declaration, and (c) that the only manner in which additional land may be subjected to this Declaration is by the procedure set forth in Section 3.2 hereof.

Section 3.2 **Additional Lands.** Declarant may, but shall not be obligated to, subject additional land to this Declaration (or to the assessment provisions of this Declaration) from time to time provided only that (a) any additional land subjected to this Declaration (or its assessment provisions) shall be contiguous to the Property then subject to this Declaration (for purposes of this Section 3.2, property separated only by public or private roads, water bodies, or open space shall be deemed contiguous), and (b) the Owners of property within additional lands made subject to this Declaration (or its assessment provisions) shall be and become subject to this Declaration (or its assessment provisions), and shall be responsible for their pro rata share of common expenses for which assessments may be levied pursuant to the terms of Article VII of the Declaration. Addition of lands to this Declaration shall be made and evidenced by filing in the public records of Wake County, North Carolina, a Supplemental Declaration executed by the Declarant with respect to the lands to be added. Declarant reserves the right to supplement this Declaration to add land to the scheme of this Declaration (or its assessment provisions) pursuant to the foregoing provisions without the consent or joinder of any Owner or deed of trust holder with respect to land within the Property.

Section 3.3 **Withdrawal of Lands.** With the consent and joinder of Owners holding a majority of the votes in the Association, the Declarant may, but shall have no obligation to, withdraw at any time, or from time to time, portions of the Property from the terms and effect of this Declaration. Upon the Declarant's request, the consent and joinder of each and every Owner to such withdrawal shall not be unreasonably withheld. The withdrawal of lands as aforesaid shall be made and evidenced by filing in the public records of Wake County, North Carolina, a Supplemental Declaration executed by the Declarant with respect to the lands to be withdrawn.

Section 3.4 **Townhome Boundaries.** The boundaries of each Townhome constructed on the Property shall be as shown on the recorded plat or plats; provided, however, that the side boundary of each Townhome shall be a line consistent with and along the center of all firewalls separating a Townhome from another Townhome. In the event of any discrepancy between the boundaries of a Townhome, as described herein and the boundaries of such Townhome when shown on the recorded Plats, the description of the boundaries of the Townhome set forth herein shall control. All of the area within the boundaries of each of the Townhomes, as herein described, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

ARTICLE IV
THE ASSOCIATION

Section 4.1 **Membership.** Each Owner, including the Declarant (at all times so long as it owns any part of the Property), shall be a member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot.

Section 4.2 **Classes and Voting.** The Association shall have two classes of membership:

(a) **Class A Members.** The Class A Members shall be all Owners, with the exception of the Declarant, who shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members of the Association. However, the vote for any such Lot shall be exercised as the Owner's thereof shall determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) **Class B Members.** The Class B Member shall be the Declarant who shall be entitled to five (5) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership;

(ii) July 1, 2025;

(m) Three (3) months after ninety percent (90%) of the Lots have been conveyed to members of the Association other than the Declarant; or

(iv) Such earlier date as the Declarant may choose to terminate the Class B Membership upon notice to the Association.

Section 4.3 **Dissolution or Insolvency of the Association.** The Association shall be dissolved upon the termination of this Declaration, or upon the written assent given in writing and signed by not less than 80% of the votes in the Association, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association, or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Area not under the jurisdiction and being maintained by the Association, shall be offered to the City of Raleigh, North Carolina, or to some other appropriate governmental entity or public agency (as determined

by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted by the Association. If the City of Raleigh or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be conveyed by the Association to the City of Raleigh or such other appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located, and subject to all other applicable rights of way and easements and subject to ad valorem property taxes subsequent to the date of such conveyance.

In the event that the City of Raleigh or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Area was required to be devoted by this Declaration, such conveyance to be made subject to the rights of Owners and other matters set forth in the immediately preceding paragraph.

ARTICLE V
COMMON AREA RIGHTS

Section 5.1 **Conveyance of Common Area.** Declarant agrees that all of the Common Area owned by Declarant shall be conveyed or assigned to the Association, subject to covenants, easements, restrictions and other matters of record, on or before ninety (90) days following the conveyance of the last Lot owned by the Declarant to any party. Upon the recordation of any deed or deeds conveying Common Area to the Association, the Association shall be conclusively deemed to have accepted the conveyance evidenced by such deed or deeds.

Section 5.2 **Owners' Easement of Enjoyment.** Except for Limited Common Areas, each Owner shall have a right and easement of enjoyment in and to the Common Area for its intended purpose, which shall be appurtenant to, and shall pass with, the title to the land of such Owner, subject to the following:

- (a) The right of the owner of the Common Area, with the consent of the Declarant (if different from such owner) to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility; provided however, the Common Area may not be mortgaged or conveyed free and clear of the provisions of this Declaration without the approval of Members holding two-thirds (2/3) of the total votes that are allocated to the Association's members;
- (b) All provisions of this Declaration;
- (c) any plat of all or any parts of the Property;
- (d) governmental restrictions;

- (e) Reasonable rules and regulations governing use and enjoyment of the Common Area implemented by the Declarant or the Association;
- (f) The rights of the Declarant under Section 5.4 to add to or withdraw land from the Common Area;
- (g) Easements, restrictions, agreements and other matters of record.

The foregoing easement of enjoyment in favor of the Owners shall not be construed to create or imply any other easements or rights not expressly created by this Declaration, it being the intent hereof to limit the Owners' rights of use of specific portions of the Common Area to only the intended purposes of such portions of the Common Area. For example, the creation of each Owner's right to drain such Owner's Lot into the portions of the Common Area included within the Surface Water or Stormwater Management System, does not create any right of access by any Owner to such portions of the Common Area over any other Owner's Lot or other privately owned portions of the Subdivision.

Section 5.3 **Owner's Easement of Enjoyment — Limited Common Areas.** Where Common Areas are designated as Limited Common Areas, only the Owners of Lots benefited by the Limited Common Areas will have the right and easement of enjoyment and use in and to said Limited Common Areas, which such right and easement Owners shall exercise in accordance with, and subject to, the limitations of Section 5.2.

