

WAKE COUNTY, NC 319
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MASTER DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR
PROVIDENCE PLACE

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**MASTER DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS FOR PROVIDENCE PLACE**

THIS DECLARATION is made on the date hereinafter set forth by **K. HOVNANIAN HOMES OF NORTH CAROLINA, INC.**, a North Carolina corporation (hereinafter "Declarant"), and **ACACIA CREDIT FUND 10-A L.L.C.**, a Delaware limited liability company (hereinafter "Acacia").

WITNESSETH:

WHEREAS, Acacia is the owner of approximately 172 acres of land located in the Town of Morrisville, Cedar Fork Township, Wake County, North Carolina, more fully described in the deeds recorded in Book 11406, Page 2448; Book 11406, Page 2452; Book 11406, Page 2468; Book 11406, Page 2475; Book 11406, Page 2481; Book 11406, Page 2485; Book 11406, Page 2489; Book 11406, Page 2492; Book 11406, Page 2498; Book 11406, Page 2502; and Book 11406, Page 2506, Wake County Registry, which is being developed into a residential community of attached and detached single-family homes, to be known as Providence Place (the "Community"); and

WHEREAS, Acacia has granted Declarant an option to purchase the Community pursuant to that certain Option Agreement dated June 7, 2005 (the "Option Agreement"), as evidenced by that certain Memorandum of Option Agreement recorded in the Register of Deeds, Wake County, North Carolina in Book 12108, Page 2103.

WHEREAS, Acacia and Declarant desire to provide for the maintenance and upkeep of the Common Area (hereinafter defined) within the Community and to provide for enforcement of covenants and restrictions applicable to the Community, and, to that end, desire to subject the property within the Community to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of such property and each owner thereof; and

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Community, and to collect and disburse the assessments and charges hereinafter created, and Declarant has incorporated under North Carolina law as a nonprofit corporation, Providence Place Community Association, Inc., for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, Acacia and Declarant declare that the real property described in **EXHIBIT A** to this Master Declaration, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Master Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

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**ARTICLE I
DEFINITIONS
DEFINITIONS**

Any defined term used in this Master Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Master Declaration.

Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, as the same may be amended from time to time.

Section 2. "Additional Property" shall mean and refer to all real property subjected to this Master Declaration, by any of the methods set forth in Article II hereof, after the initial recording of this Master Declaration.

Section 3. "Association" and "Master Association" (the terms being used interchangeably) shall mean and refer to the PROVIDENCE PLACE COMMUNITY ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns.

Section 4. "Board of Directors" and "Board" (the terms being used interchangeably) shall mean and refer to the Board of Directors of the Master Association elected or appointed to manage the affairs of the Master Association as provided in Article V of the Bylaws, and is the "Executive Board" as defined in the Act.

Section 5. "Builder" shall mean and refer to a Person, other than the Declarant, who regularly is in the business of constructing Dwellings for resale to other Persons and who purchases or becomes the Owner of one or more Lots within the Community for the purpose of constructing a Dwelling for resale on each of such Lots.

Section 6. "Bylaws" shall mean and refer to the Bylaws of the Master Association, as they may now or hereafter exist, including all duly adopted amendments thereto.

Section 7. "Code" shall mean and refer to the Code of Ordinances of the Town of Morrisville, North Carolina, including all rules, regulations and policies lawfully adopted pursuant thereto, including all amendments, supplements and replacements thereof enacted from time to time.

Section 8. "Common Area" and "Common Property" (the terms being used interchangeably) shall mean and refer to (i) all real property and improvements thereon owned in fee, leased or used by the Master Association for the common use, enjoyment or benefit of the Members or the Properties, (ii) all rights and easements of the Master Association in, on, under, over and through any real property not owned in fee by the Master Association, together with all improvements on such real property that are owned or maintained by the Master Association, each such easement or right also being referred to herein as a "Common Area Easement" or a "Common Property Easement," and (iii) all personal property owned, leased or used by the Master Association, or with respect to which the Master Association has a financial obligation, for the common use, enjoyment or benefit of the Members or the Properties. Common Area Easements are included within the definition of Common Area, even though Common Area Easements may sometimes be referred to separately herein.

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Common Area Easements may include portions of public street rights-of-way or other property owned by or dedicated to a governmental entity, and may include, without limitation, signs, landscaping and other improvements. This definition of Common Area also includes Limited Common Property. All Common Property not maintained by a Sub-Association (hereinafter defined) shall be maintained by the Master Association unless dedicated to public use and accepted by a public agency, authority or utility or conveyed to another nonprofit entity formed for similar purposes (Note: The definition of Common Area in this Master Declaration is broader than the definition of "common elements" in the Act.)

Common Area also includes all other property and improvements, if any, required to be included as such by the Code or other Legal Requirement, and all other property and improvements, if any, declared to be Common Area by this Master Declaration or by the Declarant or the Master Association.

Section 9. "Common Expenses" shall mean and refer to: (i) all expenses of maintenance of Common Area, including repair, restoration and replacement thereof, and including monies allocated to reserve funds; (ii) *ad valorem* taxes and public assessments, if any, levied against the Common Area or other assets owned in fee by the Master Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Master Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained therein by the Master Association result in additional *ad valorem* taxes on such real property that would not be assessed in the absence of such improvements); (iii) premiums for hazard, liability and other insurance insuring the Common Property or the Master Association, its officers, directors and employees, if any; (iv) fees and expenses of attorneys, accountants, and other Persons employed by the Master Association for Master Association business; (v) expenses declared to be or described as Common Expenses by the Act, the Code, or this Master Declaration, including expenses for Stormwater Control Measures; (vi) expenses determined by the Board of Directors or by the Members to be Common Expenses; and (vii) all other expenses incurred by the Master Association in performing its functions, including operating, management and administrative expenses.

Section 10. "Declarant" shall mean and refer to **K. Hovnanian Homes of North Carolina, Inc.**, a North Carolina corporation, or shall instead mean and refer to Acacia if Acacia becomes the Declarant as contemplated by Section 3 of Article XII below. It shall also mean and refer to any person, firm or corporation to whom or which Declarant may assign or delegate all or any of the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Registry, provided, however, for so long as Acacia owns any portion of the Community, no rights of Declarant may be assigned without the written consent of Acacia, and any purported assignment without such consent shall be deemed void and of no force and effect.

Section 11. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors and officers of the Master Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2020;
- (b) Not later than four months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the

Properties are formed by the creation and subjection to this Master Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, and by its right to vote as to Lots owned by Acacia, a sufficient number of votes (at the 9-to-1 ratio provided in Section 2(b) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or

- (c) Relinquishment or transfer by Declarant of all Special Declarant Rights as provided in §47F-3-104 of the Act, which Declarant shall not do without the written consent of Acacia so long as the Option Agreement remains in effect.

Section 12. "Declaration" and "Master Declaration" (the terms being used interchangeably) shall mean and refer to this "Master Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Providence Place," and all amendments thereto and supplements thereof.

Section 13. "Dwelling," "Dwelling Unit" and "Unit" (the terms being used interchangeably) shall mean and refer to any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner, and specifically including detached dwellings located on separate Lots and attached dwellings located on separate Lots (for example, townhomes, in which more than one Dwelling may be located in a single building, but each Dwelling is on a separate Lot). A detached or attached Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

Section 14. "Legal Requirements" shall mean and refer to any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the County of Wake, the Town of Morrisville, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the Properties, including any branch, department or division of any of the foregoing.

Section 15. "Limited Common Area" and "Limited Common Property" (the terms being used interchangeably) shall mean and refer to all Common Property, together with any improvements thereon, owned, leased, used or maintained by the Master Association for the benefit of fewer than all of the Members or less than all of the Properties, and which has been designated as such by the Declarant or the Master Association. Limited Common Property may include, for example, private alleys and Stormwater Control Measures serving less than all of the Properties.

Section 16. "Limited Common Expense" shall mean and refer to all expenses of the type included within the term "Common Expense" but which are related solely and specifically to Limited Common Property. Limited Common Expenses shall be paid out of assessments levied only against the portions of the Properties benefited by Limited Common Property.

Section 17. "Lot" shall mean and refer to any portion of the Properties with delineated boundary lines, as shown on a plat recorded in the Registry or as identified by metes and bounds description, that is intended for construction of a Dwelling thereon, or on which a Dwelling has been constructed. A Lot intended to be used for construction thereon of a detached or attached Dwelling

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shall become a Lot upon recording in the Registry of a plat creating such Lot. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new plat, the newly platted lot thereafter shall constitute a Lot.

Section 18. "Member" shall mean and refer to every Person who or which holds membership in the Master Association.

Section 19. "Owner" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding contract purchasers and trustees and secured parties having an interest in a Lot solely as security for the performance of an obligation.

Section 20. "Person" shall mean and refer to any natural person, trust, corporation, association, partnership, limited liability company, joint venture or any other legal entity, whether public or private.

Section 21. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant to said Article II.

Section 22. "Registry" shall mean and refer to the office of the Register of Deeds for Wake County, North Carolina, or any successor office in which deeds, plats, easements, mortgages and deeds of trust are recorded. Any reference herein to a plat or document being recorded refers to such plat or document being recorded in the Registry.

Section 23. "Special Declarant Rights" shall mean and refer to all rights granted to, or reserved by, or established for the benefit of, Declarant in this Master Declaration, the Articles of Incorporation, Bylaws of the Master Association (whether or not such rights are referred to as Special Declarant Rights in such documents), and the Act. Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, at any time and from time to time, subject to such terms and conditions as Declarant specifies in the assignment document. Except as specifically provided herein, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, and the assignment becomes effective upon the recording of the document in the Registry or on any later date specified therein; provided that so long as Acacia owns any of the Community, no such assignment shall be effective without the written consent of Acacia.

Section 24. "Stormwater Agreement" (which term includes any other agreement, maintenance manual or other document, by whatever name, relating to Stormwater Control Measures) shall mean and refer to any agreement required by the Code between or among any combination of the Town, the Declarant, the Master Association (or Sub-Association), and one or more Owners, relating to maintenance of Stormwater Control Measures.

