

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
MAGNOLIA PARK**

**THE FOLLOWING STATEMENTS ARE REQUIRED BY THE NORTH
CAROLINA PLANNED COMMUNITY ACT:**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG
OF THE UNITED STATES OF AMERICA OR THE STATE OF NORTH
CAROLINA.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL
SIGNS.**

Prepared by and when recorded return to:

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K&L Gates LLP
P.O. Box 17047
Raleigh, NC 27619

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
MAGNOLIA PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MAGNOLIA PARK ("Declaration") is made as of the date set forth on the signature page hereof by Mattamy Homes LLC, a North Carolina limited liability company (the "Declarant").

RECITALS:

1. Capitalized terms used in these Recitals and otherwise in the Declaration are defined in Article 1 below.
2. Declarant is the owner of the real property described on Exhibit "A."
3. The Governing Documents impose upon the Properties mutually beneficial restrictions under a general plan of improvement, all for the benefit of the owners of each portion of the Properties and for the preservation and promotion of the value, aesthetics and desirability (as the case may be) of the Properties and all portions of the same. Furthermore, this Declaration establishes a planned community under the North Carolina Planned Community Act (N. C. Gen. Stat. Chap. 47F; as amended from time to time).
4. Likewise, the Governing Documents establish a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties, and in furtherance of such plan, this Declaration provides for the creation of Magnolia Park Owners Association, Inc. to own, operate and maintain the Common Areas, and to otherwise administer and enforce the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof and the provisions of the Act, collect and disburse the assessments and charges imposed in accordance with the provisions hereof and the provisions of the Act, and exercise such other powers as may be authorized by the Governing Documents and by the Act; and.

NOW, THEREFORE, Declarant hereby declares that all of the property described on Exhibit "A" and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

ARTICLE 1: DEFINITIONS

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. “Act”: The North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes, as same may be amended from time to time.

1.2. “Additional Property”: All of that certain real property which abuts directly on the property line of the property described on Exhibit “A”, or which has a boundary line within 1,000 feet of the boundary line of the property described on Exhibit “A;” all such adjacent or nearby real property being subject to annexation to the terms of this Declaration in accordance with Article 7.

1.3. “ARB”: The Architectural Review Board, as described in Article 9.

1.4. “Area of Common Responsibility”: The Common Area, together with those areas, if any, for which the Association has or assumes responsibility pursuant to the terms of the Governing Documents.

1.5. “Articles of Incorporation” or “Articles”: The Articles of Incorporation of the Association, as filed with the Secretary of State of the State of North Carolina, as they may be amended.

1.6. “Association”: Magnolia Park Owners Association, Inc., a North Carolina nonprofit, mutual benefit corporation, its successors or assigns.

1.7. “Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in the Bylaws and serving as the Board of directors under North Carolina corporate law.

1.8. “Builder”: Any Person who purchases one (1) or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such Person’s business and who is appointed in writing as a “Builder” by Declarant or the ARB. Notwithstanding the foregoing, any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy or leasing of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

1.9. “Bylaws”: The Bylaws of the Association, attached hereto in initial form as Exhibit “B,” as they may be amended.

1.10. “Class “B” Control Period”: The period of time during which the Class “B” Member is entitled to appoint a Majority of the members of the Board of Directors as provided herein.

1.11. “Common Area”: All real and personal property, including easements and licenses, that the Association owns or leases, or in which the Association holds possessory or use rights, for the common use and enjoyment of the Owners, including without limitation, (a) all property shown on a recorded plat of the Properties, or any portion thereof, designated as “Common Open Space”, “Common Area”, “Private Open Space,” “Recreation Area,” “Amenity Area” or other similar designation on Map(s) of the Property recorded in the Office of the Register of Deeds for the County. “Common Area” or “Common Areas” shall also include (i) all private streets and private utilities, if any, including any utility line serving more than one lot located outside of public street rights-of-way and public utility easements, (ii) all retaining walls constructed by Declarant that serve and support more than one (1) Lot and all improvements within any private retaining wall and/or fence easement established on the Maps

of the Property that serve and support more than one (1) Lot, (iii) any public road, right-of-way or cul-de-sac in the Property which has been dedicated to the public on Map(s) of the Property recorded in the County but not accepted for public maintenance by the appropriate governmental entity, (iv) storm pipes and any median or planting area and related signage, irrigation facilities and lighting constructed by Declarant within rights-of-way within the Property, (v) any real or personal property which the Association now or hereafter owns, leases or holds possessory or use rights in for the benefit of the Owners and their permittees, (vi) such easement rights for right-of-way and appurtenant easements or licenses as Declarant may declare, acquire or reserve or as are granted to the Association for the benefit of the Owners and their permittees or for the use, care or maintenance of any portion of the Property, including, but not limited to, rights-of-way and appurtenant easements or licenses for landscaping, trees, plantings, irrigation, signage, monuments, lighting, water, sanitary sewer, storm sewer, stormwater drainage and/or retention, communications and/or other utility services, (vii) cluster mailboxes installed by Declarant on the Common Area or other portion of the Property, (viii) all recorded tree conservation areas shown on any recorded Map; (ix) any areas designated as Designated Common Areas as described in Section 5.1(a)(xii) and (x) all fencing constructed by Declarant that serve more than one (1) Lot and all improvements within any private fence easement established on the Maps of the Property that serve more than one (1) Lot. Declarant hereby grants to the Association an easement over any road, right-of-way or cul-de-sac within the Property which shall automatically terminate upon dedication to and acceptance for public maintenance by the appropriate governmental entity.

1.12. “Common Expenses”: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserves, as the Board may find necessary and appropriate pursuant to the Governing Documents but shall not include any expenses for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs for improvements constructed by Declarant unless approved by a majority of the Voting Power of the Association; provided, however, the repair, maintenance and replacement of such infrastructure or other original capital improvements shall be a Common Expense. Common Expenses shall include, without limitation, (i) all sums lawfully assessed by the Association against its Members; (ii) the actual and estimated expenses incurred or anticipated to be incurred by the Association for administration, maintenance, repair, or replacement of the Common Area; (iii) the actual and estimated expenses incurred or anticipated to be incurred by the Association declared to be Common Expenses by the provisions of the Act, or any Governing Document; (iv) premiums for hazard, liability, casualty and such other insurance as the Declaration or the Bylaws may require or authorize the Association to purchase or which the Association is required by law to purchase; (v) ad valorem taxes and assessment charges lawfully levied against the Common Area owned in fee simple by the Association; (vi) the actual and estimated expenses incurred or anticipated to be incurred by the Association as agreed by the Members to be Common Expenses of the Association; (vii) fees for utilities used in connection with the Common Area; (viii) fees for services of accountants, attorneys, engineers, managers and other professionals engaged by the Association; (ix) the costs and expenses associated with encroachments within the rights-of-way serving the Property in accordance with any encroachment agreement(s) by and among the Declarant, the Association and the applicable governmental authority; (x) the costs and expenses associated with the maintenance, preservation, enhancement, repair and improvement of Lot improvements which the Association is required to maintain, if any, pursuant to the terms of this Declaration; (xi) unpaid assessments following a foreclosure; (xii) lease payments on all leased street lights within the Property (“Street Lights”); (xiii) expenses incurred for trash removal providers engaged by the Association to serve the Property; and (xiv) all expenses classified as Common Expenses pursuant to the Act.

1.13. “Community” or “Magnolia Park”: That certain residential community located in Wake

County, North Carolina, and commonly known and referred to as Magnolia Park, comprised of the Properties.

1.14. "Community-Wide Standard": The standard of conduct, maintenance, development, construction or other activity generally prevailing throughout the Properties, including the frequency and level of the same as applicable and as the case may be, which shall be consistent with other first-class single-family residential subdivisions in the Wake County area of like age, all as such standard is initially set by the activities of Declarant, and as more specifically interpreted by the Board of Directors and the ARB, in its/their reasonable discretion (including with the realization that some portions of the Common Area may simply designed to be kept in their originally existing natural state).

1.15. "Cost Sharing Agreement": Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within Magnolia Park for the allocation of expenses (and obligations, as the case may be) for amenities and/or other use rights or services that benefit both the Association and the owner or operator of such property.

1.16. "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.17. "Declarant": Mattamy Homes LLC, or any successor, successor-in-title, or assign who takes title to any portion of the Properties for the purpose of development and/or sale and who is designated as the Declarant in an instrument executed by the immediately preceding Declarant and the transferee and recorded in the Public Records; provided however, there shall be only one (1) "Declarant" hereunder at any time.

1.18. "Design Guidelines": The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9, and attached hereto in initial form as Exhibit "C," as the same may be amended.

1.19. "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration, or any Additional Property, or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.20. "Dwelling": The habitable structure located on a Lot which constitutes and serves as the primary single family residence.

1.20. "General Assessment": Assessments levied on all Lots that are subject to assessment under Article 8; such assessments to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.1 and 8.2.

1.21. "Governing Documents": The Declaration, Bylaws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the Rules of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be amended from time to time; the initial Bylaws, Design Guidelines and Rules of the Association as amended from time to time if at all.

1.22. "Legal Requirement" Includes any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, applicable town or city where the Property is located, the County, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the Property or any portion thereof, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

1.23. "Lot": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family, and which is not part of the Common Area. The term shall refer to the land which is part of the Lot as well as any improvements thereon.

1.24. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.25. "Member": A Person that holds membership in the Association pursuant to Section 3.2.

1.26. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of instrument securing debt, that affects title to a Lot.

1.27. "Mortgagee": A beneficiary or holder of a Mortgage.

1.28. "Owner": One (1) or more Persons who hold the record title to any Lot, including the Declarant and any Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.29. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.30. "Properties" or "Property": The real property described on Exhibit "A" as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.31. "Public Records": The Office of the Register of Deeds for Wake County, North Carolina, or such other place as/if applicable, which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.32. "Roads": Any permanent Roads constructed within the Properties and including the right of way shown on a recorded plat of the Properties. The Roads shall be considered part of the Common Area until such times as such Roads are dedicated and accepted by the applicable governmental authority for public maintenance.