Section 5.4 **Right of the Declarant to Designate Property as Common Area or to Withdraw Property from the Common Area.** Notwithstanding anything to the contrary contained in this Declaration, the Declarant shall have the right, in its sole discretion, to designate land, easements, use rights and personal property owned by the Declarant as Common Area, provided only that such land shall be located within the Property or contiguous to the Property (for purposes of this Section 5.4, property separated only by public or private roads, water bodies, commercial properties, or open space shall be deemed contiguous). For so long as the Declarant shall own any Lot, the Declarant may, at any time, withdraw, or cause to be withdrawn, land from the Common Area in the Declarant's sole discretion without the consent of or notice to any Owner. The prior sentence notwithstanding, in the event such withdrawal of Common Area shall materially and adversely affect any Lot, or materially and adversely affect access, visibility, or drainage to or from any Lot, the Declarant shall not have the right to withdraw such Common Area without the consent and joinder of the Owner of the Lot which is so affected. Addition of land to and withdrawal of land from the Common Area shall be evidenced by recording a Supplemental Declaration in the public records of Wake County, North Carolina, which shall specifically reference such addition or withdrawal. Withdrawal of land from the Common Area by the Declarant shall terminate any and all easements and rights of use of the Owners in such land. No land owned by the Declarant shall be deemed to be Common Area unless such land is expressly referenced as such under Section 2.4 hereof, or subsequently designated as such by the Declarant pursuant to Section 2.4 hereof and this Section 5.4, even if the Declarant consents or acquiesces to the use of such land by the Owners. In the event any land, easements, use rights, or personal property owned by the Association shall be

withdrawn from the Common Area pursuant to this Section 5.4, upon the Declarant's written request, the Association shall promptly execute and deliver to the Declarant any and all deeds, bills of sale, assignments or other conveyance documents as may be necessary or appropriate to effectuate the withdrawal of such Common Area.

Section 5.5 **Maintenance of Common Area and Compliance with Applicable Permits.** The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Area and any improvements and landscaping (except utilities owned and maintained by public or private utility companies providing water, sewer, electrical, fire protection, cable television, telephone, or similar utilities to the Property, or any portion thereof) situated on the Common Area, if any. The Association shall maintain all lakes, swales, drainage areas, drainage easements, and control structures, and shall preserve and protect all designated conservation areas and littoral zones located within the Property, in accordance with all permit requirements and conditions contained in applicable dredge, fill, consumptive use, surface water permits, or any other applicable permits issued by governmental agencies, and all statutes, rules, regulations and requirements pertaining to surface water management, drainage and water quality promulgated by all other local, state and federal authorities having jurisdiction over the Property. The Association shall maintain those portions of the Common Area designated by applicable permit as conservation tracts, stormwater management tracts or similar designations, in accordance with all permit requirements, rules, and regulations promulgated by all local, state and federal authorities having jurisdiction over the Property. The Association shall be responsible for the maintenance, operation and repair of any Surface Water or Stormwater Management System on the Property pursuant to the requirements of the applicable governmental authority. All maintenance obligations of the Association shall be performed as ordered by the Board of Directors of the Association, and all or any portion of the cost of such maintenance incurred by the Association pursuant to this Section 5.4, shall be a common expense of the Association to be collected and paid in the manner prescribed by this Declaration.

Section 5.6 **Easement for Maintenance Purposes.** The Declarant hereby grants to the Association and its successors, assigns, agents, and contractors, a perpetual, nonexclusive blanket easement in, on, over and upon the Property as may be reasonably necessary for the purpose of maintaining the Common Area, including the Surface Water or Storm Water Management System, or other portions of Property to be maintained by Association, in accordance with the requirements of this Declaration, including, without limitation, in, on, over, and upon each Lot (provided, however, that such easement shall be released with respect to any portion of a Lot on which a residence is constructed and located. The easement granted hereby shall not be exercised by any party in a manner which materially and unreasonably interferes with the use, occupancy, or enjoyment of any improved portion of the Property or Permanent Open Space, or easement which is prohibited by the law. Further, in the event that any portion of the Property shall be damaged or altered in any way as the result of the exercise of the easement rights granted hereby, such portions of the Property shall be immediately restored to the condition that existed immediately prior to such damage or alteration by the party exercising such rights.

Section 5.7 **Taxes and Governmental Assessments.** The Association shall pay

when due, and in any case before the accrual of penalties thereon, all taxes, assessments, license fees, permit fees and other charges imposed by any governmental authority in connection with the Association's ownership or operation of the Common Area. Provided, however, that the Association may institute an appropriate legal proceeding for the purpose of contesting or objecting to the amount or the validity of any such tax, assessment, fee, or charge by appropriate legal proceedings. If the Association fails to pay any governmental charge when due or fails to contest any governmental charge in a timely and appropriate legal proceeding, then each Owner of a Lot shall become personally obligated to pay to the governmental authority imposing such charge a portion of the charge in an amount determined by multiplying the total charge by a fraction, the denominator of which is the total number of Lots and the numerator of which is the number of Lots owned by the Owner for whom the calculation is being performed (the "Owner's Share"). If the Owner does not pay the Owner's Share within thirty (30) days following actual notice to the Owner of the Owner's Share, then the Owner's Share shall become a continuing lien on the Lot owned by the Owner, and the governmental entity may bring an action at law against the Owner to obtain payment of the Owner's Share or may foreclose the lien against the Lot of the Owner.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 6.1 **Architectural Review and Approval.** Except for the initial construction of residential dwellings and related structures, landscaping and other improvements by Declarant ("Initial Construction"), no landscaping, improvement or structure of any kind, including without limitation, any building, fence, play equipment, wall, screen enclosure, sewer, drain, disposal system, landscape device or object, driveway or other improvement shall be commenced, erected, placed or maintained upon any Lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same have been submitted to, and approved in writing by the Association. All plans and specifications shall be evaluated as to visual and acoustical privacy and as to the harmony of external design and location in relation to surrounding structures, topography, existing trees and other natural vegetation and as to specific conformance with architectural criteria which may be imposed from time to time by the Declarant or the Association. It shall be the burden of each Owner to supply one (1) set of completed plans and specifications to the Architectural Review Board ("ARB") and no plan or specification shall be deemed approved unless a written approval is granted by the ARB to the Owner submitting same. The ARB shall approve or disapprove plans and specifications properly submitted within thirty (30) days of each submission. Any change or modification to an approved plan shall not be deemed approved unless a written approval is granted by the ARB to the Owner submitting same.

Section 6.2 **Architectural Review Board.** The architectural review and control functions of the Association shall be administered and performed by the ARB, which shall consist of three (3) or five (5) members who need not be members of the Association. The Board of Directors of the Association shall have the right to appoint and remove all of the members of the ARB. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof shall be filled by the Board of Directors.

