

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TRINITY CREEK**

EACH PERSON ACQUIRING A LOT IN THE PROJECT IS BOUND BY ALL OF THE TERMS AND PROVISIONS OF THIS DECLARATION AND MUST READ IT IN ITS ENTIRETY IN ORDER TO BE FULLY AWARE OF ALL REQUIREMENTS IMPOSED.

AMONG SUCH REQUIREMENTS ARE THE FOLLOWING:

- THAT EACH OWNER OF A LOT BE A MEMBER OF, AND PAY ASSESSMENTS TO, TRINITY CREEK PROPERTY OWNERS ASSOCIATION.
- THAT APPROVAL OF THE ARCHITECTURAL CONTROL COMMITTEE BE OBTAINED BEFORE COMMENCEMENT OF ANY IMPROVEMENTS UPON OR DISTURBANCE OF A LOT, AS MORE PARTICULARLY SET FORTH IN ARTICLE VIII OF THIS DECLARATION.

THE RECITATION OF CERTAIN REQUIREMENTS OF THIS DECLARATION ABOVE DOES NOT RELIEVE ANY OWNER OF A LOT IN THE PROJECT FROM THE REQUIREMENTS OF ALL PROVISIONS OF THIS DECLARATION AND ANY AMENDMENTS TO THIS DECLARATION WHICH MAY HEREAFTER BE RECORDED.

AS SET FORTH IN THIS DECLARATION, DECLARANT RESERVES TO ITSELF THE RIGHT TO MODIFY, ALTER OR CHANGE THE DEVELOPMENT PLAN FOR THE PROJECT, CONSISTENT WITH THE UNIFORM SCHEME OF DEVELOPMENT FOR THE PROJECT. DECLARANT HAS RESERVED CERTAIN RIGHTS TO UNILATERALLY AMEND THIS DECLARATION, AS PROVIDED IN ARTICLE XIV SECTION 3 OF THIS DECLARATION. DECLARANT HAS ALSO RESERVED THE RIGHT TO ANNEX ADDITIONAL PROPERTY INTO THE PROJECT.

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS,  
AND THE FLAG OF THE UNITED STATES OF AMERICA OR  
THE STATE OF NORTH CAROLINA**

Drawn by and after recording return to:  
Crescent Holly Springs, LLC  
227 West Trade Street, Suite 1000  
Charlotte, North Carolina 28202  
Attention: Sherry L. Walton

Submitted electronically by "Parker Poe Adams & Bernstein LLP"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Wake County Register of Deeds.

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR TRINITY CREEK**

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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR TRINITY CREEK**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is made this 11<sup>th</sup> day of July, 2017, by **CRESCENT HOLLY SPRINGS, LLC**, a Delaware limited liability company ("Declarant"). All capitalized terms used in this Declaration shall have the meanings set forth in Article I or elsewhere in this Declaration.

W I T N E S S E T H:

Declarant is the owner of the real property located in Wake County, North Carolina, and more particularly described on Exhibit "A" attached hereto and incorporated by this reference (the "Initial Property"). The Initial Property is a portion of the property conveyed to Declarant by deed recorded in Book 15999 at Page 2087 of the Office of the Register of Deeds for Wake County, North Carolina. The Initial Property, together with portions of the Additional Property (defined below) that may be subjected to this Declaration, is being developed by Declarant (or one or more affiliates of Declarant) as a residential community known as Trinity Creek (the "Project").

Declarant desires to provide for the preservation of the property values, amenities and opportunities in the Project and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the easements, covenants, conditions, restrictions, charges and liens set forth and/or described in this Declaration, all in accordance with the terms of the North Carolina Planned Community Act.

Although Declarant contemplates that separate easements, covenants, conditions and restrictions (which may include easements, covenants, conditions and restrictions similar to those contained in this Declaration) may be imposed with regard to the various phases or sections of the Project, Declarant desires to impose pursuant to this Declaration easements, covenants, conditions and restrictions upon all of the Property, with the understanding that, at the option of Declarant, additional restrictions may be imposed with regard to the various phases or sections of the Project.

NOW, THEREFORE, Declarant subjects the Property to the easements, covenants, conditions, restrictions, charges and liens set forth in this Declaration, and declares that (subject to certain rights of amendment, as described below) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of protecting the value, desirability and attractiveness of the Project. Subject to the above-described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

ARTICLE I

DEFINITIONS

Section 1. "Additional Declaration" shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the Recording Office, with regard to a certain Phase, Tract, section or portion of the Property, as more particularly described in Article II, Section 2.

Section 2. "Additional Property" shall mean and refer to additional real estate near or contiguous to the Property, including the real estate conveyed to Declarant by that deed recorded in Book

15999 at Page 2087 of the Recording Office (the “Currently Owned Additional Property”), and further including all real property within eight thousand (8,000) feet of any boundary of the Property. All or any portion of the Additional Property may be made subject to the terms of this Declaration in accordance with the provisions of Article II.

Section 3. “Agency” shall mean and refer to any one of the following entities (or their successors) that holds or insures a Mortgage: the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Government National Mortgage Association.

Section 4. “Amenity Area” or “Amenity Areas” shall mean and refer to the parcel or parcels of land labeled “Amenity Area” (or a similar term) on a Plat, together with any parking area, clubhouse, pool, tennis courts, recreational field, playground or other recreational amenity or facility constructed or placed thereon for the common use and enjoyment of all Owners.

Section 5. “Amenity Area Opening Date” shall mean and refer to the date that the initial Amenity Area within the Project is completed and made available for use by Owners.

Section 6. “Annual Assessments” shall mean and refer to Assessments levied annually by the Association, as described in more detail in Article V, Section 2.

Section 7. “Architectural Changes Committee” shall have the meaning set forth in Article VIII.

Section 8. “Architectural Control Committee” shall mean and refer to the committee appointed by the Board to oversee the development and enforcement of architectural control standards and restrictions with respect to the Project and to perform certain other functions described in the Declaration.

Section 9. “Architectural and Design Guidelines” shall have the meaning as set forth in Article VIII.

Section 10. “Articles of Incorporation” shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit “B” to this Declaration and incorporated by reference, as amended from time to time.

Section 11. “Assessments” shall mean and refer to any or all of the following: Annual Assessments, Supplemental Annual Assessments, Special Assessments, Special Individual Assessments, Initial Capital Assessments, Common Drive Reserve Assessments (as defined in Article X, Section 8), and Transfer Fees.

Section 12. “Association” shall mean and refer to TRINITY CREEK PROPERTY OWNERS ASSOCIATION, a North Carolina non-profit corporation, its successors and assigns.

Section 13. “Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 14. “Builder” shall mean and refer to any home builder that purchases undeveloped Lots from Declarant for purposes of constructing Dwelling Units. If Declarant elects to construct Dwelling Units on any Lots owned by it, it shall be deemed a Builder with respect to those Lots.

Section 15. "Bylaws" shall mean and refer to the Bylaws for the Association attached as Exhibit "C" hereto and incorporated in this Declaration by reference, as amended from time to time.

Section 16. "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

Section 17. "Common Area" or "Common Areas" shall mean and refer to all real and personal property owned by the Association, and all easements granted to the Association, for the common use and enjoyment of the Owners; provided, however, that the term Common Areas shall not include any Lot that the Association may acquire through foreclosure of an Assessment lien, or by deed in lieu of foreclosure. The Common Areas shall include the Amenity Areas, Drainage Easement Areas, Entrance Monument Easements, Parking Areas, Storage Areas, Street Lights, Roadways (prior to their acceptance for maintenance by Wake County or other governmental entity) and the Trail System, including all sidewalks, paved areas, landscaped areas, signs, common mailbox facilities, ponds, basins, drainage facilities and other improvements located therein, and any other property specifically shown and designated on any Plat as "Common Area," "Common Open Area," "Common Open Space," "Open Space," "COS," "Private Right-of-Way," or a similar designation. The Common Areas initially shall be owned by Declarant for ultimate conveyance to the Association for the common use, benefit and enjoyment of the Owners. Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Project.

Section 18. "CPI" shall have the meaning set forth in Article V.

Section 19. "Declarant" shall mean and refer to Crescent Holly Springs, LLC, a Delaware limited liability company, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and the Currently Owned Additional Property, and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

Section 20. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as amended and/or supplemented from time to time.

Section 21. "Density Factor" shall mean the number of Dwelling Units permitted for each Tract if and as determined by Declarant in accordance with Article XIII. In accordance with Article XIII, Declarant may assign and allocate to each Tract, at or before the initial sale or conveyance of the Tract by Declarant to a third party, or prior to the commencement of development of any Tract developed by Declarant or an affiliate of Declarant, the maximum number of Dwelling Units that may be constructed on the Tract.

Section 22. "Dwelling Unit" shall mean and refer to a portion of the Project, whether developed or undeveloped, intended for development, use and occupancy as an attached or detached dwelling for a single family. Each Lot containing vacant land intended for development or land on which improvements are under construction shall be deemed to contain one (1) Dwelling Unit. Upon issuance of one or more Certificate(s) of Occupancy for a structure or structures constructed on a Lot, the Lot on which such structure(s) are constructed shall be deemed to contain one (1) Dwelling Unit. Each Tract shall be

deemed to contain the number of Dwelling Units equal to the number of Lots shown on recorded Plats subdividing such Tract into Lots.

Section 23. “Drainage Easement Area” or “Drainage Easement Areas” shall mean and refer to the parcel or parcels of land labeled “Drainage Easement,” “SDE,” or “BMP Pond” (or a similar term) on a Plat, together with any retention ponds, water quality basins, underground pipes, catch basins or other storm drainage improvements constructed or placed thereon for the common use and enjoyment of all Owners.

Section 24. “Entrance Monument Easements” shall mean and refer to the easements reserved by Declarant and granted to the Association in Article X over, across and under certain areas of the Property, for the installation and maintenance of entrance monuments, landscaping and related improvements for the Project, all as more particularly described in Article X.

Section 25. “Guidelines” shall mean and refer, collectively, to the Architectural and Design Guidelines, the Landscape Guidelines and the construction rules described in Article VIII, Section 3(c).

Section 26. “Improvement” shall have the same meaning as set forth in Article VIII.

Section 27. “Initial Capital Assessment” shall mean and refer to the amount that a Builder shall collect upon the initial transfer of title to a Dwelling Unit, as more particularly set forth in ARTICLE VSection 7.

Section 28. “Landscape Guidelines” shall have the meaning as set forth in Article VIII.

Section 29. “Lot” shall mean and refer to any numbered or lettered tract of land (excluding any Common Area) shown on any Plat which is a part of the Property and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract of land is located. No tract of land shall become a “Lot,” as that word is used in this Declaration, until a Plat of the area in which the same is located is recorded in the Recording Office.

Section 30. “Maintenance Areas” shall have the meaning as set forth in Article X. The Maintenance Areas shall include any Off-Site Maintenance Areas.

Section 31. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 32. “Mortgage” shall mean any mortgage or deed of trust constituting a first lien on a Lot, Tract or Dwelling Unit.

Section 33. “Mortgagee” shall mean the owner and holder of a Mortgage at the time such term is being applied. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner’s Lot, Tract and/or Dwelling Unit.

Section 34. “North Carolina Planned Community Act” shall mean and refer to Chapter 47F of the North Carolina General Statutes, as it may be amended from time to time, or any successor statutory provision that replaces Chapter 47F of the North Carolina General Statutes.

Section 35. “Occupant” shall mean and refer to any person occupying all or any portion of a Lot, Tract or the Property for any period of time, regardless of whether such person is a tenant of the Owner of such Lot, Tract or portion of the Property.

Section 36. “Off-Site Maintenance Areas” shall mean and refer to those portions of the Additional Property that are maintained by the Association, as provided in ARTICLE IV Section 6. The Off-Site Maintenance Areas may include landscaped or buffer areas located along the street frontage of the Additional Property, vacant parcels or other open spaces, drainage improvements, entrance roads, entrance features, signs and similar common improvements within the Additional Property that serve or benefit the Project. The Association shall have the right to elect whether to treat any portions of the Additional Property as Off-Site Maintenance Areas.

Section 37. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, Tract or other portion of the Property, but excluding those having such interest merely as security for the performance of an obligation. Furthermore, Declarant shall be deemed an Owner for so long as Declarant owns any portion of the Property or of the Currently Owned Additional Property.

Section 38. “Parking Areas” shall mean and refer to the parking lot or lots which may be constructed over certain portions of the Common Area(s), including, without limitation, the Amenity Areas, for the common use, benefit and enjoyment of the Owners, their families, guests and invitees.

Section 39. “Person” shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

Section 40. “Phase” shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Recording Office.

Section 41. “Plat” shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the Recording Office.

Section 42. “Project” shall mean and refer to the residential development and amenity facility being developed by Declarant on the Property and commonly known as Trinity Creek.

Section 43. “Project Documents” shall mean and refer to this Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 44. “Property” shall mean and refer to the Initial Property, as defined in the recitals, as well as such portions of the Additional Property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II.

Section 45. “Recording Office” shall mean and refer to the Office of the Register of Deeds for Wake County, North Carolina.

Section 46. “Roadways” shall mean and refer to the roads, streets, entranceways and cul-de-sacs in the Project, as shown on the Plats, and any other roads, streets, entranceways and cul-de-sacs on the Property, as well as any paved areas, curbs, gutters, sidewalks, medians, signs, street trees and other Improvements located within such areas, all to be privately maintained by the Association until accepted for maintenance by Wake County or other governmental entity, as set forth in Article IV, Section 6.

Section 47. “Special Assessments” shall mean and refer to Assessments levied by the Association for the purpose of defraying, in whole or in part, the cost of (i) the construction of any improvements in the Common Areas and/or the Maintenance Areas which are not originally constructed by Declarant; or (ii) the reconstruction, repair or replacement of the Common Areas and/or Maintenance

Areas, including any improvements located thereon, and including, without limitation, the Amenity Area, as described in more detail in Article V, Section 6.

Section 48. “Special Declarant Rights” shall mean and refer to the rights reserved for the benefit of Declarant in this Declaration, and those rights set forth in N.C.G.S. §47F-1-103(28). Declarant may transfer any Special Declarant Rights to any person or entity, by an instrument evidencing the transfer duly recorded in the Recording Office. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C.G.S. §47F-3-104.

Section 49. “Special Individual Assessments” shall mean and refer to Special Assessments levied by the Association against one or more particular Owners for the purposes set forth in Article V, Section 6.

Section 50. “Street Lights” shall mean and refer to those certain street lights leased or owned by Declarant or Association and installed upon, along and/or over the rights-of-way of the Roadways, Parking Areas (if any), Maintenance Areas and Common Areas.

Section 51. “Supplemental Annual Assessments” shall mean and refer to supplemental Annual Assessments levied by the Association in accordance with the provisions of Article V, Section 4(c).

Section 52. “Supplemental Declaration” shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the Recording Office, to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article II.

Section 53. “Town” shall mean and refer to the Town of Holly Springs, North Carolina.

Section 54. “Tract” shall mean and refer to any separate and identifiable tract of land which is a part of the Property, whether or not shown on a Plat, which is neither a Lot nor Common Area.

Section 55. “Tract Assessments” shall mean assessments levied against a particular Tract or Tracts to fund Tract Expenses, as more particularly described in Article V.

Section 56. “Tract Association” shall refer to any condominium association, homeowners’ association or other mandatory membership owners association having concurrent, but subordinate, jurisdiction over any Tract.

Section 57. “Tract Declaration” shall refer to any declaration of condominium, declaration of protective covenants, or similar instrument which subjects all or a portion of any property within a Tract to covenants, restrictions and/or easements in addition to those contained in the Declaration.

Section 58. “Tract Expenses” shall mean and include the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of a particular Tract or Tracts, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized in this Declaration or in the Supplemental Declarations applicable to the Tract or Tracts.

Section 59. “Trail System” shall mean and refer to any and all hard surface or soft surface walking trails, bike paths, jogging trails or similar pathways located within those portions of the Property

designated by Declarant as a part of a system of trails or paths for common use, and related amenities (such as shelters, benches and trail signs) that may be constructed by Declarant.

Section 60. “Transfer Fee” shall mean and refer to the fee that the Association may collect upon transfer of title to a Lot, as more particularly set forth in ARTICLE VSection 7.

Section 61. “Turnover Date” shall have the meaning set forth in Article IV.