1.33. "Rules": The rules and regulations of the Association described more particularly in Section 10.2 and attached hereto in initial form as part of Exhibit "C", as the same may be amended.

1.34. "Special Assessment": Assessments levied in accordance with Section 8.4.

1.35. "Specific Assessment": Assessments levied in accordance with Section 8.5.

1.36. “Stormwater Covenant”: Any, recorded covenant (whether contained herein or separately recorded) as required by any governmental authority or ordinance (or by agreement resulting from the same), or otherwise under any Legal Requirement, relating to Stormwater Control Measures for the Community or any part thereof, and includes all amendments and supplements to such agreements.

1.37. “Stormwater Control Measures” or “Stormwater Control Facilities”: such terms being used interchangeably in this Declaration shall mean any one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves any part or all of the Properties: conduits, storm drains, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bioretention areas, retention or detention ponds, and other devices, facilities, appurtenances and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and public drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a Plat or in a document recorded in the Registry, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures owned by or dedicated to the Association are Common Area.

1.38. “Stormwater Operations Maintenance Budget”: means that budget however named, and including any attached to and incorporated into any Stormwater Covenant, or otherwise required to be maintained by any governmental authority or agreement therewith, or otherwise established by the Board, establishing the actual or estimated payments/costs for maintenance of Stormwater Control Facilities by the Association.

1.39. “Supplemental Declaration”: An instrument filed in the Public Records which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to any declaration of covenants, conditions and restrictions.

1.40. “Voting Delegates” shall mean those individuals entitled to cast Class “A” votes on behalf of Lots at meetings as determined under Article 3 of this Declaration.

1.41. “Zoning Ordinance”: Wake County and/or Town of Garner Code of Ordinances, as the same may be amended from time to time.

ARTICLE 2: PROPERTY RIGHTS

2.1. Common Areas. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed from Declarant conveying such property to the Association;
- (c) The right of the Board to adopt, amend and repeal Rules regulating the use and

enjoyment of the Common Area, including Rules limiting the speed limits on Roads (prior to acceptance for public maintenance) and regulating the use by Owners and guests of the Common Area;

(d) The right of the Board to fine or suspend the right of an Owner to use any recreational and social facilities within the Common Area pursuant to Section 4.3;

(e) Subject to §47F-3-112 of the Act, the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(f) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to the Governing Documents. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.3 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds of such conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) Days after such taking at least eighty percent (80%) of the total Class "A" vote of the Association and, during the Development Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ARB. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(d) and in the Bylaws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by an individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B".

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Lot. All Class "A" votes shall be cast as provided in Section 3.2(d) below. If there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised by one of the Owners chosen in the manner as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than (1) Person seeks to exercise it. No vote shall be exercised on behalf of any Lot if any assessment for such Lot is delinquent.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the Bylaws and the Articles, are specified in the relevant sections of this Declaration, the Bylaws and the Articles. The Class "B" Member may appoint, remove and/or replace, any or all members of the Board of Directors during the Class "B" Control Period which shall continue until the first to occur of the following:

(i) When one hundred percent (100%) of the total number of Lots being developed in the Properties have certificates of occupancy issued for the Dwellings thereon and have been conveyed to Persons other than Builders; or

(ii) when, in its sole discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

Upon termination of the Class "B" Control Period, the Class "B" membership shall automatically terminate and, if at such time the Declarant owns any Lots, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot it owns.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article 7, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(d) Exercise of Voting Rights by Class "A" Members. If there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised by one of the Owners (designated as the

Voting Delegate) chosen in the manner as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than (1) Person seeks to exercise it. No vote shall be exercised on behalf of any Lot if any assessment for such Lot is delinquent.

ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Function of Association. The Association shall be a non-profit North Carolina corporation charged with the duties and invested with the powers prescribed by the North Carolina Non-Profit Corporation Act (N. C. Gen. Stat. Chap. 55A), the Act, or other applicable law and set forth in the Governing Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Governing Documents. Unless the Governing Documents or the Act specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. A copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the Properties, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any pond or other body of water that may be conveyed. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.3. Enforcement. The Board, or any committee established by the Board with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in the Bylaws. Such sanctions may include, without limitation:

- (a) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (b) suspending an Owner's right to vote;
- (c) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association;
- (d) imposing one or more fines in accordance with Rules adopted pursuant to Article 10.

In the event that any occupant, guest or invitee of a Lot violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such

occupant, guest or invitee and/or the Owner of the Lot that the violator is occupying or visiting.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking Rules, the removal of pets that are in violation of pet Rules, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the Bylaws. The Association may levy a Specific Assessment to cover all costs incurred in bringing a Lot into compliance with the terms of the Governing Documents.

The Association may also elect to enforce any provisions of the Governing Documents by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the Bylaws.

All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county, city, state and federal ordinances, if applicable, and permit local and other governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Indemnification. The Association shall indemnify every officer, director, ARB member and committee member against all damages, liabilities, and expenses, including reasonable attorney's fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ARB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and North Carolina law.

The officers, directors, ARB members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, ARB members, and committee members shall have no

personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ARB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, ARB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, ARB member or committee member may be entitled. The Association may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.6. Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to Wake County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, or to any private utility company, or for reasonable compensation to an adjacent property owner.

4.7. Security. Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, nor any Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measure cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Lots, the Common Area and improvements constructed on the same, resulting from acts of third parties.

4.8. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include property management, landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association. The Association may provide different levels of services for different types of Lots; for example the Association may provide additional "Townhome Services" (defined in Article 17) to "Townhome Lots" (defined in Article 17).

4.9 Rezoning. For so long as Declarant owns any portion of the Properties or the Additional Property, no Owner or any other Person may apply or join in an application to amend, vary or modify the Zoning Ordinance applicable to, or rezone or apply for any zoning variance or waiver as to, all or any portion of the Properties, without the prior written consent of Declarant. Declarant may apply for such rezoning as to any portion of the Properties owned by it at any time.

4.10. Use of the Bodies of Water. None of the Association, the Declarant, nor any successor Declarant shall be held liable for any loss or damage by reason of any permitted or prohibited use of any body of water, within or adjacent to the Properties, including any river, lake, pond, creek or stream, by Owners, their invitees, licensees, and tenants. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using any body of water shall do so only as permitted under applicable governmental laws, ordinances, rules and regulations. The Association shall not be responsible for any loss, damage, or injury to any Person or property arising out of the authorized or unauthorized use of any body of water, including any river, lake, pond, creek or streams within the Properties. Each Person assumes all risks of personal injury, and loss or damage to property, including Lots, resulting from or associated with authorized or unauthorized use of any body of water, including any river, lake, pond, creek or streams within the Properties. In addition, none of the Association, the Declarant, nor any successor Declarant makes any representation with respect to the availability or issuance of any dock or pier permit for any portion of the Properties, if applicable.

4.11. Presence and Management of Wildlife. Each Owner and occupant, and each tenant, guest and invitee of any Owner or occupant acknowledges that the Properties are located adjacent to and in the vicinity of wetlands, bodies of water and other natural areas. Such areas may contain wildlife, including without limitation, deer, raccoons, opossums, alligators, reptiles, and snakes. None of the Association, the Board, the original Declarant, nor any successor Declarant shall be liable or responsible for any personal injury illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the original Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife and fishing management plans and practices on the Properties to the extent that such practices are permitted by applicable state and federal law. For the purpose of illustration and not limitation, this includes the right to manage and control any populations of white-tailed deer, feral hogs, raccoons, alligators and other wildlife through a variety of techniques, including organized hunting, shooting, trapping, relocating, sterilization, and habitat manipulation. Declarant may, in its sole discretion, commission environmental studies and reports relating to the Properties and the wildlife habitats located thereon, and may elect to follow or disregard any recommendations resulting from such studies. The Declarant may assign these management rights to the Association in which event the expenses of such activities shall be funded by General Assessments.

ARTICLE 5: MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair and to the Community-Wide Standard the Area of Common Responsibility which may include, but need not be limited to:

(i) all Common Areas (whether or not the same are expressly identified on a plat of any portion of the Properties);

(ii) all trees, landscaping and other flora, parks, ponds, structures, and improvements, including any entry features, parking areas, sidewalks, and bike and pedestrian pathways/trails situated upon the Common Area;

(iii) all furnishings, equipment and other personal property of the Association;

(iv) any trees, landscaping and other flora, parks, bike and pedestrian pathways/trails, sidewalks, buffers, entry features, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;

(v) such additional portions of any property included within the Area of Common Responsibility as may be dictated by the Governing Documents, or any contract or agreement for maintenance thereof entered into by the Association;

(vi) the Roads as set forth and limited in Section 5.6 below, and for avoidance of doubt, all retaining walls on Common Areas or Lots.

(vii) any trees, landscaping and other flora on any areas of the Properties (including on Lots if applicable) called out on a plat as Common Area or Area of Common Responsibility, or by similar designation intended to convey that the Association is charged with maintenance (for example, steep slopes areas that may be difficult in the determination of the Board for an Owner to safely maintain);

(viii) All yards, lawn areas and grassy areas, and landscaped features and areas (including but not limited to plants, flowers, trees and bushes, but not including irrigation systems and exotic installations by Owner, if any are allowed pursuant to approvals under Article 9) located on the Lots and the same within all adjacent Common Areas and without limitation within the street rights of way. The required maintenance shall include grass mowing, removal of weeds and grass clippings, fertilization and aeration, all to be performed in manner and frequency as determined by the Board of Directors; all provided, however, that Owners, and not the Association, shall be responsible for watering their own lawns and landscaping on their Lots, and are subject to individual assessment for failure to do so and for any resulting replacement costs incurred as a result of such failure;

(ix) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and

(x) if the Stormwater Control Facilities are not owned or maintained by the County or another applicable municipal authority, Declarant reserves the right to require the Association to maintain, operate, repair and replace the Stormwater Control Facilities in accordance with the Stormwater Operations Maintenance Manual and Budget (as defined in the Stormwater Covenant) as a Common Expense (and to collect applicable related reserves for the same) in order to provide drainage, water storage, conveyance, or other stormwater management capabilities as required by the applicable governmental authorities.