Section 6.3 **Powers and Duties of the ARB.** The ARB shall have the following powers and duties:

(a) To recommend amendments to the architectural criteria to the Board at such time as the Board shall have the right to adopt or amend architectural criteria for the Property. For so long as the Declarant shall be entitled to elect or appoint a majority of the members of the Board, only the Declarant shall have the right to promulgate, amend, eliminate, or replace architectural criteria applicable to architectural review to be conducted by the Association. At such time as members of the Association shall elect a majority of the members of the Board, such architectural criteria shall be promulgated, amended, eliminated, or replaced by the Board. Any amendment of the architectural criteria shall be consistent with the provisions of this Declaration. Notice of any amendment to the architectural criteria, which shall include a verbatim copy of such amendment, shall be delivered to each member of the Association. The delivery to each member of the Association of notice and a copy of any amendment to the architectural criteria shall not, however, constitute a condition precedent to the effectiveness or validity of such amendment. It shall not be necessary for the architectural criteria, or any amendment thereto, to be recorded.

(b) To require submission to the ARB of one (1) complete set of all plans and specifications for any improvement or structure of any kind requiring review and approval of the ARB pursuant to this Article VI. The ARB may also require submission of samples of building materials proposed for use on any Lot, and may require tree surveys to show the effect of the proposed improvements on existing tree cover, and such additional information as reasonably may be necessary for the ARB to completely evaluate the proposed structure or improvement in accordance with this Declaration and applicable architectural criteria.

(c) To approve or disapprove in accordance with the provisions of this Article VI, any improvements or structures of any kind (other than Initial Construction), or any change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot, and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon. All decisions of the ARB may, but need not be evidenced by a certificate in recordable form executed under seal by the President or any Vice President of the Association. Any party aggrieved by a decision of the ARB shall have the right to make a written request to the Board, within thirty (30) days of such decision, for a review

thereof The determination of the Board upon review of any such decision shall be dispositive.

(d) To adopt a schedule of reasonable fees for processing requests for ARB approval of proposed improvements. Such fees, if any, shall be payable to the Association, in cash, at the time that plans and specifications are submitted to the ARB.

Section 6.4 **Compensation of ARB.** The Board may, at its option, pay reasonable compensation to any or all members of the ARB.

Section 6.5 **Reserved.**

Section 6.6 **Variance.** The Declarant and the ARB may authorize variances from compliance with any architectural provisions of this Declaration or applicable architectural criteria when circumstances such as topography, natural obstructions, hardships, or aesthetic or environmental considerations require same. Such a variance must be evidenced by a document signed by an authorized representative of the Declarant or ARB, as applicable. If such a variance was granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provisions of this Declaration or applicable architectural criteria covered by the variance, nor shall it effect in any way an Owner's obligation to comply with all governmental laws and regulations, including but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

Section 6.7 **Limited Liability.** In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Declarant, the ARB, or the Association as contemplated by this Article VI, neither the Declarant, the ARB, nor the Association shall be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way related to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld by the Declarant, the ARB, or the Association.

ARTICLE VII
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 7.1 **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, jointly and severally, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due, and costs, including,

without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made in favor of the Association and the Association shall be entitled to file a document evidencing such lien in the land records of Wake County. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Deed of Trust or on any Deed of Trust to Declarant duly recorded in the land records of Wake County and all amounts advanced pursuant to such Deed of Trust and secured thereby in accordance with the terms of such instrument. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Deed of Trust holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within five (5) days after receiving a written request therefore and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Annual assessments shall be levied at a uniform rate per Lot and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

Section 7.2 Purpose of Assessments.

7.2.1 The annual assessments levied by the Association shall be used for the purposes of management and accounting fees, taxes, insurance, utility, and other fees and charges relating to the Common Area, to fund the obligations of the Association set forth in Section 5.5 hereof, and for all other purposes reasonably contemplated by this Declaration, the Articles, the Bylaws, or any cost sharing or similar agreement to which the Association is or may become a party. Further, such annual assessments may be levied to fund reasonable reserves for deferred maintenance of, or non-recurring expenses related to, the Common Area. Assessments collected by the Association to fund reserves shall be separately accounted for, it being the requirement of this Declaration that such funds shall be used exclusively for deferred maintenance of, or non-

recurring expenses related to, the Common Area including, but not limited to, the Surface Water or Stormwater Management System.

7.2.2 The Board of Directors may levy special assessments for any purpose relating to permissible or required activities of the Association pursuant to this Declaration, the Articles, or the Bylaws. Any funds collected pursuant to such a special assessment shall be used solely for the purpose or purposes identified by the Board of Directors at the time such special assessment is levied.

7.2.3 In addition to the annual and special assessments provided for in this Declaration, the Association may levy, in any calendar year, a capital assessment contribution for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair, or replacement of any capital improvement upon the Common Area, provided that, except with respect to the Capital Contribution, as hereinafter defined, any such capital assessment shall require the vote of the holders of two-thirds of the total votes of the Association.

Section 7.3 **Calculation and Collection of Assessments.** Annual assessments shall be established by the Board of Directors based upon an annual budget. Each Owner's pro rata share of the total annual assessment or any special assessment shall be based upon the following calculations:

(a) Owners of Lots shall pay a pro rata share of annual and special assessments which shall be allocated among the Owners as provided in subparagraph (b) of this Section 7.3.

(b) All annual and special assessments shall be established at a uniform rate per Lot.

(c) The assessment obligations of each Owner other than the Declarant shall commence upon the recordation of this Declaration in the current public records of Wake County, North Carolina. Annual assessments shall be collectable in advance on a periodic basis established by the Board of Directors from time to time, which periodic basis shall not be less frequent than annually. Special and capital assessments shall be collectible in advance in the manner established by the Board of Directors at the time such special assessments are authorized. Notwithstanding anything to the contrary, at the first conveyance of any Lot with a completed residential dwelling thereon, the grantee of such conveyance shall pay the Association the sum of \$300.00 for each Lot as a contribution to the capital of the Association (the "Capital Contribution"). The Association may use the Capital Contribution or any part thereof for any of the purposes authorized for assessments by this Declaration.

(d) The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year (or, if the assessment has not been established at the time an

Owner purchases such Owner's Lot, at least thirty (30) days prior to the due date of the first installment in the case of the initial budget). The budget and the assessment shall become effective unless disapproved at a meeting by the holders of a majority of the total Association votes. Notwithstanding the foregoing, however, in the event the members disapprove the proposed budget or the Board fails for any reason to set the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 7.4 **Effect of Non-Payment of Assessment: Lien, Personal Obligation, and Remedies of Declarant.** The lien of the Association shall be effective from and after recording in the public records of Wake County, North Carolina, a claim of lien stating the description of the Lot encumbered thereby, the name of the Owner, the amount and the due date. Such claim of lien shall include assessments which are due and payable when the claim of lien is recorded as well as assessments which may accrue thereafter, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as herein provided. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record, and the affected Owner shall pay the cost of such satisfaction. If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the due date at the highest lawful rate, and the Association may at any time thereafter bring an action to enforce the lien authorized hereby by appropriate foreclosure proceedings and/or a suit on the personal obligation against the Owner.