In addition, the definitions set forth in N.C.G.S. §47F-1-103 are incorporated in this Declaration by reference, and the terms defined in the North Carolina Planned Community Act shall have the meanings set forth in that statute when used in this Declaration or the Project Documents, unless those terms are expressly defined otherwise in this Declaration or the Bylaws, or unless it is plainly evident from the context that a different meaning is intended.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 1. Property Made Subject to this Declaration. The Initial Property is made subject to this Declaration, and the Initial Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Initial Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, including without limitation the provisions of the Guidelines.

Section 2. Additions to the Property.

(a) Declarant may cause all or any portion of the Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Recording Office, containing a description of the portion of the Additional Property so subjected, and a statement by Declarant of its intent to extend the operation and effect of this Declaration as to such portion of the Additional Property. Notwithstanding the foregoing, the covenants and restrictions established in this Declaration as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in subparagraph (b) of this Section 2.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained in this Declaration, and may vary the covenants and restrictions contained in this Declaration as they apply to such Additional Property, as may be necessary in the judgment of Declarant to reflect the different character of the Additional Property.

(c) In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners of portions of the Property outside of the affected Phase or Tract, to subject (or to allow the Owner thereof to subject) any Phase of the Property, or any Tract within the Property, to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by recording an Additional Declaration or Tract Declaration in the Recording Office covering only such Phase or Tract within the Property. Such an Additional Declaration or Tract Declaration may or may not provide for the establishment of a property owners’ association to govern the ownership and/or maintenance of the Phase or Tract affected by and the enforcement of the provisions of such

Additional Declaration or Tract Declaration. Whether or not a property owners' association is formed pursuant to such Additional Declaration or Tract Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration or Tract Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration or Tract Declaration.

(d) So long as Declarant owns any part of the Property or of the Currently Owned Additional Property, the prior written consent of Declarant shall be required for any Person to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or any Additional Declaration or Tract Declaration, or to impose new or additional covenants, conditions, restrictions or easements (including any Additional Declaration or Tract Declaration) on any part of the Property.

Section 3. Withdrawal of Property. At any time on or before the date that is ten (10) years after the date of recording of this Declaration (as to the Initial Property), or ten (10) years after the date of recording of a Supplemental Declaration (as to the Additional Property described in that Supplemental Declaration), Declarant shall have the right to withdraw any portion of the Property that is then owned by Declarant (or by an Affiliate of Declarant) from the Project, and the operation of this Declaration, without the consent of any other Owner or Person. Such withdrawal of all or any portion of the Property shall be effected by recording a Declaration of Withdrawal in the Recording Office, setting forth the legal description of the Property being withdrawn from the Project. Upon the withdrawal of any portion of the Property from the Project pursuant to this Section 3, such withdrawn property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

### ARTICLE III PROPERTY RIGHTS

Section 1. Ownership of Common Areas. Except for Common Areas (such as Drainage Easement Areas or Entrance Monument Easements) that may be located within the boundaries of a Lot, Declarant shall convey to the Association the Common Areas to be owned and maintained by the Association; provided, with respect to any part of the Common Areas leased by Declarant (e.g., Street Lights), Declarant shall assign its rights under such lease to the Association and the Association shall assume all obligations of Declarant under such lease. Declarant reserves the right (but shall not be obligated) to construct within the Common Areas, among other things, (i) the Street Lights (which may be leased from a third party) and other lighting, signage and irrigation facilities, (ii) the Roadways (including sidewalks, drainage facilities and other improvements), (iii) ponds, water quality basins, and related drainage improvements within the Drainage Easement Areas, (iv) the Trail System, (v) certain improvements within the Amenity Areas, (vi) common mailbox facilities, and (vii) certain additional recreational amenities and facilities, for the use and enjoyment of the Owners who are entitled to the use of such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public (with the exception of the Roadways, which may eventually be accepted for public dedication and maintenance by Wake County or another governmental entity).

Section 2. Owners' Rights to Use and Enjoy Common Areas. As provided in Article X of this Declaration, each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

(a) the right of the Association and the Board to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the Owners and the safety of all Owners within the Common Areas;

(b) the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment or charge against said Owner's Lot remains unpaid, or for any infraction of its published rules and regulations, in accordance with the procedures specified in N.C.G.S. §47F-3-107.1;

(c) the right of Declarant or the Association to grant or reserve access (pedestrian or vehicular), utility, drainage and other easements across the Common Areas; and

(d) any and all other applicable provisions of this Declaration, including, without limitation, the provisions of Section 4 below.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Areas and facilities located thereon to the members of his or her family, his or her guests, invitees, or his or her tenants.

Section 4. Use of Amenity Areas by Licensees. Subject to the prior written consent of Declarant (until the Turnover Date), the Association shall have the right, from time to time, to allow individuals not owning a Lot or any other part of the Property (each, a "Licensee"; collectively, "Licensees") to use all or a certain portion of the Amenity Areas upon terms and conditions acceptable to the Association and set forth in a written agreement between the Association and each Licensee (each, a "License Agreement"). Each License Agreement, among other things, may include the following provisions: Upon execution of a License Agreement, each Licensee may be required to pay to the Association an amount determined by the Association in its sole discretion (a "License Fee") as consideration (in addition to the "User Fee" defined in Section 4(b) below) for the Association's agreement to enter into the License Agreement;

(b) In addition to the License Fee, each Licensee shall pay to the Association an amount to be collected no less often than annually (a "User Fee") in such amount as is determined by the Association from time to time as consideration for the ongoing use of the Amenity Areas (or such portion thereof with respect to which license has been granted);

(c) The License Agreement may provide for termination at will by the Association or the Licensee, and may provide that, upon any such termination, any License Fee paid by such Licensee, as well as a pro-rated portion of the User Fee, if applicable, shall be refunded to the Licensee, less any costs owed by such Licensee to the Association; and

(d) The License Agreement may provide for termination for cause by the Association, and may provide for forfeiture of the License Fee and any prepaid User Fee in the event of any such termination.

Section 5. Exclusive Common Areas. Certain portions of the Common Areas and certain portions of Property located within any Tract may be designated as Exclusive Common Areas and reserved for the exclusive use or primary benefit of Owners within a particular Tract or Tracts. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, ponds and other portions of the Common Areas within a particular Tract or Tracts. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Areas

shall be assessed as a Tract Assessment against the Owners of those Lots located within such Tracts to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Areas shall be designated as such and the exclusive use thereof shall be assigned in the deed by which Declarant conveys the Common Areas to the Association or on the Plat showing such Common Areas; provided, any such assignment shall not be exclusive and shall not preclude Declarant from later assigning use of the same Exclusive Common Areas to additional Tracts, so long as Declarant has a right to subject Additional Property to this Declaration pursuant to Article II. Thereafter, a portion of the Common Areas may be assigned as Exclusive Common Areas of a particular Tract or Tracts and Exclusive Common Areas may be reassigned upon the vote of the Members in accordance with this Declaration and the Bylaws. As long as Declarant owns any Property, any such assignment or reassignment shall also require the consent of Declarant.

Exclusive Common Areas may be owned by a Tract Association, and the expenses of the operation and maintenance thereof paid through Tract Assessments; or they may be owned by the Association and the expenses of the operation and maintenance thereof paid through Association assessments levied against the Owners of Lots entitled to use such Exclusive Common Areas, in the discretion of Declarant.

The Association may, upon approval of the Owner(s) of the Tract(s) to which certain Exclusive Common Areas are assigned, permit Owners of other Tracts to use all or a portion of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Tract Expenses attributable to such Exclusive Common Areas.

#### ARTICLE IV

##### THE ASSOCIATION

Section 1. Membership. Every Owner of a Dwelling Unit shall be a Member of the Association. An Owner of a Tract shall not be a Member of the Association, and shall not be entitled to any vote in the Association, until such Tract has been subdivided into a Lot or Lots. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit, and shall be governed by the Bylaws attached as Exhibit "C" to this Declaration. In addition, as long as Declarant owns any part of the Property, or any portion of the Currently Owned Additional Property, Declarant shall be a Member of the Association.

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

(a) Class I. The Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled to one (1) vote for each Dwelling Unit owned by such Association Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Dwelling Unit, all such Persons shall be Members and the voting rights appurtenant to said Dwelling Unit shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Dwelling Unit.

(b) Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Dwelling Unit owned by Declarant.

Section 3. Relinquishment of Control. Notwithstanding anything contained in this ARTICLE IV to the contrary, the Class II Association Membership shall cease and be converted to the Class I Association Membership upon the earliest to occur of (a) the date on which Declarant no longer owns any

part of the Property or of the Currently Owned Additional Property; (b) the date Declarant shall elect, in its sole discretion, that the Class II membership cease and be converted to the Class I membership (which election may be made, if at all, upon Declarant giving written notice of its election to the Board); or (c) December 31, 2047. The earliest to occur of (a), (b) or (c) above shall be referred to in this Declaration as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class I Association Member.

Section 4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 5. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year, and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee.

Section 6. Maintenance. Prior to their acceptance for public maintenance, the Roadways shall be maintained by the Association, provided that Declarant, in its sole discretion, has the right to reimburse the Association for maintenance costs until the Roadways are accepted for maintenance by Wake County or other governmental entity. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the Roadways shall conform to the standard of maintenance (if one is ascertainable) which would be required by Wake County or other governmental entity before it would accept such Roadways for maintenance. The Common Areas and the Maintenance Areas (including any portions of the Additional Property designated as Off-Site Maintenance Areas by the Association), together with all utilities, easements and amenities located in those areas, and not otherwise maintained by public entities or utilities or any other party as provided in this Section 6, shall be maintained by the Association as more particularly described below:

(a) Maintenance of the entryways to the Project shall include maintenance, repair and reconstruction, when necessary, of the entrance monuments, signage, irrigation, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the entrance monuments and signage located thereon.

(b) Maintenance of the Parking Areas (if any) shall include repair, maintenance and reconstruction, when necessary, of the pavement and payment of the costs of lighting.

(c) Maintenance of the Drainage Easement Areas shall include repair, maintenance and reconstruction, when necessary, of the retention ponds, water quality basins, underground pipes, catch basins or other storm drainage improvements constructed or placed within the Drainage Easement Areas, and any other maintenance obligations necessary to comply with the requirements of the North Carolina Department of Environment and Natural Resources ("DENR") and the Town. Declarant discloses that it will enter into a maintenance agreement covering the storm drainage improvements (the "Maintenance Agreement") with the Town, obligating Declarant or its successor to be responsible for the maintenance of the storm drainage improvements, including compliance with an Approved Stormwater Management Plan that specifies regular periodic inspection, reporting and maintenance obligations. Upon the completion of

the storm drainage improvements in each Phase of the Project, and the conveyance of the Common Areas in that Phase to the Association, Declarant shall assign to the Association, and the Association shall assume from Declarant, all obligations set forth in the Maintenance Agreement. The Maintenance Agreement will require the establishment of a cash escrow account to secure the obligations of Declarant and/or the Association. The cash funds held in escrow may be used by the Town after it has exhausted all methods of enforcement and deemed it necessary to maintain the storm drainage improvements in order to stay in compliance with the Town's ordinance and the Maintenance Agreement. The funds required to replenish the escrow account and to pay any cost overages will be the responsibility of the Association, and if not paid in a timely manner, will then be sought from the Association by the Town by civil means. Routine inspections (visual, by a member or representative of the Association) shall be performed and documented in accordance with the Maintenance Agreement. Annual reporting and certifications must be performed by a Licensed Professional Engineer (P.E.) and shall be provided to the Town, in accordance with the Town's ordinance and the Maintenance Agreement.

(d) To the extent not maintained by Wake County or other governmental entity, as the case may be, the Association shall maintain or cause to be maintained the road rights-of-way and medians and associated landscaping and related improvements along and within the Roadways. Declarant shall plant and maintain trees along the streets within the Property in accordance with the landscaping plan as same is shown on Declarant's final development construction plans; replace any of said trees if damaged or dead; and maintain all trees in a manner consistent with an allowance for pedestrian and vehicular traffic on sidewalks and roadways. Upon the completion of the streets in each Phase of the Project, and the conveyance of the Common Areas in that Phase to the Association, Declarant shall assign to the Association, and the Association shall assume from Declarant, the foregoing maintenance obligations with respect to the street trees in that Phase.

(e) All environmentally sensitive areas (i.e. riparian buffers, floodplain, wetlands, etc.) located within any Common Area outside of the Town's right-of-way shall be maintained by the Association in compliance with all applicable federal, state and local regulations.

(f) The Common Areas and Maintenance Areas, including the Trail System, shall be kept clean and free of debris, and maintained in a neat and orderly condition, including repair, maintenance, replacement and removal, when necessary, of any landscaping, utilities or Improvements located thereon, in accordance with such standards as may be specified by Declarant in its sole discretion as long as Declarant owns any portion of the Property.

(g) Maintenance of any improvement within the Amenity Areas (including, without limitation, any fencing, parking area, clubhouse, pool, tennis courts or other recreational amenity or facility located therein) shall include, but not be limited to, any and all interior and exterior maintenance (including, where necessary, repair and/or reconstruction), landscaping and payment of all utility charges related to any such improvement.

(h) The level of maintenance of the Off-Site Maintenance Areas shall be in the discretion of the Association.

(i) As provided in ARTICLE III, ARTICLE III Section 1, Declarant reserves the right to enter into a contract with Progress Energy or another third party for the installation and operation of the Street Lights, which may require a continuing monthly payment to Duke Energy by the Association.

(j) The Association shall be responsible for all the installation and costs associated with the perpetual maintenance of specialty street signs and posts, if any, requested by Declarant and approved by the Town. If the Association fails to fulfill its responsibility for maintenance of these specialty signs and

the Town. If the Association fails to fulfill its responsibility for maintenance of these specialty signs and posts, the Town shall install its standard sign materials and the Association shall be required to remove the specialty signs and posts at no cost to the Town. The cost of materials and installation of standard street name signs and posts need to replace specialty street name signs and posts which have not been properly maintained shall be borne by the Association of the subdivision. The Town shall install its standard sign materials should any specialty signs be damaged. If the Association reinstalls a new specialty sign, it shall contact the Public Works Department of the Town to coordinate the return of temporary signage.

(k) The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the improvements within the boundaries thereof, including, without limitation, any Dwelling Unit. The Owners of such Lots shall be solely responsible for the same. However, (1) the Association may elect, in its sole discretion, to maintain any environmentally sensitive areas, street trees or retaining walls located within a Lot, and (2) a Tract Association, pursuant to a Tract Declaration approved in accordance with Article XI, Section 2 below, may undertake responsibility for maintaining Lots (or portions thereof) and/or Dwelling Units (or portions thereof).

Section 7. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all or a portion of the Common Areas or Maintenance Areas and in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such reserve fund shall be collected and maintained out of the Annual Assessments, Initial Capital Assessments and/or Transfer Fees. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

Section 8. Parking Areas. Declarant may construct, and the Association shall maintain, repair and, if destroyed, replace, as a common expense of the Association, paved Parking Areas located on the Amenity Area and other Common Areas. The Parking Areas shall be constructed and maintained in order to provide parking for the Owners, and may be used by Declarant and its assigns and the Owners, their families, guests and invitees, in connection with their use of the Amenity Area.

Section 9. Liability Limitations. Neither Declarant, nor any Association Member, nor the Board, nor any officers, directors, agents or employees of any of them, shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

## ARTICLE V

### COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special and Special Individual Assessments. Each Owner of any Lot or Tract, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance document, is deemed

to covenant and agrees to pay Assessments to the Association, established and collected as provided in this Declaration. Any such Assessment, together with interest, costs, and reasonable attorneys' fees, shall be: (a) a charge and a continuing lien upon the Lot or Tract, as the case may be, against which each such Assessment is made, and (b) the personal obligation of the Owner, at the time when the Assessment fell due, of the Lot or Tract, as the case may be, against which such Assessment is made. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them, provided such Assessments, together with interest, costs, and reasonable attorneys' fees, shall, as set forth above, be a continuing lien upon the Lot or Tract, as the case may be, against which such Assessments or charges are made.