(xi) Sidewalks within the Properties other than those accepted for maintenance by any public authority and other than those which front Lots (such sidewalks being maintained by Owners) of the applicable Lot.

(xii) Any areas designated by Declarant as Common Area, including portions of one (1) or more Lots, and any improvements situated thereon, including, without limitation, drainage facilities and retaining walls constructed by Declarant, by describing such real property in a document recorded in the Wake County Registry ("Designated Common Areas"). The Association shall be responsible for maintaining the Designated Common Areas and all costs associated with the maintenance, repair and replacement of such improvements thereon shall be Common Expenses and shall be recovered by Annual Assessments or Special Assessments levied by the Association. The Association shall have the right of access over and upon the Lots as necessary in connection with any maintenance, repair or replacement of such Designated Common Areas as required hereunder. Declarant hereby designates all retaining walls constructed by Declarant that serve and support more than one (1) Lot as Common Area and the Association shall be responsible for maintaining such retaining walls and all costs associated with the maintenance, repair and replacement of such improvements thereon shall be Common Expenses and shall be recovered by Annual Assessments or Special Assessments levied by the Association.

The Association may, as a Common Expense, maintain other property and improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by an Owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation (as seasonally appropriate if applicable), except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty- seven percent (67%) of the Class "A" votes in the Association and during the Development Period the Declarant agree in writing to discontinue such operation.

(c) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or (ii) such property is dedicated to and maintained by any local, state, or federal government or quasi- governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof.

(e) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Lot, and all structures, parking area, sprinkler and irrigation systems, landscaping and other flora, and other improvements comprising the Lot in a manner consistent with the Community-Wide Standard, all Governing Documents and the Zoning Ordinance, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or to a regulatory authority. Each Owner shall also maintain the driveway and mailbox serving his or her Lot and all landscaping located in any right-of-way immediately adjacent to the Owner's Lot. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association or its designee under this Section shall not constitute a trespass. Notwithstanding any terms or provisions herein, each Owner shall maintain at its sole cost and expense, any portions of any irrigation system or stormwater or other drainage systems located on their Lot, except to the extent the system improvements serve more than one Lot (in which case the Association shall maintain at its cost and expense).

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that the Association has been negligent in the performance of its maintenance responsibilities.

5.4. Office of Ocean and Coastal Resource Management. Each Owner acknowledges that any portion of any Lot which may contain submerged land, coastal waters or other critical areas, is subject to the jurisdiction of the Office of Ocean and Coastal Resource Management. Each Owner shall be liable, to the extent of such Owners' ownership, for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any such submerged land, coastal waters or other critical areas.

5.5 Dedication of Common Area. Common Area shall be conveyed to and accepted by the

Association on or before the completion of all construction with respect thereto or at such other times and from time to time as the Declarant may determine to be appropriate, and in any event, and including while owned by Declarant, the Association shall be responsible for the operation and maintenance of the Common Area.

5.6 Maintenance, Operation and Repairs of Roads. Prior to the dedication and acceptance by the applicable governmental authority of the Roads for public maintenance, but not thereafter unless it otherwise deems it necessary, the Association (a) shall be solely and exclusively responsible for the maintenance, repair, replacement management, operation and condition of the Roads as part of the Area of Common Responsibility, (b) shall at all times maintain, repair and replace the Roads in good repair and order, (c) shall manage, operate and oversee the Roads in a manner complying with the provisions of this Declaration and any requirements which may be imposed at any time, from time to time, by any governmental authority, and (d) is and shall be authorized to promulgate and adopt Rules concerning the use, enjoyment, operation, management, maintenance, repair, replacement and improvement of the Roads, subject to the terms and conditions of this Declaration and with all determinations relative to the foregoing being made in the reasonable discretion of the Board. Furthermore, the Association may establish a Roads maintenance reserve fund as deemed necessary by the Board.

5.7 Cluster Mailboxes. Declarant may install one (1) or more cluster mailboxes on the Properties and may assign a single box in each cluster to each Lot. If cluster mailboxes are installed and assigned to a Lot then the Owner of said Lot may not install any additional mailbox on its Lot. The Association shall be responsible for the maintenance, repair and replacement (if necessary) of all cluster mailboxes, with any and all costs associated with the same being a Common Expense. Declarant may install, maintain, repair and/or replace cluster mailboxes on any portion of the Common Area or in any easement area shown on any recorded plat (including any easement on a Lot if applicable). Notwithstanding the foregoing, if at the time of any conveyance, cluster mailboxes are located on any portion of any Lot, the Association shall have an easement over said Lot as reasonably necessary for maintenance, repair and replacement of the same, regardless of whether or not said easement is shown on a recorded plat. Except that the Association shall maintain, repair and replace any cluster mailboxes so as to keep the same in good working order (with each Owner having the duty to report any problems with its mailbox to the Board), neither the Association, the Board, nor Declarant shall have any liability relative to condition, operation or access of/to the cluster mailboxes (or any events/actions/occurrences arising from the same or lack of the same) AND BY ACCEPTANCE OF THE DEED FOR ANY LOT, EACH OWNER THEREBY WAIVES ANY OR ALL CLAIMS, ACTIONS AND/OR DAMAGES REGARDING OR ARISING OUT OF THE SAME, AGAINST THE BOARD, THE ASSOCIATION OR THE DECLARANT.

ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area

of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvement;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Directors and officers liability coverage;

(iv) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

(v) Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.5.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Wake County, North Carolina area.

The Association policy shall provide for a certificate of insurance to be furnished to the Association upon request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

(i) All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of North Carolina;

(2) be written in the name of the Association as trustee for the benefited

parties. Policies on the Common Areas shall be for the benefit of the Association and its Members.

(3) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(4) contain "inflation guard" and "agreed amount" endorsements.

(5) an endorsement requiring at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

(ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash

(3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure:

(4) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(5) a cross-liability provision; and

(6) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. In the event of any insured loss, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost or repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least eighty percent (80%) of the total Class "A" votes in the Association (or such greater percentage if required under the Act), and during the Development Period the Declarant, decide within sixty (60) Days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) Day period, then the

period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional Days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed in accordance with the provisions of §47F-3-113(g) of the Act.

Notwithstanding the provisions of this Section 6.1n, §47F-2-118 of the Act governs the distribution of the insurance proceeds if this Declaration is terminated.

6.2. Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property and casualty insurance (including for the full replacement cost of all insurable improvements on his or her Lot, including without limitation the Dwelling thereon), less a reasonable deductible.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Lot, including without limitation, the Dwelling thereon, the Owner shall proceed promptly to repair or to reconstruct all such structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation by Declarant. Until thirty (30) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property to a Builder, provided that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the

consent of Voting Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2. Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

7.4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5. Amendment. Without limiting Declarant's rights under Section 15.2, or anywhere else in the Governing Documents, this Article shall not be amended during the Development Period without the prior written consent of Declarant.

ARTICLE 8: ASSESSMENTS

8.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.4; and (c) Specific Assessments as described in Section 8.5. Each Owner (other than the Declarant during the Development Period), by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments as and to the extent herein provided.

All assessments and other charges, together with interest, late charges, service fees, collection fees and administrative fees, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section 8.6. Each such assessment or charge, together with interest, late charges, service fees, collection fees and administrative fees, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use for Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or performing some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2. Computation of General Assessments. Not later than sixty (60) days prior to each fiscal year, the Board shall prepare and adopt a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish reasonable reserves in accordance with a budget separately prepared as provided in Section 8.3.

General Assessments shall be levied equally against all Lots subject to assessment, provided, however, that (i) each Lot owned by a Builder shall be assessed at 50% of the rate at which any other Lot owned by any other Class "A" Owner is assessed; (ii) Lots owned by Declarant shall not be subject to General Assessments during the Development Period; (iii) the General Assessments for Lots owned by Owners who do not have the right to use a certain amenity, if any, shall not include the cost of maintaining, operating and insurance in the same; and iv) Townhome Lots may be subject to additional

General Assessments for Townhomes Services (all as defined in Article 17) the effect being that General Assessments may be higher for Townhome Lots than for other Lots. General Assessments shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of General Assessments, the Board in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreement. If a Lot is owned by a Builder for only a portion of the year, then the General Assessments for such Lot for said year shall be prorated for the year based upon the number of days in the year the Lot was owned by each category of Owner.

Declarant is not obligated to pay any Assessments hereunder during the Development Period, however, Declarant (in its sole and absolute discretion) may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send written notice and a copy and summary of the proposed budget as well as the amount of the payment due to each Owner within thirty (30) days after the adoption by the Board of such budget. To the extent required by Section 47F-3-103(c) of the Act or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by Section 47F-3-103(c) of the Act, or other applicable law, the Board shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at such meeting Members exercising more than 90% of all of the votes eligible to be cast in the Association reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board. The failure of the Board to send, or of a Member to receive, any budget notice shall not relieve any Member of the obligation to pay Assessments

8.3. Reserve Budget. The Board may, in its sole discretion, annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general reserve amounts sufficient to meet the projected needs of the Association. Without limitation, Townhome Lots may be subject to higher reserves requirements than detached Dwelling Lots if the Board determines it is prudent to maintain higher reserves towards Townhome Services than towards other services it performs hereunder.

8.4. Special Assessments. In addition to other authorized assessments, the Board may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Lots, if such Special Assessment is for Common Expenses. A Special Assessment shall be allocated equally among all Lots subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by at least sixty-seven percent (67%) of the total Class "A" votes allocated to Lots which will be subject to

such Special Assessment and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Voting Delegates as provided for special meetings in the Bylaws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security, caretaker, fire protection, utilities, and similar services and facilities), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover all costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments.