Section 25. "Stormwater Control Measures" shall mean and refer to any one or more of the following that serves or benefits any part or all of the Properties or is required by the Code or other Legal Requirement in connection with any part or all of the Properties, whether located in the Properties or outside of the Properties: (i) storm water drainage easements (also referred to herein as "storm water easements" or "drainage easements") that are shown on plats of the Properties recorded in the Registry or established by written instruments recorded in the Registry, and which either are

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located on the Common Area or benefit or serve more than one (1) Lot; and (ii) storm water management facilities for the Properties, including ponds, man-made or natural areas and/or planned or management facilities for the Properties, including ponds, man-made or natural areas and/or planned or landscaped areas into which storm water drains, or in which storm water is collected or from which it is discharged, drains, pipes, conduits, inlets, channels, dams, ditches, filters, buffers, bio-retention areas, and other equipment, facilities and storm water management measures used for inspecting, monitoring, measuring, collecting, controlling, transporting, conveying, handling, storing, discharging and managing storm water. Except as otherwise provided herein, Stormwater Control Measures are part of the Common Property, and maintenance of Stormwater Control Measures is a Common Expense. References in the Master Declaration to storm water management include all applicable Stormwater Control Measures and Stormwater Agreements.

Section 26. "Sub-Association" shall mean and refer to a North Carolina nonprofit corporation or other entity formed by Declarant and/or Acacia for the purpose of owning, managing and/or maintaining that Sub-Association's Common Property and including, without limitation, a property owners' association in a portion of the Properties containing townhomes. Assessments imposed upon the members of the Sub-Association by the documents establishing or governing a Sub-Association or subjecting an applicable portion of the Properties thereto shall be in addition to, and not in lieu of, assessments imposed upon such Members by this Master Declaration.

Section 27. "Sub-Association Common Area" and "Sub-Association Common Property" (the terms being used interchangeably) shall mean and refer to portions of the Properties owned or maintained by a Sub-Association for the use, enjoyment and/or benefits of its members. All private streets and open space owned by, or under the jurisdiction of a Sub-Association are Sub-Association Common Property. "Sub-Association Limited Common Property" and "Sub-Association Limited Common Area" are defined as Sub-Association Common Property that is established for the benefit of fewer than all of the Members of the Sub-Association or less than all of the property subject to the jurisdiction of the Sub-Association.

Section 28. "Sub-Association Declaration" shall mean and refer to a declaration or supplemental declaration recorded in the Registry and applicable solely to Owners, Lots and Sub-Association Common Property within the jurisdiction of a Sub-Association. During the Declarant Control Period, no Sub-Association Declaration shall be recorded without the prior written consent of Declarant, as evidenced by Declarant's execution of same.

Section 29. "Town" shall mean and refer to the Town of Morrisville, North Carolina, a municipal corporation.

ARTICLE II PROPERTY SUBJECT TO THIS MASTER DECLARATION AND WITHIN THE JURISDICTION OF THE PROVIDENCE PLACE COMMUNITY ASSOCIATION, INC.

Section 1. Existing Property.

The real property which, at the time of recording of this Master Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to this Master Declaration, and which is within the jurisdiction of the Master Association, is described on **Exhibit A** attached hereto.

Section 2. Additions to Existing Property.

(a) By Acacia and Declarant. At any time during the Declarant Control Period, Declarant and Acacia may annex Additional Property to this Master Declaration, without approval of any Person other than the Town (if required by the Legal Requirements), by recording a "Supplemental Declaration" extending the operation and effect of this Master Declaration to such Additional Property. Except to the extent required by the Legal Requirements, nothing in this Master Declaration shall be deemed to require the Declarant or Acacia to annex any Additional Property. Such property must be contiguous to property already subjected to this Master Declaration (or separated from such property only by the right-of-way of a street or road). The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

(b) By the Members. If a Person other than the Declarant or Acacia desires at any time to subject Additional Property to the Master Declaration, such Additional Property may be annexed only by the affirmative vote of at least sixty-seven percent (67%) of the votes cast by the Members present at a duly-called meeting of the Members of the Master Association for which the notice of meeting includes notice of the proposal to annex such Additional Property, or by written agreement signed by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Master Association are allocated, and, after such approval, the recording in the Registry of a Supplemental Declaration signed by the owner of such Additional Property and by the appropriate officer(s) of the Master Association certifying the required meeting and vote. In addition to the foregoing, during the Declarant Control Period, such annexation, other than by Acacia, shall be valid only with the consent of Declarant, as evidenced by Declarant's execution of the Supplemental Declaration, and for so long as Acacia owns any of the Community, such annexation shall be valid only with the consent of Acacia.

(c) Automatic Addition to Existing Property. If not sooner subjected to this Master Declaration as provided in Section 2(a) and 2(b) above, Lots and other property identified on Exhibit B shall automatically be subjected to this Master Declaration, without the necessity of recording a supplementary declaration, upon the earlier of the following to occur:

- (i) as to a particular phase or section of the Community, the later of: (a) the date that is five (5) years after the date on which preliminary subdivision approval for that phase or section was given by the Town, or (b) any extension of such date granted by the Town pursuant to the provisions of the Code; or
- (ii) as to a Lot, by and upon sale of the Lot to a person or entity other than Acacia or Declarant.

(d) Approval by Governmental Entities. Annexations of Additional Property to the Master Declaration must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA and/or VA if, at the time of such annexation, FHA and/or VA regulations require such approval, provided, however, that the real property described on Exhibit B is part of the property approved by the Town as of the date of execution of this Master Declaration, and the property described on Exhibit B may be annexed by Declarant without further approval of any Person, except for any additional approval required by the Town.

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(e) Supplemental Declaration. Each Supplemental Declaration shall be effective to annex Additional Property only upon obtaining all required approvals and upon its recording in the Registry, and the effective date of such annexation shall be the later of the date specified therein, if any, or the date of recording. Each Supplemental Declaration shall describe the Additional Property annexed and indicate that the Additional Property is being subjected or annexed to the Master Declaration. A Supplemental Declaration need not be in any specific form and need not be titled Supplemental Declaration (for example, the required subjecting language may be contained in a deed from the Declarant conveying the Additional Property being annexed), but it shall indicate clearly the intention to subject or annex such Additional Property. Any Supplemental Declaration may contain such use restrictions and such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such Additional Property, not in conflict with this Master Declaration, as the Person annexing such Additional Property to the Master Declaration may determine, but this Master Declaration shall control over any provision of any Supplemental Declaration that conflicts or is inconsistent with this Master Declaration.

(f) Votes Allocated to Additional Property. The votes of the Members in the Additional Property shall be allocated in the same manner that votes are allocated in portions of the Properties already subject to the Master Declaration. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Common Area in Additional Property.

Common Area, if any, located within any Additional Property, or the applicable phase or portion thereof, shall be conveyed to the Master Association pursuant to the requirements of Section 3 of Article IV of the Declaration.

Section 4. Withdrawal of Properties from the Master Declaration.

(a) Withdrawal. Subject to Legal Requirements, at any time during the Declarant Control Period, the Declarant and Acacia, in their sole discretion, without the approval or joinder of the Master Association, any Owner, or any other Person except the Owner (if not Declarant or Acacia) of the portion of the Properties being withdrawn, may record in the Registry a "Withdrawal Declaration" to withdraw one or more portions of the Properties from the Master Declaration. All portions of the Properties withdrawn from the Master Declaration shall be identified in the Withdrawal Declaration either by a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the Withdrawal Declaration is recorded in the Registry, or on such later date (if any) specified therein. All such withdrawals also must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA and/or VA, if, at the time of such withdrawal, FHA and/or VA regulations require such approval.

After the end of the Declarant Control Period, and subject to Legal Requirements, at any time and from time to time, portions of the Properties may be withdrawn from the Master Declaration upon approval by the Owner of such portion of the Properties and by the affirmative vote of at least sixty-seven percent (67%) of the votes cast by the Members present at a duly-called meeting of the Members of the Master Association for which the notice of the meeting includes notice of the proposal to withdraw such portion of the Properties from the Master Declaration, or by written agreement signed

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by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Master Association are allocated. All such withdrawals also must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA and/or VA, if, at the time of such withdrawal, FHA and/or VA regulations require such approval.

Following approval of any such withdrawal, the Master Association and the Owner of the portion of the Properties to be withdrawn from the Master Declaration shall record a Withdrawal Declaration particularly describing the withdrawn portion of the Properties by reference to a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the Withdrawal Declaration is recorded in the Registry, or on such later date (if any) specified therein.

(b) Effect of Withdrawal. Any portion of the Properties that is withdrawn from the Master Declaration may be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed in any manner allowed under Legal Requirements, and shall be released from the terms and provisions of the Master Declaration on the date the withdrawal becomes effective as provided herein, except that all easements specifically affecting such withdrawn portions of the Properties, as shown on plats or documents recorded in the Registry, shall remain in effect unless released or terminated by all Persons having rights to exercise such easements.

Section 5. Sub-Association Declaration.

Within the Properties, there will be certain separate and distinct phases, sections, or subdivisions. Because such phases, sections or subdivisions may have varying Lot sizes, types of Dwelling Units, marketing considerations and other differences, it may be desirable to impose additional and different covenants and restrictions on such phases, sections or subdivisions which are applicable solely to such phase, section or subdivision (the foregoing being referred to herein as a "Sub-Association Declaration"). Accordingly, the Declarant or other Person who owns any such phase, section or subdivision of the Properties may subject such phase, section or subdivision to such Sub-Association Declarations as the Declarant or other Person, in his, her or its sole discretion, may from time to time determine, provided, however, that, during the Declarant Control Period, no Person other than the Declarant may subject any phase, section or subdivision of the Properties to any Sub-Association Declaration unless the Declarant consents in writing thereto by executing such Sub-Association Declaration. More than one phase, section or subdivision may be subjected to the same Sub-Association Declaration. Any Sub-Association Declaration may do any one or more of the following: (i) create and regulate the use of and assessments for Common Area; (ii) establish minimum building setback distances and minimum Dwelling square footage requirements for such phase, section or subdivision that are more or less than the minimum building setback distances and minimum Dwelling square footage requirements, if any, that are specified in the Master Declaration; and (iii) may specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with the Master Declaration, as the Person subjecting such real property to the Sub-Association Declaration may determine (provided, however, the provisions of the Master Declaration control over any conflicting provisions of any Sub-Association Declaration). Except for the foregoing matters that may be different in a Sub-Association Declaration from the requirements in the Master Declaration, the Master Declaration shall control over any provision of any Sub-Association Declaration that conflicts or is inconsistent with the Master Declaration.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Declarant, Acacia and every Owner of a Lot which is subject to assessment by the Master Association shall be a Member of the Master Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include Persons or entities who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two (2) classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Class B Member (as hereinafter defined) or Acacia. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots." When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot.