Section 7.5 **Subordination of Lien to Deeds of Trust.** The lien of the assessments provided for by this Declaration shall be subordinate to the lien of any bona fide Deed of Trust which is perfected by recording prior to the recording of the claim of lien for any such unpaid assessments. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of the affected Lot by deed in lieu of foreclosure, pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure of such Deed of Trust. No sale or other transfer shall release any Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. A written statement of the Association that the lien is subordinate to a Deed of Trust, shall be dispositive of any question of subordination.

Section 7.6 **Declarant and Builder Assessments.** Notwithstanding any provision of this Declaration to the contrary, during the Development Period (as defined below) the Lots and other portions of the Property owned by the Declarant and Lots owned by ForeverHome LLC, or the builder of the initial improvement on any Lot (a "Builder") shall not be subject to any annual or special assessments levied by the Association or to any lien for such assessments. During the Development Period, the Declarant shall pay the balance of the actual operating expenses of the Association (excluding costs of major repairs, deferred maintenance, replacements and reserves) remaining after the Association levies and collects assessments from Owners (other than the Declarant). The Declarant shall be obligated to fund such balance only as the expenses are actually incurred by the Association during the Development Period. The Development Period shall begin upon the conveyance of the first Lot in the Property to an Owner other than the Declarant and shall continue until (i) the Declarant shall notify the Association that it will no

longer pay for operating deficits of the Association; or (ii) the Class B Membership shall cease and be converted to Class A Membership. Upon termination of the Declarant's agreement to pay operating deficits, the Declarant shall become obligated to pay assessments on Lots owned by it within the Property on the same basis as other Owners. In no event shall the Declarant be obligated to pay for operating deficits of the Association after the Declarant no longer owns any Lots within the Property.

ARTICLE VIII
EXTERIOR MAINTENANCE AND SPRINKLER MAINTENANCE

Section 8.1 **Exterior Maintenance.** In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Townhome which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, Patio, Area, Stoop, Fences installed by Declarant or approved by the Association, exterior post lights (excluding electricity therefor), and other exterior improvements. Such exterior maintenance shall not include glass surfaces, or screens for windows and doors, or any improvements contained within courtyards or areas secured by the owner or the repair or reconstruction of any improvements on any lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect. The Association shall not be responsible for damage to vegetation planted by a Lot Owner. If, in the opinion of the Association any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period at the expense of the Owner. *The Owner shall not plant any vegetation in the front or rear yard except with the prior written approval of the Association. In the event a Lot Owner selects unusual or exotic vegetation for his Lot, which vegetation necessitates extraordinary maintenance and care by the Association, the Association reserves the right to impose an individual assessment upon the individual Lot Owner for any costs attributable to said extraordinary maintenance and care of his vegetation.*

As a matter of information to future Members of this Association, the Declarant wishes to make it known that it is a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some Townhomes will require far more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord in their belief that all Members of the Association will be benefited by the variety of exteriors and, therefore, the Association should provide exterior maintenance and make a uniform rate of charge without regard to the actual cost of maintenance of each Townhome.

Section 8.2 **Sprinkler System Maintenance.** The sprinkler systems installed in each Townhome shall be Limited Common Areas benefitting the Lots where each Townhome is located. The Association shall provide maintenance to the sprinkler systems and all costs associated with maintenance, repair, and replacement of the sprinkler systems shall be an expense allocated to the Owner of the Lots where the sprinkler systems are located and may be recovered by one or more special assessments or limited common area assessments levied by the Board

equally against the benefitted Owners. It is anticipated that the annual budget will contain a line item for such special assessments or limited common area assessments in the approximate amount of \$___ per Lot, which amount may change from time to time and shall be in addition to all other Assessments levied against the Lots.

Section 8.3 **Access.** For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after the notice to the Owner provided under Section 8.1, to enter upon any Lot at reasonable hours on any day except Sunday. In the case of emergency repairs, access will be permitted at any time with only such notice as under the circumstances is practical.

Section 8.4 **Party Walls.** Each wall or fence built as part of the original construction on a Lot which serves and separates any two adjoining Lots or Townhomes shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

ARTICLE IX
RESERVED

ARTICLE X
USE RESTRICTIONS AND RIGHTS AND
EASEMENTS RESERVED BY DECLARANT

Section 10.1 **Residential Use.** The Lots subject to this Declaration may be used for residential dwellings and for no other purpose except that one or more Lots may be used for model homes during the development and sale of Lots within the Property or other properties. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof except with the prior written approval of the Board and so long as the business or business activity is in compliance with applicable zoning requirements. No Lot shall be divided, subdivided or reduced in size without the prior written consent of the Declarant. Assessments for common expenses attributable to any Lot which may be subdivided pursuant to this Section 10.1 shall be reallocated by the Declarant, in its sole discretion, at the time written consent for such subdivision is given by the Declarant. No garage shall be converted or used as a bedroom, storage room, or other living space. Garages shall be used for the parking of motor vehicles and limited storage which does not interfere with such parking. Dwellings shall be occupied by no more persons than the maximum permitted by law, and by no more than one household or housekeeping unit.

Declarant or the Association shall have the right, without the consent of the Owners, to

enter into reciprocal easement agreements with one or more commercial property owners adjacent to the Property for purposes of providing cross access, cross drainage, or other mutually beneficial easements and to provide for the payment by the owners of such commercial parcels of compensation as deemed reasonable and appropriate by Declarant and/or the Association, it is sole discretion.

Section 10.2 **No Detached Buildings.** Unless approved in advance and in writing by the ARB, no detached garages, tool or storage sheds, tents, trailers, tanks, temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot. Any such structures must be constructed out of materials and reflect aesthetic design characteristics substantially similar to the residential dwelling on such Lot. No dwelling or any other structure shall be erected within any easement area shown on any plat of all or any portion of the Property or within any easement reserved by Section 11.1 of this Declaration.

Section 10.3 **Leasing.** Improved Lots may be leased for residential purposes only upon review and approval of lease by the Board of Directors. All leases shall be for a minimum term of at least 6 months. All leases shall require that the tenant acknowledge receipt of a copy of this Declaration, the Bylaws, use restrictions and rules and regulations of the Association. No owner may rent a Lot without the prior written consent of the Board of Directors and in no event may greater than twenty percent (20%) of the lots be rented.

Section 10.4 **Landscaping.** Landscaping shall be installed on each Lot by Declarant. Any additional landscaping for any Lot must be approved by the Board/Architectural Committee.