Section 2. Purpose of Annual Assessments. The Annual Assessments shall be used as follows:

(a) to repair, maintain, reconstruct (when necessary) and keep clean and free from debris the Common Areas (including without limitation the Amenity Areas, the Parking Areas and the Storage Areas, if any), the Maintenance Areas (including any Off-Site Maintenance Areas) and any Improvements located on the Common Areas or the Maintenance Areas, and to maintain the landscaping, including any necessary removal or replacement of landscaping;

(b) to maintain and repair the Roadways to the standards of the maintenance (if one is ascertainable) which would be required by Wake County or other governmental entity before it would accept such Roadways for maintenance;

(c) to maintain, operate, repair and reconstruct, when necessary, the entryways to the Project, including the entrance monuments, signage, irrigation, planters, landscaping and lighting located thereon, including all Improvements located within the Entrance Monument Easement Areas;

(d) to maintain and repair the road rights-of-way and medians and associated Street Lights, landscaping (including street trees) and related improvements along and within the Roadways to the extent not maintained by Wake County or another governmental entity, as the case may;

(e) to maintain, inspect, operate, repair and reconstruct, when necessary, the storm drainage improvements within the Drainage Easement Areas, in compliance with the terms of the Maintenance Agreement with the Town;

(f) to pay all costs associated with the lease and operation of the Street Lights, including, but not limited to, monthly lease payments and utility costs;

(g) to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association;

(h) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;

(i) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth in this Declaration or in the Bylaws;

(j) to carry out all other purposes and duties of the Association, the Board of Directors and the Architectural Control Committee as stated in the Articles, the Bylaws and in this Declaration;

(k) to maintain a reserve fund for the purposes set forth in Article IV, Section 7, in amounts as determined by the Board of Directors;

(l) to pay any trash collection fees charged to the Association by Wake County or any other public or private trash collector; and

(m) to pay all fees, costs, compensation and other charges accruing under any management agreement or similar contract entered into, or assumed, by the Association in accordance with ARTICLE IV Section 5.

The expenses of the Association for the foregoing purposes are sometimes referred to in this Declaration as "common expenses."

Section 3. Payment of Annual Assessments; Due Dates. Each Owner of a Lot or Tract shall pay to the Association Annual Assessments as set forth below.

(a) The Annual Assessments shall commence as to all Lots shown on a Plat of any Phase of the Property as of the date of the conveyance of the first Lot in such Phase by Declarant to an Owner (other than Declarant) of such Lot, and shall commence with respect to any Tract upon the recording of a Plat subdividing such Tract, or a portion thereof, into Lots, or at such other time as may be established in any Supplemental Declaration or other instrument subjecting such Tract (or any portion thereof) to this Declaration. The Annual Assessment for the first year in which a Lot or Tract is subject thereto shall be prorated based upon the number of days remaining in the applicable billing period from the date of such conveyance. For purposes of assessments levied against a Tract, the Tract shall be deemed to contain the number of Lots shown on the recorded Plats subdividing such Tract into Lots. From and after the time that any portion of a Tract has been platted, and the Plats recorded, each Lot shown thereon shall be deemed a Lot hereunder for purposes of assessment, and such Tract shall be deemed to contain that number of Dwelling Units to be assessed equal to the total number of Lots shown on such Plats. Each such plat shall be deemed a "Plat" hereunder. The Annual Assessment amount for the calendar year beginning January 1, 2017, is established by Declarant to be \$900.00 per Lot; provided, however, that until the occurrence of the Amenity Area Opening Date, the initial Annual Assessment shall be reduced to \$600.00 per Lot. The Annual Assessment amount for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with the terms of this Article V. Annual Assessments shall be due and payable in advance in equal installments on a quarterly basis commencing on January 1, April 1, July 1 and October 1 of each calendar year. The Board of Directors shall fix the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the payment due, to each Owner on or before January 5 of such calendar year. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments. Notwithstanding the foregoing, the Board of Directors may alter the dates of the fiscal year for setting the Annual Assessments, and may increase or decrease the frequency of the collection of the Annual Assessments (or installments thereof) in any reasonable manner.

(b) Declarant shall have the authority to reduce the Annual Assessment and the Special Assessment (i) on any Lot on which no Dwelling Unit has been completed (i.e. no Certificate of Occupancy has been issued for such Dwelling Unit), (ii) for certain Lots in certain Phases or within certain Tracts subjected to this Declaration which are subjected to Additional Declarations or Tract Declarations, or (iii) on any Lot owned by a Builder until such time as the Builder sells or otherwise transfers ownership of its Lot.

Section 4. Maximum Annual Assessment.

(a) For calendar year 2018 and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members may increase the Annual Assessment applicable to each Lot or Tract by a maximum amount equal to the previous year's Annual Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (the "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the CPI (published by the United States Government indicating changes in the cost of living) shall be used. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members. In addition, if the Amenity Area Opening Date has not occurred by December 31, 2016, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members may increase the Annual Assessment by up to fifty percent (50%), effective as of the Amenity Area Opening Date, to reflect the additional common expenses associated with the operation and maintenance of the Amenity Area.

(b) For calendar year 2018 and thereafter, the maximum annual assessment applicable to each Lot or Tract may be increased above the maximum amount set forth in subparagraph (a) of this Section 4 by a vote of a majority of the votes appurtenant to the Dwelling Units which are then subject to this Declaration, plus the written consent of Declarant (so long as Declarant owns any part of the Property).

(c) The Board of Directors may fix the Annual Assessment applicable to each Lot or Tract at an amount not in excess of the maximum set forth in subparagraph (a) of this Section 4 (the "Maximum Annual Assessment"). If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"). In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year except as expressly provided in this Declaration.

(d) With respect to any Lot or Tract conveyed by Declarant, the purchaser of such Lot or Tract shall pay to the Association at closing the amount of the Annual Assessment for the installment period in which the closing occurs on such Lot or Tract, prorated based upon the number of days remaining in such installment period. With respect to any Lot or Tract conveyed by any Owner other than Declarant, the amount of the Annual Assessment applicable to such Lot or Tract for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

Section 5. Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only. Provided, however, (a) Declarant shall not be obligated to pay any Special Assessments on Lots owned by Declarant except with Declarant's prior written approval, and (b) any Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property or the Currently Owned Additional Property) and by a vote of a majority of the votes appurtenant to the Dwelling Units which are then subject to this Declaration.

Section 6. Special Individual Assessments. In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a Special Individual Assessment against any Owner: (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and/or Maintenance Areas, including, without limitation, the Amenity Area and any improvements located thereon, whether occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or Declarant pursuant to this Declaration or the Bylaws. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 6 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 7. Initial Capital Assessments and Transfer Fees. Any Builder, as the agent of the Association, shall collect from each initial purchaser of a Dwelling Unit at the time of closing an Initial Capital Assessment, in an amount equal to twice the then-current monthly installment of the Annual Assessment (without giving any effect to the discount in Annual Assessments prior to the Amenity Area Opening Date). As an example, the initial amount of the Initial Capital Assessment to be collected by each Builder from each purchaser, based on the 2017 assessment rates, shall be \$150.00. Such funds shall not be considered advance payments of other Assessments. Builder will deliver the Initial Capital Assessments so collected to the Association to provide the necessary working capital for the Association. Such amounts may be used for initial equipment and supplies, organizational expenses and other start-up costs, and for such other purposes as the Board may determine.

In addition, the Board shall have the authority to establish and collect a Transfer Fee payable by the transferring Owner upon each transfer of title to a Lot within the Property, which Transfer Fee shall be payable to the Association at the closing of the transfer, and shall be deemed an Assessment secured by the Association's lien under Article V, Section 1. The Board shall have the sole discretion to determine the amount of the Transfer Fee, which shall not exceed twice the then-current monthly installment of the Annual Assessment (without giving any effect to the discount in Annual Assessments prior to the Amenity Area Opening Date). As an example, the initial maximum amount of the Transfer Fee, based on the 2017 assessment rates, shall be \$150.00.

The Transfer Fees may be used to fund the reserves established under ARTICLE IV Section 7, or for such other purposes as the Board may determine. No Transfer Fee shall be levied upon: (a) the initial conveyance of a Lot or Dwelling Unit by Declarant or any Builder, (b) any conveyance by a co-owner of a Lot to another person who also was the co-owner of that Lot prior to the conveyance, (c) any conveyance to the estate, surviving spouse or a child upon the death of an Owner, (d) to an entity wholly owned by the Owner, provided that upon any subsequent transfer of an ownership interest in that entity, the Transfer Fee shall become due, or (e) the foreclosure of any Mortgage, or the delivery of a deed in lieu of foreclosure.

Section 8. Collection Agent. At the option of the Board of Directors, any person or entity designated by the Board of Directors may act as collection agent for any and all assessments imposed by the Association and/or the Board against the Owners.

Section 9. Reduced Assessments For Lots Owned by Declarant. Except as otherwise expressly set forth in this Declaration, all Lots or Tracts owned by Declarant shall not be subject to

Assessments. Furthermore, Declarant shall be entitled to credit against any Assessments on Lots owned by Declarant any and all amounts which Declarant has paid directly for common expenses, or has paid or contributed to the Association for the Association's payment of common expenses.

## ARTICLE VI

### GENERAL ASSESSMENT PROVISIONS

Section 1. Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot or Tract have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot or Tract is binding upon the Association as of the date of its issuance.

Section 2. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment (or installment thereof) not paid by its due date as set forth in this Declaration shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition, interest, reasonable attorneys' fees, late payment fees established by the Board, and costs of such action or foreclosure shall be added to the amount of such assessment. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Lot or Tract with respect to which such sum was assessed upon filing in accordance with N.C.G.S. §47F-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47F-3-116 and **ARTICLE X** of the Bylaws. **NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON ELEMENTS OR ABANDONMENT OF HIS OR HER LOT.**

Section 3. Subordination of the Lien to Mortgages. The lien of the Assessments provided for in Article V and in ARTICLE VI of this Declaration shall be subordinate to the lien of any first Mortgage on a Lot or Tract. Sale or transfer of any Lot or Tract shall not affect the Assessment lien. The sale or transfer of any Lot or Tract pursuant to a mortgage foreclosure under any first Mortgage on a Lot or Tract, or any proceeding in lieu thereof, however, shall extinguish the lien (but not the personal obligation of the mortgagor or any prior Owner) of such Assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may in its sole discretion determine such unpaid Assessments to be an Annual, Special or Special Individual Assessment, as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the Annual Assessment to be in excess of the Maximum Annual Assessment permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot or Tract from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for in Article V and in ARTICLE VI of this Declaration shall continue to be subordinate to the lien of any first Mortgage on a Lot or Tract as provided above.

## ARTICLE VII

### RESTRICTIONS

PORTIONS OF THE LAND CONTIGUOUS TO THE PROJECT ARE NOT OWNED BY DECLARANT, ARE NOT PART OF THE PROPERTY AND ARE NOT SUBJECT TO THIS DECLARATION, INCLUDING THE RESTRICTIONS SET FORTH IN THIS ARTICLE VII. OWNERS OF LOTS IN THE PROJECT WILL NOT HAVE ANY RIGHTS OR RECOURSE UNDER THIS DECLARATION WITH RESPECT TO THE USES OR DEVELOPMENT OF SUCH ADJACENT PARCELS.

Section 1. Residential Restrictions. Each Lot shall be used exclusively for single-family, non-transient residential purposes; provided, however, Declarant shall have the right to use the Lots designated from time to time by Declarant for the purpose of construction and operation of construction offices and sales/marketing offices (and for related uses) for the Project. Declarant may also allow, in its discretion, any Builder to use Lots (and Dwelling Units constructed thereon) for sales and marketing offices and as model homes, subject to such regulations as Declarant may impose. No trade, business or business activity of any kind shall be conducted upon a Lot or any part thereof except by Declarant as described hereinabove. Provided, however, the Board may permit an incidental business or business activity to be conducted on a Lot within a Dwelling Unit occupied primarily for single-family residential purposes (e.g., a portion of a Dwelling Unit may be used as a home office), so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of this Declaration, and does not entail regular visits to the Dwelling Unit by business invitees. The Board may issue rules regarding permitted business activities. Leasing of a residence on a Lot shall not be considered a business or business activity.

Except those to be utilized by Declarant or any Builder as described above, no structure shall be erected, placed, altered, used or permitted to remain on any Lot other than one attached or detached single-family private Dwelling Unit and one private garage for not less than two (2) vehicles and only such other accessory structures used in conjunction with such attached or detached single-family private Dwelling Unit for related single family residential purposes as are approved in advance in writing by the Architectural Control Committee pursuant to the Guidelines. No Lot and no Improvements may be used for hotel or other transient residential purposes. Each lease relating to any Lot or any Improvements thereon (or any part of either thereof) must be for a term of at least six (6) months, must be in writing, must limit use of the Dwelling Unit to single family residential purposes, and must provide that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Lot and/or Improvements. A copy of each lease must be provided to the Association prior to the tenant taking occupancy.

Section 2. Dwelling Unit Size. The square footage requirements set forth below are for enclosed heated floor area, are measured from the ground level up (said ground level being the first level of any Dwelling Unit as viewed from the Roadway fronting same) and are exclusive of the areas in heated or unheated basements, vaulted ceiling areas and attics, unheated porches of any type, attached or detached garages, porte-cocheres and unheated storage areas, decks and patios.

Except as otherwise provided in this Declaration, or in any Supplemental Declaration or other instrument subjecting Property to this Declaration, any single-family detached Dwelling Unit erected upon any Lot shall contain not less than 2,000 square feet of heated floor area. Notwithstanding the foregoing requirements, the Architectural Control Committee shall have the right (but not the obligation), because of restrictive topography, lot shape, dimensions or unusual site related conditions or other reasons, to allow variances from such minimum square footage requirement by granting a specific written variance. Furthermore, Declarant may establish different minimum square footage requirements for different Phases of the Property in the Supplemental Declarations subjecting such Phases to this Declaration to reflect the different character of such Phase or the Dwelling Units to be constructed thereon.

No Dwelling Unit erected upon a Lot shall contain more than two and one-half (2½) stories above ground level (the ground level being defined as the first level of any Dwelling Unit as viewed from the Roadway fronting the Lot). Notwithstanding the foregoing, the Architectural Control Committee shall have the right (but not the obligation), to allow Dwelling Unit heights greater than two and one-half (2½) stories as viewed from rear and side elevations.

Section 3. HVAC Equipment. No air conditioning or heating equipment or apparatus shall be installed on the ground in front of, or attached to any front wall of, any Dwelling Unit on a Lot.

Additionally, air conditioning and heating equipment and apparatus shall be screened from view from Roadways by landscape improvements, as more particularly provided in the Guidelines.

Section 4. Exterior Lighting. Exterior lighting on Lots shall be subject to the applicable requirements and limitations in the Guidelines. Night lighting of tennis courts, sport courts and other recreational facilities on Lots is not permitted.

Section 5. Fences and Walls. In addition to the restrictions contained elsewhere in this Declaration and except as expressly provided below, no fence or wall (including densely planted hedges, rows or similar landscape barriers) shall exceed six (6) feet in height, except fences enclosing approved tennis courts or sport courts may be up to ten (10) feet in height if located at least twenty-five (25) feet from all Lot boundary lines. All fences and walls shall be maintained in a structurally sound and attractive manner. No fence or wall shall be erected on any Lot until the Architectural Control Committee has given its prior written approval of the color, size, design, materials and location for such fence or wall.

Section 6. Mail and Newspaper Boxes; House Numbers. In connection with its original development of each Phase of the Project, Declarant shall install (or cause a Builder to install) a common mailbox facility within the Common Areas for the joint use of all Owners within that Phase, which shall be maintained by the Association. No other mailbox or newspaper box shall be erected or maintained on any Lot. House numbers may be displayed on the Dwelling Unit and/or mailbox only as approved by the Architectural Control Committee.

Section 7. Animals. No animals, livestock or poultry shall be raised, bred or kept on any portion of the Property except that dogs, cats or other household pets may be kept, 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. 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. The number of household pets kept or maintained outside the Dwelling Unit on a Lot shall not exceed three (3) in number, except for newborn offspring of such household pets which are all under six (6) months in age. Dogs shall at all times whenever they are outside of a Dwelling Unit be on a leash or otherwise confined in a manner acceptable to the Board. Animal control authorities shall be permitted to enter the Project and the Property to patrol and remove pets and wild animals. All pets shall be registered, licensed and inoculated as required by law. No fenced dog enclosure or other structure for pets may be constructed or maintained on any Lot unless the same has been approved in writing by the Architectural Control Committee.

Section 8. Signs. No sign of any kind shall be displayed on any Lot except for sign(s) approved in advance by the Architectural Control Committee. The Architectural Approval Committee shall have the right to preapprove certain categories or types of signs (such as marketing or "for sale" signs), subject to such size and duration limits, and other conditions as it may elect to promulgate. Notwithstanding the foregoing, 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 or Maintenance Areas.

Section 9. Temporary Structures; Structure Materials. No residence or building of a temporary nature, including a construction trailer, shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic or canvas structure shall be erected on any Lot or attached to any residence. No portable on-site storage containers or similar containers shall be allowed to remain on any portion of the Property, except during the initial construction of a Dwelling Unit on a Lot, if approved by the Board, and, if such approval is granted, subject to such regulations and restrictions as may be imposed by the Board.