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to nine (9) votes for each Lot that it or Acacia owns (each such Lot being a "Class B Lot"); provided however, that Acacia shall be entitled to cast the votes appurtenant to the Lots it owns if Declarant no longer owns any Lots within the Properties or if Acacia becomes the Declarant under this Master Declaration as provided in Section 3 of Article XII hereof. A Lot owned by Acacia shall be a "Class B Lot". Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns (and one vote for each Lot owned by Acacia); however, such Declarant-owned and Acacia-owned Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Declarant's Right to Appoint Directors and Officers of the Master Association. Notwithstanding any other provision of this Master Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the Directors and officers of the Master Association. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members. See §47F-3-103(d) of the Act. If at any time Acacia becomes the Declarant under this Master Declaration by virtue of the provisions of Section 3 of Article XII hereof, Acacia shall be the sole Declarant, and K. Hovnanian Homes of North Carolina, Inc. (or its successors or assigns) ("KHOV") shall be considered a Builder.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his/her own personal living quarters or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant or rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Master Association. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant or Acacia.

ARTICLE IV
PROPERTY RIGHTS
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article and by other rules adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Master Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article.

(b) the right of the Master Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use the Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any violation of this Declaration, any other covenants applicable to the Properties, and the rules, regulations and policies, if any, adopted by the Master Association (individually and collectively, the "Rules"), provided, however that the Master Association may not suspend an Owner's right to the use of any Common Area providing access or utilities to his Lot.

(c) the right of the Master Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the Master Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Master Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board of Directors, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Master Association.

(d) the right of the Master Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Master Association, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Master Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided, however, that:

(i) written notice of the exchange is given to each Member of the Master Association, except in cases where the exchange is done to eliminate an encroachment; and

(ii) after the notice is given, the exchange is approved by a majority of the Members present and voting at a meeting of the Members duly called for the purpose of approving such exchange, provided, however, that Member approval shall not be required if the sole purpose of the exchange is to eliminate an encroachment; and

(iii) the acreage and configuration of the remaining Common Area (including the real property to be received by the Master Association in such exchange) equal or exceed the requirements of the Town; and

(iv) if required, the exchange is approved by the Town.

(f) the rights of Acacia as set forth in Article XII hereof.

Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence in Wake County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Master Association. Acacia and Declarant each covenants, for itself, its successors and assigns, that it will convey to the Master Association title to those portions of the Common Area to be owned in fee by the Master Association. Acacia and Declarant hereby reserve and grant (regardless of whether or not such reservation and grant is specifically set forth in such deed), for themselves and their respective successors and assigns, an easement over, under, across and through the Common Area so long as any of them owns any Lot within the Properties or Acacia owns any property described in **Exhibit B** to this Master Declaration, for the purpose of constructing any improvements on the Common Property and/or the Lots as it or they deem necessary or advisable. Except as otherwise stated herein, all conveyances by Acacia or Declarant to the Master Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Master Declaration, restrictive covenants applicable to the Properties, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Properties, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Acacia or Declarant shall become the property of the Master Association upon completion of such improvements, except utilities owned and maintained by the Master Association, the Town or other governmental entity, or a public or private utility company.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements.

It is the intent of Declarant and Acacia that the Common Area (whether owned by the Master Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Properties. To that end, Acacia and Declarant, by recording any plat or map of any phase or section of the Properties, grant to the Master Association an easement over and across any portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Master Association to take any action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot on which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Master Declaration, no Owner or other person shall, without the prior written consent of the Master Association: (1) remove any trees or vegetation from any Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on or in any Common Area; (4) fill or excavate any Common Area; or (5) plant vegetation on or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

It is the intent of the Declarant that a Common Area Easement shall be maintained in the same state as when the Lot upon which such Easement lies was conveyed to an Owner other than the Declarant, except for changes permitted by Article VIII hereof and changes authorized or approved in writing by the Declarant or the Master Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Master Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner for the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Master Association, shall be deemed a limited special assessment against such Owner's Lot and shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Master Declaration.

(b) Rights and Responsibilities of the Master Association. The Master Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Master Declaration or other Rules; (ii) procure and maintain adequate liability insurance covering the Master Association and its Members against any loss or damages suffered by any Person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Master Association.

(c) Master Association's Right of Entry for Maintenance of Common Area Easements. The Master Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent reasonably necessary to gain access to and maintain the improvements and facilities within the Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Master

Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Master Association annual assessments, special assessments, and limited special assessments, such assessments to be established and collected by the Master Association as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 7 of this Article and all costs of collection, including, without limitation, reasonable attorneys' fees, shall be a charge on the Lot of such Owner, and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon the Lot against which such assessment is made. As provided in §47F-3-116 of the Act, such lien shall attach to the Lot only if an assessment against the Lot remains unpaid for at least thirty (30) days and a claim of lien is filed by the Master Association as provided in the Act. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s) or firm(s) owning such Lot at the time when the assessment fell due, but such personal or corporate obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Any monetary fines imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall be a limited special assessment against the Lot of such Owner.

Section 2. Purposes of Assessments. The assessments levied by the Master Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Community and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, Stormwater Control Measures, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments, if any, levied against Common Area owned by the Master Association in fee; (iv) procurement of insurance; (v) employment of attorneys, accountants, management agents and other persons or firms for Master Association business; (vi) payment of principal and interest on funds borrowed by the Master Association for Master Association purposes; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2006, the Maximum Annual Assessment shall be \$420.00 for each Class A Lot.

(a) Beginning on January 1, 2007, and on January 1 of each year thereafter, the Maximum Annual Assessment may be increased by ten percent (10%) of the Maximum Annual Assessment for the previous calendar year.

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(b) The Maximum Annual Assessment may be increased without limitation if such increase is approved by the Declarant and by not less than two-thirds (2/3) of the votes cast by the increase is approved by the Declarant and by not less than two-thirds (2/3) of the votes cast by the Class A Members present, in person or by proxy, at a meeting duly called for that purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Certificate of Payment; Ratification of Budgets. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Master Declaration.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. Unless a lower amount is set by the Board, the initial annual assessment shall be the Maximum Annual Assessment set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. The annual assessment for Class B Lots shall always be zero (\$0); provided, however that any Class B Lot containing a Dwelling that is occupied as a residence shall be assessed at the Class A rate. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected yearly, semiannually, quarterly, or monthly, as determined by the Board of Directors. Any monies paid at any time by the Declarant or Acacia for Common Expenses or otherwise for or on behalf of the Master Association shall be credited against past or future assessments due from the Declarant or Acacia, as appropriate.

The Master Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Master Association, or the management company employed by the Master Association, setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

The Board of Directors shall adopt a proposed budget for the Master Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless, at that meeting, Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the proposed budget provides for annual assessments not more than ten percent (10%) greater than the annual assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board of Directors.

Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At

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least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

Section 5. Special Assessments; Limited Special Assessments. In addition to the annual assessments authorized above, the Master Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article and further provided that the special assessments for Class B Lots shall always be zero (\$0). Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected yearly, semiannually, quarterly, or monthly, as determined by the Board of Directors.

The Board of Directors, without vote of the Members, may levy a limited special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Master Association with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Any fine imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall also constitute a limited special assessment against such Owner's Lot. Special assessments and limited special assessments shall constitute a lien to the same extent as annual assessments against the Lot.

Section 6. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If, however, a quorum is not present or represented at any meeting, the Members or their proxies present and entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or be represented. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of quorum. The quorum requirement shall continue to be reduced by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 7. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within fifteen (15) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than eighteen percent (18%) per annum or the maximum rate allowable by law, whichever is less. The Master Association may file a claim of lien in the Office of the Clerk of Superior Court of Wake County against the Lot once an assessment levied against it has remained unpaid for a period of thirty (30) days or longer. The Master Association may foreclose the claim of lien in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, except that the Master Association cannot foreclose under the power of sale provided in Article 2A of Chapter 45 if the assessment lien consists solely of fines imposed by the Master Association, interest on unpaid fines, or attorneys' fees solely associated with fines imposed by the Master Association, or if the assessment lien consists solely of fees resulting from

an attempt to collect a service, collection, consulting or administration fee.

Section 8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 9. Exempt Property. All portions of the Properties included within any of the following categories: (i) Common Area; (ii) Sub-Association Common Area; (iii) property owned by, or dedicated to and accepted by the Town or a public utility, including property within the rights-of-way of publicly-dedicated streets and roads; and (iv) property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, provided, however, that any property containing a Dwelling used a residence shall not be Exempt Property.

Exempt Property shall not be subject to the assessments provided for herein, and the Owner of such Exempt Property shall have no voting rights in the Master Association based on ownership of such Exempt Property. Furthermore, unless and until such time, if any, as it loses its Exempt status, all Exempt Property owned by the Town or a utility provider, and all Exempt Property within publicly-dedicated street rights-of-way, shall be exempt from all of the provisions of the Master Declaration, except for any easements over such Exempt Property reserved in the Master Declaration by or for the Declarant, the Master Association, the Town or any other Person.

Exempt Property that loses its status as Exempt shall be reclassified as a Lot, as appropriate, and shall be subject to all of the terms and provisions of the Master Declaration in the same manner and to the same extent as other Lots.