Section 10.5 **Motor Vehicles and Boats.** No motor vehicles, except four wheel passenger vehicles that are road worthy and have current registration, license plates and inspection stickers, may be placed, parked or stored upon any Lot; except, boats and motorcycles may be parked inside enclosed garages. No maintenance or repair may be performed upon any boat or motor vehicle upon any Lot unless performed entirely within the garage (garage door must remain closed until maintenance/repair of vehicle is complete). Commercial vehicles shall not be parked overnight within the Property within public view. Construction trailers may be parked only with the prior written consent of the Declarant and in an area designated by the Declarant.

Section 10.6 **Nuisances.** Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to any party. 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. If a dispute or question arises as to what may be or become a nuisance, the issue shall be submitted to the Association's Board of Directors, whose decision shall be dispositive of such dispute or question. No immoral, improper or unlawful use shall be made of any portion of the Property and there shall be compliance with any and all valid laws, zoning ordinances and regulations of governmental agencies having jurisdiction thereof.

Section 10.7 **Antenna.** To the extent permitted by law and subject to the Federal Telecommunications Act, the following applies: Exterior radio and television antennae, aerials, disks and dishes for reception of commercial broadcasts and other aerials, disks and

dishes (for example, without limitation, amateur short wave or ship to shore) shall not be permitted on any Lot without permission of the ARB as to design, appearance and location or pursuant to any architectural guidelines that may be issued for that purpose.

Section 10.8 **Intentionally deleted.**

Section 10.9 **Artificial Vegetation.** No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ARB.

Section 10.10 **Signs and Flags.** U.S. flags will be permitted. Other flags may be permitted through written permission for a period of six months per issuance of permission. ARB will maintain a record of approved flags and expiration of permissions. ARB may restrict all flags by number, size, color, wear, content and/or any other criteria which do not specifically exclude a U.S. flag of reasonable proportion and condition. Subject to applicable law, no sign, banner, billboard or advertisement of any kind, including without limitation, informational signs, , "for sale" or "for rent" signs and those of contractors/subcontractors, shall be displayed on any Lot except for sign(s), banner(s), flag(s), and billboard(s) approved in advance by the ARB, and by Declarant as long as Declarant owns any Lot, or any portion of the Property. Declarant shall be entitled to erect and maintain signs and billboards advertising the Property, the Project or portions of either, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas. If permission is granted to any Owner to erect a sign within on a Lot, the ARB (and Declarant, as long as Declarant owns any Lot or any portion of the Property) reserve the right to restrict the size, shape, color, lettering, height, material and location of the sign, or in the alternative, provide the Owner with a sign to be used for such purpose. No sign shall be nailed or otherwise attached to trees.

Section 10.11 **Lighting.** Lighting which illuminates the facade of homes is permissible if it does not interfere with the "quiet enjoyment" of neighboring homes. All lighting not installed by Declarant is subject to review by the ARB. Seasonal decorative lights are subject to review by the ARB. No lighting shall be permitted which alters the residential character of the Subdivision.

Section 10.12 **Animals.** No animals, wildlife, livestock, reptiles or poultry shall be raised, bred or kept on any portion of the Property except that domesticated dogs, domesticated house cats, domesticated birds, and fish may be kept as household pets, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. Under no circumstances shall any animals which raise the insurance premium or are deemed to be "dangerous animal" pursuant to the Association's policy of liability insurance be allowed to be raised, bred or kept on any portion of the Property. Any excrement deposited by an animal on any portion of the Property shall be promptly removed and appropriately disposed of by the owner of such animal. All animals shall be kept under control by each Owner at all times and leashed when outside of the Owner's Dwelling. The Association may restrict the walking of pets to certain areas. Any animal not so kept or which poses a danger to persons, other animals or

wildlife may be permanently or temporarily removed by the Association or by animal control authorities at the request of the Association. Animals shall be kept for the pleasure of Owners only and not for any commercial or breeding use or purposes. The ability to keep a pet is a privilege, not a right. Pets may not be left unattended or leashed in yards, garages, porches or in any common area. If, in the discretion of the Board, any animal shall become dangerous or an annoyance or nuisance to other Owners, or destructive of wildlife or property, such animal may not thereafter be kept on a Lot or in a Dwelling. Further, in the event any group of animals shall collectively become dangerous or an annoyance or nuisance to other Owners, or destructive to wildlife or property, the Board shall have the right to require the applicable Owner to reduce the number of animals kept on the Lot, or to take such other remedial action as the Board shall specify in its sole discretion. All pets shall be registered, licensed and inoculated as required by law.

Section 10.13 **Maintenance of Lots and Limited Common Areas.** After construction of improvements on a Lot has commenced, no weeds, underbrush or other unsightly vegetation shall be permitted to grow or remain upon any Lot or Limited Common Area. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere within the Property other than in reasonably kept construction dumpsters. All such Lots and any improvements placed thereon, shall at all times be maintained in a neat and attractive condition and landscaping shall be maintained in a neat, attractive and orderly manner, including maintenance of grass, plants, plant beds, trees, turf, proper irrigation and lake edge maintenance, all in a manner with such frequency as is consistent with good property management. In order to implement effective control, the Association, its agents and assigns, shall have the right to enter upon any Lot for the purpose of mowing, pruning, removing, clearing, or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of the Board distracts from the overall beauty and safety of the property in accordance with the provisions of Article VIII hereof. During construction of the dwelling or other improvements, the builder will be required to maintain his Lot in a clean condition, providing for trash and rubbish receptacles and disposal. Construction debris shall not be permitted to remain upon any Lot.

Section 10.14 **Fences.** Except as approved by the Declarant as part of Initial Construction, or as subsequently approved by the ARB, no fence, wall or other barrier shall be constructed upon any Lot or any other portion of the Property.

Section 10.15 **Intentionally Deleted.**

Section 10.16 **Window Air Conditioning.** No window air conditioning units shall be installed on any building within the Subdivision.

Section 10.17 **Compliance with Laws.** All Owners and other occupants of the Property shall at all times comply with the terms of all environmental, land use, marketing and consumer protection ordinances, statutes, regulations, and permits applicable to the Property or to any improvements constructed thereon.

Section 10.18 **Platting and Additional Restrictions.** The Declarant shall be entitled at

any time, and from time to time, to plat or replat all or any part of the Property owned by it, and to file any covenants and restrictions, or amendments to this Declaration, with respect to any undeveloped portion or portions of the Property owned by the Declarant.

Section 10.19 **Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swells, storm sewers or storm drains. Declarant hereby reserves for the benefit of Declarant, any builder who has purchased any Lot(s) for the purpose of the construction of a residence thereon and the resale of such Lot(s) and residence(s), and the Association and their respective successors and assigns, a perpetual easement across the Common Area and the Lots for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. Notwithstanding the foregoing, in no event shall any exercise of such right materially adversely affect the drainage flows over and across any Lot or the Common Area without the prior written consent of the Owner of such Lot or the Declarant and the Association, respectively.