8.6. Lien for Assessments; Enforcement. Each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association General Assessments, Special Assessments, and any applicable Specific Assessments. The General, Special and Specific Assessments, together, with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made as provided in the Act. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due.

Enforcement of the lien for Assessments (an "Assessment Lien") shall be as follows:

(a) Any Assessment, or any installment of an Assessment, not paid for a period of thirty (30) days or longer after the Assessment, or the installment of the Assessment, first became due shall have added to such Assessment or installment, a late payment charge not to exceed the greater of (i) ten percent (10%) of the amount of the unpaid Assessment, or (ii) twenty dollars (\$20.00) per month. Any amounts paid by a Member shall be applied first to unpaid principal and then to late charges or interest. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made as provided in §47F-3-116 of the Act. The Assessment Lien may be placed of record in the office of the clerk of superior court in the county in which the Lot is located by filing a "Claim of Lien" in the manner set forth in §47F-3-116 of the Act.

(b) The Assessment Lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration except for (i) tax liens for real Property taxes on the Lot, (ii) assessments on any Lot in favor of any municipal or other governmental body and (iii) the lien of any First Mortgage or the lien of any other encumbrance recorded before the docketing of the claim of lien in the office of the clerk of court.

(c) Before filing a Notice of Claim of Lien against any Lot, the Association shall make reasonable and diligent efforts to ensure that its records contain the Owner's current mailing address and make a written demand to the defaulting Owner for payment of the delinquent Assessments together with late charges, service fees, collection fees, administration fees, interest, reasonable collection costs and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien but any number of defaults may be included within a single demand or claim of lien. If the delinquency is not paid within fifteen (15) days after delivery of the demand, the Association may proceed with filing a Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, late charges, interest, lien recording fees, service fees, collection fees, administration fees, reasonable collection costs and reasonable attorneys' fees have been paid in full. The Owner shall be notified in writing of the Association's intent to seek payment of attorneys' fees and court costs in accordance with §47F-3-116(e1) of the Act. In accordance with Section 47F-3-116(h) of the Act, the Owner shall be responsible for the payment of all costs and fees incurred by the Association, including, without limitation, service, collection, consulting or administration fees charged by the Association's management company, in connection with the Association's collection of unpaid assessments.

(d) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with late charges, interest, lien recording fees, reasonable collection costs, service fees, collection fees, administration fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner set forth in §47F-3-116 of the Act. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale. Note that for avoidance of doubt if not otherwise, and in any event in order to obviously comply with the terms and provisions of Sec. 47F-3-116(h) of the Act, the Association may charge, and the assessments and charges described in this Section 1 include (but are not limited to), all reasonable service, collection, consulting and/or administrative fees charged by the association in any amount that does not exceed any amount allowable by law, provided, however, that if required under Sec. 47F-3-116(h) of the Act any lien securing a debt consisting solely of these types of fees (meaning not including any liens for other fees or assessments) may only be enforced by judicial foreclosure.

8.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the date on which the Lot is conveyed to a Person other than the Declarant or the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual General Assessment levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

8.8. Failure to Assess. Failure of the Board to establish assessment amounts or rates or to

deliver or mail each Owner an assessment shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

8.9. Capitalization of Association. Upon the closing of any sale of any Lot by Declarant or by any Builder, to a homeowner, and only upon such initial sale, the Owner shall pay to the Association a one-time initial capital contribution in the amount set and revised by the Board from time to time (and at any time as the case may be) but in any event not greater than the amount equal to three times (triple) the then applicable annual General Assessment for one Lot. This contribution shall be collected at the applicable closing and shall be deposited into and shall be part of the general operating funds of the Association. This working capital contribution may be used in covering normal operating expenses incurred by the Association pursuant to this Declaration and the Bylaws, including expenses incurred by the Declarant in providing infrastructure and other Common Area. This amount may be increased or decreased from time to time in the sole and exclusive discretion of the Board.

ARTICLE 9: ARCHITECTURAL STANDARDS

9.1. General. No exterior structure or improvement, as described in Section 9.5, shall be placed, erected, installed or made upon any Lot or adjacent to any Lot where the purpose of the structure is to service such Lot except in compliance with this Article, and with the prior written approval of the ARB under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3.

All Dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer approved by the ARB in its sole discretion. Only one (1) Dwelling shall be permitted on each Lot.

This Article shall not apply to the activities of or improvements made by the Declarant, nor to improvements to the Common Area by or on behalf of the Association. This Article may not be amended during the Development Period without the Declarant's written consent.

9.2. Architectural Review Board. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the ARB described below. The ARB shall consist of three (3) or more Persons who may, but are not required to, be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The ARB shall have exclusive jurisdiction over all construction on any portion of the Properties. For so long as the Declarant owns any portion of the Properties, the Declarant retains the right to appoint the members of the ARB who shall serve (or be removed and replaced) at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by the Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion. If the Board or Declarant does not appoint the members of the ARB then the Board shall act as the ARB until such time as an ARB is appointed in accordance

with the terms herein.

9.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from any pond, river, stream or other body of water. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARB and compliance with the Design Guidelines does not guarantee approval of any application.

The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The ARB shall make the Design Guidelines available to Owners who seek to engage in development or construction within the Properties.

(b) Procedures. All plans and specifications showing the nature, kind, shape, color, size, materials, and locations of all proposed structures and improvements shall be submitted to the ARB for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time.

In the event that the ARB fails to approve or to disapprove any application within thirty (30) Days after submission of all information and materials reasonably requested, the application shall be deemed disapproved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to Section 9.7.

Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval of the ARB. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval of the ARB.

9.4. Architect and General Contractor Approval. In order to ensure that appropriate standards of construction are maintained throughout the Properties, all architects and general contractors must be approved by the ARB prior to engaging in any construction activities. The ARB shall implement an approval process utilizing established criteria and requiring the submission of a written application for approval. Both the criteria and the application form are subject to change in the sole discretion of the ARB. Approval of architects and contractors may not be construed as a recommendation of a specific architect or contractor by the ARB or the Declarant, nor a guarantee or endorsement of the work of such architect or contractor. Once approved (unless such approval is withdrawn by the ARB), an approved architect or contractor shall not be required to re-submit to the approval process.

9.5. Specific Guidelines and Restrictions.

(a) Exterior Structures and Improvements. Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any Dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of mailboxes; basketball hoops; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; docks, or piers; gazebos or playhouses; window air-conditioning units or fans; hot tubs; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind, and/or solar panels, only in strict compliance with all state and federal laws and regulations.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the ARB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the ARB. The ARB may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

(i) Signs. "For Rent" or "For Lease" signs shall be prohibited. In addition, no sign of any kind shall be erected by an Owner or occupant on any Lot without the prior written consent of the ARB other than one (1) sign of not more than nine (9) square feet advertising a Lot for sale and signs with maximum dimensions of twenty four (24) inches by twenty four (24) inches 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 forty-five (45) days before such election and shall be removed within seven (7) days after such election. No signs shall be posted or erected by any Owner or occupant on the Common Area. No signs shall be posted or erected by any Owner or occupant of any Lot within the Dwelling of such Lot if such sign would be visible from the exterior of such Dwelling as determined in the ARB's sole discretion.

The Declarant and the ARB reserve the right to prohibit all types of signs and to restrict the size, content, color, lettering, design and placement of any approved signs. Any signs which are permitted must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized

agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) Tree Removal. No trees that are more than six (6) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the ARB; provided however, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the ARB. The ARB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed. The above requirements shall be in addition to, and not in lieu of, any requirements with respect to tree removal imposed by any governmental authority.

(iii) Temporary or Detached Structures. Except as may be permitted by the ARB during initial construction, no temporary house, Dwelling, garage or outbuilding shall be placed or erected on any Lot. No mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Lot as a temporary or permanent dwelling.

(iv) Accessory Structures. No accessory structures, including without limitation, any play set, greenhouse, swimming pool, tool shed, dog house, or garage, may be placed on a Lot without the approval of the ARB, and the ARB may determine in its sole discretion not to allow any accessory structures.

(v) Solar Collectors. For purposes hereof, “Solar Collectors” are panels/equipment that that gather solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, or generating electricity for a Lot or Dwelling. Solar Collectors are subject to the provisions of North Carolina General Statutes §22B-20 (“State Solar Panel Regulations”). To the maximum extent allowed under the State Solar Panel Regulations, the following shall apply:

(a) No Solar Collectors shall be permitted on any Lot or Dwelling unless the design and location is approved in writing by the ARB with such screening as the ARB may require.

(b) Solar Collectors on Dwellings must be façade or roof mounted and not visible from areas open to common areas or street or other areas of public access (this may therefore require that all Solar Collectors mounted on roofs/facades must be on the rear facing side of Dwellings (away from road frontage).

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

(d) Owners must install and maintain screening improvements (“Screening”) around Solar Collectors to screen items that would otherwise be visible from outside of the Lot unless such requirement would violate State Solar Panel Regulations.

The provisions within this Section 9.5 are severable from each other; the invalidity or unenforceability of any provision or portion of this section shall not invalidate or render unenforceable any other provisions or portions of this section, and all such other provisions or portions shall remain valid and enforceable. The invalidity or unenforceability of any provisions or portions of this section to a particular type of Solar Collector or to a particular Solar Collector on a particular Lot or Dwelling shall not invalidate or render unenforceable such provisions or portions regarding other Solar Collectors on other Lots or Dwellings.

9.6. No Waiver of Future Approvals. Except for plans and specifications for initial construction of Dwellings by Builders, approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.7. Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly Rules. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.8. Limitation of Liability. The criteria and requirements established by the ARB for approval of architects and contractors are solely for the Declarant's protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved architect or contractor. Owner's selection of an architect or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such architect or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in the future, against the ARB or the Declarant.

The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Association, the Board, nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all Dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. None of the Declarant, the Association, the Board, the ARB, or any committee or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.5.