Section 10. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on a Lot, a sum equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Lot and transferred to the Master Association as part of its working capital. The purpose of the working capital fund is to ensure that the Master Association will have adequate cash available to meet its initial operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Master Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 11. Declarant's Obligation to Fund Operating Deficits. During the Declarant Control Period, Declarant shall be obligated to fund any deficit between the normal operating expenses of the Master Association and the monies received by the Master Association from the Owners from assessments. Declarant, at its option, may pay such expenses directly to the person or entity providing the services or materials or pay to the Master Association the amounts necessary to fund the operating deficit. Any monies paid at any time by the Declarant for or on behalf of the Master Association shall be credited against past or future assessments due from the Declarant.

Section 12. Neighborhood Assessments. The Master Association shall have the power to levy, in addition to all other assessments that may be levied as provided herein, assessments (deemed to be limited special assessments) against the Lots in a particular Neighborhood which is not subject to a Sub-Association Declaration to fund actual and estimated expenses incurred by the Master Association for the primary benefit of the Lots within such Neighborhood including, without limitation, maintenance required to be performed by the Master Association with respect to property within that Neighborhood. The Master Association shall levy Neighborhood Assessments within a Neighborhood upon the written request of Owners of at least two-thirds (2/3) of the Lots within that Neighborhood.

ARTICLE VI MAINTENANCE OF LOTS AND COMMON PROPERTY

Section 1. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Each Owner shall keep his Lot and Dwelling in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements that the Master Association is responsible for maintaining as provided in this Master Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Master Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Dwelling erected thereon, and the cost of such maintenance, plus a surcharge of fifteen percent (15%) for administration, shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Master Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Master Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article.

Section 2. Maintenance by the Master Association. The Master Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) to the extent the same is not maintained by a Sub-Association, maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Master Declaration or other Rules; (ii) procure and maintain adequate liability insurance covering the Master Association and its Members against any loss or damages suffered by any Person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Master Association.

Section 3. Assessment of Cost. In the event that the Master Association performs maintenance on any Lot as provided in Section 1 of this Article, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be a limited special assessment against the Lot upon which such maintenance is done.

Section 4. Stormwater Management. Except for maintenance responsibilities (i) placed on Owners by the Master Declaration or Legal Requirements, or (ii) assumed or undertaken by other

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Persons (for example, the Town), the Master Association shall maintain the Stormwater Control Measures as part of the Common Expenses. As used in the immediately preceding sentence, the word "maintain" includes a provision for maintenance of, which may include financial contributions toward maintenance of Stormwater Control Measures located on and/or shared with other properties not subject to the Master Declaration. Such maintenance obligations shall terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time as the Town accepts responsibility to maintain, in whole or in part, the Stormwater Control Measures for the Properties, or some other Person is providing the necessary maintenance therefor (for example, pursuant to an agreement with the Master Association which may require monetary payments to such Person by the Master Association). Following any such assumption of maintenance by the Town or other Person, the Master Association may, without obligation, continue to provide maintenance to the extent that, in the opinion of the Board of Directors, the Town or other Person fails to provide adequate maintenance, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the Town or such other Person has not assumed maintenance responsibility, or following termination of the Town's or such Person's maintenance responsibility. The Owner of any Lot on, over or through which any Stormwater Control Measures are located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable, unless the Association assumes such responsibility; and (ii) removal of debris and other materials to the best of the Owner's ability, where such debris or materials has impeded or threatens to impede the free flow of stormwater on, over or through the Stormwater Control Measures located on the Lot. Such Owner's responsibility shall include notification of the Master Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter which the Owner reasonably believes is beyond the Owner's ability to remove, and any excessive erosion within any such Stormwater Control Measures. The Owner of a Lot on which Stormwater Control Measures are located shall not obstruct or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Master Association, shall be responsible for maintenance of all Stormwater Control Measures located on and used exclusively in connection with such Owner's Lot or the improvements thereon, including guttering, and pipes and drains for transportation of stormwater from such Lot into any other Stormwater Control Measures.

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

Control Measures.

~~Control Measures.~~

With respect to its obligations under this Section, the Master Association shall pay, post, provide for or comply with all bonds and other financial obligations under Legal Requirements and agreements, including Stormwater Agreements, executed by the Master Association (or, during the Declarant Control Period, by the Declarant on behalf of the Master Association or for later assignment to the Master Association), and the Master Association (and, during the Declarant Control Period, the Declarant on behalf of the Master Association) may enter into agreements, including Stormwater Agreements, with the Town, another association that exists for purposes similar to those of the Master Association, or any other Person with respect to inspecting, monitoring, measuring, collecting, controlling, transporting, handling, storing, discharging, operating and managing any part or all of the stormwater on, to, or from the Properties and/or any or all of the Stormwater Control Measures for the Properties, whether such Stormwater Control Measures are located within or outside of the Properties. Such agreements, including Stormwater Agreements, shall be binding on all Owners (or, with respect to Limited Common Property, all Owners to whose portion of the Properties such Limited Common Property is allocated), and may require payments from the Master Association or the Owners whose Lots are served by the applicable Stormwater Control Measures for the services provided by the Town, such other association or such other Person in inspecting, monitoring, measuring, collecting, controlling, transporting, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such agreements, including Stormwater Agreements, may include all other terms and obligations required by Legal Requirements. In connection with the foregoing purposes expressed in this paragraph, the Master Association (and, during the Declarant Control Period, the Declarant on behalf of the Master Association) may grant rights over, in, under, upon and through any and all stormwater drainage easements in the Properties, and may grant rights over, in, under, upon and through all easements in the Properties that provide pedestrian and/or vehicular access from a publicly dedicated street right-of-way to and from stormwater drainage easements and/or Stormwater Control Measures. Provided, however, during the Declarant Control Period no such agreement shall be valid unless the same shall have been consented to in writing by the Declarant.

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the Properties or phases of the Subdivision (for example, because of the topography of the Properties it may be desirable for a portion of the Properties to have Stormwater Control Measures separate from and/or in addition to, other Stormwater Control Measures in or serving the Properties and it may be desirable for other portions of the Properties to utilize Stormwater Control Measures located outside of the Properties), and in further recognition of the desire of the Declarant for the provisions of the Master Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Properties of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by the Town, in fulfilling its obligations under the Master Declaration, the Master Association (or, during the Declarant Control Period, the Declarant on behalf of the Master Association or for later assignment to the Master Association) may enter into different agreements, including Stormwater Agreements, for different portions of the Properties, subject to all of the other terms of the Master Declaration. It further is recognized and contemplated by the Master Declaration that, if such multiple Stormwater Control Measures and/or agreements, including Stormwater Agreements are determined to be necessary or desirable, the costs of maintaining such Stormwater Control Measures and/or funding such agreements, including Stormwater Agreements, may be different for different portions of the Properties, some

Stormwater Control Measures may be classified as Limited Common Property or Sub-Association Common Property, and annual assessments and/or stormwater assessments (as defined herein) may be Common Property, and annual assessments and/or stormwater assessments (as defined herein) may be different for Lots in different portions of the Properties, and such differences may be classified as Limited Common Expenses under the Master Declaration or Sub-Association Common Expenses under a Sub-Association Declaration.

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

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

ARTICLE VII RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Master Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Master Association and, upon written request to the Master Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Master Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

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(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Master Association.

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

(d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties who have requested notice as provided in Section 2 above have given their prior written approval, the Master Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Master Association. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(e) of said Article IV hereof, shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Master Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Master Association.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however, that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners to the Master Association.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Master Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Master Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under this Master Declaration.

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**ARTICLE VIII
EASEMENTS
EASEMENTS**

In addition to all other easements granted or reserved elsewhere in this Master Declaration including, without limitation, those reserved or granted in Article XII hereof, Declarant and Acacia hereby grant and/or reserve the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water lines, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded plats of the Properties. The Master Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Master Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements. Any easements located on a Lot shall be maintained continuously by the Owner of such Lot, except for any such improvements for which a public authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot (10') right-of-way over, under and along the rear line of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

An easement is also reserved for the benefit of the Declarant and the Master Association, and their respective successors and assigns, over, across and under those portions of Properties shown and designated as "sign easement", "landscape easement" or "drainage easement", or any similar designation, and any combination of the foregoing on any recorded map or plat of any portion of the Properties for the purpose of installing, operating, repairing and maintaining, as appropriate, landscaping, irrigation system, entrance signage, fencing and Stormwater Measures in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing, or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Master Association unless approved as provided in Article IX of this Declaration and, if required, by the Town.

For a period of fifteen (15) years from the date hereof, Declarant and Acacia grant to and reserve for themselves, the Master Association, the Town, and their respective successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably

necessary or appropriate. After such action has been completed, the person or entity taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The person or entity taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

The Declarant and the Master Association, and their successors and assigns, shall at all times have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Paragraph.

Section 2. Easement for Support. Every Lot and Dwelling which contributes to the lateral and/or vertical support of any adjoining Lot or Dwelling shall be burdened with an easement of support for the benefit of such adjoining Lot or Dwelling.

Section 3. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 4. Easement Over Common Area. A perpetual, nonexclusive easement over, under and through the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to, from and over the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 5. Master Association's Easement Upon Lots. The Master Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Master Declaration, the restrictive covenants applicable to the Properties, and any other laws, ordinances, rules and regulations, public or private, which the Master Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Master Association or of the manager employed by the Master Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 6. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation,

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law enforcement, fire protection, garbage collection, and the delivery of mail.

ARTICLE IX ARCHITECTURAL CONTROL

After occupancy of the Dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs), wall or other structure (including play equipment) shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or relandscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed \$150.00, for receiving and processing each application and the right (but not the obligation), at the expense of the Owner seeking approval of the Improvements, to employ an engineer or other professional to review the plans for the Improvements. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Properties.

Declarant may, at any time, delegate the review and approval authority contained in this Article to the Board of Directors of the Master Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three or more persons appointed by the Board of Directors. Declarant shall delegate such authority no later than the end of the Declarant Control Period.

Any use of the term "Declarant" in this Article shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

Declarant shall have and shall exercise the rights set forth herein as to a Lot at all times prior to issuance of a certificate of occupancy or other certificate issued by the appropriate governmental entity for the Dwelling constructed on a Lot.