Section 10.20 **Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 10.21 **Setbacks.** No building shall be located on any Lot nearer to the front or rear Lot line or to any side Lot line than shall be permitted under applicable subdivision ordinances of the City of Raleigh and Wake County or other applicable laws, rules, and regulations. Notwithstanding any more permissive governmental regulations, no building other than a Townhome shall be located on any Lot nearer to the side lot line than ten (10) feet without Declarant's or the Association's prior written consent.

Section 10.22 **Utility Lines.** Except as may be permitted by the ARB, no overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 10.23 **Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARB.

Section 10.24 **Party Walls.** All common party walls between individual Townhomes shall conform to the requirements of the North Carolina State Building Code. The general rules of law regarding party walls, lateral support and liability for property damage due to negligence or willful acts or omissions shall apply to each wall which is built as part of the original construction

of the Dwellings within the Properties and which is placed on the dividing line between Lots, and to all reconstruction or extensions of such walls, to the extent not inconsistent with the provisions of this Article. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 10.25 **Gardens and Play Equipment.** No vegetable garden, hammock, statuary or play equipment (including, without limitation, basketball goals) shall be constructed, erected or maintained upon any Lot unless the type and location thereof has been previously approved by the ARB. No portable sporting equipment may be installed or used in front of a townhouse or in the street or Common Areas, including, but not limited to soccer goals, skate ramps, basketball hoops, hockey nets, etc. Children's play toys and other moveable equipment of any type (garden tools, etc.) shall not remain overnight within any front yard of any Lot. No sporting equipment shall be installed which is visible from the curb and road in front of a townhouse.

Section 10.26 **Mailboxes.** All mailboxes and mailbox posts shall be of a similar style and color as that installed initially by Declarant or a builder.

Section 10.27 **Exteriors.** Any change to the exterior color, finish or texture of any improvement located on a Lot, including, without limitation, the dwelling, the roof on any dwelling or any fence, must be approved by the ARB.

Section 10.28 **Clothesline.** No exterior clothesline of any type shall be permitted upon any Lot. No outdoor clothes drying or hanging shall be permitted in the Project, nor shall anything be hung, painted or displayed on the outside of the windows (or inside if visible from the outside) or placed on the outside surfaces of doors of any of the Dwellings or any other Improvements, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of any Dwellings or any other Improvements, or any part thereof, nor relocated or extended, without the prior written consent of the Board of Directors. Window air conditioners are prohibited as previously stated.

Section 10.29 **Entry Features.** Owners shall not alter, remove or add improvements to any entry features constructed by Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the ARB.

Section 10.30 **Window Treatments.** The outside of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white or off-white. No bed sheets, newspaper, or other similar materials may be used as window treatments. No foil or other reflective materials shall be used on any windows for sun screens, blinds, shades or for any other purpose.

Section 10.31 **Fuel or Water Tanks.** No fuel tanks or water tanks shall be stored or maintained upon any Lot in such a manner as to be visible from any public street or road or from any other Lot, unless used by Declarant, temporarily, in the ordinary course of development of the

Community.

Section 10.32 **Erosion Control.** No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ARB of plans and specifications for the prevention and control of such erosion or siltation. The ARB may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling of such erosion or siltation.

Section 10.33 **Common Retaining Walls and Reinforcement Zones.** If any portion of a Common Retaining Wall or a Reinforcement Zone supporting a Common Retaining Wall is located within the boundaries of a Lot, the Residential Owner of such Lot is prohibited from installing any Improvements or performing any land disturbing activities on the Lot which may damages, weaken or compromise the structural integrity of the Common Retaining Wall, or would obstruct access to such Common Retaining Wall or the appurtenant Reinforcement Zone, without the prior written consent of Declarant or Board. Further, the Declarant of Board shall retain a perpetual easement for maintenance, repair and access to any such common retaining walls or reinforcement zones.

Section 10.34 **Association Insurance.** If and to the extent necessary to satisfy the requirements of federal, state or local law, ordinance or regulation, including without limitation the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD"), or otherwise as determined by the Board of Directors, the Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain or cause to be obtained the following insurance: for all insurable improvements, whether or not located on Common Area, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts;

(b) a public liability policy covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, directors' and officers'" liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00); and,

(c) such other insurance necessary to satisfy the requirements of applicable laws or deemed necessary in the sole discretion of the Board.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost name of the Association, as trustee for the respective benefitted parties. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Deed of Trust holder having an interest in such losses may be prohibited from participating in the settlement negotiations, if any,

related thereto. The Association's Board of Directors shall make every reasonable effort to secure insurance policies that will provide that no policy may be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 10.35 **Insurance on Townhomes.** Every Owner shall maintain in full force and effect at all times fire and hazard insurance from an insurer reasonably approved by the Board, in an amount equal to the full replacement value of his Townhome, including the value of excavations and foundations. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid as a result of enforcement by the Association or otherwise.

The Association may, at its election, procure and pay for such insurance on all buildings, improvements and Townhomes, which shall then become an expense included in the Association's budget and allocated to the Lots.

Casualty coverage shall afford protection against:

- (a) Loss or damage to property by fire or other hazards covered by a standard extended coverage endorsement; and
- (b) Such other risks as from time to time shall be customarily covered with respect to buildings and improvements similar in construction, location and use as the buildings and improvements to be insured, including, but not limited to, vandalism and malicious mischief.

Such insurance shall be issued with an insurer licensed to do business in North Carolina and holding a rating of "A" or better by Best's Insurance Reports, and such policy must provide that the insurer will not cancel, reduce or substitute coverage without first giving the Association and any mortgagee named in the policy thirty (30) days prior written notice thereof.

Section 10.36 **Intentionally Deleted.**

Section 10.37 **Parking.** The term "vehicles" as used in this section shall include registered four wheel passenger vehicles, two wheel motorized bicycles and standard bicycles only. No vehicle may be left upon any portion of the Property except upon a driveway, a designated parking space or within a garage. With the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Unit or the Property, no person shall park any commercial vehicles (including but not limited to any type of vehicle with advertising or lettering), recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles or unlicensed or inoperable vehicles within the Property except within a garage.

10.37 **Parking** The term “vehicles” as used in this section shall include registered four wheel passenger vehicles, two wheel motorized bicycles and standard bicycles only. No vehicle may be left upon any portion of the Property except upon a driveway, a designated parking space or within a garage. With the exception of emergency vehicle repairs or commercial vehicles which are temporarily parked for the purpose of servicing a Townhome or the Property, no person shall park any commercial vehicles (including but not limited to any type of vehicle with advertising or lettering), recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles or unlicensed or inoperable vehicles within the Property except within a garage.