9.9. Enforcement. The Declarant, the ARB, the Board, and the members and representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be

deemed to be nonconforming. Upon written request from the ARB, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the property as required, any authorized agent of Declarant, the ARB, or the Board shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant and the ARB by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment pursuant to Section 8.5.

Unless otherwise specified in writing by the ARB, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment pursuant to Section 8.5.

Neither the ARB nor any member of the foregoing nor the Association, the Declarant, or their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the Bylaws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

ARTICLE 10: USE RESTRICTIONS

10.1. General. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Lot. The Properties shall be used only for residential purposes and such purposes are consistent with this Declaration and any Supplemental Declaration.

10.2. Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time and at any time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding a Majority of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant.

10.3. Occupants Bound. All provisions of the Declaration, Bylaws, and of any Rules, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

10.4. Leasing; Short-Term Prohibited. Lots may be leased for residential purposes only and

each lease shall apply to an entire Lot and not to any portion thereof. Lots may not be leased for less than a 180-day term unless otherwise approved in writing by the Board. All leases of any Lot shall be in writing and require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and Rules of the Association. The lease shall also obligate the tenant to comply with the foregoing. A copy of such lease together with such additional information deemed necessary by the Board shall be delivered to the Board promptly following its execution by all applicable parties. No Owner shall place "For Rent" or "For Lease" sign or other such similar sign on its Lot to advertise the Lot for rent.

Furthermore and for avoidance of doubt if not otherwise, no part of the Properties, including any improvements thereon or to be built thereon, will be used for (or subject to or advertised as) any type of short-term rental (less than 6 months) or vacation rental (e.g. Airbnb) purposes, or any type of Time Share Program or Time Share Project as defined by the North Carolina Time Share Act, N.C. Gen. Stat. 93A-41 (1983) as amended from time to time.

The provisions of this Section 10.4 shall not apply to the Declarant's or any Builder's use of Lots owned by (or leased to) the Declarant or a Builder, as applicable, as a model home or for marketing purposes.

10.5. Residential Use. Lots may be used only for residential purposes of a single family and for ancillary business, home occupation, or home office uses. A business, home occupation, or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Lot by clients, customers, employees, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; (e) the Owner of such Lot obtains a special zoning permit from the applicable governmental authority; and (f) the activity is consistent with the Community-Wide Standard and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Lot without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties.

10.6. Occupancy of Unfinished Dwellings. No Dwelling erected upon any Lot shall be occupied in any manner while in the course of construction, nor at any time prior to the Dwelling being fully completed.

10.7. Parking. Parking of Vehicles is prohibited in the front yard of lots except on a driveway. Street-side parking (meaning parking along any street or road in the Project) of any vehicles is prohibited;

provided, however, that temporary street-side parking of Vehicles by guests or invitees visiting or providing services to any Owner at its Lot is allowed so long as: i) the visiting/servicing vehicle is parked directly in front of the benefitted Lot, ii) the street-side parking does not inhibit or materially impede traffic and/or create an unsafe condition within in the Project; and iii) the street-side parking does not continue for more than 8 consecutive hours or 8 hours in any single calendar day. Furthermore, and notwithstanding any above exceptions, in no case shall street-side parking be allowed by any Owner, guest or invitee between the hours of 11:00 p.m. and 7:00 a.m. Parking of any inoperable Vehicle anywhere on a Lot or anywhere on a street within the Property is prohibited. No part of any Vehicle may be parked over any part of a sidewalk because such parking may impede use of the sidewalks, particularly for persons with disabilities using the sidewalks. The provisions of this Section 10.7 shall not apply to (a) Vehicles that are exempt from this subsection under applicable law, (b) Vehicles of Declarant or any of its employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property, or (c) Vehicles used by the Association in repairing, maintaining and replacing the Common Areas and all improvements thereon, and in performing all other rights, duties and obligations of the Association under this Declaration.

10.8. Vehicles.

(a) No automobile, truck, motorcycle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat trailer or other similar equipment or motor vehicle of any kind (collectively, "Vehicles" and individually a "Vehicle") shall be parked, kept or maintained on the Common Area or in any side or rear yard of any lot. No trailer, truck or other Vehicle, that exceeds 18.5 feet in length, 6.25 feet in height, or 7 feet in width, is allowed on any portion of the Property, except that such a Vehicle owned by any guest or invitee of any Owner or tenant may be parked on a driveway on a Lot only during such time as the guest or invitee is visiting the Owner or tenant on said Lot; provided, however, that notwithstanding the foregoing no such Vehicle shall be parked on any Lot for more than seven (7) days during any six (6) month period of time.

(b) Except for emergency Vehicle repairs on a Lot, no Vehicle of any kind shall be constructed, reconstructed or repaired on any Lot or the Common Area. No inoperable Vehicle or Vehicle which because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance is, in the sole opinion of the ARB, unsightly or detracts from the appearance of the Project shall be stored, parked or kept on any Lot. All emergency repairs must be completed within 48 hours. No boats may be kept on the Property except in a closed garage.

(c) No Vehicle classed by manufacturer rating as exceeding one ton and no commercial Vehicle may be parked or stored on any area in the Project; provided, however, this provision shall not apply to Vehicles that are pickup trucks of less than one ton capacity with camper shells not exceeding 7 feet in height and 18.5 feet in length which are parked as provided in Section 10.7 and are used on a regular and recurring basis for transportation. For purposes of this section, commercial Vehicles shall mean any Vehicle that (i) displays the name, tradename, telephone number or other identifying information of any business or governmental entity or (ii) otherwise bears the appearance of a commercial Vehicle by reason of its normal contents (e.g. trade goods, extensive tools, ladders), as reasonably determined by the ARB.

(d) All vehicles shall be subject to such reasonable Rules as the Board of Directors may adopt.

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

10.9. Towing of Vehicles. The Association shall have the right to have any Vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Declaration or Rules towed away at the sole cost and expense of the owner of the Vehicle or equipment. Any expense incurred by the Association in connection with the towing of any Vehicle shall be paid to the Association by the owner of the Vehicle. If the Vehicle towed is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and his Lot and be payable on demand, and such cost shall be secured by the assessments lien.

10.10. Use of Common Area. There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association, except as specifically provided herein.

10.11. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All pets shall be reasonably controlled by the owner and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self- help rights provided in Section 4.3. All dogs must be leashed or fenced, and all fencing must be approved in writing by the ARB.

10.12. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any structure on a Lot unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically.

The reasonable and normal development, construction and sales activities conducted or permitted

by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

10.13. Storage of Materials, Garbage, Dumping, Etc. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; manure, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake within the Properties, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff.

Each Owner shall maintain its Lot in a neat and orderly condition throughout initial construction and not allow trash and debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Lot shall be subject to such conditions and Rules as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Lots and shall not be buried or covered on the Lot. Any Lot on which construction is in progress may be policed prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Lot upon reasonable notice by Declarant in preparation for special events.

10.14. Combustible Liquid. There shall be no storage of gasoline, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the ARB.

10.15. Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation shotguns, rifles and handguns of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any such discharge.

10.16. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed after a subdivision plat including such Lot has been approved and filed in the Public Records without the Declarant's prior written consent during the Development Period, and the prior written consent of the ARB thereafter. In addition, no home shall be subdivided or partitioned to create housing for more than a single family. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.17. Site Plan Approval. For so long as the Declarant owns any portion of the Properties, the Declarant shall have the right to review and approve any subdivision of any portion of the Properties, including the right to approve all preliminary or final site plans and subdivision plats, Lot lay-outs and street locations. During that time the Declarant shall also have the right to approve the size, density and configuration of any subdivided parcels within the Properties.

10.18. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped and improved so as to permit safe sight across such areas. No fence, wall, hedge or

shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

10.19. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Lot. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Lot. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Lots. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Lot.

(d) No Person shall alter the grading of any Lot without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

10.20. Irrigation. Owners shall not install irrigation systems which draw upon ground or surface waters nor from any lakes or ponds within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

10.21. Streams. No streams which run across any Lot may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 11.

10.22. Wetlands. All areas designated on a recorded plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Lot, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. If approved, the Association may maintain Boardwalks, fishing docks, and crab docks over, around, and in such wetlands. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

10.21 Timesharing. No Lot shall be made subject to or be operated as a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years.

10.22 Additional Lake and Pond Restrictions:

(a) No refuse of any kind shall be placed on or disposed of into any lake or pond on the Properties which are to be kept clean and free of pollution.

(b) No water shall be removed from any lake or pond on the Properties (except in emergencies due to flooding) without the prior written permission of the Association.

(c) Except as may be included as part of any Common Property adjacent to a lake, no alteration may be made of a lake bed or edge, nor shall any boat canals be dug or excavated, nor shall any bulkheading, barges, docks, pilings, or other marine structures be erected adjacent thereto or thereupon, except by Declarant or the Association or anyone else with the prior written permission of the Association.

(d) The Owner(s) of each Lot located adjacent to the lake or a pond shall be responsible for maintaining the landscaping of the Common Area located between their Lot and the edge of the lake or pond which would be formed by the extension of their Lot's boundary lines into the lake or pond (each such area between the lake or pond and a Lot being defined as a "Limited Common Area"). The Owner(s) of each Lot located adjacent to the lake or ponds are hereby granted an exclusive easement of enjoyment to enter and use such Limited Common Area located between their Lot and the lake or pond for such landscaping maintenance and also for the enjoyment of the area between the Lot and the lake or pond. However, the Declarant and Association reserve the right to enter into any Limited Common Area for the purpose of maintaining the lake and ponds as otherwise provided in this Declaration.

10.23 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot.

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

10.25 Basketball Goals and Backboards. No basketball backboard, hoop or similar structure or device shall be permitted except in accordance with the ARB.

10.26 Playground Equipment. No jungle gyms, swing sets or similar playground equipment shall be erected or installed on any Lot without the prior written approval of the ARB.

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

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

provided such display complies with the requirements for displaying the United States Flag.