ARTICLE X USE RESTRICTIONS

Section 1. Use of Lots and Common Area. All Lots shall be used for residential purposes only. Except as permitted by the Code, no trade, business, profession or other type of commercial

activity shall be carried on upon any Lot, except that the Declarant, Acacia, any Builder, real estate brokers, Owners and their agents may show Lots for sale or lease. Notwithstanding the foregoing, the Declarant, any Builder and, to the extent necessary to exercise its rights under Article XII hereof, Acacia, and the agents and employees of each, shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and other uses consistent with the development of the Properties and the sale and construction of homes therein; (ii) maintain spotlighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit development, sales and construction efforts; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

Section 2. Building Setbacks; House Location. No Dwelling shall be erected or maintained on any Lot outside of the building envelope required by the zoning ordinance of the Town (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the Dwelling only to the extent that the same are deemed to be part of the Dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such Dwelling. Any Dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a Dwelling may be erected so as to face either street or the intersection of the two streets on which the Lot abuts.

Section 3. Use of Accessory Structures. No shack, barn, or other building, other than a Dwelling, its garage and outbuildings incident to residential use, shall be erected on a Lot. No structure of a temporary nature may be used temporarily or permanently as a residence. Notwithstanding the foregoing, the Declarant, any Builder and, to the extent necessary to exercise its rights under Article XII hereof, Acacia, may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of Dwelling Units.

Section 4. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the Community. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 5. Animals. No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other ordinary household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the Community. The Board of Directors has the right, in its sole and absolute discretion, to determine whether or not a particular animal is a nuisance and to require removal. No Person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the Rules of the Master Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot, street right-of-way, or the Common Area.

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Section 6. Signs. Except as otherwise required by the Town, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, one sign of not more than ten (10) square feet advertising the property for sale or rent, and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Master Association. Notwithstanding the foregoing, Declarant, any Builder and Acacia shall each have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

Section 7. Fences. No fence or wall shall be erected on any Lot closer to the street which the house faces than the nearest rear corner of the house. Any fence or wall installed within the Properties must meet all requirements of the Zoning Ordinance and must be approved as provided in Article IX of this Master Declaration. It is the intent of Declarant that all fences installed within the Properties must be scalloped or have some other ornamental detail (plain stockade fences will not be permitted) and must be screened from view by shrubs which will grow to a height of not less than 36" within two years after planting. Chain-link fences will not be permitted. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots nor to any fence installed by the Declarant at any entrance to or along any street within the Properties.

Section 8. Parking. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall have a concrete surface.

No mobile house trailer (whether on or off wheels), recreational vehicle, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Properties. No boat, boat trailer, or any other trailer shall be parked on any street within the Properties. A boat, boat trailer, or other trailer may be parked or kept on a Lot if it is parked or kept in the garage or approved out-building (and the door of the garage or out-building can close completely) or otherwise in such a manner that the boat and trailer are screened from the street, the Common Area, and other Lots. Screening may include an approved fence and plantings, but, in any case, the screening must comply with the Zoning Ordinance and be approved pursuant to Article IX of this Master Declaration.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Properties or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot. Vehicles without current registration and inspection stickers are considered abandoned or inoperative.

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The Board of Directors shall have the right and authority to make, implement and enforce such additional parking Rules as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Master Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking Rules, and the cost of towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered or the Owner of the vehicle, as appropriate.

Section 9. Antennae and Roof Structures. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon unless approved in accordance with Article IX hereof, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Master Association shall be empowered to adopt Rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to Rules adopted by the Master Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) is integrated with the Dwelling and surrounding landscape; and (iv) is approved pursuant to Article IX of this Master Declaration.

Section 10. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored in the garage or behind the Dwelling Unit in such a manner as not to be visible from the street upon which the Dwelling Unit fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to their permitted location the night of the scheduled pickup. Trash containers used by the Declarant during construction are exempt from this provision.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable Legal Requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board of Directors, when reasonably required for the construction of other improvements within the Properties.

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Section 11. Swimming Pools. No above-ground swimming pools are permitted in the Community, except that small, inflatable wading pools shall be permitted in the back yard of a Dwelling.

Section 12. Mailboxes. No mailbox, other than community standard mailboxes specified by the Declarant, shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article IX of this Master Declaration.

Section 13. Maintenance of Lot and Improvements; Construction. As more fully provided in this Master Declaration, each Owner shall keep his Lot, including, but not limited to, plantings, landscaping and lawns, in a neat and attractive condition and shall keep the improvements thereon in a suitable state of repair. If an Owner fails to comply with this provision, the Declarant or the Master Association, without any obligation to do so, may remedy such non-compliance and the Owner of such Lot shall be responsible for all costs of bringing the Lot into compliance with this provision. Any such costs shall be deemed a limited special assessment against the Lot.

In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within nine (9) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the Dwelling constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape the area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially-completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Owner of each Lot shall at all times keep public streets abutting his Lot free from any dirt, mud, garbage, trash or other debris resulting from construction on his Lot.

Section 14. Leasing of Dwellings. An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be for at least six (6) months, be in writing, and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Master Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Providence Place, recorded in the Wake County Registry. Tenant acknowledges that he has received a copy of such Master Declaration and the rules and regulations of the Master Association and is familiar with the provisions of same."

Section 15. Street Lighting. Declarant reserves the right to subject the Properties to a contract with Progress Energy for installation and operation of street lighting, which requires a continuing monthly payment to Progress Energy by each residential customer or by the Master Association.

Section 16. Waiver of Violations. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article IX of this Master Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of

25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Registry.

Section 17. Fines. The Board of Directors shall have the right and authority to levy fines or suspend privileges or services provided by the Master Association, except for rights of access and utilities to a Lot, for reasonable periods for the violation of any provision of this Master Declaration and other Rules hereafter promulgated by the Board of Directors pursuant thereto. Any monetary fine shall be deemed a limited special assessment against the Lot of the Owner against whom such fine is assessed.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Master Association and each Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Master Declaration, the Act, the Bylaws or other Rules adopted by the Master Association. Failure by the Master Association or an Owner to enforce any covenant or Rule herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Master Association shall not be obligated to take action to enforce any covenant, restriction or Rule which the Board of Directors reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board of Directors reasonably determines that the Master Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board of Directors reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Master Association from enforcing any other covenant, restriction or Rule.

Section 2. Term/Amendment. The covenants and restrictions of this Master Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Master Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below.

During the Declarant Control Period, the Declarant may amend this Master Declaration, without the consent or joinder of the Members or the Master Association provided such amendment is not expressly prohibited by the Act, and further provided that such amendment does not adversely affect the title to any Lot nor materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or the Common Area as set forth in this Master Declaration; provided, however, that so long as the Option Agreement is in effect, Declarant may not amend this Master Declaration without the written consent of Acacia and any purported amendment without such approval shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by Acacia and recorded.

This Master Declaration may also be amended during the first twenty-five (25) year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and

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thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots; provided, however, that in no event may Declarant's or Acacia's rights hereunder be amended or altered without the written consent to Declarant or Acacia, as appropriate. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof shall not constitute an "amendment". No amendment shall be effective unless it has been recorded in the office of the Registry.

Section 3. Non-Liability of Governmental Entities. Neither the Town nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of Acacia, the Declarant, the Master Association, an Owner, or an occupant of any Lot.

The Town shall not be responsible for maintaining any private streets within the Properties, since such streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance. The Master Association is responsible for maintaining all private streets that are Common Area of the Master Association.

Section 4. Subdivision of Lots. No Lot within the Properties may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Properties, except with the consent of the Declarant or Acacia during the Declarant Control Period, and thereafter by the Master Association, and, if required, by the Town.

Section 5. Insurance. The Master Association shall procure and maintain adequate liability insurance covering the Master Association, in an amount not less than \$1,000,000.00. The Master Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Master Association, and shall procure and maintain officers', directors' and employees' liability insurance. The premiums for such insurance shall be a Common Expense paid from annual assessments as provided in Article V of this Master Declaration.

Section 6. Rules and Regulations. The Board of Directors shall have the authority to adopt additional Rules governing the use of the Common Area and the Lots and shall furnish a written copy of said Rules to the Owner(s) of each Lot at least fifteen (15) days before such Rules become effective.

In addition to any other rights and remedies that the Master Association may have under this Master Declaration, the Master Association may impose sanctions for violations of this Master Declaration, the Bylaws of the Master Association, the Rules adopted by the Master Association, or the restrictive covenants and other Rules applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed a limited special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Master Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

In addition, pursuant to procedures provided in the Bylaws, the Master Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and

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tenant vehicles that are in violation of parking Rules) and may suspend the right of an Owner to use any Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or any Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Master Association, provided, however, that the Master Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

The Master Association shall have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of any Architectural Guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Master Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 7. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Master Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Master Association for operation expenses or reserves, as determined by the Board of Directors or the Members. Nothing in this Section shall prevent the Board of Directors from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house.

Section 8. Master Association Contracts and Leases During Declarant Control Period. All Master Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Master Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable and made with an entity not affiliated with the Declarant. Any Master Association contract or lease entered into before the first Board of Directors elected by the Class A Members takes office, and which is not bona fide or which was unconscionable to the Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Master Association at any time after the first Board of Directors elected by the Class A Members takes office, upon not less than ninety (90) days notice to the other parties to the contract or lease.

Section 9. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Master Association in substantially the following form:

CERTIFICATE OF PROVIDENCE PLACE COMMUNITY
CERTIFICATE OF PROVIDENCE PLACE COMMUNITY
ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of Providence Place Community Association, Inc., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [described the action approved] was approved by at least _____% of the Members as required by the Master Declaration and Bylaws of the Master Association.

[President/Secretary]

Section 10. Number and Gender. Whenever the context requires, the singular shall included the plural, and *vice versa*, and one gender shall include all.

Section 11. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Master Declaration.

Section 12. Severability. If any provision of this Master Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of this Master Declaration and shall not be deemed to nullify or affect any other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Master Declaration is in conflict with any applicable federal, state or local laws, this Master Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 13. Conflicts. In the event of a conflict between this Master Declaration and the Articles of Incorporation, the Articles of Incorporation shall control. In the event of a conflict between this Master Declaration and the Bylaws, this Master Declaration shall control. In the event of any conflict between this Master Declaration and any Sub-Association Declaration, this Master Declaration shall control.

Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. Chapter §55A), and the Code shall in all cases control over any construction inconsistent therewith. The provisions of the Act and the Nonprofit Corporation Act shall in all cases control any conflicting provisions of the Code.

Section 14. Rule Against Perpetuities. As provided in §47F-2-103(b) of the Act, the Rule Against Perpetuities may not be applied to defeat any provision of this Master Declaration, Bylaws, or rules and regulations adopted pursuant thereto. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Master Declaration violates any applicable Rule Against Perpetuities, such provision shall be deemed amended and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable Rule Against Perpetuities.

Section 15. Declarant. Nothing contained in this Master Declaration shall be construed to permit interference with the development of the Lots by Declarant and construction of homes by Declarant so long as said development and construction follow the general plan of development previously approved by the Town. The restrictions contained herein shall not be deemed to apply to any sales office, signs, landscaping construction trailer, model home, or other temporary or permanent improvement installed by or with the approval of Declarant.

Section 16. Non-Discrimination. Neither the Master Association, the Board of Directors, committee of the Board of Directors, officer of the Master Association, nor any member of the Board of Directors or committee, in exercising its/his/her rights and obligations under this Master Declaration, Bylaws or Articles of Incorporation, shall discriminate against any person on the basis of the race, color, religion, national origin or handicap of such person.

Section 17. Security Measures. Neither the Master Association nor the Board of Directors shall have any responsibility for establishing or maintaining any security measures within the Properties, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the Police Department of the Town.

ARTICLE XII RIGHTS OF ACACIA

Pursuant to the Option Agreement Acacia has contracted to sell to Declarant the Lots described on Exhibit A, as well as other Lots developed or to be developed on the real property described on Exhibit B (the "Exhibit B Property"). It is the intent of Acacia and Declarant that the Lots developed out of the Exhibit B Property be subjected to this Master Declaration as they are purchased by Declarant from Acacia. However, Acacia and Declarant also acknowledge the following: (i) Code may necessitate subjecting Lots owned by Acacia to this Master Declaration prior to their conveyance to Declarant; (ii) if, for any reason, Declarant does not purchase all of the Lots in the Community, Acacia shall become the Declarant under this Master Declaration; and (iii) Acacia may need certain rights to access and work in portions of the Properties conveyed to the Master Association and may need to reserve easements over, under and through Common Area. Accordingly, the following rights and easements hereby are granted to, or reserved by, Acacia, its successors and assigns, and, as specified herein, the future owners of any such detached single-family residential lots, and are in addition to all other rights granted to or reserved by Acacia in this Master Declaration.

Section 1. Agreement to Subject Lots to this Master Declaration. Acacia agrees to subject the portion of the Exhibit B Property which is intended to be part of the Properties to this Master Declaration to the extent necessary to satisfy the requirements of the Town.

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Section 2. Agreement to Convey Common Area. Until such time as all portions of the Properties owned by Acacia and intended to be Common Area have been conveyed to the Master Association (or to Declarant for conveyance to the Master Association), Acacia agrees to convey to the Master Association (or to Declarant for conveyance to the Master Association) such portions of the Properties in a manner that will comply with the requirements of the Code for development of the Properties. All such conveyances to the Master Association shall be made by Special Warranty Deed and shall be conveyed in compliance with the provisions of Section 3 of Article IV hereof.

Section 3. Acacia's Rights as Declarant. Until such time, if ever, that Acacia becomes the Declarant under this Master Declaration, Declarant shall have the right to exercise all of the votes applicable to Lots owned by Acacia. Acacia shall automatically become the Declarant under this Master Declaration upon the termination of the Option Agreement as evidenced by an instrument recorded in the Registry, in which event all references to "Declarant" shall thereafter mean and refer only to Acacia or its successors and assigns and, after which event, KHOV shall be considered a Builder hereunder and shall no longer be the "Declarant" under this Declaration; provided, however, Acacia shall not be liable to any person for any act or omission of Declarant, including, without limitation, Declarant's failure to pay any amounts owing or to be paid or reserved for hereunder or as may otherwise be required by statute or at law or to perform any act or obligation required to be performed by Declarant hereunder or as may otherwise be required by statute or at law, arising prior to the date Acacia succeeds to the Declarant's rights hereunder, and Acacia shall assume the obligations under this Declaration only for matters and obligations arising or to be performed from and after the date Acacia succeeds to Declarant's rights hereunder, and Acacia is hereby released and discharged from any and all obligations under this Declaration accruing prior to the date Acacia succeeds to Declarant's rights hereunder.

Section 4. Acacia's Right to Exchange Common Area. In connection with its development of the Properties, Acacia shall have the right to exchange real property with the Master Association pursuant to and limited by the provisions of the Code.

Section 5. Acacia's Easements. Acacia, its agents and contractors, shall have all of the rights and easements of Declarant under this Master Declaration with respect to easements over, under and through the Common Area. Acacia shall have the following additional non-exclusive rights and easements over, under and through the Common Area. For purposes of this Section, the term "Acacia" also includes any successor to Acacia of any part or all of the Properties.

(a) The right to grant perpetual utility easements on, over, under, across and through the Common Area as may be reasonably necessary for development of the Properties and/or other portions of the Properties, and the Master Association shall, upon request, execute any such easement to permit recording of same. For purposes of this Article, "utility" or "utilities" include, without limitation, water, sanitary sewer, storm water drainage, electricity, telephone, natural gas, cable television, greenway easements, and buffers required by the Code or other governmental laws, ordinances and regulations. Such easements may be granted by written instrument or plat, and may be publicly-dedicated or private easements. Insofar as reasonably practicable, and except for any portions thereof that by necessity must be at or above the surface of the ground, all utilities installed, used and maintained pursuant to such easements shall be underground. Unless specifically excluded therefrom, the grants of all such easements by Grantor are deemed to include a right of ingress, egress and regress over and upon all portions of Common Area as reasonably required to facilitate the exercise of such

easements.

(b) The right to install, use and maintain in Common Area such utilities as may reasonably be required for development of the Properties and/or other portions of the Properties.

(c) The right to install, use and maintain in Common Area signs, landscaping (including, without limitation, grass, plants, lighting, and irrigation), fencing and other decorative features in connection with development of the Properties.

(d) The right to construct, improve, repair, replace and maintain any and all private streets, driveways and alleys that constitute any part of the Common Area, in accordance with any requirements of the Town and/or in accordance with any contractual obligations of Grantor to any person or legal entity.

(e) A non-exclusive right of pedestrian and vehicular ingress, egress and regress over and upon all Common Area for the purposes of exercising the rights and easements reserved by or granted to Acacia under this Master Declaration, provided, however, that, with respect to vehicular ingress, egress and regress, to the extent reasonably practicable Acacia shall use only those portions of the Common Area designed or designated for use by vehicles, such as private streets, driveways and alleys.

(f) A nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Common Area Easement and/or to exercise its rights as Declarant under this Master Declaration, and no such entry shall be deemed a trespass. To the extent practicable, Acacia shall give reasonable oral notice to the Owner or occupant of such Lot.

(g) The easements reserved in this Section shall exist and continue so long as Acacia owns any portion of the Properties. Acacia may also terminate all or any portion of said easement rights by recording in the Registry an easement termination document executed by Acacia.

Section 6. Amendments of this Article XII. So long as Acacia owns any portion of the Community, the provisions of this Declaration may not be amended or terminated without the written consent of Acacia. Any purported amendment without such approval shall be deemed void and of no force and effect unless subsequently approved by a written consent signed by Acacia and recorded.

Section 7. Compliance with Laws. Acacia's exercise of all rights and easements under this Article shall comply with all applicable governmental laws, ordinances and regulations.

Section 8. Limitation on Declarant's Rights. Notwithstanding any other provision contained in this Declaration, Declarant shall not, without the prior written consent of Acacia, have the right to exercise any of the "Declarant" rights under this Declaration in any manner which will have a material or adverse impact on any portion of the Community owned by Acacia.

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Section 9. Termination of Option. Notwithstanding any other provision of this Declaration, Declarant and Acacia acknowledge that, upon recordation of a termination of the Option Agreement, the Option Agreement, for purposes of this Declaration shall be deemed terminated and shall no longer be in force or have any effect hereunder.

So long as the Option Agreement is in effect, Acacia shall have the right to enforce any of the provisions of this Declaration, the Articles of Incorporation for the Association and the Bylaws of the Association that are intended to be for the benefit of Acacia.

None of the provisions of this Declaration shall obligate or be construed to obligate Declarant or Acacia or their respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration or any Supplemental Declaration or any provisions hereof or thereof, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

[Signature Pages to Follow]

IN WITNESS WHEREOF, Declarant and Acacia have each caused this instrument to be executed in its name by its duly authorized officer of Manager, as of the date set forth in the notary acknowledgment below.

DECLARANT:
K. HOVNANIAN HOMES OF NORTH CAROLINA, INC.

By: *Michael J. Reiser*
Michael J. Reiser, Division President

STATE OF NC -- COUNTY OF Wake:

I, the undersigned, a Notary Public for the County and State aforesaid, certify that Michael J. Reiser personally appeared before me this day and acknowledged that he is Division President of Hovnanian Homes of North Carolina, Inc., a North Carolina corporation, and that he, as Division President, being authorized to do so, executed the foregoing on behalf of the Declarant.

Witness my hand and official stamp or seal, this the 10th day of Aug, 2006.

Linda Paschall
Notary Public
My commission expires: 8-15-2008

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ACACIA CREDIT FUND 10-A L.L.C.,
ACACIA CREDIT FUND 10-A L.L.C.,
a Delaware limited liability company

By: Fund 10-A Management Company L.L.C.,
a Delaware limited liability company,
its Managing Member

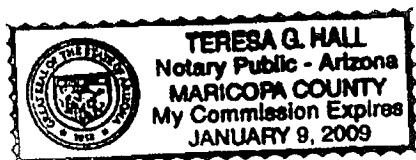
By: Acacia Capital Corporation,
a California corporation, its Managing Member

By: Steven S. Benson
Steven S. Benson, as its Executive Vice President

STATE OF Arizona -- COUNTY OF Maricopa:

I, the undersigned, a Notary Public for the County and State aforesaid, certify that Steven S. Benson personally appeared before me this day and acknowledged that he is Executive Vice President of Acacia Capital Corporation, a California corporation, Managing Member of Fund 10-A Management Company L.L.C., a Delaware limited liability company, Managing Member of Acacia Credit Fund 10-A L.L.C., a Delaware limited liability company, and that he, as President, being authorized to do so, executed the foregoing on behalf of Acacia.