No vehicle shall be parked on any portion of the Property, including any roadways within or adjacent to the Property, for more than a four (4) hour period, and overnight parking on any roadway is strictly prohibited.

Homeowners are responsible for guests or invitees that violate these parking restrictions.

The Homeowners Association is herein given authority to set fines accordingly for any violations of this section.”

ARTICLE XI
RIGHTS AND EASEMENTS GRANTED OR RESERVED BY DECLARANT

Section 11.1 **Easements for Ingress, Egress, Utilities and Drainage.** The Declarant reserves for itself, the Association, and their respective successors, assigns and designees, a right-of-way and perpetual, nonexclusive easement for ingress and egress and to erect, maintain and use utilities, electric, telephone and street lighting poles, wires, cables, conduits, storm sewers, sanitary sewers, water mains, gas, sewer, water lines, drainage ways and structures, cable television and radio equipment or other public conveniences or utilities, on, in and over, (i) any portion of the Common Area; (ii) any area designated as an easement, private street or right-of-way area on any plat of all or any portion of the Property; and (iii) a strip of land within each Lot five feet in width along the front, rear and sides of each Lot. Declarant will not be responsible for damage or destruction of any landscaping, fencing, or other improvement placed in the foregoing easement.

Section 11.2 **Drainage Flow.** Drainage flow shall not be obstructed or diverted from drainage easements. The Declarant or the Association may, but shall not be required to, cut drainways for surface water wherever and whenever such action may appear to be necessary to maintain reasonable aesthetic standards relative to the Property and surrounding properties. These easements include the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other reasonable action necessary to install utilities and to maintain reasonable aesthetic standards, but shall not include the right to disturb any permanent improvements erected upon a Lot which are not located within the specific easement area designated on the plat or reserved in this Declaration. Except as provided herein, existing drainage shall not be altered so as to divert the flow of water onto an adjacent Lot or into sanitary sewer lines.

Section 11.3 **Future Easements.** Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights of way on any Lots within the Property owned by Declarant. In addition, Declarant hereby expressly reserves the right to grant easements and rights-of-way over, under and through the Common Area so long as Declarant shall own any portion of the Property. The easements granted by Declarant shall not materially or adversely affect any improvements or unreasonably interfere with the enjoyment of the Common Area.

Section 11.4 **Cable Television or Radio.** Declarant reserves for itself, and its successors and assigns, an exclusive easement for the installation, maintenance and supply of radio and television cables within the rights of way and easement areas depicted upon any plat of any portion of the Property or within any easement reserved by this Declaration.

Section 11.5 **Easements for Maintenance Purposes.** The Declarant reserves for itself, the Association, and their respective agents, employees, successors or assigns, easements, in, on, over and upon each Lot and the Common Area as may be reasonably necessary for the purpose of preserving, maintaining or improving retaining walls, reinforcement zones, roadways, landscaped areas, wetland areas, lakes, ponds, hammocks, wildlife preserves or other areas, the maintenance of which may be required to be performed by the Declarant or the Association.

Section 11.6 **Declarant Rights Regarding Temporary Structures, Etc.** Declarant reserves the right for itself, its successors, assigns, nominees and grantees, to erect and maintain such temporary dwellings, trailers, model houses and any other structures upon Lots owned by the Declarant, which it may deem advisable for development purposes and to do all acts reasonably necessary in connection with the construction and sale of improvements located on the Lots within the Subdivision. Nothing contained in this Declaration shall be construed to restrict the foregoing rights of Declarant.

Section 11.7 **Easements Over Lots.** The Lots shall be subject to, and the Declarant does hereby grant, in addition to the easements described above, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, any builders and subcontractors authorized by Declarant, the Members, the Owners, and the successors-in-title of each:

(a) **Townhome Maintenance.** There is reserved for the benefit of each Lot a reciprocal appurtenant easement between all adjacent Lots for the purpose of maintaining or repairing the improvements located on each Lot, which easement shall extend to a distance of five (5) feet as measured from any point on the common boundary between the Lots. This easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Lots over which this easement is exercised which arises out of such maintenance or repair work. In addition, each Lot shall be subject to a perpetual easement in favor of the Association and its contractors for the maintenance of the Townhomes and of the landscaping and other features located on the Lots.

(b) Maintenance. Each Lot shall be subject to a perpetual easement in favor of the Association and its contractors for the maintenance of the Lots as provided for in the Article entitled "Maintenance" herein.

(c) Lot Construction and Boundary Line Improvements. Each Lot shall be subject to a temporary construction easement in favor of the Declarant, authorized builders and subcontractors, and adjoining Lot Owners for the construction of any Lot, including, but not limited to, installation of boundary line improvements such as fences, walls and hedges. Any boundary line improvement made by an adjoining Lot Owner shall first be approved by Declarant or the Association prior to installation.

Section 11.8 Easement for Support. Every Lot and Unit which contributes to the lateral and/or vertical support of any adjoining Townhome(s) shall be burdened with an easement of support for the benefit of such adjoining Townhome(s).

Section 11.9 Easement for Storm Water Drainage. An easement is hereby established over Common Area, Limited Common Area and every Lot to allow runoff from the built-upon areas of the Townhomes to drain into the storm water system for the development. This may be accomplished through a variety of means, including roof drain gutters which drain to the street, or grading perimeter swales to collect the Lot runoff and directing the runoff into a component of the storm water system.

Section 11.10 Easements for Common Retaining Walls and Reinforcement Zones. Declarant hereby reserves for the benefit of Declarant and the Association, an easement over and upon those portions of the Property on which any part of a Retaining Wall or any part of a Reinforcement Zone supporting a Retaining Wall is located ("Retaining Wall Easement"). The purpose of this Retaining Wall Easement is to allow Declarant and Association to inspect, repair, reconstruct, and replace the Retaining Walls and the Reinforcement Zones supporting such Retaining Walls. The Retaining Wall Easement includes the right of Declarant and the Association to enter upon any Lot on which any portion of a Retaining Wall or Reinforcement Zone for a Retaining Wall is located, including the right to remove any Improvement, materials or other obstructions which impede access to the Retaining Wall or Reinforcement Zone or which violate any restrictions herein.