10.29 Yard Sales. Owners may hold "yard sales" to sell personal property of such Owners only in compliance with the following requirements: (i) yard sales shall be limited to two days per year on any Lot, (ii) no yard sale shall commence prior to 8 AM EST or continue after 5 PM EST, (iii) no Owner shall post any signs advertising any yard sale anywhere on the Properties except that a temporary sign may be posted on such Owner's Lot on the day that a yard sale is being held, and (iv) if the Association ever adopts standard yard sale dates for the Properties, yard sales shall be held only on such dates. The Association shall give reasonable notice to all Owners if it adopts standard yard sale dates for yard sales on the Properties.

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

10.31 Antennae / Satellite Dishes. No exterior antenna or satellite dish (all together "Receiver") greater in size than 30 inches in diameter may be placed on any Residential Unit or otherwise on any Lot except in a location where it is not visible to a person six feet (6') tall standing on any portion of the street(s) on which the applicable Lot fronts. Furthermore, the location, appearance, screening from view, installation, and all other aspects of the Receiver and placement of the same shall be subject to the prior written approval of the ARB to the extent said ARB adopts further Rules regarding placement and screening of Receivers. To the extent this restriction may later be determined to be unenforceable pursuant to applicable laws; including but not limited to any rules and regulations promulgated by the Federal Communication Commission (as from time to time may be amended), an Owner shall nevertheless be restricted in its placement of said Receiver to an area which is least visible from the front of the Dwelling and which causes or is likely to cause the least interference with the placement and use of Receivers by other Owners. Any permitted Receiver shall be installed, maintained and replaced in accordance with Rules adopted by the Board from time to time. Nothing in this section, however, shall prohibit (but shall not obligate) the Declarant or the Association from erecting a central master Receiver other similar master telecommunication system for the benefit of the Lots and charging fees for usage thereof.

10.32 Utility Services. All lines, wires, propane gas tanks, or other devices for the communication or transmission of electric current or power, including telephone, television, gas and radio signals, shall be contained in tanks, conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the ARB. Temporary power or telephone structures incident to construction activities approved by the ARB are permitted.

10.33 Diseases and Insects. No Owner or resident shall permit anything or condition to exist upon a lot which shall induce, breed or harbor infectious plant diseases or noxious insects.

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

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

10.36 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any lot except such machinery or equipment as is usual and customary in connection with the use or maintenance of improvements constructed by the Declarant or approved by the ARB. The provisions of this section shall not apply to any activity of Declarant or any Designated Builder or their respective employees, agents, or contractors during the course of construction activities or sales activities upon or about the Property.

10.37 Landscaping; Fencing. No landscaping improvements shall be installed or removed on Lots by the Owners thereof except with the written approval of the ARB and no landscaping improvements that are not comprised of native vegetation shall be allowed whatsoever. This Section 10.37 shall not apply to landscaping installation or removal by Declarant or any Builder. No fence shall be allowed on any Lot except with the approval of the ARB.

10.38 Declarant and Builder Exemption: Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant (or its designated agents and contractors) or a Builder (subject to approval by Declarant) during the period of development, construction, performance of warranty work, sales and marketing on the Properties, or any production homes, model homes and sales offices and parking incidental thereto, construction trailers, landscaping or signs deemed necessary or convenient by Declarant or a Builder (subject to the approval of Declarant for so long as Declarant owns portion of the Properties), in their sole discretion, to the development, construction, sale and marketing of property within the Properties. Any actions taken by a Builder pursuant to this section shall require the prior approval of Declarant (so long as Declarant owns any portion of the Properties), which shall not be unreasonably withheld. The Association shall take no action that would interfere with access to or use of model homes; without limitation of the foregoing, the Association shall have no right to close private streets to access by members of the public desiring access to model homes.

ARTICLE 11: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the benefit of and enjoyment of the Declarant, the Association, the Members, the Owners, and their successors-in-title.

11.1. Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots, between each Lot and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; lakes, ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Properties.

(c) Any damage to a Lot resulting from the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3. Easement for Slope Control, Drainage and Waterway Maintenance. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Lot for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion;

(b) drainage of natural or man-made water flow and water areas from any portion of the Properties;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot or Common Area;

(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and

(e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties.

11.4. Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.5. Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any Dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.6. Easements for Maintenance and Enforcement. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including the Common Area, Limited Common Areas, and each Lot, to (a) perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass.

The Association also may enter the Limited Common Area and any Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorney's fees, may be assessed against the violator as a Specific Assessment.

11.7. Easements for Lake and Pond Maintenance and Flood Water. Declarant reserves, creates, establishes, promulgates and declares for itself and its successors, assigns, and designees and the Association the nonexclusive, perpetual, appurtenant right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility (including any Limited Common Area) to (a) install, keep, maintain, and replace pumps and irrigation systems in order to provide water for the irrigation of any of the Area of Common Responsibility (including any Limited Common Area); (b) draw water from such sources for purposes of irrigation; (c) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (d) remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties (including any Limited Common Area) abutting or containing any portion of any lake, pond, stream, or wetland to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves, creates, establishes, promulgates and declares for itself and its successors, assigns and designees, and the Association the non-exclusive, perpetual, appurtenant right and easement of access and encroachment over the Common Area, the Limited Common Area, and Lots (but not the Dwellings thereon) adjacent to or within fifty (50) feet of lake beds, ponds, streams and wetlands in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility (including any Limited Common Area); (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; (d) disturb existing landscaping; and (e) pile dirt and plant materials. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. All affected areas shall be restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of any construction or maintenance activities authorized in this Declaration. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Declarant further reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (a) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (b) to define the limits of any such easements.

11.8. Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area and Limited Common Area, every Lot, and any improvement which contributes to the lateral support of another portion of the Common Area, any Limited Common Area, or another Lot, shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.9. Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds,

and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.10 Rights to Stormwater Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

11.11. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

11.12. Community Easements; Maintenance. Without limiting any existing rights in the Declaration, and in addition thereto, Declarant, for itself, its successors and assigns, including but not limited to the Association, hereby reserves easements (and the right to later convey/reserve the same) over any portion of any Lot or otherwise within the Properties designated as “Community Easement” or other similar designation (in any case, a “Community Easement”), on any currently or subsequently recorded plat, easement instrument, or other instrument (for example in an amendment or supplement to the Declaration), recorded by Declarant in the Public Records during such time as Declarant owns any portion of the Properties. Every Community Easement shall be for all of the following purposes: installation, construction, operation and maintenance of landscaping, berms, retaining walls, drainage and stormwater facilities, utilities, lighting and sprinkler systems, monuments, fencing, signage and other improvements installed by or at the direction of Declarant in conjunction with development of the Properties. No fences, structures, driveways, plantings, swing-sets or any other objects, temporary or permanent, shall be permitted on any Community Easement area other than those initially installed by Declarant or its designated successor, without Declarant’s prior written approval, or, after all Lots are occupied by Owners, without the written approval under Article 9. The Association shall at all times have the right of access for its employees, agents and subcontractors over Community Easement areas for the purpose of constructing, improving, repairing, replacing, landscaping, planting, mowing and otherwise maintaining the area and improvements within such easements, and shall likewise have the right (but not the obligation to do so). In the event that the Association (in the sole discretion of the Board) opts to maintain or otherwise undertake activities within the Community Easement area (and consistent with the scope of said Community Easement), then any costs incurred by the Association in doing so shall be assessed against all Owners as part of the assessments under the Declaration and enforceable as the same. Notwithstanding any of the foregoing, the Owner of any Lot containing any portion of a Community Easement shall maintain all portions thereof that are not maintained or landscaped by the Declarant or the Association. The reservation of this easement imposes no obligation on Declarant, its successors and assigns, or the Association, to continue to maintain the planting, retaining walls, landscaping or other improvements located within the described easements.

11.13. Grant of Ingress Egress Easement. Without limiting any rights or obligations of any party under this Declaration, and in addition to all existing easements herein, and only to the extent required by the “Emergency Escape and Rescue Opening” within the North Carolina Residential Code and Chapter 2 of the North Carolina Residential Code (the “NCRC”), Declarant hereby reserves for all Owners and occupants of Lots containing or directly abutting the Easement Areas for their benefit (prohibiting

construction of permanent barriers blocking egress paths of easement areas, if required by the NCRC), a permanent and perpetual right of way and easement over Easement Areas for ingress / egress to access public rights of way; the "Easement Areas" for purposes of this Section 11.13 are all portions of the Properties, LESS AND EXCEPT any portion of the same upon which a Dwelling or accessory structure of any kind is now or later constructed.

ARTICLE 12: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within sixty (60) Days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

12.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt request.

12.5. Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

ARTICLE 13: DECLARANT'S RIGHTS

13.1. Transfer of Assignment. Any or all of the rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and the transferee and duly recorded in the Public Records.

13.2. Development and Sales. The Declarant and Builders may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, such as sales activities, tournament, charitable events, promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant and Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant and Builders (with the approval of Declarant for so long as Declarant owns any portion of the Properties) may establish within the Properties, such facilities as may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, including, but not limited to, business offices, signs, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant and Builders shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any such fees.

13.3. Improvements to Common Areas. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

13.4. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, master deed or lease creating or establishing a horizontal property regime, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, Bylaws or Articles.

13.5. Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or Builders under the Governing Documents, or

interfere with development of, construction on, or marketing of any portion of Magnolia Park, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Class "B" Member or the Declarant in the Governing Documents.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Class "B" Member has registered with the secretary of the Association, which notice complies with the Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at such meeting. The Class "B" Member may waive its right to receive notice in the same manner as provided in the Bylaws.

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Class "B" Member, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) Days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Class "B" Member exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.6. Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and Rules made after termination of the Class "B" Control Period shall be effective without prior notice to and the written consent of the Declarant during the Development Period. This Article may not be amended without the written consent of the Declarant during the Development Period.