Witness my hand and official stamp or seal, this the 9th day of August, 2006.



Teresa G. Hall
Notary Public
My commission expires: 01/09/09

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EXHIBIT “A”

Lying and being in the Town of Morrisville, Cedar Fork Township, Wake County, North Carolina, and being more particularly described as follows:

All of Lots 1-19 and 58-61 in Providence Place Subdivision, Phase 1, as shown on map recorded in **Book of Maps 2006, Page(s) 932-933 (932)**, Wake County Registry, to which map reference is hereby made for a more particular description.

All of Lots 20-24 and 53-57 in Providence Place Subdivision, Phase 1, as shown on map recorded in **Book of Maps 2006, Page(s) 932-933 (933)**, Wake County Registry, to which map reference is hereby made for a more particular description.

All of Lots 25-42 and 44-52 in Providence Place Subdivision, Phase 1, Plat 3, as shown on map recorded in **Book of Maps 2006, Page 1449**, Wake County Registry, to which map reference is hereby made for a more particular description.

All of Lots 97-120, 123-127, 143-147 and 150 in Providence Place Subdivision, Phase 2, as shown on map recorded in **Book of Maps 2006, Page 1487**, Wake County Registry, to which map reference is hereby made for a more particular description.

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EXHIBIT B

LEGAL DESCRIPTION

172 - ACRE TRACT
LOCATED IN MORRISVILLE, NORTH CAROLINA

Lying and being in the Town of Morrisville, Cedar Fork Township, Wake County, North Carolina, and being more particularly described as follows:

BEGINNING at a new iron pipe set in the western line of the 60' right-of-way of Church Street (N.C.S.R. 1637), said pipe being located in the northern line of the property now or formerly owned by Sara Harris (PIN # 0746-67-0267; Book 1562, Page 76, Wake County Registry ["WCR"]), and also being located South 87°07'01" West a distance of 188.13 feet from North Carolina Grid System monument "Tony" (grid coordinates based on North American Datum of 1983 = North 767,580.97; East = 2,046,191.35), said monument also being located North 16° 03' 40" West a distance of 2,582.31 feet (ground) from North Carolina Grid System monument "Shiloh".

From said point of Beginning, running thence with the northern line of the Harris property, North 87°49'19" West a distance of 112.14 feet to an existing axle at Harris' northwestern corner; running thence with the western line of the Harris property, South 15°09'19" East a distance of 310.13 feet to a new iron pipe set at the northeastern corner of the property now or formerly owned by the Cora Holland Heirs (PIN # 0746-57-8126), all of such boundary lines being relocated pursuant to a plat entitled "ReCombination Plat prepared for K. Hovnanian Homes," by Jeremy Taylor, Professional Land Surveyor (L-3841) of Rice & Associates, dated May 4, 2005, running thence with the northern line of the Cora Holland Heirs property, the following six (6) calls:

- 1) South 52°14'10" West a distance of 42.30 feet to a new iron pipe;
- 2) South 75°21'09" West a distance of 42.31 feet to a new iron pipe;
- 3) South 85°32'34" West a distance of 41.03 feet to a new iron pipe;
- 4) South 85°38'21" West a distance of 56.82 feet to a new iron pipe;
- 5) South 75°36'46" West a distance of 71.41 feet to a new iron pipe; and
- 6) North 88°50'41" West a distance of 86.02 feet to a new iron pipe;

running thence with the western line of the Cora Holland Heirs property, South 19°43'16" East a distance of 138.10 feet to a new iron pipe; running thence with the southern line of the Cora Holland Heirs property, South 88°52'56" East a distance of 334.14 feet to an existing iron pipe at the southeastern corner of the Cora Holland Heirs property and in the southwestern corner of the Sarah Harris property; running thence with the southern line of the Harris property, North 87°39'27" East a distance of 172.80 feet to an existing iron pipe in the western line of the 60' right-of-way of Church Street; running thence with said right-of-way, along and with the arc of curve to the RIGHT having a radius of 2,805.57 feet (Chord Bearing: South 11°20'10" East; Chord Length: 448.37 feet) a distance of 448.84 feet to a point; continuing with said right-of-way and running thence along and with the arc of a curve to the RIGHT having a radius of 1,670.00 feet (Chord Bearing: South 03°30'22" East; Chord Length: 189.17 feet) a distance of 189.27 feet to an existing concrete monument, the northeastern corner of the property now or formerly owned by Lilar A. Pennington and Harold D. McGill (PIN # 0746-66-1364; Book 5531, Page 836, WCR); running thence with the northern line of

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the Pennington/McGill property, South 87°28'47" West a distance of 278.19 feet to a point, the northwestern corner of the Pennington/McGill property; running thence with the western line of the northwestern corner of the Pennington/McGill property; running thence with the western line of the Pennington/McGill property, South 03°03'30" East a distance of 256.58 feet to a point in the northern line of the property now or formerly owned by Pauline Williams (PIN # 0746-66-1154; Book 1360, Page 594, WCR) [the "Williams I property"], the southwestern corner of the Pennington property; running thence with the northern line of the Williams I property, South 86°56'30" West a distance of 35.00 feet to an existing concrete monument, the northwestern corner of the Williams I property; running thence with the western line of the Williams I property, South 03°03'40" East a distance of 150.01 feet to an existing concrete monument in the northern line of property now or formerly owned by Pauline Williams, *et al.* (PIN # 0746-65-0977; Book 5132, Page 144, WCR) [the "Williams II property"], the southwestern corner of the Williams I property; running thence with the northern line of the Williams II property, South 86°56'48" West a distance of 149.98 feet to an existing concrete monument, the northwestern corner of the Williams II property; running thence with the western line of the Williams II property, South 03°03'10" East a distance of 209.99 feet to a point; running thence South 08°42'03" East a distance of 109.40 feet to a point at the northwestern corner of the property now or formerly owned by Otto C. & Queen E. Lyons (PIN # 0746-65-1751; Book 3485, Page 799, WCR) [the "Lyons I property"]; running thence along and with the western line of the Lyons I property and the western line of the property now or formerly owned by Ralph B. Pennington (PIN # 0746-65-1558; Book 2136, Page 35, WCR) [the "Ralph Pennington Property"], South 36°23'49" East a distance of 208.00 feet to a point in the northern line of the property now or formerly owned by Otto & Queen Lyons (PIN # 0746-65-1493; Book 2273, Page 147, WCR) [the "Lyons II property"]; running thence with the northern line of the Lyons II property, North 89°16'02" West a distance of 98.00 feet to an existing iron pipe, the northwestern corner of Lyons II property; running thence with western line of the Lyons II property, South 13°58'05" East a distance of 214.52 feet to an existing iron pipe (disturbed), the southwestern corner of the Lyons II property; running thence with the southern line of the Lyons II property, South 89°39'27" East a distance of 408.59 feet to an existing iron pipe in the western line of the 60' right-of-way of Church Street, the southeastern corner of the Lyons II property; running thence with said right-of-way line, along and with the arc of a curve to the LEFT having a radius of 9,759.93 feet (Chord Bearing: South 11°57'25" East; Chord Length 192.75 feet) a distance of 192.75 feet to an existing iron pipe marking the northeastern corner of the property now or formerly owned by Mary Barbee (PIN # 0746.04-64-3913; Book 8521, Page 1085, WCR) [the "Mary Barbee Lot #2 property"]; continuing with said right-of-way line and running thence, South 13°22'15" East a distance of 19.86' to an existing iron pipe on the northern right-of-way line of Barbee Road; running thence across Barbee Road, South 13°22'56" East a distance of 60.04 to a new iron pipe on the southern line of the right-of-way of Barbee Road; running thence with the western line of the right-of-way of Church Street, South 13°22'56" East a distance of 165.26 feet to an existing iron pipe, the northeastern corner of the property now or formerly owned by Mary Barbee (PIN # 0746-64-3840; Book 8521, Page 1085 and Book of Maps 1987, Page 887, WCR) [the "Mary Barbee Lot #1 property"]; running thence with the northern line of the Mary Barbee Lot #1 property South 77°24'17" West a distance of 289.18 feet to an existing iron pipe at the northwestern corner of the Mary Barbee Lot #1 property and on the eastern line of the right-of-way of Barbee Road; running thence along with the eastern right-of-way of Barbee Road, the following two (2) calls: (1) North 09°38'22" West a distance of 47.87 feet to a point and (2) along and with the arc of a curve to the RIGHT, having a radius of 127.33 feet (Chord Bearing: North 05°23'56" West; Chord Length: 18.83 feet) a distance of 18.85 feet to a point; and running thence across the right-of-way of Barbee Road, North 05°20'15" West a distance of 59.56 feet to a point within the right-of-way of Barbee Road; continuing across the right-of-way line of Barbee Road, North 03°36'08" West a distance of 71.02 feet