Provided, however, nothing in this Section 9 shall prohibit Declarant or a Builder (subject to the prior written approval of Declarant) from erecting or moving temporary buildings or trailers onto Lots owned by Declarant or such Builder to be used for storage, or for construction or sales offices.

Section 10. Sight Line Limitations. To the extent that governmental requirements shall not impose a stricter standard, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above Roadways shall be placed or permitted to remain on any corner Lot within the triangular areas shown on the Plat as "Sight Triangles." The same sight line limitations shall apply on any Lot within the triangular area formed by (i) the line that runs from the point of intersection of (a) the edge of a Roadway's pavement and (b) the edge of the pavement of the driveway on such Lot for a distance of ten (10) feet along such Roadway pavement away from such driveway pavement, (ii) the line that runs from said point of intersection for a distance of ten (10) feet along such driveway pavement away from such Roadway pavement, and (iii) the straight line that connects the ending points of the lines described in the foregoing clauses (i) and (ii). No tree shall be permitted to remain within such triangular areas unless the foliage line is maintained at an appropriate height to prevent obstruction of sight lines.

Section 11. Utilities. All utilities and utility connections shall be located underground, including electrical, telephone and cable television lines. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the buildings constructed on Lots or, if approved by the Architectural Control Committee in writing, located elsewhere on the Lot provided they are adequately screened as required by the Architectural Control Committee in accordance with the provisions of this Declaration. The foregoing provisions shall not be deemed to forbid the erection of temporary power or telephone structures in connection with the initial construction of Dwelling Units by any Builder, or subsequent construction activities approved in writing by the Architectural Control Committee.

Section 12. Reclaimed Water Lines and Irrigation. Declarant has entered into an agreement with the Town to permit the use of reclaimed water from the Town's treatment plant for irrigation in the Project, and distribution lines for such reclaimed water are installed within street rights-of-way within the Property. Accordingly, no Owner may install or permit to be installed any sprinkler or irrigation system within the Property unless such system uses only reclaimed water and is connected only to the reclaimed water distribution system referenced above.

Section 13. Sediment Control. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by Declarant or the Architectural Control Committee, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion.

Section 14. Building Envelope. No building or other Improvement on any Lot (including any stoops or porches, patios, decks, terraces, etc.) shall be erected or permitted to remain outside of the "Building Envelope" for that particular Lot as established by the Architectural Control Committee (as to each Lot, the "Building Envelope"). The Building Envelope approved for any Lot will be available from the Architectural Control Committee on an unrecorded map. Provided, however, and notwithstanding the foregoing to the contrary, (i) exterior steps at the front and rear of a Dwelling Unit may project into the setback area established by the Building Envelope up to a distance of five (5) feet, and (ii) fireplace chimney structures projecting from the side of a Dwelling Unit may encroach no more than eighteen (18) inches into the side yard setback established by the Building Envelope. The Architectural Control Committee shall have the right in its sole discretion to make exceptions to any Building Envelope to recognize any special topography, vegetation, Lot shape or dimension, or other site-related conditions. In the event any zoning or subdivision ordinance, floodway regulation or other ordinance, law or regulation applicable to a Lot shall

prescribe greater setbacks, then all buildings erected during the pendency of such requirements shall conform thereto.

Section 15. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. During construction of Improvements on a Lot, all rubbish and debris shall be stored and disposed of in accordance with the rules and established by the Architectural Control Committee. Following completion of the Dwelling Unit on a Lot, all trash, garbage and other waste shall be kept in sanitary containers within each Dwelling Unit, and the Owner of each Lot shall be responsible for placing such garbage in a roll-out container, and rolling the container out to the designated trash pick-up area on a regular basis. All trash containers or other equipment for storage or disposal of such waste shall be kept in a clean and sanitary condition and shall be located in appropriate areas concealed from public view, except on garbage collection days. In addition, dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances anywhere on the Project is prohibited. The Board shall have the right to adopt rules and regulations regarding garbage, trash, trash containers and collection. The Board also shall have the right to contract with or designate one or more third parties (including a municipality) to collect garbage, trash and recyclable materials for the benefit of the Owners and Occupants, with any costs to be a Common Expense, a Tract Expense or billed separately to the Owners, at the sole discretion of the Board.

Section 16. Combination or Subdivision of Lots. Should the Owner of a Lot own an adjacent Lot(s) and desire that two (2) or more such Lots be considered as one Lot, then such Lots shall (except as provided in this Section 16) be considered as one Lot for the purposes of this Article VII upon the recordation in the Recording Office, of an instrument by such Owner expressing such intent (such instrument to refer specifically to this section in this Declaration and to identify the Lots to be considered as one Lot for purposes of this Article VII, and a copy of such recorded instrument shall be promptly delivered by such Owner to the Architectural Control Committee); and in each such case, Building Envelopes, setback lines, and easements reserved in this Declaration shall be adjusted accordingly by the Architectural Control Committee. The Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. With respect to combined Lots, Declarant reserves the right to designate said combined Lots as one (1) Lot or multiple Lots, in Declarant's sole and absolute discretion, for purposes of payment of Assessments. No Lot shall be subdivided by sale, lease or otherwise without the prior written consent of Declarant. Provided, however, Declarant reserves the right to change the size, boundaries or dimensions of any Lot owned by Declarant, by subdivision, combination, recombination, or otherwise, for any reason, and each resulting Lot following such change shall be deemed a single Lot for all purposes hereunder, including Assessments.

Section 17. Restricted Activities in Common Areas and Maintenance Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas or the Maintenance Areas. There shall be no obstruction of the Common Areas or the Maintenance Areas, nor shall anything be kept or stored in the Common Areas or the Maintenance Areas, nor shall anything be altered, or constructed or planted in, or removed from, the Common Areas or the Maintenance Areas, without the prior written consent of Declarant and the Association. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area and/or the Maintenance Area caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees. The provisions in this Section 17 shall not apply to Declarant or to any Builder in connection with its construction activities on the Property; provided, however, that any Builder, upon the written request of Declarant or the Association, shall remove any temporary obstruction of the Common Areas or the Maintenance Areas that unreasonably interferes with the rights of nearby Owners, and shall repair any damage to those areas caused by such removal.

Section 18. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot, other than in enclosed garages.

Section 19. Rules of the Board. All Owners of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with such rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or Declarant for all damages and costs, including attorneys' fees.

Section 20. Recreational and Other Equipment.

(a) No recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be attached to the exterior of any Dwelling Unit or otherwise placed or kept on any Lot, except in accordance with the requirements as set forth in the Guidelines.

(b) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition to adjoining Owners.

(c) Children's play toys and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall not remain repeatedly overnight within any front yard of any Lot, or within the side yards of any Lot located on a Roadway corner, in such number or for such a long period of time as to create a continuing, unsightly condition, in the sole discretion of the Board.

Section 21. Parking; Storage.

(a) No vehicles, trucks, vans, cars, trailers, construction equipment, etc. may be parked overnight on any Roadway within the Property. Any automobile or other vehicle parked on the Property shall have a current license plate, and may be parked only within a garage or on a driveway approved by Architectural Control Committee.

(b) Commercial-use vehicles and trucks not involved with construction activity on the Property and having a carrying capacity and/or size designation greater than one (1) ton shall not be permitted to park overnight on the Roadways, driveways or otherwise within the Property, unless stored in an enclosed garage or in a Storage Area pursuant to a Storage Lease. No vehicle of any size which transports inflammatory or explosive cargo may be kept within the Property at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage.

(c) The Owner of each Lot will be responsible for providing on such Owner's Lot a sufficient paved parking area for all vehicles normally parked and/or situated on or in regard to such Lot.

(d) No recreational vehicles or related equipment, including any boat, houseboat, trailer, motor home or "camper" vehicle may be maintained, stored or kept on any portion of the Property, except in a Storage Area (if any), in an enclosed garage or in an enclosure specifically approved for such maintenance or storage by the Architectural Control Committee.

(e) No construction office trailers may be placed, erected or allowed to remain on any Lots during construction, except as approved in writing by the Architectural Control Committee. Provided, however, nothing in this Section 21 shall prohibit Declarant or any Builder (subject to the prior written approval of Declarant) from erecting or moving temporary buildings onto Lots owned by Declarant or such Builder, to be used as construction or sales offices. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight on the Property (including any Lot or Roadway) only in accordance with such rules as may be established by the Architectural Control Committee.

Section 22. No Septic Tanks or Wells. No septic tank shall be installed, used or maintained on any Lot (excluding Lots owned by Declarant or the Association). No well or individual water supply system shall be installed, used or maintained on any Lot for human domestic water consumption nor shall any well be connected in any manner whatsoever to the water mains, laterals or piping serving the Dwelling Unit which furnish domestic water from sources beyond the boundary lines of the Lot. Notwithstanding the foregoing prohibition, the Architectural Control Committee may permit in writing the installation, use and maintenance of wells and pumps for irrigation purposes or ground water heat pump systems. Furthermore, Declarant shall have the right to install and utilize a septic system for any sales center and/or construction office on a temporary basis.

Section 23. Power Equipment. The use of motorized lawn mowers, lawn tractors, grass trimmers, garden tillers, chain saws and other motorized (including, but not limited to, electric and gasoline-powered engines) lawn and garden maintenance equipment shall be prohibited before 8:00 a.m. and after 8:00 p.m.

Section 24. Hoses, Pipes and Cables. Except for the temporary use of hoses and the like which are reasonably necessary in connection with normal lawn care, no hose, water pipe, sewer pipe, gas pipe, drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground, unless such installation is expressly approved by the Architectural Control Committee.

Section 25. Vegetable Gardens. Vegetable gardens shall not be permitted on any Lot unless placed in the rear portion of such Lot in such a manner as not to constitute a nuisance or unsightly condition to any adjoining Owners.

Section 26. Lawn Furniture and Statues. No lawn furniture or decorative items, such as statuettes or renderings of animate or inanimate objects, shall be maintained in the front or side yards of any Lot unless shielded from view by landscaping, a fence or a wall approved in advance in writing by the Architectural Control Committee.

Section 27. Clothes Lines. No clothes lines of any description or type, and no outside drying of clothes shall be allowed on any Lot.

Section 28. Window Coverings. Bedding materials, plastic sheets, towels or other similar non-standard window treatments shall not be hung or placed in or on any window on any Dwelling Unit located on any Lot, except on a short-term, temporary basis.

Section 29. Restricted Activities Regarding Lakes and Ponds. The Property may contain one or more lakes or ponds, which may or may not be Common Area. With respect to construction of any Improvements on any Lot that abuts a lake or pond, a silt fence or barrier shall be placed across each such Lot during the construction of any Improvements thereon in such manner as to protect the lake or pond from soil erosion and silt. Such fence or barrier shall be constructed prior to the commencement of any

construction of Improvements, including clearing or grading, and shall remain in place until such time as the said Lot has been landscaped or stabilized in a manner that will protect the lake or pond from soil erosion and silt. No pesticides or other toxic, hazardous or harmful chemicals shall be used for any purposes whatsoever within thirty (30) feet of any lake or pond. Any such chemicals used or applied more than thirty (30) feet from any lake or pond shall be used or applied so as to prevent the spread or dissemination of such chemicals into the lake or pond. No piers, jetties, docks, boat houses, storage facilities or other similar structures shall be constructed or located on or in any portion of the lake or pond. No boats or other floating vessels shall be permitted in or on any portion of the lake or pond. No Person shall be allowed to swim, fish or engage in any other recreational activities within any lake or pond.

Section 30. Nuisances. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's property. No Lot or Tract shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within any Lot or Tract, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Project. There shall not be maintained on any Lot or Tract any plants or animals or device or thing of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Dwelling Unit or any unimproved Lot or Tract unless required by law.

Section 31. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot or Tract must be continued with reasonable diligence to completion and no partially completed Dwelling Units or other Improvements shall be permitted to exist on any Lot or Tract, except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the Architectural Control Committee. Any damage to the Roadways, curbs or sidewalks or any part of any Common Area, Maintenance Area or any utility system caused by an Owner or Owner's builder or such builder's subcontractors shall be repaired by such responsible Owner. Any builder of Improvements and such builder's subcontractors on any portion of the Property shall keep such portion of the Property free of unsightly construction debris, in accordance with the construction rules established by the Architectural Control Committee (or, in the absence of such rules, in accordance with standard construction practices), and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in the Project to pay for the cost of repairing any damage to Roadways, curbs or sidewalks or any part of any Roadway, Common Area, Maintenance Area or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Project, and to pay for the cost of the removal of garbage, trash or other debris, which are occasioned by the activities of an Owner or Owner's builder or such builder's subcontractors during the construction of Improvements.

Section 32. Governmental Requirements. Nothing contained in this Declaration shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot or Tract and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot or Tract shall continue to be applicable and shall be complied with in regard to the Lots or Tracts. Each Owner shall comply with all laws, regulations, ordinances and other governmental rules and restrictions in regard to the Lot(s), Tract(s) or other portion of the Property owned

by such Owner (including, without limitation, applicable zoning and watershed laws, rules, regulations and ordinances).

Section 33. Occupants Bound. All provisions of this Declaration, any Additional or Supplemental Declaration and the Bylaws and any and all rules and regulations, use restrictions or the Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

Section 34. Grassed Areas to be Sodded. The grassed areas in the front, side and rear yard of each Lot shall be covered with sodded grass promptly following the completion of construction of a Dwelling Unit on each such Lot (unless an extension is granted with respect thereto by Architectural Control Committee pursuant to the Guidelines). With respect to corner Lots, the side yard fronting on the side Roadway also shall be covered with sodded grass promptly following the completion of construction of a Dwelling Unit on each such corner Lot (unless an extension is granted with respect thereto by Architectural Control Committee pursuant to the Guidelines). Notwithstanding the foregoing, the Architectural Control Committee shall have the right to waive or vary the sodded grass requirement contained in this Section 34 for any townhomes located on any Tract.

Section 35. Enforcement. The Association or its agent shall have the right to enforce the provisions of this ARTICLE VII by assessing fines against any defaulting Owner in accordance with the procedures set forth in N.C.G.S. §47F-3-107.1 and the Bylaws, and any such fine shall be levied by the Association as a Special Individual Assessment against such Owner and such Owner's Lot.

## ARTICLE VIII

### ARCHITECTURAL AND LANDSCAPING CONTROL

Section 1. General. Notwithstanding anything contained in this Declaration to the contrary, no Improvements, including, without limitation, site preparation on any Lot or Tract, change in grade or slope of any Lot or Tract, or erection of buildings or exterior additions or alterations to any building situated upon the Property, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot or Tract, shall be commenced, erected or maintained on any portion of the Property, subject to the provisions of Article VIII, Section 7, until: (a) the Architectural Control Committee, appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Guidelines; (b) the fees set forth in or contemplated in this Article VIII have been paid; and (c) the contracts identified in this Article VIII have been executed. In addition to any standards established pursuant to this Declaration, Declarant may establish, by Additional Declarations, architectural and landscaping control standards, guidelines and restrictions in regard to various Phases or sections of the Property. Except as otherwise expressly provided in this Declaration, the provisions of this Article VIII shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or Tract or upon any of the Common Areas or Maintenance Areas.

The Board may delegate to the Architectural Control Committee any powers or authority reserved or granted to the Board under this Article VIII.

Section 2. Composition of Architectural Control Committee. So long as Declarant owns any Lot, Tract or other portion of the Property, or any portion of the Currently Owned Additional Property, the members of the Architectural Control Committee shall be appointed by Declarant in its sole discretion. At

such time as Declarant no longer owns any Lot, Tract or other portion of the Property, or any portion of the Currently Owned Additional Property, or at such earlier date as Declarant releases its right to appoint the members of the Architectural Control Committee, the members of the Architectural Control Committee shall thereafter be appointed by the Board. The members of the Architectural Control Committee shall be appointed annually and will be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the Architectural Control Committee to be designated from time to time by the body then having the authority to appoint such members (Declarant or the Board, as the case may be). The members of the Architectural Control Committee need not be Owners of property in the Project. In the event of the death or resignation of any member of the Architectural Control Committee, the party or body then having the authority to appoint members to the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. Notwithstanding anything contained in this Declaration to the contrary, the Architectural Control Committee shall have the right, power and authority to employ and/or use the services of any architects, engineers, attorneys or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Control Committee as described in this Article VIII.