13.7. Corrective Declarant Rights. Without limiting any other rights reserved herein, Declarant reserves for itself, and others it may designate, the right to inspect, monitor, test, redesign, and/or correct, any structure, improvement, or condition (including any wall, swale or lack thereof) which may exist on any portion of the Properties (including on any Lot), and a perpetual, nonexclusive easement of access throughout said Properties, all to the extent reasonably necessary to exercise the rights described in this Section 5. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a house shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such

exercise.

ARTICLE 14: [Intentionally Omitted]

ARTICLE 15: GENERAL PROVISIONS

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

15.2. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. In addition, during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes held by Members other than the Declarant, and, during the Development Period, the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

15.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4. Dispute Resolution.

(a) Provisions Mandatory. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in this Sections ("Claims") shall be resolved using the procedures set forth below in lieu of filing suit in any court. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By- Laws, the Design Guidelines, or the Association's Rules (referred to jointly in this Declaration as the "Governing Documents"), or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of this Section 15.4. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this Section:

(i) any suit by the Association against any Bound Party to enforce the provisions of Article 8 (Assessments);

(ii) any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief, and such other ancillary relief as permitted to enforce the provisions of Article 9 (Architectural Standards) and Article 10 (Use Restrictions);

(iii) any suit by an Owner to challenge the actions of the Declarant, the Association, the ARB, or any other committee of the Board with respect to approval, disapproval, application or enforcement of the provisions of Article 9 (Architectural Standards) or Article 10 (Use Restrictions);

(iv) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(v) any suit in which any indispensable party is not a Bound Party; and

(vi) any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in this Section.

(b) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) Claimant's proposed remedy; and

(iv) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(c) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

(ii) If the Parties do not resolve the Claim within 30 days of the date of the Notice or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in Wake County, North Carolina.

(iii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit

the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of North Carolina.

(e) Allocation of Costs of Resolving Claims.

(i) Subject to the following subsection (ii), each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(ii) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

(f) Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures herein. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

15.5. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the voting Delegates. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

15.6. Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners

shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

15.7. Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

15.8. Use of the "Magnolia Park" Name and Logo. No Person shall use the word "Magnolia Park" or the logo for Magnolia Park in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words Magnolia Park in printed or promotional matter where such terms are used solely to specify that particular property is located within Magnolia Park and the Association and any other community associations located in Magnolia Park shall be entitled to use the words Magnolia Park in their names.

15.9. Compliance. Every Owner and occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.10. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Lot shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

15.11. Development of Magnolia Park. Each Owner acknowledges and agrees that Magnolia Park is a planned community, the development of which is likely to extend over an extended period of time and that changes may occur in the development plans and plats as the development proceeds. Each Owner therefore agrees not to protest, challenge or otherwise object to changes made or proposed by the Declarant in the development plan or in the uses or density of the Properties beyond the boundaries of those shown on recorded plats in the Public Records for Wake County. Accordingly, Declarant has no obligation to develop Magnolia Park in accordance with any existing development plan, site plan or approved zoning. Declarant also has no obligation to construct any amenities within Magnolia Park including without limitation, any clubhouse, swimming pool or other related amenities, regardless of whether or not the same were reflected on any development plan, site plan or marketing materials for Magnolia Park. The Owner of a Lot may have seen proposed or contemplated amenities or other portions of the development which may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or may have been advised of the same in discussions with sales personnel; however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no obligation to construct such improvements or portions of the development, and the same may not be built in the event that Declarant, for any reason whatsoever or for no reason, decides not to build same. An Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the

foregoing provisions.

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

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

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

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

15.16. Exhibits; Recitals. Exhibit "A" attached to this Declaration is incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 15.2. Exhibit "B" (Bylaws) is attached for informational purposes and may be amended as provided therein. Exhibit "C" (Design Guidelines and Rules) is attached for informational purposes and may be amended as provided therein. Exhibit "D" (Rules of Arbitration) is incorporated herein by this reference (to the extent provided in Section 15.4). The terms or the “Recitals” herein are hereby incorporated in this Declaration by this reference.

15.17. Oral Statements. Any amendments to or modifications of this Declaration shall be effective only if made in writing and executed by all parties who are required under this Declaration to execute same. Oral statements of the Declarant or the Association, or their respective employees, agents and representatives, shall not be binding on the Declarant or the Association and are hereby expressly disclaimed. No party shall be entitled to rely upon any such oral statements.

15.18. Amenities. Without limiting any terms and provisions (including without limitation any disclaimers) in Section 15.11 or otherwise in this Declaration, and in particular without commitment to develop any amenities whatsoever, Declarant, during the Development Period, shall have the right to construct and unilaterally allocate one or more amenities for exclusive use by some (but fewer than all) Owners and their tenants/invitees; provided, however, that if the use of any amenity is at any point restricted to fewer than all Owners (and their guests and invitees), then only those Owners shall be assessed for the maintenance, operation and insurance of the same for so long as they have exclusive use rights. Furthermore, Declarant may unilaterally alter any allocation of amenity use rights from time to time or at any time during the Development Period. By way of example and not in any way commitment, Declarant may construct one swimming pool for use by Townhome Lot Owners and another for use by the Owners of all other Lots, and/or Declarant may allow all Lot Owners to use an amenity temporarily and then later restrict use rights to a subset of Owners at a later point in time.

ARTICLE 16: Stormwater Management

16.1. Stormwater Management. Except for maintenance responsibilities (i) placed on Owners by the Governing Documents or Legal Requirements, or (ii) assumed or undertaken by other Persons (for example, a governmental authority), the Association shall maintain the Stormwater Control Measures and shall pay for the maintenance thereof as part of the Common Expenses. As used in the immediately preceding sentence, the word “maintain” includes maintenance, repair, replacement and insurance, and making provision for the same (which may include financial contributions toward said maintenance), of Stormwater Control Measures located on the Properties and and/or on or shared with other properties not subject to the Declaration. Provided, however, such maintenance obligations shall cease and terminate, or be reduced proportionally, temporarily or permanently, as applicable and as the case may be, at such time as a governmental authority accepts responsibility to maintain, in whole or in part, the Stormwater Control Measures, or some other Person is providing the necessary maintenance therefor (for example, pursuant to an agreement which requires monetary payments by the Association to the Person who is performing the maintenance). Following any such assumption of maintenance by a governmental authority or other Person, the Association may, without obligation, continue to provide maintenance to the extent that the governmental authority or other Person fails to provide adequate maintenance, in the opinion of the Board, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the governmental authority or such other Person has not assumed maintenance responsibility, or following termination of the governmental entity’s or such Person’s maintenance responsibility.

Notwithstanding anything to the contrary herein, the Owner of any Lot on, over or through which any Stormwater Control Measures or portion thereof is 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. An Owner’s responsibility shall include notification of the 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 a Stormwater Control Measure is located shall not obstruct it or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all stormwater drainage easements and stormwater management facilities located on and used exclusively in connection with such

Owner's Lot or the improvements thereon, including guttering, and pipes and drains on the Lot used exclusively for transportation of stormwater from such Lot into any Stormwater Control Measures. All issues as to whether a stormwater drainage easement or stormwater management facility is part of the Stormwater Control Measures for which the Association is responsible or whether it is the responsibility of an Owner shall be determined by the Declarant during the Class "B" Control Period (unless Declarant assigns such right to the Association), and thereafter by the Association.

Declarant, during the Class "B" Control Period, and thereafter, the Association, subject to any approval required by a governmental authority, may grant, relocate, abandon and/or release one or more stormwater drainage easements in the Community, subject to the following: (i) the initial grant of any such stormwater drainage easement also shall be consented to in writing by the Owners of all Lots (not including Common Area) on which such stormwater drainage easement is located, unless the stormwater drainage easement is shown on a recorded plat of such Lots, in which event the consent of the Owners thereof is not required and the Declarant or the Association, as applicable, may grant the stormwater drainage easement by written instrument; (ii) no such relocation, abandonment or release shall materially adversely affect any Lot on which the stormwater drainage easement is to be relocated, or if it does have such material adverse effect it is consented to in writing by owners of the Lots on which such stormwater drainage easement is to be relocated; and (iii) no such grant, relocation, abandonment or release shall materially adversely affect the Stormwater Control Measures for the Community. The provisions of this paragraph also are applicable to any access easement over any portion of the Community 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.

With respect to its obligations under this Section, the Association shall pay, post, provide for or comply with all bonds and other financial obligations under all Legal Requirements, Stormwater Covenants and other agreements related to Stormwater Control Measures that are executed by the Association (or, during the Class "B" Control Period, by the Declarant on behalf of the Association or for later assignment to the Association), and the Association (and, during the Class "B" Control Period, the Declarant on behalf of the Association) may enter into one or more Stormwater Covenants and other agreements and amend, add to, or supplement existing Stormwater Covenants and other agreements (and when Stormwater Covenants or other agreements are referred to in the Declaration, the reference includes amendments, additions, and supplements thereto), with a governmental authority, another association that exists for purposes similar to those of the Association, or any other Person with respect to inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating and managing any part or all of the stormwater on, to, or from any part or all of the Community and/or any or all of the Stormwater Control Measures for the Community, whether such Stormwater Control Measures are located within or outside of the Community, and with respect to maintenance of the Stormwater Control Measures. Such Stormwater Covenants and other agreements shall be binding on all Owners, and may require payments from the Association or the Owners whose Lots are served by the applicable Stormwater Control Measures for the services provided by a governmental authority, such other association or such other Person in inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such Stormwater Covenants and other agreements may include all other terms and obligations required by Legal Requirements. In connection with the foregoing purposes expressed in this paragraph, the Association (and, during the Class "B" Control Period, the Declarant on behalf of the Association) may grant rights over, in, under, upon and through any and all stormwater drainage easements in the Community, and may grant rights over, in, under, upon and through all easements in the Community 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 Class “B” Control Period no such Stormwater Covenant or other 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 Community or phases of the same (for example, because of the topography of the Community it may be desirable for a portion of the Community to have Stormwater Control Measures separate from and/or in addition to, other Stormwater Control Measures in or serving the Community and it may be desirable for other portions of the Community to utilize Stormwater Control Measures located outside of the Community), and in further recognition of the desire of the Declarant for the provisions of the Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Community of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by a governmental authority, in fulfilling its obligations under the Declaration the Association (or, during the Class “B” Control Period, the Declarant unilaterally and on behalf of the Association or for later assignment to the Association) may enter into different Stormwater Covenants and other agreements for different portions of the Community, and/or may amend, add to, or supplement existing Stormwater Covenants and other agreements, subject to all of the other terms of the Declaration.