ARTICLE XII
GENERAL PROVISIONS

Section 12.1 **Remedies for Violations.**

12.1.1 If any Owner or other person shall violate or attempt to violate any of the covenants or restrictions herein set forth, the Association, the Declarant, or any Owner shall have all remedies available at law or in equity, which shall be cumulative, including, without limitation (i) to sue for damages against those so violating or attempting to violate any such covenant; or (ii) to file suit against those so violating or attempting to violate any such covenant for the purpose of preventing or enjoining all or any such violations, including mandatory

injunctions requiring compliance with the provisions of this Declaration. The prevailing party in such suits shall be entitled to recover from the non-prevailing party or parties, reasonable attorneys' fees for pre-trial preparation, trial, appellate, arbitration, and bankruptcy proceedings.

12.1.2 In addition to all other remedies, and to the maximum extent allowed by law, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, lessees, invitees or employees, to comply with any covenant or restriction herein contained, or rule of the Association.

Section 12.2 **Severability.** Invalidation of any of the provisions of this Declaration by judgment or court order shall not affect or modify any of the other provisions, which shall remain in full force and effect.

Section 12.3 **Additional Restrictions.** No Owner, without the prior written consent of the Declarant, may impose any additional covenants or restrictions on any part of the Property, but the Declarant may include in any contract or deed hereafter made and covering all or any part of the Property, any additional covenants or restrictions applicable to the Property so covered which are not inconsistent with and which do not lower standards established by this Declaration.

Section 12.4 **Titles.** The addition of titles to the various sections of this Declaration are for convenience and identification only and the use of such titles shall not be construed to limit, enlarge, change, or otherwise modify any of the provisions hereof, each and all of which shall be construed as if not entitled.

Section 12.5 **Termination or Amendment.** The covenants, restrictions, easements and other matters set forth herein shall run with the title to the Property and be binding upon each Owner, the Declarant, the Association, and their respective successors and assigns for a period of fifty (50) years, and shall be automatically renewed for successive ten (10) year periods unless terminated as herein provided. The Owners holding two-thirds (2/3) or more of the total votes of the Association may alter or amend these covenants. Any amendment to this Declaration shall be executed by the Association and Declarant, if applicable, and shall be recorded in the current public records of Wake County, North Carolina. For so long as there is a Class B Membership and provided HUD or VA shall have insured or hold a Deed of Trust within the Property, the following actions shall require approval of the Federal Department of Housing and Urban Development ("HUD") and the Veteran's Administration ("VA"): annexation of additional properties, dedication of any portion of the Common Area, and amendment of this Declaration.

Termination of these covenants shall be pursuant to the provisions of the North Carolina Planned Community Act, N.C. Gen. Stat. §§ 47F-1-101, *et seq.*

This Declaration may be amended unilaterally by the Declarant at any time prior to the end of the Declarant Control period. This Declaration may also be amended unilaterally by Declarant if: (a) such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) such amendment is necessary to enable any reputable title insurance

company to issue title insurance coverage with respect to the Lots, (c) such amendment is required by an institutional or governmental lender or purchaser of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to enable such lender or purchaser to make or purchase loans on the Lots, (d) such amendment is necessary to enable any governmental agency or private insurance company, including but not limited to HUD and the VA, to insure or guarantee loans on the Lots, provided, however, that any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing, or (e) such amendment does not materially adversely affect the substantive rights of any Owners hereunder nor adversely affect title to any Lot without the consent of the affected Owner.

Any such amendment shall become effective upon the recording with the Register of Deeds of the instrument evidencing such change unless a later effective date is specified therein. The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate. Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the Superior Court in Wake County within one year of the date of recordation of such amendment with the Register of Deeds.

Section 12.6 **Assignment of Permit Responsibilities and Indemnification.** In connection with the platting and development of the Property, the Declarant may have assumed certain obligations in connection with the maintenance of the Surface Water or Stormwater Management System. The Declarant hereby assigns to the Association, and the Association shall be solely responsible for, all of the Declarant's obligations and responsibilities for maintenance of the Surface Water or Stormwater Management System pursuant to all applicable Permits and the plat of the Property. Subsequent to the termination of the Class B Membership, the Association shall indemnify, defend and hold the Declarant harmless from all suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury or property damage, or any other damage arising from or out of an occurrence in, upon, at or resulting from the operation or maintenance of the Surface Water or Stormwater Management System, occasioned wholly or in part by any act or omission of the Association or its agents, contractors, employees, servants or licensees.

Section 12.7 **Conflict or Ambiguity in Documents.** To the extent of any conflict, ambiguity, or inconsistency between this Declaration, the Articles, or the Bylaws, the terms of this Declaration shall control both the Articles and Bylaws.

Section 12.8 **Usage.** Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 12.9 **Effective Date.** This Declaration shall become effective upon its recordation in the public records of Wake County, North Carolina.

[SIGNATURES ON FOLLOWING PAGE]

FOREVERHOME-LYNN:

ForeverHome-Lynn LLC, a North Carolina limited liability company

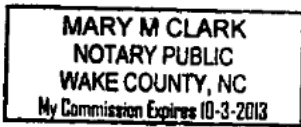
By: [Signature]
W. Carlton Midyette, Jr. Manager

By: ForeverHome, LLC, Manager

By: [Signature]
Mark Ward, Manager

State of North Carolina
County of Wake

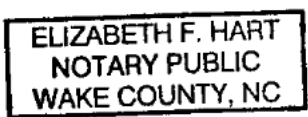
I, the undersigned Notary Public of the County of Wake and State aforesaid, certify that W. Carlton Midyette, Jr. personally came before me this day and acknowledged that he is the Manager of ForeverHome-Lynn LLC, a North Carolina limited liability company, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 28th day of May, 2013.



Mary M. Clark
My Commission Expires: Oct. 3, 2013
Mary M. Clark Notary Public
Notary's Printed or Typed Name

State of NC
County of Wake

I, the undersigned Notary Public of the County of Wake and State aforesaid, certify that Mark Ward personally came before me this day and acknowledged that he is the Manager of ForeverHome, LLC, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 23 day of May, 2013.

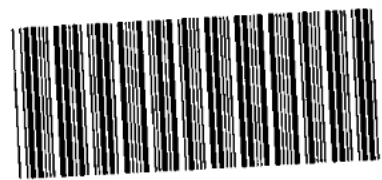


[Signature]
My Commission Expires: 6-16-17
Elizabeth F. Hart Notary Public
Notary's Printed or Typed Name

EXHIBIT A

Legal Description of the Property

BEING all of that property described on that plat entitled "Final Plat Lynnwood Bluff A Townhome Development" by Priest Craven & Associates, Inc. dated January 2011 and recorded June 6, 2012 in Book of Maps 2012, pages 548 – 552 Wake County Registry.



BOOK:015290 PAGE:00690 - 00725

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



**Wake County Register of Deeds
Laura M. Riddick**