### Section 3. Architectural and Landscape Guidelines.

(a) The Architectural Control Committee shall, from time to time, publish and promulgate architectural and design guidelines (the "Architectural and Design Guidelines"). The Architectural and Design Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for Improvements (excluding only landscape Improvements, which are addressed in Article VIII, Section 3(b)). The Architectural and Design Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of non-landscape Improvements) to the Architectural Control Committee and the fees to be imposed by the Architectural Control Committee, as more specifically described in Article VIII, Section 8. In any event, the Architectural and Design Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of non-landscape Improvements) submitted to the Architectural Control Committee for approval. Furthermore, the Architectural Control Committee may publish and promulgate different Architectural and Design Guidelines for different Phases, sections or portions of the Property.

(b) The Architectural Control Committee shall, from time to time, publish and promulgate landscape guidelines (the "Landscape Guidelines"). The Landscape Guidelines shall be explanatory and illustrative of the general intent of the landscape development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing plans and specifications for landscape Improvements. The Landscape Guidelines shall also set out, among other things, the procedures for submission, review and approval of landscape plans and specifications to the Architectural Control Committee and the fees to be imposed by Architectural Control Committee, as more specifically described in Article VIII, Section 8. In addition, the Landscape Guidelines shall establish approved standards, methods and procedures for landscaping, landscape management and landscape maintenance in the Property, including the removal of trees. Such authorized standards, methods and procedures shall be utilized by Owners and their contractors and subcontractors, and the approval by the Architectural Control Committee of any landscaping plan or other landscaping improvement in connection with landscaping on a Lot, Tract or other portion of the Property shall be based upon the conformity of such plan or improvement with the Landscape Guidelines. In any event, the Landscape Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control

Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of landscaping plans, specifications and other materials submitted to the Architectural Control Committee for approval. Furthermore, the Architectural Control Committee may publish and promulgate different Landscape Guidelines for different Phases, sections or portions of the Property.

(c) The Architectural Control Committee is also authorized to publish and promulgate from time to time, and revise and amend at any time in its sole discretion, construction rules to be followed by all Owners and Builders performing work or constructing or installing Improvements (including landscape Improvements) on the Property.

(d) The Architectural and Design Guidelines described in Article VIII, Section 3(a), the Landscape Guidelines described in Article VIII, Section 3(b), and the construction rules described in Article VIII, Section 3(c) shall collectively be referred to as the "Guidelines." The Architectural Control Committee may issue and amend the Guidelines from time to time and may publish and promulgate different Guidelines for different Phases, sections or portions of the Property.

Section 4. Definition of "Improvements". The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot or Tract, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; roofed structures; parking areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings; poles; driveways; ponds; lakes; changes in grade or slope; site preparation; swimming pools; hot tubs; jacuzzis; tennis courts or sport courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Control Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Control Committee.

Section 5. Enforcement.

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any Additional Declarations are to permit control of the architectural design and landscaping and to establish quality standards for construction and construction activity in the Project and to help preserve values of properties in the Project. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of property in the Project and to Declarant, and to the values of their respective properties in the Project, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article VIII by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant specifically reserves and grants unto the Architectural Control Committee, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determination by the Architectural Control Committee or the Board whether there exists any construction of any Improvement which violates the terms of any approval by the Architectural Control Committee, the terms of the Guidelines, the terms of this Declaration or any Additional Declaration, or the terms of any amendments hereto or thereto.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof

(including, without limitation, the demolition and removal of any unapproved Improvements) if such Improvements were commenced or constructed in violation of this ARTICLE VIII. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot, Tract or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association and/or the Architectural Control Committee in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot, Tract or other portion of the Property upon which such Improvement was commenced or constructed.

Section 6. Failure of the Architectural Control Committee to Act. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements of this Declaration and of the Guidelines or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittal was a full and complete submittal, in accordance with the Guidelines, of all items that were to have been submitted to the Architectural Control Committee, and provided the Architectural Control Committee shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) business days after additional written request to act on such items is delivered to the Architectural Control Committee following the passage of such first above-described thirty (30) business day period, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals, **EXCEPT** that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration or any Additional Declaration, and **EXCEPT FURTHER**, that the Architectural Control Committee shall not be deemed to have waived any of the requirements set forth in Article VIII, Section 8, **Error! Reference source not found.** or **Error! Reference source not found.**. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

Section 7. Variances. Upon submission of a written request for a variance, which request shall set forth, among other things, the extraordinary circumstances applicable to a Lot giving rise to the need for a variance, the Architectural Control Committee may, from time to time, in its sole discretion, permit Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, the Architectural Control Committee may grant a variance only due to the existence of extraordinary circumstances applicable to a Lot, which extraordinary circumstance (i) has not been caused by the Owner of such Lot and (ii) materially impairs the ability of an Owner to construct a Dwelling Unit on such Owner's Lot. Any variance granted shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions set forth in this Declaration. Written requests for variances shall be deemed to be disapproved in the event the Architectural Control Committee has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards

provided hereunder or under any Additional Declaration against any other Owner. If a variance is granted, the Owner receiving such variance shall comply with the more restrictive of the terms of the variance or applicable local, state or federal laws (including, without limitation, local zoning and development laws), and the granting of a variance shall not relieve any Owner from the obligation of complying with such laws. Notwithstanding anything contained in this Section 7 to the contrary, in no event shall a variance granted by the Architectural Control Committee be deemed a waiver or assurance of any future variance requests.

Section 8. Fees Required by the Architectural Control Committee. The Architectural Control Committee, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Architectural Control Committee pay one or more fees to the Architectural Control Committee or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established by, and may be increased from time to time by, the Architectural Control Committee, shall be reasonable in amount, and shall be set forth in the Guidelines.

Section 9. Notices and Submittals. Notices and submittals to the Architectural Control Committee shall be in accordance with the notice provisions set forth from time to time in the Guidelines.

Section 10. Separate Committee for Changes to Existing Improvements. The Board shall have the right, power and authority, in its sole discretion, to appoint a committee separate and apart from the Architectural Control Committee to review plans and specifications for any and all renovations, changes and additions to existing Improvements located on a Lot, Tract or other portion of the Property (the "Architectural Changes Committee"). Should the Board appoint such an Architectural Changes Committee, then the Architectural Control Committee shall relinquish to the Architectural Changes Committee its authority to review plans and specifications for any such changes to existing Improvements, and the Architectural Changes Committee shall be solely responsible for review and approval of the same. The composition of the Architectural Changes Committee shall be determined by the Board in its sole discretion and the procedure for submission, review and approval of plans and specifications to and by the Architectural Changes Committee shall be set forth in the Guidelines. Notwithstanding the foregoing, nothing in this Section 10 shall be deemed to obligate the Board to appoint an Architectural Changes Committee, and until an Architectural Changes Committee is appointed, the Architectural Control Committee shall be responsible for reviewing and approving or disapproving all plans and specifications for renovations, changes and additions to existing Improvements in accordance with the provisions of this Article VIII and the Guidelines.

Section 11. Limitation of Liability. No member of the Architectural Control Committee or the Architectural Changes Committee shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article VIII. Neither the Architectural Control Committee, nor the Architectural Changes Committee (if applicable), nor the members thereof, nor the Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the Architectural Control Committee or the Architectural Changes Committee (if applicable) shall not be deemed or construed as a representation or warranty of the Architectural Control Committee or the Architectural Changes Committee (as the case may be), Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in

accordance with such plans and specifications; and any responsibility or liability therefor is disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he or she will not bring any action or suit against Declarant, the Association, the Architectural Control Committee, the Architectural Changes Committee (if applicable), the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 12. Miscellaneous. Members of the Architectural Control Committee and, if applicable, the Architectural Changes Committee, in the sole discretion of the party or body appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the Architectural Control Committee and the Architectural Changes Committee (if applicable) for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of the Architectural Control Committee and the Architectural Changes Committee (if applicable), including those incurred in connection with the exercise of their enforcement or other powers as provided in this Article VIII, shall be borne by the Association; provided, however, nothing in this Section 12 shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Article VIII, Section 5.

## ARTICLE IX

### INSURANCE; REPAIR AND RESTORATION; CONDEMNATION

Section 1. Insurance Requirements. The Board of Directors shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) Property Insurance. All improvements and all fixtures and personal property included in the Common Areas and Maintenance Areas and all personal property and supplies belonging to the Association shall be insured in an amount equal to the current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing coverage. The Board shall, at least annually, review the insurance coverage required in this Section 1(a) and determine the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by the perils covered by the "special form of loss" policy promulgated by the Insurance Services Organization, or its equivalent. In addition to the provisions and endorsements set forth in Article IX, Section 3 and Section 4, the property insurance described in this Section 1(a) shall contain the following provisions:

- (1) standard "Agreed Amount" and "Inflation Guard" endorsements;
- (2) construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;
- (3) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and

(4) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The property insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association or the Owners; (2) loss payments are contingent upon action by the carrier's directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or the Association from collecting the proceeds.

(b) Liability Insurance. The Board shall also be required to obtain and maintain, to the extent obtainable, a policy of commercial general liability insurance (current ISO Form or its equivalent), and a policy of officer's and director's liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use as the Project, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and Maintenance Areas, or from service on the Board; provided, however, in no event shall the amounts of such commercial general liability insurance ever be less than \$2,000,000 per occurrence, nor shall the amount of such officer's and director's insurance be less than \$2,000,000 unless such coverage is determined by the Board to be unreasonably expensive. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board shall review such limits annually.

(c) Fidelity Coverage. The Board shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverages as the Board shall determine from time to time to be desirable, specifically including, without limitation, directors and officers liability insurance, flood insurance, workers' compensation or employee liability insurance, automobile liability insurance, performance bonds, and maintenance bonds.

Section 2. Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Owners pursuant to the terms of this Declaration.

Section 3. Special Endorsements. The Board shall make diligent efforts to secure insurance policies that will provide for the following:

- (a) recognition of any insurance trust agreement entered into by the Association;
- (b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured and any insurance trustee; and

(c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner.

Section 4. General Guidelines. All insurance policies maintained by the Board under this ARTICLE IX shall comply with the terms of N.C.G.S. §47F-3-113. All insurance policies purchased by the Board shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of "A VIII" or better by the current issue of *Best's Insurance Reports*. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 5. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of property insurance covered by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association remaining after satisfactory completion of repair and replacement shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Maintenance Areas.

Section 6. Insufficient Proceeds. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 7. Owner's Personal Property. Neither the Association nor Declarant shall be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, tenants, guests or invitees, located on or used at the Common Areas. Further, neither the Association nor Declarant shall be responsible or liable for any damage or loss to any personal property of any Owner, his family, tenants, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

Section 8. No Obligation to Insure Owners' Property. By virtue of taking title to a Lot or Tract within the Project, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or Tract or any Dwelling Unit or other property located thereon.

Section 9. Security. The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures, and maintain or support certain other activities within the Project designed to make the Project safer than it might otherwise be. Provided, however, should the Association provide, maintain or support any such measures or activities, then neither the Association, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Project, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot, Tract or Dwelling Unit and each tenant, guest and invitee thereof acknowledges and understands that neither the Association, Declarant nor any successor of Declarant are insurers, and each such Owner,

and Occupant of a Lot, Tract or Dwelling Unit and their tenants, guests and invitees assume all risks for loss or damage to persons, property or contents belonging to any such persons.

Section 10. Condemnation. Whenever all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of such taking shall be paid to the Association. The Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot, Tract, or other portion of the Property, appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area. All compensation and damages paid to the Association on account of such a taking shall be used to restore the Common Area, provided such restoration is possible, with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Nothing in this Section 10 shall prevent any Owner whose Los or other property is specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on its own behalf for consequential damages relating to loss of value of the affected Lots, Tracts or other property, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Area, Lots, Tracts or other property without such allocation, the award shall be divided between affected Owners and the Board, as their interests may appear, by the Board in its sole discretion.

## ARTICLE X

### EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted or reserved in this Declaration, reserves unto itself, its successors and assigns, and grants to the Association and any other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. In addition, Declarant reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Project, including, but not limited to, easements in favor of Declarant, the Association, the Owners, and all their family members, guests, invitees and tenants and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified.

Section 1. Easements and Cross-Easements on Common Areas. Declarant, for itself, its designees and the Association, reserves the right to impose upon the Common Areas from time to time such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, sewer, water, gas, drainage, irrigation, pond maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Project or any portion thereof.

Section 2. Use of Common Areas. Subject to any limitation or restriction set forth in this Declaration, Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Association and their designees, the Owners and all their family members, guests, invitees and tenants, and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in

accordance with the terms of this Declaration and any Additional Declaration or Tract Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 3. Right-of-Way Over Roadways. Declarant reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, tenants, invitees, designees, successors and assigns, and to each Owner of a Lot or Tract, their family members, tenants, guests, invitees, successors and assigns, and to each Occupant of a Lot or Tract, and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Property while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Property.

Section 4. Right of the Association and Declarant to Enter Upon the Common Areas and Maintenance Areas. Declarant reserves for the benefit of itself, its successors in interest and assigns, and grants to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress, egress and access to enter upon or over the Common Areas and Maintenance Areas for the purposes of inspecting any construction, proposed construction, or Improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas and Maintenance Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they are hereafter redesignated or as Declarant otherwise determines them to be reasonably suited. Notwithstanding the foregoing, nothing contained in this Section 4 shall be interpreted as imposing any obligation upon the Association or Declarant to maintain, repair, or construct Improvements which an Owner is required to maintain, construct or repair.

Section 5. Easement for Encroachments. Declarant reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, any Builders, other Owners, their successors and assigns, and to the Occupants of Lots or Tracts, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Property now or hereafter encroaches upon any of the remaining portions of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Owners and all their designees.

Section 6. Easements Regarding Trail System. Declarant reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, the Owners, their successors and assigns, and to the Occupants of Lots or Tracts, a perpetual, non-exclusive easement, right and privilege of passage and use, both pedestrian and non-motorized vehicular, over and across the Trail System, and the right to use any shelters, benches, railings, boardwalks or other facilities constructed or installed by Declarant or the Association within the Trail System. Declarant also reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, its successors and assigns, a perpetual, non-exclusive easement to construct, install, operate, maintain and replace any shelters, benches, railings, boardwalks or similar facilities or Improvements within the Trail System. The Association shall have the right to establish reasonable rules and regulations for use of the Trail System, including limitations on the types of non-motorized vehicles permitted on the Trail System (or on designated portions of the Trail System).

Section 7. Maintenance Areas. Declarant reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Association, its successors and assigns, the following nonexclusive

perpetual easements over certain areas of the Property as described below, for the purposes described below:

(i) Easements for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monument(s) for the Project, over, across and under those portions of the Property shown and designated as "Entry Easement" or by similar designation on the Plats (the "Entrance Monument Easements"). Declarant and/or the Association shall have the right to landscape and maintain the areas of the Property so designated as entryways to the Project, to erect and maintain entrance monument(s) thereon bearing the name of the Project, and to erect and maintain lighting for such monument(s), plantings, landscaping, irrigation systems and other improvements typically used for entryways.

(ii) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, lighting, monuments and irrigation systems, over, across and under those portions of the Property shown and designated as "Landscape Easements" or "Landscape, Signage, and Utility Easements" on the Plats ("Landscape Easements").

(iii) Easements for the installation, maintenance, repair and removal of sidewalks, over, across and under those portions of the Property shown and designated as "Sidewalk Easements" on the Plat ("Sidewalk Easements").

All of the areas and items described above, together with the Off-Site Maintenance Areas, are collectively referred to as the "Maintenance Areas." The Association shall maintain the Maintenance Areas to a consistent standard of maintenance typical of a first-class development, which standard shall be determined by Declarant from time to time in its sole discretion, so long as Declarant owns any portion of the Property.

Section 8. Easements for Common Driveways. Certain groups of Lots in the Project may be served by Common Driveways, as defined below, which will run over and across certain areas of the Property. The Lots which are part of a group which will be served by a Common Driveway and are therefore subject to the provisions of this Section 8 will be specified in the Supplemental Declarations and/or Additional Declarations for the Phases in which such Lots are located. Provided, however, the Owners of certain Lots shall have the right, but not the obligation, to have such Lots be served by a Common Driveway and therefore included within the designated group of Lots using such Common Driveway, which Lots will also be specified in the Supplemental Declarations and/or Additional Declarations for the Phases in which such Lots are located and which Lots shall be referred to as "Optional Lots." All Lots served by one Common Driveway, including those Optional Lots whose Owners have chosen to be served by such Common Driveway, shall be referred to as a "Group."