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to an existing iron pipe in the eastern line of the property now or formerly owned by Charlie Mayo and Aree M. Monroe (PIN # 0746-54-9998; Book 2009, Page 283 and Book of Maps 1999, Page 1941, Aree M. Monroe (PIN # 0746-54-9998; Book 2009, Page 283 and Book of Maps 1999, Page 1941, WCR) [the "Charlie Mayo and Aree M. Monroe Property"]; running thence along the northern line of the right-of-way of Barbee Road and with the arc of a curve to the RIGHT, having a radius of 187.33 feet (Chord Bearing: North 51°52'09" East; Chord Length: 58.56 feet) a distance of 58.81 feet to an existing iron pipe in the northern line of the right-of-way of Barbee Road and to a corner in the eastern line of the property now or formerly owned by Perlle M. Gupton (PIN # 0746-65-0140; Book 8463, Page 2285 and Book of Maps 1999, Page 1941, WCR); running thence with the eastern line of the Gupton property, the following two (2) calls: (1) North 44°22'15" West a distance of 74.33 feet to an existing iron pipe, and (2) North 03°32'51" West a distance of 19.44 feet to an existing iron pipe at the northeastern corner of the Gupton property; running thence with the northern line of the Gupton property, North 89°15'42" West a distance of 150.53 feet to a point; running thence with the northern line of the Gupton property and with the northern line of the Charlie Mayo & Aree M. Monroe property and with the northern line of the property now or formerly owned by Eula Adm Barbee c/o Herbert Barbee (PIN # 0746-54-2476) [the "Eula Adm Barbee property"]; North 88°49'03" West a distance of 1,351.77 feet to an existing iron pipe, the northwestern corner of the Eula Adm Barbee property; running thence with the western line of the Eula Adm Barbee property, South 17°34'14" West a distance of 424.38 feet to an existing concrete monument, the northeastern corner of the property now or formerly owned by Research Triangle Foundation (PIN # 0736-46-0035; Book 1670, Page 239, WCR); running thence with the northern line of the Research Triangle Foundation property, North 89°02'11" West a distance of 736.84 feet to a chiseled "x" in an existing stone, the southeastern corner of the property now or formerly owned by Robert L. & Ralph Pennington (PIN # 0746-35-1254; Book 5196, Page 891, WCR); running thence with the eastern line of the Robert L. & Ralph Pennington property, North 10°12'41" East a distance of 706.47 feet to an existing iron pipe, the northeastern corner of the Robert L. & Ralph Pennington property; running thence with the northern line of the Robert L. & Ralph Pennington property, North 82°51'32" West a distance of 894.98 feet to a point, the northwestern corner of the Robert L. & Ralph Pennington property; running thence with the western line of the Robert L. & Ralph Pennington property the following two (2) calls: (1) South 24°29'06" West a distance of 151.47 feet to a point and (2) South 34°07'58" West a distance of 211.70 feet to a point in the eastern line of the future I-540 right-of-way; running thence with said right-of-way the following two (2) calls: (1) North 48°19'30" West a distance of 436.14 feet to a point and (2) North 06°32'00" East a distance of 333.66 feet to a point, the southwestern corner of the property now or formerly owned by Otto C. & Queenesther H. Lyons (PIN # 0746-26-4198; Book 3100, Page 213, WCR) [the "Lyons III property"]; running thence with the eastern line of the Lyons III property, along and with the arc of a curve to the LEFT having a radius of 220.00 feet (Chord Bearing: North 57°29'57" East; Chord Length: 187.07 feet) a distance of 193.22 feet to a point on the northwestern line of the 60' right-of-way margin of Weaver Road (N.C.S.R. 1638); running thence with the northwestern right-of-way Weaver Road the following three (3) calls: (1) along and with the arc of a curve to the LEFT having a radius of 328.99 feet (Chord Bearing: North 20°54'17" East; Chord Length: 60.66 feet) a distance of 60.74 feet to a point, (2) North 15°36'55" East a distance of 112.36 feet to a point, and (3) along and with the arc of a curve to the RIGHT having a radius of 248.58 feet (Chord Bearing: North 30°36'32" East; Chord Length: 128.65 feet) a distance of 130.13 feet to an existing iron pipe at the northeastern corner of the Lyons III property; running thence with the northern line of the Lyons III property, North 51°26'38" West a distance of 257.96 feet to a point on the eastern right-of-way of future I-540; running thence with the eastern right-of-way of future I-540, the following five (5) calls:

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- 1) North 40°24'30" East a distance of 104.26 feet to a point;
- 2) North 09°37'00" East a distance of 131.66 feet to a nail found;
- 2) North 09°37'00" East a distance of 131.66 feet to a nail found;
- 3) along and with the arc of a curve to the RIGHT having a radius of 2,165.35 feet (Chord Bearing: North 34°12'23" East; Chord Length: 79.05 feet) a distance of 79.06 feet to a point;
- 4) along and with the arc of a curve to the RIGHT having a radius of 2,165.35 feet (Chord Bearing: North 35°54'07" East; Chord Length: 49.10 feet) a distance of 49.10 feet to a point; and
- 5) along and with the arc of a curve to the RIGHT having a radius of 2,165.35 feet (Chord Bearing: North 53°29'06" East; Chord Length: 1,261.35 feet) a distance of 1,279.90 feet to a point in the western line of the property now or formerly owned by Sallie Mayo Heirs & Pearl Mayo Bass (PIN # 0746-37-9901; Book 2539, Page 675, WCR);

running thence with the western line of Mayo/Bass property, the following three (3) calls:

- 1) South 01°36'22" West a distance of 307.71 feet to an existing iron pipe;
- 2) South 01°35'45" West a distance of 296.79 feet to an existing iron pipe; and
- 3) South 01°37'32" West a distance of 144.20 feet to an existing iron pipe, the southwestern corner of Mayo/Bass property;

running thence with the southern line of the Mayo/Bass property, North 89°52'36" East a distance of 630.00 feet to an iron pipe set, the southeastern corner of the Mayo/Bass property; running thence with the eastern line of the Mayo/Bass property, North 01°37'48" East a distance of 655.78 feet to an existing iron pipe, the southwestern corner of property now or formerly owned by Katherine R. Everett (PIN # 0746-48-7656; Book 1386, Page 273, WCR); running thence with the southern line of the Everett property, North 89°02'00" East a distance of 1,037.67 feet to an iron pipe set in the western right-of-way line of the 60' right-of-way of Weaver Road; running thence across Weaver Road, North 89°02'00" East a distance of 60.00 feet to a point in the eastern right-of-way of Weaver Road; running thence with the eastern right-of-way of Weaver Road the following five (5) calls:

- 1) North 01°01'48" West a distance of 124.08 feet to a point;
- 2) along and with the arc of a curve to the RIGHT, having a radius of 933.73 feet (Chord Bearing: North 06°30'22" East; Chord Length: 244.92 feet) a distance of 245.63 feet to a point;
- 3) along and with the arc of a curve to the RIGHT having a radius of 933.73 feet (Chord Bearing: North 21°01'25" East; Chord Length: 226.99 feet) a distance of 227.55 feet to a point;
- 4) North 28°00'18" East a distance of 35.40 feet to a point; and
- 5) North 65°11'57" East a distance of 164.07 feet to an existing nail found on the western line of the 60' right-of-way of the aforesaid Church Street;

running thence with the western right-of-way line of Church Street the following two (2) calls: (1) South 54°49'33" East a distance of 104.18 feet to an existing nail found, and (2) South 30°12'25" East a distance of 155.17 feet to an existing iron pipe, the northeastern corner of the property now or formerly owned by Beulah Weaver McClain Heirs (PIN # 0746-57-8700; Book 3032, Page 831, WCR); leaving said right-of-way line and running thence along and with the northern line of the McClain Heirs property, South 73°58'20" West a distance of 25.44 feet to an iron pipe set, the

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northwestern corner of McClain Heirs; running thence with the western line of the McClain Heirs property, along and with the arc of a curve to the LEFT having a radius of 157.50 feet (Chord Bearing: South 11°05'35" West; Chord Length: 67.68 feet) a distance of 68.21 feet to a point; continuing with the western line of the McClain Heirs property and running thence South 01°18'50" East a distance of 62.08 feet to an iron pipe set; running thence with a northern line of the McClain Heirs property, South 64°35'29" West a distance of 131.11 feet to an iron pipe set; running thence with the western line of the McClain Heirs property, South 26°01'36" East a distance of 200.00 feet to an iron pipe set, the southwestern corner of McClain Heirs; running thence with the southern line of the McClain Heirs property, North 60°51'20" East a distance of 243.81 feet to an iron pipe set in the western 60' right-of-way line of Church Street; running thence with the western 60' right-of-way margin of Church Street, along and with the arc of a curve to the RIGHT having a radius of 4,655.48 feet (Chord Bearing: South 28°28'50" East; Chord Length: 107.90 feet) a distance of 107.90 feet to the POINT AND PLACE OF BEGINNING, containing approximately 172 acres as shown on a survey entitled "ALTA/ASCM Survey for K. Hovnanian Homes," by Jeremy Taylor, Professional Land Surveyor (L-3841) of Rice & Associates, dated April 26, 2005 and certified May 6, 2005, to which map reference is made for a more particular description.

Said 172 - ACRE TRACT excludes that certain property lying in the Town of Morrisville, Cedar Fork Township, Wake County, North Carolina, which is shown as an Existing Cemetery on the above referenced survey and being more particularly described as follows:

Beginning at a point located South 67°07'25" West a distance of 71.00 feet from the southeastern corner of said Tract #6-B to the true point of BEGINNING; from said point of beginning, running thence North 75°05'53" West a distance of 48.37 feet to a point; running thence North 46°57'24" West a distance of 76.84 feet to a point; running thence South 49°34'42" West a distance of 52.79 feet to a point; running thence South 62°11'02" West a distance of 42.34 feet to a point; running thence South 83°59'31" West a distance of 29.83 feet to a point; running thence South 15°14'37" West a distance of 50.33 feet to a point; running thence South 01°22'12" West a distance of 33.30 feet to a point; running thence South 36°06'05" West a distance of 39.09 feet to a point; running thence South 08°28'01" East a distance of 187.01 feet to a point; running thence South 84°13'59" East a distance of 40.62 feet to a point; running thence South 77°24'05" East a distance of 53.26 feet to a point; running thence South 76°28'42" East a distance of 51.52 feet to a point; running thence South 70°15'36" East a distance of 38.02 feet to a point; running thence North 55°43'35" East a distance of 49.31 feet to a point; running thence North 01°42'52" West a distance of 57.43 feet to a point; running thence North 12°57'32" East a distance of 67.23 feet to a point; running thence North 00°08'32" West a distance of 42.74 feet to a point; running thence North 43°08'26" West a distance of 28.35 feet to a point; running thence North 02°23'11" East a distance of 73.84 feet to a point; running thence North 04°58'09" East a distance of 43.47 feet to the POINT AND PLACE OF BEGINNING, containing approximately 1.763 acres.



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Wake County Register of Deeds
Laura M. Riddick
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