Declarant reserves, for the benefit of itself, its agents, employees, designees, successors and assigns, and grants to the Association, its agents, employees, designees, successors and assigns, and to each Owner of a Lot in a particular Group, their successors and assigns, a perpetual non-exclusive easement over, across and under the area of the Property shown and designated as "Common Driveway and Utility Easement" on the Plat of such Group and running to such particular Group. The above-described easement is reserved and granted for the purposes of (a) paving, maintaining and repairing a Common Driveway to be erected on such easement area (the "Common Driveway"), and (b) laying, maintaining, repairing and replacing utility lines over, under and across such easement area, which non-exclusive easement shall include the right to go upon such easement area and any portion of the Property in the area of or adjacent to such easement area necessary to perform such work; provided, however, and notwithstanding the foregoing, no utility lines or equipment shall be placed or maintained within the Common Driveway area without the express prior written approval of the Architectural Control Committee, and absent such

approval, utility lines servicing the Common Drive Lots shall access those Lots exclusively from publicly dedicated rights-of-way. In addition, Declarant grants to each Owner of a Lot in a Group, their successors and assigns, a perpetual, non-exclusive easement over and across any areas of the Property necessary for such Owner to tie his or her Lot into the Common Driveway and Utility Easement serving his Lot (the "Tie-In Easement"), which Tie-In Easement may also be used for the purposes described above.

Declarant reserves, for the benefit of itself, its agents, employees, designees, successors and assigns, and grants to the Association, its agents, employees, designees, successors and assigns, and to each Owner of a Lot in a particular Group, their family members, guests, invitees, successors and assigns, and to each Occupant of a Lot in a particular Group, a perpetual, non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Common Driveway and Utility Easement serving such Group, and over and across any Tie-In Easement necessary, for the purpose of providing access, ingress and egress to and from the Lots in such Group.

Any Owner or Occupant of a Lot within a Group may and must use only the Common Driveway and Utility Easement serving such Group as its means of access to a public Roadway. Within the Common Driveway and Utility Easements and the Tie-In Easements, no structure, planting or other material shall be placed or permitted to remain which could interfere with the use of the Common Driveway and Utility Easements and the Tie-In Easements for the purposes stated above.

The Owner of each Lot within a Group shall pay for its attributable share of the construction of that Group's Common Driveway in accordance with the provisions of the Guidelines.

Each Owner of a Common Drive Lot shall pay annually to the Association, within ten (10) days after notice from the Board, an amount (the "Common Drive Reserve Assessment") to be held in escrow and used by the Board to pay for maintenance and repair of the Common Driveway. The Common Drive Reserve Assessment shall be set annually by the Board in its discretion. If at any time the amount in reserve is insufficient for the Board's then contemplated or actual expenses for repair or maintenance of the Common Drive, the Board may make a Special Assessment as to the Owners of Common Drive Lots pursuant to the provisions of this Declaration to pay for such repair or maintenance and replenish the reserve.

The Owner of each Lot in a Group shall have the right to lay, maintain, repair and replace within the Common Driveway and Utility Easement, and within any Tie-In Easement as necessary, utility lines servicing its Lot, provided, that any such work shall be carried out in such a way so as not to interfere with the other Owners' reasonable use of the Common Driveway, and provided further that any Owner performing such work and causing disturbance to the pavement, concrete, landscaping or other features of the Common Driveway and Utility Easement, or to other property in the Project, shall repair the same to its condition prior to such work.

Section 9. Utility and Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Plats, including, but not limited to, those certain easements shown and designated on the Plats as:

- (a) "Utility Easement";
- (b) "Storm Drainage Easement";
- (c) "Drainage and Utility Easement";
- (d) "Sanitary Sewer Easement";

- (e) "Water Easement";
- (f) "Sidewalk Easement";
- (g) "Landscape, Signage and Utility Easement";
- (h) "Retaining Wall Easement"; and
- (i) "Sanitary Sewer Right-of-Way."

Such easements are reserved for the use of Declarant, its successors and assigns, and are established for the use of the Association, its successors and assigns, and include, without limitation, storm drainage easements of variable width, whether or not depicted on a Plat, over the entire area within all ditches along any Roadway.

In addition to any easement areas shown on the Plats, Declarant reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, and to each Builder (but only as to the Lots now or formerly owned by such Builder) a non-exclusive easement and right-of-way over, under and along a 10-foot strip of land within each Lot, which is adjacent to the front, side and rear boundary lines of such Lot (other than any Lot upon which a townhome Dwelling Unit is constructed) within the Property, for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, sanitary sewer and drainage facilities, storm drainage and/or other utilities. Within the above-described easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easement areas.

Within certain drainage easements shown on the Plats and/or on other locations within the Property as initially installed by Declarant, there are underground storm drainage pipes, rip-rap, and similar storm drainage facilities. Each Owner shall be responsible for routine exterior maintenance of any such facilities located on his or her Lot, at such Owner's sole cost and expense, so that storm water may continue to flow properly through such pipes and all drainage facilities. This maintenance obligation includes keeping pipe outlets and swales clear of debris, leaves, and other material which may impede the flow of storm water. If any Owner fails to perform such maintenance, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform such maintenance, and to assess the cost thereof as a Special Individual Assessment. If any obstruction within any such storm drainage facilities, whether on a Lot or on Common Area, is caused by the act or omission of any Owner or an Owner's contractor (e.g., siltation resulting from construction activities, or a blockage from blowing leaves into storm drains), the Owner whose acts or omissions (or whose contractor's acts or omissions) caused such obstruction shall remedy such obstruction at such Owner's sole cost and expense, and if such Owner fails to do so, the Association shall have the right, but not the obligation, to remedy such obstruction and to assess the cost thereof as a Special Individual Assessment. If any obstruction within any such storm drainage facilities occurs on a Lot on Common Area, and the Association reasonably determines that the source thereof cannot be determined with a reasonable degree of accuracy, then the Association shall have the right, but not the obligation, to remedy such obstruction and to pay the cost thereof from the Annual Assessments or Reserve Fund collected from all Lot Owners. Declarant discloses to each Lot Owner that (a) within the drainage easements there will be, from time to time, standing water, and (b) as more Dwelling Units are completed in the Project, the flow of storm water run-off water over particular Lots may increase.

Section 10. Irrigation Easements. Declarant reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, non-exclusive perpetual easements over, across and under those portions of the Property shown and designated as "Irrigation Easement" on the Plats for the installation, maintenance, repair and removal of irrigation systems to service the landscaping to be installed and maintained in the Landscape Easement areas (the "Irrigation Easements"). Within the Irrigation Easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, repair and maintenance of irrigation systems. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Architectural Control Committee, over such easements.

Section 11. Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it under this ARTICLE X. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property pursuant to this ARTICLE X, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Notwithstanding the above, the Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas on any Lot or Tract.

Section 12. Easement Reserved for the Association and Declarant. Full rights of access, ingress and egress are reserved by Declarant for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this Article X and for the carrying out by Declarant or the Association of the rights, functions, duties and obligations of each party under this Article X; provided, that any such entry by Declarant or the Association upon any Lot or portion of the Property shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their employees or agents shall be repaired by Declarant or the Association, as the case may be, at the expense of Declarant or the Association, as the case may be.

Section 13. Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Property owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Project, by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of the persons who are not Association Members or Owners. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant for the development of the Project and the preservation and enhancement of Declarant's interest therein.

Section 14. No Merger of Easements. The easements granted or reserved in this Article X shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

## ARTICLE XI

## RIGHT OF FIRST REFUSAL

Section 1. Applicability. Except for sales and conveyances by Declarant, no unimproved Lot (as defined below) may be sold by any Owner except in compliance with the provisions of this Article XI.

Section 2. Right of First Refusal. Before any unimproved Lot (or any ownership interest therein) may be sold to any Person other than Declarant or its successors, the Owner or Owners of such Lot shall first offer in writing to sell the Lot to Declarant or its successors at a price equal to: (1) the contract purchase price paid by such Owner for such Lot (excluding all finance charges related to the purchase) increased by the percentage increase, from the closing date of such Owner's purchase of such Lot to the date of such written offer to sell the Lot to Declarant or its successors, in the CPI, less (2) the cost of removing all liens and encumbrances on the Lot and customary seller's closing costs (including, without limitation, the cost of preparing the deed and any documentary or transfer tax stamps to be affixed to said deed). If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. For the purposes of this Article XI, a Lot shall be considered as unimproved unless and until any proposed Improvements to such Lot have been approved by the Architectural Control Committee and the good faith commencement of the construction of such Improvements (i.e., at a minimum, completion of footings and foundation of the approved residence and bona fide evidence of total expenditures for Improvements to the Lot of at least \$50,000.00) shall have occurred. Upon receipt by an Owner of a bona fide offer to purchase an unimproved Lot, such Owner shall send to Declarant a copy of such bona fide offer along with written notification that such Owner is offering the Lot for sale to Declarant pursuant to this right of first refusal. If Declarant or its successor does not accept or reject in writing said offer of sale within thirty (30) days from the date of receipt of the same, then the Owner or Owners of such Lot shall have the right to sell the Lot to the third party making such bona fide offer pursuant to such bona fide offer, without any further additional obligation to offer the Lot to Declarant. Declarant shall have this right of first refusal with regard to each bona fide offer which an Owner receives for the purchase of an unimproved Lot. Any Owner who buys an unimproved Lot from another Owner shall be governed by the provisions of this Article XI and the waiver of the right of first refusal with respect to any sale shall not limit Declarant's rights of first refusal with respect to any subsequent sale of any unimproved Lot. Provided, however, the right of first refusal reserved by Declarant pursuant to this Section 2 shall be valid and enforceable with respect to any unimproved Lot only for a period of fifteen (15) years from the date of the first conveyance of such Lot from Declarant to an Owner other than Declarant, and upon the expiration of said fifteen (15) year period, the Owner or Owners of such Lot shall have the right to sell the unimproved Lot to any third party without the obligation to offer the Lot to Declarant. Further provided that this Section 2 shall not be applicable with respect to any foreclosure sale of a first lien deed of trust or first lien mortgage on an unimproved Lot or deed in lieu thereof which is made and delivered in good faith. In each instance where an offer to purchase an unimproved Lot is presented to Declarant by an Owner pursuant to the right of first refusal granted in this Section 2, Declarant shall determine in its sole discretion and on a case by case basis whether to exercise its right of first refusal, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose. Should an Owner fail to comply with the provisions of this Section 2 and sell an unimproved Lot without first offering said Lot to Declarant in accordance with the terms hereof, then the purchaser of such unimproved Lot shall purchase such Lot subject to the right of first refusal granted in this Section 2, and Declarant shall thereafter at any time have the right to purchase such Lot, whether or not it is subsequently improved, from the purchaser thereof at the price as set forth in this Section 2, and shall also be entitled to any other rights and remedies available at law or in equity for the violation of this Section 2.

Section 3. Death of an Owner; Gift. The personal representative, heirs, successors and assigns of any Owner who dies while owning any unimproved Lot, or the donee of a gift of a Lot from an Owner, shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer and conveyance of such Lot shall be governed by the provisions of this Article XI.

Section 4. Transfers to Declarant. In the event that Declarant exercises its right of first refusal pursuant to Section 2 above, the closing of the conveyance of such Lot shall occur within sixty (60) days after receipt by the Owner of written notice from Declarant or its successors that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall make payment to such Owner of the purchase price as described in Section 2 above, in cash or cash equivalent. The Owner shall deliver to Declarant a special warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and any other exceptions which may be approved by Declarant. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

Section 5. No Further Documentation Required. The right of first refusal reserved by Declarant in this Article XI shall run with the title to each Lot in the Project and be binding upon each purchaser of a Lot from Declarant and upon any subsequent Owner of a Lot, whether such Owner purchased such Lot from Declarant or from a third party. The provisions of this Article shall constitute record notice to all purchasers of Lots in the Project of the right of first refusal reserved in this Article XI, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of Lots in the Project subject to the provisions of this Article XI.

## ARTICLE XII

### TRACTS

Section 1. Creation of Tracts. Portions of the real property subjected to the Declaration (including the Property initially subjected to this Declaration as described on Exhibit A attached hereto) either initially or through the filing of a Supplemental Declaration may be divided by Declarant into Tracts at such time as Declarant determines in its sole discretion. Any such portion of the Property as is designated as a Tract by Declarant shall be designated on a plat or plats for the Project, or by a metes and bounds description of the property recorded either as an exhibit to this Declaration, in a Supplemental Declaration, or separately, on a plat or plats or in a deed or deeds in the appropriate registry. Declarant may in accordance with Section 3 of Article XIV, amend this Declaration or any Supplemental Declaration from time to time to subdivide, combine and/or redesignate Tracts and/or revise Tract boundaries. Tracts may be subjected to additional covenants and restrictions set forth in a Supplemental Declaration or in a Tract Declaration separately filed by the Owner thereof, provided that all such covenants and restrictions are approved by Declarant in accordance with the terms hereof.

Section 2. Tract Declaration. No more than one (1) Person shall hold title to a Tract, or any portion thereof, unless such Tract is subject to a Tract Declaration recorded in the Recording Office. The Board of Directors and Declarant, so long as Declarant owns any Property or any of the Currently Owned Additional Property must approve in writing, which approval shall not be unreasonably withheld, any Tract Declaration before such Tract Declaration may be recorded. No Tract Declaration shall be approved unless the following issues or concepts are addressed or included in the Tract Declaration:

(a) A Tract Association, established as a corporation under North Carolina law, that is responsible for the administration, maintenance, preservation, use, and enjoyment of such Tract and is to function as the Owner of such Tract.

(b) Mandatory membership in the Tract Association by all owners of real property in the Tract.

(c) The Tract is bound by the Tract Declaration during the entire time period that this Declaration binds the Tract.

(d) The payment of all Assessments including any Tract Assessment, fees, charges, and fines levied by the Association against a Tract or its Lot Owners shall be the responsibility of the Tract Association, which may be sued in its own name for failure to pay such monies, and shall also be the responsibility of and a lien and charge upon the property of the Owner of such Tract and upon each Lot within the Tract.

(e) Authority of the Tract Association to collect assessments from all Persons owning any real property within the Tract, including each such Person's pro-rata share of any assessments, charges, fees, or fines levied by the Association.

(f) Authority of the Tract Association to have lien rights (as permitted under North Carolina law) against any owner of any real property therein to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and the costs of collection (including attorneys' fees). Such lien shall be prior and superior to all other liens, except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the real property but excluding mechanic's or materialmen's liens) recorded before the docketing of the claim in the Recording Office; (ii) liens for real estate taxes and other governmental assessments and charges against the Tract; and (iii) the liens of the Association against any Tract to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection.

(g) Authority of the Tract Association to institute legal proceedings in its own name to collect all sums due and owing.

(h) Prohibition of all uses not permitted under this Declaration; provided, however, a Tract Declaration may further restrict or prohibit activities permitted in this Declaration; provided such restrictions or prohibitions are not inconsistent with the standard of conduct throughout the Project.

(i) Such other provisions that the Board deems necessary for the administration, maintenance, preservation, use, and enjoyment of the Project.

**Section 3. Special Tract Services.** The Owner of a Tract or Tracts may request that the Association provide or perform a higher level of service or special services for the benefit of a Tract or Tracts. The Association shall provide such services, except where the Association, acting through its Board of Directors, determines, in its sole discretion, that the Association does not have the capacity skill or expertise to provide the requested service, where the Association determines that the provision of the service would expose the Association to an unreasonable risk of claims, potential or legal exposure, where the Association determines that the provision of services would be unduly burdensome on the Association, or where the Tract or Tracts requesting the same owe outstanding assessments or other charges to the Association, or have failed to timely pay such assessments or charges in the past two (2) years. The cost of such services shall be assessed against the Tract or Tracts requesting the same as a Tract Assessment, provided, however, the Association may but shall not be required to request advance payment for start-up costs associated with providing the service. In such event, the Association shall provide the requested

services. The cost of such services shall be assessed against the Tracts as a Tract Assessment. In the event the Association determines that the Association does not have the capacity skill or expertise to provide the requested service, that the provision of the service would expose the Association to an unreasonable risk of claims, potential or legal exposure, that the provision of services would be unduly burdensome on the Association, or that the Tract of Tracts requesting such services owe outstanding assessments or other charges to the Association, or have failed to timely pay such assessments or charges in the past two (2) years, the Association may elect to discontinue the provision of such services upon forty-five (45) days' written notice to the Owner of the Tract.

Section 4. Subdivision of a Tract. The Owner of a Tract may at any time petition the Board of Directors to divide the property comprising the Tract into two (2) or more Lots. Such petition shall be in writing and shall include a plat of survey which indicates the boundaries of the proposed Lots. Such petition shall be granted upon the filing of all required documents with the Board, unless the Board of Directors denies such application in writing within thirty (30) days of its receipt thereof. Notwithstanding the above, so long as Declarant owns any of the Property or the Currently Owned Additional Property, any subdivision of Tracts shall require the prior written consent of Declarant. Declarant may limit the number of Lots which may be subdivided out of any Tract. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

## ARTICLE XIII

### DENSITY; ZONING

Section 1. Limitation of Density of and Permitted Uses on Each Tract. Declarant may assign and allocate a Density Factor expressed as a Dwelling Unit number to each Tract at or before the initial sale or conveyance of the Tract by Declarant to a third party or prior to the commencement of development of any Tract developed by Declarant or an affiliate of Declarant, establishing the maximum density of structures and improvements that may be constructed on the Tract (hereinafter, "Density"). Said Density restrictions may be expressed in terms of a restriction on the overall number of Dwelling Units that may be constructed on a Tract and other limitation or restrictions on Density as may be agreed to by Declarant and to purchaser of the Tract. In addition, Declarant may limit, restrict and/or regulate the types and scope of uses and activities permitted on or in the Tract, the height of structures and improvements to be constructed on or in a Tract and may place such other covenants and restrictions on a Tract as may be agreed to by Declarant and the purchaser of the Tract (all of which including the Density restrictions shall hereinafter be collectively referred to as "Special Tract Covenants"). Such Special Tract Covenants shall be reflected in this initial Declaration, or in any Supplemental Declaration subjecting such Tract to this Declaration, or in an amendment or amendments to the Declaration, which amendment(s), notwithstanding anything to the contrary contained in this Declaration, may be unilaterally executed by Declarant and recorded in the appropriate registry without the necessity of further approvals or consents and which upon recording, shall run with the land, bind said Tract, and be enforced in the same manner as any other covenant contained in this Declaration.

Section 2. Unused Density. Any assigned or allocated Density that has not been used by an Owner within five (5) years of the date that a Supplemental Declaration or amendment to the Declaration allocating or assigning such Density to the Tract was recorded shall automatically revert to Declarant and shall thereafter be the sole and exclusive property of Declarant. Upon such reversion, Declarant may hold such unused Density or sell, transfer and assign the same to other Tract Owners to the Association. Upon the reversion of unused Density and upon any further transfer and assignment of such Density by Declarant to other Tracts or to the Association Declarant shall unilaterally execute and record an amendment to the Declaration setting forth the reallocations of Density among and between the affected Tracts. For the

purposes of this Section 2, unused Density shall mean any which has not actually been constructed on a Tract and/or for which no Certificate of Occupancy has been issued and/or Density for which a building permit allowing for its construction by the appropriate governing authority has not been issued.

Section 3. Transfer of Density Between Tracts. The Owner of a Tract with unused Density may not sell, transfer and convey such unused Density, or portion thereof, to the Owner of any other Tract without the written consent of Declarant which may be withheld in the sole and absolute discretion of Declarant.

Section 4. Rezoning and Variances. No Owner shall seek to rezone the Property, such Owner's Tract, or any portion thereof; seek any variance or special exception from the zoning conditions applicable to the Property, any Tract, or portion thereof; or seek to alter, modify or change any zoning ordinance applicable to the Project, any Tract, or portion thereof, without the written consent of the Board of Directors, and Declarant so long as Declarant either owns real property within the Property or retains unused Density that may be assigned to others within the Property, or owns any portion of the Currently Owned Additional Property.

## ARTICLE XIV

### GENERAL PROVISIONS

Section 1. Duty of Maintenance. Except for those portions, if any, of a Lot or Tract which the Association may elect (or is obligated) to maintain or repair under the terms of this Declaration, the Owner of any Lot or Tract shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) or Tract(s) owned by such Owner, including Improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Additional Declaration, in accordance with the provisions of the Guidelines, and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance, as to unimproved and improved Lots or Tracts, shall include, but shall not be limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and waste;
- (2) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
- (3) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
- (4) Complying with all governmental health and police requirements.

In addition, such maintenance, as to improved Lots or Tracts, shall include, but shall not be limited to, the following:

- (1) Lawn mowing on a regular basis;
- (2) Tree and shrub pruning;
- (3) Watering by means of a lawn sprinkler/irrigation system and/or hand watering as needed;
- (4) Keeping exterior lighting and mechanical facilities in working order;

- (5) Keeping lawn and garden areas alive;
- (6) Removing and replacing any dead plant material;
- (7) Maintenance of natural areas and landscaping in accordance with the Guidelines;
- (8) Keeping parking areas and driveways in good repair;
- (9) Repainting of Improvements;

(10) Repair of damage and deterioration to Improvements, it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty, then within six (6) months following the date such damage or destruction occurs, the Owner of the Lot or Tract on which such Improvements are situated, must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Architectural Control Committee and otherwise in accordance with the terms and provisions of this Declaration and of each Additional Declaration applicable thereto) or remove such damaged Improvements and restore the Lot or Tract to its condition existing prior to the construction of such Improvements.

Notwithstanding anything contained in this Declaration to the contrary, the above-described maintenance responsibilities as to any Lot or Tract shall commence only upon a Plat showing such Lot or Tract being recorded in the Recording Office, and upon the conveyance of such Lot or Tract by Declarant. If an Owner of any Lot or Tract has failed in any of the duties or responsibilities of such Owner as set forth in this Section 1, then the Board and Declarant, either jointly or severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in this Section 1. Provided, however, this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently prosecute the same. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property or any portion of the Currently Owned Additional Property), acting through its authorized agent or agents, either jointly or severally, shall have the right and power to enter onto the premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Lot or Tract on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association or Declarant in performing such work computed at the highest lawful rate as shall be permitted by law from the date(s) such amounts are expended until repayment to the Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and such Owner shall reimburse the Association or Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Association or Declarant, as the case may be, within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association or Declarant, the Association may impose a Special Individual Assessment against such Owner.

**Section 2. Duration.** This Declaration and the controls, covenants, restrictions and standards set forth in this Declaration, as it may be amended from time to time in accordance with the terms hereof, shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property, including Declarant, and their

respective heirs, successors, and assigns, for a term of thirty (30) years beginning on the date this Declaration is recorded in the Recording Office. At the end of such thirty (30) year period, the easements, covenants, conditions and restrictions set forth in this Declaration shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the expiration of a respective period, by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws, there shall be adopted a resolution to terminate these covenants and restrictions. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting. The foregoing shall not limit the right of Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right in favor of Declarant is described in Section 3 below.

Section 3. Amendment. Except as otherwise expressly provided in this Declaration, and subject to the limitations contained in this Declaration, this Declaration may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, if sixty-seven percent (67%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then this Declaration may be amended by obtaining the vote of sixty-seven percent (67%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, or any portion of the Currently Owned Additional Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Association Members is required pursuant to this Section 3 shall become effective when an instrument executed by the Association Members voting for such amendment or modification is filed of record in the Recording Office; provided, however, such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Section 3.

Notwithstanding the terms of the immediately preceding paragraph of this Section 3, for a period of ten (10) years after the recordation of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications to this Declaration which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration. Furthermore, at any time during the term of this Declaration, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications to this Declaration which are (i) correctional in nature and do not involve a change which materially adversely affects the rights, duties or obligations specified in this Declaration, and (ii) necessary to cause this Declaration or any Additional Declaration to comply with the requirements of any Agency, or the requirements of the North Carolina Planned Community Act.

Section 4. Enforcement; Litigation. The Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Supplemental Declaration or Additional Declaration. Enforcement of the controls,

covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof. Except as otherwise expressly provided in this Declaration, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of no less than two-thirds of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. The immediately preceding sentence shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration, (b) the imposition and collection of assessments, charges or other fees hereunder, (c) proceedings involving challenges to ad valorem taxation, (d) counter-claims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services to the Project. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 5. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 6. Notice. Except as otherwise expressly set forth in this Declaration, whenever written notice to an Owner or Association Member (including Declarant) is required under the terms of this Declaration, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner or Association Member appearing on the records of Declarant or the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. Declarant's address as of the date of recording of this Declaration is 227 West Trade Street, Suite 1000, Charlotte, North Carolina 28202.

Section 7. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 8. No Exemption. No Owner or other party may exempt himself from the coverage of this Declaration, or the obligations imposed by this Declaration, including the obligation to pay Assessments, by non-use of such Owner's Lot(s) or other property located within the Project or the Common Area.

Section 9. Changes to Plans for the Project. Nothing contained in this Declaration shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Project, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration, reserves the right to change any plans for the Project at any time and from time to time as Declarant may determine to be necessary based

upon Declarant's continuing research and design program and/or market conditions, and any plans for the Project shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration.

Section 10. Joinder of Lenders. The Property is encumbered by the following mortgages: (a) First Lien Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing, dated as of October 14, 2016, from Declarant to a trustee for the benefit of JPMorgan Chase Bank, N.A., as Collateral Agent ("First Lender"), recorded in Book 16571 at Page 1783 in the Recording Office (the "First Mortgage"); and (b) Second Lien Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing, dated as of October 14, 2016, from Declarant to a trustee for the benefit of Wilmington Trust, National Association, as Collateral Trustee ("Second Lender"), recorded in Book 16571 at Page 1804 in the Recording Office (the "Second Mortgage"). Consent and Subordination Agreements, executed by First Lender and Second Lender, are being recorded in the Recording Office in connection with this Declaration.

*[signatures on following page]*

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.

**CRESCENT HOLLY SPRINGS, LLC**, a Delaware  
limited liability company

By: \_\_\_\_\_

Name: James F. Martin

Title: Vice-President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Sherry L. Walton a Notary Public of the County and State aforesaid, certify that James F. Martin personally came before me this day and acknowledged that he is Vice-President of CRESCENT HOLLY SPRINGS, LLC, a Delaware limited liability company, and that he, as Vice-President, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and official stamp or seal this 17<sup>th</sup> day of July, 2017.

Sherry L. Walton  
NOTARY PUBLIC

My Commission Expires: March 18, 2018

[NOTARIAL STAMP OR SEAL]

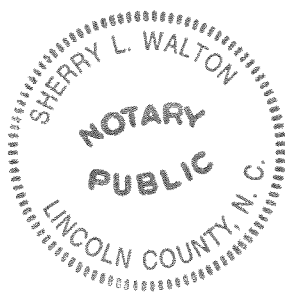


EXHIBIT "A"

All of those lots or parcels of land located in Holly Springs Township, Wake County, North Carolina, and identified as Lots 1 through 3, Lot 5, Lots 7 through 11, Lots 89 through 92, Lots 111 through 121, and COS-1, COS-2 and COS-3, all as shown on that plat entitled "Major Subdivision and Recombination Plat of Trinity Creek, Phase 1A," prepared by Bass, Nixon & Kennedy Inc., dated March 7, 2017 and recorded in Book of Maps 2017 at Pages 1283 through 1286 in the Wake County Public Registry (the "Phase 1A Plat"). It is the intent of Declarant that the Initial Property include all of the real property shown on the Phase 1A Plat, other than the areas owned by third parties and the areas identified as "Future Phases."



# NORTH CAROLINA

## Department of the Secretary of State

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To all whom these presents shall come, Greetings:

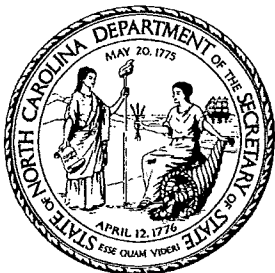
I, Elaine F. Marshall, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

### ARTICLES OF INCORPORATION

OF

### TRINITY CREEK PROPERTY OWNERS ASSOCIATION

the original of which was filed in this office on the 15th day of October, 2015.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 15th day of October, 2015.

*Elaine F. Marshall*

Secretary of State

# ARTICLES OF INCORPORATION NONPROFIT CORPORATION

B-2

9. The street address and county of the principal office of the corporation is:

Principal Office Telephone Number: (980) 321-6000

Number and Street: c/o Crescent Communities, LLC, 227 West Trade Street, Suite 1000

City: Charlotte State: NC Zip Code: 28202 County: Mecklenburg

The mailing address *if different from the street address* of the principal office is:

Number and Street or PO Box: \_\_\_\_\_

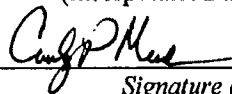
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

10. (Optional): Please provide a business e-mail address: \_\_\_\_\_  
The Secretary of State's Office will e-mail the business automatically at the address provided at no charge when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is being offered, please see the instructions for this document.
11. These articles will be effective upon filing, unless a future time and/or date is specified: \_\_\_\_\_

This is the 12th day of October, 2015.

TRINITY CREEK PROPERTY OWNERS ASSOCIATION

(Incorporator Business Entity Name)



Signature of Incorporator

Carolyn P. Meade

Type or print Incorporator's name and title, if any

NOTES:

1. Filing fee is \$60. This document must be filed with the Secretary of State.

CORPORATIONS DIVISION  
Revised September, 2013

P. O. BOX 29622

RALEIGH, NC 27626-0622  
Form N-01

**ATTACHMENT TO ARTICLES OF INCORPORATION OF  
TRINITY CREEK PROPERTY OWNERS ASSOCIATION**

**Purpose of Corporation:**

(a) To carry on one or more exempt functions of a homeowners association under the Internal Revenue Code of 1986, as amended (the "Code"), including those activities related to the acquisition, construction, management, maintenance, and care of "association property" (as defined in Section 528(c)(5) of the Code), all pursuant to such rules and policies as shall be set forth in its Bylaws; and

(b) To do such other acts and things, and engage in any lawful act or activity, for which corporations may be organized under, and as are authorized and permitted by, the Act and to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Corporation is organized;

provided, however, that in all events and circumstances, no part of any net earnings of the Corporation shall inure (other than by acquiring, constructing, or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees, or assessments or as provided below in the event of a dissolution and/or liquidation of the Corporation) to the benefit of any member of the Corporation or to the benefit of any private shareholder or individual (as defined in accordance with Treasury Regulations Section 1.528-7 promulgated under the Code), the Corporation being organized to provide, among other things, for the acquisition, construction, management, maintenance, and care of association property.

**Distributions Upon Dissolution:**

In the event of a dissolution and/or liquidation of the Corporation, all of the residual assets of the Corporation shall be distributed to the Members in proportion to the assessments collected from the Members.

EXHIBIT "C"

**BYLAWS**

**OF**

**TRINITY CREEK PROPERTY OWNERS ASSOCIATION**

ARTICLE I

GENERAL

Section 1. Name. The name of the corporation is Trinity Creek Property Owners Association (the "Association").

Section 2. Location. The principal office of the Association shall be located in Mecklenburg County, North Carolina, or Wake County, North Carolina. The registered office of the Association may be, but need not be, identical with the principal office.

Section 3. Authority and Responsibility: Except as otherwise specifically provided in the Project Documents, the Association shall be responsible for administering, operating and managing the Common Areas, and shall have, without limitation, all of the powers specified in N.C.G.S. §47F-3-102.

Section 4. Official Action: The Association, its Board, its officers and its members shall at all times act in conformity with the North Carolina Nonprofit Corporation Act, the North Carolina Planned Community Act, and the Project Documents.

ARTICLE II

DEFINITIONS

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified in these Bylaws) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Trinity Creek (the "Declaration"), executed by Crescent Holly Springs, LLC ("Declarant"), and duly recorded in the Office of the Register of Deeds for Wake County, North Carolina.

ARTICLE III

MEETINGS OF ASSOCIATION MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Association Members shall be held on a date selected by Declarant, and each subsequent regular annual meeting of the Association Members shall be held on the third (3<sup>rd</sup>) Tuesday in March each year thereafter, at a time designated by the Board, provided, however, the Board shall have the right, upon not less than ten (10) nor more than sixty (60) days' prior notice to the Association Members, to change the month, date and time of any annual meeting. If the day for the annual meeting of the Association Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Association Members may be called at any time by (a) the President or by the Board or (b) by the holders of at least ten percent (10%) of all the

votes entitled to be cast on any issue proposed to be considered at a proposed special meeting upon the delivery to the Association's Secretary of one or more signed and dated written demands describing the purpose or purposes for which it is to be held. Any such special meeting called by the Association Members in the manner described in (b) above shall be held within thirty (30) days after the delivery of such written demand by the holders of at least ten percent (10%) of the votes entitled to be cast at such meeting.

Section 3. Place of Meetings. All meetings of the Association Members shall be held at such place, within Wake County, North Carolina, as shall be determined by the Board.

Section 4. Notice of Meetings. Written notice of each meeting of the Association Members shall be given by, or at the direction of, the Association's Secretary or other person authorized to call the meeting, by first class, registered or certified mail, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Association Member entitled to vote thereat, addressed to the Association Member's address last appearing on the books of the Association, or supplied by such Association Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 5. Membership in the Association. Each and every Owner of a Dwelling Unit shall automatically become and be an Association Member. An Owner of a Tract shall not be a Member of the Association, and shall not be entitled to any vote in the Association, until such Tract has been subdivided into a Lot or Lots. In addition, for so long as Declarant owns any part of the Property, or any portion of the Currently Owned Additional Property, Declarant shall be an Association Member.

Section 6. Classes of Voting Right. The Association shall have two (2) classes of voting membership:

Class I. Class I Association Members shall be all Association Members with the exception of Declarant. Class I Association Members shall be entitled to one (1) vote for each Dwelling Unit owned by such Association Member. When more than one Person owns an interest (other than a leasehold or security interest) in any Dwelling Unit, all such Persons shall be Members and the voting rights appurtenant to said Dwelling Unit shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Dwelling Unit. At any meeting of the Association Members, a representation by any one such owner that the owners of said Dwelling Unit have agreed to a vote shall be conclusive unless another such owner contests such representation at such meeting prior to the casting of such vote.

Class II. The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Dwelling Unit owned by Declarant.

Section 7. Cessation of Class II Membership. Notwithstanding anything contained in this ARTICLE III to the contrary, the Class II Association Membership shall cease and be converted to a Class I Association Membership on the earlier to occur of (a) the date on which Declarant no longer owns any part of the Property or of the Currently Owned Additional Property; (b) the date Declarant shall elect, in its sole discretion, that its Class II Membership cease and be converted to Class I Membership (which election may be made, if at all, upon Declarant giving written notice of its election to the Board); or (c) December 31, 2046. The earliest to occur of (a), (b) or (c) above shall be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class I Association Member.

Section 8. Quorum and Voting. The presence at the meeting of Association Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes entitled to be cast by all classes of

the Association Members shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws; if, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9. Proxies. At all meetings of Association Members, each Association Member may vote in person or by proxy. All proxies shall be in writing and filed with the Association's Secretary. Every proxy shall be revocable.

Section 10. Voting by Mail. Any Association Member may cast his or her vote by written ballot, in accordance with N.C.G.S. Section 55A-7-08, on any proposal voted upon at any meeting of the Members of the Association by sending such written vote to the Secretary of the Association within the period seven (7) days before the date of the meeting. Such written votes shall be filed with the records of the Association and, in no event, shall any action be taken or approved by the Association with the approval of any less than the percentage of voting power required by the provisions of the Declaration or without the consent of any party that is required by any of said provisions. Members who have voted by mail shall not be counted in determining whether the quorum has been met at a meeting of the Members of the Association.

Section 11. Action by Association Members. Except as may be otherwise specifically set forth in the Declaration, the Articles or these Bylaws, the vote of a majority of all votes entitled to be cast by all classes of the Association Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Association Members. Notwithstanding the above, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Association Members shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Project or any part thereof; or (2) assert a claim against or sue Declarant.

Section 12. Waiver of Notice. Any Association Member may, at any time, waive notice of any meeting of the Association Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by an Association Member at any meeting of the Association Members shall constitute a waiver of notice by him of the time and place thereof except where an Association Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Association Members are present at any meeting of the Association Members, no notice shall be required and any business may be transacted at such meeting.

Section 13. Informal Action by Association Members. Any action which may be taken at a meeting of the Association Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Association Members who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

## ARTICLE IV

### BOARD OF DIRECTORS

Section 1. Number and Appointment. So long as Declarant owns any Lot, Tract or other portion of the Property, or any portion of the Currently Owned Additional Property, or until Declarant relinquishes the right to appoint the directors of the Association in a written notice delivered to the Secretary of the Association, whichever shall earlier occur, the business and affairs of the Association shall be

managed by a Board of five (5) directors who are appointed by Declarant. From and after such time that Declarant no longer owns any Lot, Tract, or other portion of the Property, or any portion of the Currently Owned Additional Property, or Declarant relinquishes the right to appoint the directors of the Association in a written notice delivered to the Secretary of the Association, whichever shall earlier occur, the business and affairs of the Association shall be managed by a Board of five (5) directors elected by the Association Members as provided by these Bylaws. Except for the directors appointed by Declarant, all directors must be Association Members. Declarant may relinquish its right to appoint the Board by relinquishing its right as to the appointment of all members of the Board, or may instead relinquish its right to appoint one or more, but less than all, of the members of the Board. In the event of any such partial relinquishment, the members of the Association shall elect the directors not appointed by Declarant. At any time after any such partial relinquishment, provided that Declarant still owns any Lot, Tract, or other portion of the Property, or any portion of the Currently Owned Additional Property, Declarant may reassert its right to appoint directors previously elected by the Association, and may remove any such previously elected director or directors and appoint their replacements to serve their unexpired terms.

Section 2. Initial Directors. The initial directors shall be appointed by Declarant. Such initial directors shall serve from the date upon which the Declaration is recorded in the Recording Office, until such time as their successors are duly appointed or elected and qualified.

Section 3. Nomination. Subject to Section 1 of this Article IV, nominations for the first election of directors of the Board shall be made from the floor at a meeting of the Association Members. After such first election of directors, nominations for election to the Board shall be made by a Nominating Committee. Subject to Section 1 of this Article IV, nominations may also be made from the floor at the annual meeting. Subject to Section 1 of this Article IV, the Nominating Committee shall consist of a Chairman, who shall be an Association Member or a member of the Board, and two (2) or more Association Members. The Nominating Committee shall be appointed by the Board prior to the annual meeting following the first election of directors and each annual meeting of the Association Members thereafter, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4. Election. Except as otherwise provided in this Article, including Section 1 hereof, directors shall be elected at the annual meeting of the Association Members and said election shall be by written ballot. At such election, the Association Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles, these Bylaws and the Declaration. Cumulative voting is not permitted.

Section 5. Term of Office. Each director shall hold office for the term for which he was appointed or elected, or until his death, resignation, retirement, removal, disqualification or until his successor is appointed or elected and qualified. Subject to Section 1 of this Article IV, at the first election of directors, the Association Members shall elect one (1) member of the Board for a term of three (3) years, who shall be the person receiving the largest number of votes, two (2) members of the Board for a term of two (2) years, who shall be the people receiving the second and third largest number of votes, and two (2) members of the Board for a term of one (1) year, who shall be the people receiving the fourth and fifth largest number of votes. At all annual elections thereafter but subject to Section 1 of this Article IV, director(s) shall be elected by the Association Members to succeed the director(s) whose term(s) then expire(s), and thereafter each director's term shall be three (3) years. Nothing contained in these By-Laws shall be construed to prevent the election of a director to succeed himself. Votes shall be tallied at the meeting where they are so cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting.

Section 6. Removal. Subject to Section 1 of this Article IV, any elected director (but not any director appointed by Declarant) may be removed from the Board, with or without cause, by a majority vote of the Association Members. In the event of the death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. The Association Members may elect a director at any time to fill any vacancy not filled by the directors or, if applicable, not appointed by Declarant.

Section 7. Compensation. No director shall receive compensation for any service he or she may render to the Association; however, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

## ARTICLE V

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Meetings of the Board shall be held on a regular basis as often as the Board sees fit on such days and at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to such action is signed by all of the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board and serve until a new President is elected.

Section 6. Participation by Conference Telephone. Any one or more directors may participate in a meeting of the Board by means of a conference telephone or similar communications device that allows all directors participating in the meeting to simultaneously hear each other during the meeting, and such participation in a meeting shall be deemed presence in person at such meeting.

## ARTICLE VI

### POWERS OF THE BOARD

The Board, for the mutual benefit of the Association Members and the Owners, shall have the following specific powers and rights (without limitation of other powers and rights the Board may have):

(a) To enter into agreements (and to accept assignment of and assume agreements originally entered into by Declarant) with the appropriate governmental authorities to enable the Association to improve and maintain the Common Areas and Maintenance Areas or portions thereof;

(b) To make reasonable rules and regulations for the use and operation of the Common Areas and Maintenance Areas, and to amend them from time to time;

(c) To enter into agreements or contracts (and to accept assignment of and assume agreements or contracts originally entered into by Declarant) with insurance companies with respect to insurance coverage relating to the Common Areas and Maintenance Areas and/or the Association;

(d) To enter into agreements or contracts (and to accept assignment of and assume agreements or contracts originally entered into by Declarant) with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas, Maintenance Areas and/or the Association, including without limitation leases of Street Lights which include the capital cost of the installation thereof;

(e) Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Association Members at which a quorum is present, all in accordance with these Bylaws, to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Association Members see fit; provided; however, until such time as Declarant no longer owns any portion of the Property, or of the Currently Owned Additional Property, the Board may not mortgage any portion of the Common Area without the prior written approval of Declarant;

(f) To enter into contracts (and to accept assignment of and assume agreements or contracts originally entered into by Declarant), maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;

(g) To the extent permitted in the Declaration and these Bylaws, including the provisions of Section 11 of Article III, to sue or defend in any court of law in behalf of the Association;

(h) To levy assessments in accordance with the provisions of the Declaration;

(i) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property of the Association and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

(j) To exercise for the Association all powers, duties and authority vested in or delegated by the Declaration, these Bylaws, or the Articles to the Association and not reserved to the Association Members or Declarant by other provisions of the Declaration, these Bylaws or the Articles;

(k) To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;

(l) To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;

(m) To enter into agreements or contracts with builders regarding the construction of Improvements on Lots located in the Project;

- (n) To retain the services of legal and accounting firms;
- (o) To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;
- (p) To the extent permitted in the Declaration and these Bylaws, to enforce the provisions of the Project Documents and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules and/or by Special Individual Assessments against any Owner for violation of such provisions or rules pursuant to the provisions of the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Declaration, the institution of actions to foreclose liens for such assessments, the imposition of changes for late payment of assessments, and after notice and an opportunity to be heard, in accordance with the procedures specified in N.C.G.S. §47F-3-107.1, suspending privileges of Owners or levying reasonable fines for violations of the Declaration, Bylaws and rules and regulations of the Association, such fines not to exceed the greater of \$150.00 per day, or such higher maximum amount as may be specified in N.C.G.S. §47F-3-107.1;
- (q) To contract with any third party or any Association Member (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms of the Declaration and these Bylaws, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association;
- (r) To employ or retain the services of professional architects or other Persons to serve on or advise the Architectural Control Committee and/or the Architectural Changes Committee;
- (s) To grant all necessary easements and rights-of-way over and across the Common Areas when in its sole discretion it deems such an action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sewerage and other utilities and drainage facilities; provided, however, until such time as Declarant no longer owns any portion of the Property, or of the Currently Owned Additional Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;
- (t) To convey fee simple title to all or any part of the Common Area when in its sole discretion it deems such an action to be necessary and appropriate; provided, however, until such time as Declarant no longer owns any portion of the Property, or of the Currently Owned Additional Property, the Board may not convey any portion of the Common Area without the prior written approval of Declarant;
- (u) To contract with any third party, including any other property owners association, for the sharing of costs of maintaining Maintenance Areas;
- (v) To take any and all other actions, and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations under the Declaration or these Bylaws or for the operational protection of the Association; and
- (w) To adopt reasonable rules from time to time governing conduct of Owners and other Persons occupying or otherwise located on the Property.

Notwithstanding anything contained in this ARTICLE VI to the contrary, none of the above-described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Association Members.

## ARTICLE VII

## OFFICERS AND THEIR DUTIES

Section 1. Officers. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Association Members.

Section 3. Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 9. Duties. The duties of the officers, unless otherwise stated by a resolution of the Board, are as follows:

(a) President: The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, promissory notes and other written instruments and may co-sign all checks; and shall have all of the general powers and duties which are incident to the office of President of a corporation organized under Chapter 55A of the North Carolina General Statutes in the supervision and control of the management of the Association in accordance with these Bylaws;

(b) Vice-President: The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board;

(c) Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Association Members, shall keep the corporate seal of the Association and affix it on all papers requiring said seal, shall serve notice of meetings of the Board and of the Association Members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board; and shall, in general, perform all duties incident to the Office of Secretary of a corporation organized under Chapter 55A of the General Statutes of North Carolina;

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board, shall sign all checks and promissory notes of the Association, shall keep proper books of account, shall prepare an annual report to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Association Members, and shall perform all duties incident to the office of Treasurer of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

## ARTICLE VIII

### COMMITTEES

Subject to Section 1 of Article IV of these Bylaws, the Board shall appoint a Nominating Committee as provided in Section 3 of Article IV of these Bylaws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE IX

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Association Member. The Declaration, the Articles and the Bylaws shall be available for inspection by any Association Member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE X

### ASSESSMENTS

As described more particularly in, and subject in all respects to, the Declaration, each Member is obligated to pay to the Association, among other assessments, charges and amounts, Annual Assessments, Special Assessments, and Special Individual Assessments, all of which are secured by a continuing lien upon each Lot or Tract in the Property. Any Assessments which are not paid when due shall be delinquent. If an Assessment is delinquent, as more particularly described in the Declaration, the Assessment shall bear interest from the due date until the date such Assessment and interest thereon is paid at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less. The Association shall have the right and duty to attempt to recover such unpaid Assessments, together with interest thereon, and the expenses of the proceedings, including reasonable attorneys' fees (if permitted by law), in an action to recover a money judgment for the same brought against such Owner, or by foreclosure of the lien on such Lot in the manner specified in N.C.G.S. §47F-3-116.

In the event of the failure of an Owner to pay any Assessment imposed under the Declaration, or any installment thereof, for more than sixty (60) days after such Assessment or installment thereof shall become due, in addition to the other remedies available under the Project Documents or the North Carolina

Planned Community Act, the Board shall have the right to declare all other Assessments, and installments thereof, with respect to such Owner's Lot that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

#### ARTICLE XI

##### CORPORATE SEAL

The Association shall have a seal circular in form having within its circumference the name of the Corporation, the state of its incorporation, the year of its incorporation, and the word "SEAL."

#### ARTICLE XII

##### AMENDMENTS

Subject to the limitations hereinafter contained, the Articles and these Bylaws may be amended or modified at any time by a vote of no less than fifty-one percent (51%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if fifty-one percent (51%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then the Articles and these Bylaws may be amended by obtaining the vote of fifty-one percent (51%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of fifty-one percent (51%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to the Articles and these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property or the Currently Owned Additional Property, which consent Declarant may grant or withhold in its sole discretion. In addition, Declarant, without obtaining the approval of any other Association Member or any other Owner or Owners other than Declarant, may make amendments or modifications to the Articles and these Bylaws which either (a) do not involve a change which materially adversely affects the rights, duties or obligations specified in the Articles or these Bylaws, or (b) apply only to the portions of the Property then owned by Declarant. Any amendment or modification effected pursuant to this Article XII shall become effective with respect to these Bylaws when an instrument is filed of record in the Recording Office; provided, however, such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Article XII and when, with respect to the Articles, any amendment or modification is filed of record in the Office of the North Carolina Secretary of State. In addition to the foregoing rights, Declarant may, at Declarant's option, amend and modify the Articles and these Bylaws without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause the Articles and these Bylaws to comply with the requirements of FHA, VA, the Federal National Mortgage Association or any other governmental agency.

#### ARTICLE XIII

##### MISCELLANEOUS

Section 1. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2. In the case of any conflict between the Articles and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Bylaws or the Articles, the Declaration shall control.

Section 3. Invalidation of any covenant, condition, restriction or other provisions of the Declaration or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 4. No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the members of the Board, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Articles of Incorporation of the Association and these Bylaws.

#### ARTICLE XIV

##### LIABILITY LIMITS; INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

Neither Declarant, nor any Association Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him or her in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty. To the fullest extent from time to time permitted by the North Carolina Nonprofit Corporation Act, as it exists or may hereafter be amended, the corporation agrees to pay the indemnitee's expenses, including attorneys' fees and expenses incurred in defending any such action, suit, or proceeding in advance of the final disposition of such action, suit, or proceeding and without requiring a preliminary determination of the ultimate entitlement to indemnification; provided that the indemnified party first provides the corporation with (i) a written affirmation of the indemnified party's good faith belief that such party meets the standard of conduct necessary for indemnification under the laws of the State of North Carolina, and

(ii) a written undertaking by or on behalf of such indemnified party to repay the amount advanced if it shall ultimately be determined by a final judicial decision from which there is no further right to appeal that the applicable standard of conduct has not been met.

The indemnification provided in this ARTICLE XIV shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, these Bylaws, agreement, vote of Association Members or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

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

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XIV, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.