Declarant hereby informs all Owners and other Persons who deal with or come in contact with the Community, that as stormwater drains from the Community or other properties into any of the Stormwater Control Measures for the Community, 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) 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 assessments may be required to pay for such removal and/or resultant clean-up of the Stormwater Control Measures.

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

ARTICLE 17: Townhomes

17.1 Additional Definitions. The following additional terms apply:

(a) “Townhome” or “Townhome Dwelling” means an individual Dwelling that is attached by Party Wall(s) (as defined in Below) to one or more other Dwellings (for avoidance of doubt the term Dwelling includes Townhome Dwellings).

(b) “Townhome Building” shall mean each building containing two or more attached Dwellings, including all structural and exterior (including roofs and facades) portions thereof.

(c) “Townhome Lot” means any Lot on which a Townhome is constructed (for avoidance of doubt the term Lot includes Townhome Lots).

(d) “Townhome Services” means that level of services, items or benefits provided by the Association for the benefit of the Townhomes and Owners thereof pursuant to this Article 17, which are in addition to the level of services otherwise provided by the Association in the Community and which therefor result in payment of additional General or Specific Assessments by Owners of Townhomes.

17.2 Townhome Services. In furtherance of maintaining the Townhome Buildings, Townhome Lots and Townhome Dwellings as a first class townhome community, the Association shall provide exterior building and Lot maintenance for the Townhome Lots, Townhome Dwellings and Townhome Buildings, all to be performed in manner and frequency as determined by the Board of Directors in its discretion as follows (the following maintenance and maintenance areas being part of the Area of Common Responsibility): (i) paint, stain, repair, replace and maintain of the exterior surfaces of the Townhome Dwellings and Townhome Buildings (including the painting of entry doors and the repair of siding, but expressly excluding the repair and replacement of entry doors and garage doors and their appurtenant hardware, and excluding the repair of wall sheathing, and further excluding all exterior glass including windows and patio doors); (ii) repair, replace, and maintain roof shingles (excluding maintenance, repair and replacement of other portions of the roof); and (iii) repair and replace gutters and downspouts. The Association shall likewise maintain all yards, lawn areas and grassy areas, and landscaped features and areas (including but not limited to plants, flowers, trees and bushes, but not including irrigation systems) located on the Townhome Lots and the same within all adjacent Common Areas and without limitation within the street rights of way. The required maintenance shall include grass mowing, removal of weeds and grass clippings, fertilization and aeration, all to be performed in manner and frequency as determined by the Board of Directors. Notwithstanding the foregoing, Owners, and not the Association, shall be responsible for watering their own lawns and landscaping on their Townhome Lots, and are subject to Specific Assessment for failure to do so and for any resulting replacement costs incurred as a result of such failure. Furthermore, the Association shall obtain such insurance for the benefit of the Owners and their Townhome Dwellings as is described below in Section 17.4 and shall charge the Owners of said Units for such insurance as part of their Assessments.

17.3 Owner's Responsibility. Except as maintained and repaired by the Association in accordance with this Article 17 and otherwise as provided in this Declaration, each Owner shall maintain his Townhome Lot and Townhome Dwelling in good repair. The yards and landscaping on all improved Townhome Lots shall be neatly and attractively maintained and shall be cultivated and planted to the extent required to maintain an appearance in harmony with other improved Townhome Lots in the Property, all in the discretion of the Board. If any sidewalk is partially or completely located on an Owner's Townhome Lot and third parties have an easement to use such sidewalk, then the Association (and not the Owner) shall be responsible for the maintenance and repair of such sidewalk. In the event a Townhome Lot Owner fails to fulfill his maintenance and repair obligations under this Article, the ARB may undertake required repairs, replacement and maintenance and charge the cost thereof to the Owner as a Specific Assessment. An Owner shall not allow a condition to exist on his Townhome Lot which will adversely affect any other Lots and Dwellings or other Owners. Without limiting the foregoing, Owners, and not the Association, shall be responsible for watering their own lawns and landscaping on their Townhome Lots, and are subject to Specific Assessment for failure to do so and for any resulting replacement costs incurred as a result of such failure. In addition to any other enforcement rights, if an Owner fails properly to perform his or her

maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Townhome Lot and the Owner as Specific Assessments. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry by the Association or its designee under this Section shall not constitute a trespass.

17.4 Insurance. Notwithstanding that the terms and provisions of Article 6 shall apply other than as to Townhome Lots, Townhome Dwellings and Townhome Buildings, the following shall apply to Townhome Lot, Townhome Dwellings and Townhome Buildings:

(a) Association to Obtain Casualty Insurance on Townhome Buildings. The Association shall obtain and maintain a casualty insurance policy or policies on all Townhome Buildings for the benefit of the Owners of the Dwellings therein and their mortgagees, as their interests may appear, and provisions shall be made for the issuance of certificates or mortgagee endorsements to Owners and to mortgagees of Owners upon request therefor by any Owner. Each Townhome Building shall be insured in an amount equal to one hundred percent (100%) of its insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended overage, vandalism and malicious mischief, and

(ii) such other risks as from time to time shall be reasonably required by the Association.

(b) Premiums and Deductibles. Premiums for all insurance policies purchased by the Association under this Section shall be Common Expenses and shall be included as part of the General Assessments for Townhome Lot Owners. Deductibles shall likewise be Common Expenses paid with Specific Assessments from Townhome Lot Owners.

(c) Proceeds. All insurance policies purchased by the Association for the benefit of Owners shall be for the benefit of the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee hereunder. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees as their interests may appear

(d) Distribution of Insurance Proceeds. Proceeds of insurance policies for the benefit of Owners that are received by the Association as insurance trustee shall be distributed in the following manner:

(i) Expense of the Trustee. All expenses of the insurance trustee shall be first paid or provisions made therefore.

(ii) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to and/or reconstruction of the damaged/destroyed Townhome Dwelling or Building. Any proceeds remaining after defraying such cost shall be held in undivided shares for the affected Owners in proportion to the costs of repairing the damage or injuries suffered by each Owner, the cost of which shall be determined by the Board.

(e) Owners to Obtain Insurance. Without limiting the Association's obligation to carry such insurance as is required under this Article 17, each Owner of a Townhome Dwelling shall procure and maintain, at such Owner's sole cost and expense, insurance coverage as follows:

(i) Public Liability. Each Owner shall procure and maintain such public liability insurance over its Townhome Lot and Townhome Dwelling as is appropriate, in each Owner's sole discretion.

(ii) Contents. Each Owner shall procure and maintain insurance on the contents of its Dwelling, with limits no less than the replacement value of such contents.

(f) Certificates of Insurance. An insurer that has issued an insurance policy under this Article 17 shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

(g) Repair and Replacement of Damaged or Destroyed Property. Any portion of the Townhome Buildings damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) this Declaration is terminated, or (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) Owners of one hundred percent (100%) of all Dwellings in a damaged Townhome Building and their Mortgagees vote not to be rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association but shall be reimbursed by assessing all benefitted Owners in equal parts by way of Specific Assessment.

17.5 Party Walls.

(a) Definition. Each wall separating two Townhome Dwellings as a part of the original construction of the same, and any replacement thereof, shall constitute a "party wall" for purposes of this Article.

(b) General Law. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all party walls.

(c) Encroachment. If any party wall protrudes or encroaches over an adjoining Lot or Dwelling or into any Common Area, such structure, wall, or fence shall be deemed to be a permitted encroachment upon the adjoining Lot, Dwelling or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall, or fence, nor any action for damages. In the case of such a protrusion, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining/encroaching Owner for continuing maintenance and use of the encroaching party wall. The foregoing provision shall also apply to any replacements in conformance with the original party wall as originally constructed.

(d) Sharing of Repair and Maintenance. The cost of replacement, repair, and maintenance of a party wall shall be equally divided by the Owners which share the wall, except that (i) if the damage necessitating the replacement, repair, or maintenance is covered under

the terms of any fire or casualty insurance policy maintained by the Association, the proceeds of such policy shall first be used to effect such replacement, repair, and maintenance; and (ii) if the portion of the wall which requires the replacement, repair, or maintenance is an outside wall for one of the Dwellings but not for the other (that is, not common to both Dwellings) the replacement, repair, or maintenance cost of that portion of the wall shall be borne by the Owner of the Dwelling utilizing that portion of the wall, if, and to the extent that, the Association does not have that responsibility.

(e) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty or requires replacement, repair, or maintenance in excess of the benefits payable under any fire or casualty insurance policy maintained by the Association, and one of the common Owners of the wall repairs, replaces, or performs necessary maintenance work, the other common Owner shall promptly reimburse the Owner who effects the work in an amount equal to one-half of the cost thereof; provided that this obligation shall not be absolute, but shall be subject to the general rules of law regarding negligence and wrongful acts.

(f) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(g) Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot and Dwelling of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or construction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots and Dwelling(s) to as near the same condition as that which prevailed prior to the commencement of the work as possible.

17.6 Landscaping; Fencing. For avoidance of doubt, no landscaping improvements shall be installed or removed on Townhome Lots by the Owners thereof except with the written approval of the ARB and no landscaping improvements that are not comprised of native vegetation shall be allowed whatsoever. This Section 17.6 shall not apply to landscaping installation or removal by Declarant or by the Association. No fence shall be allowed on any Townhome Lot except with the approval of the ARB.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this ____ day of _____, 2021.

MATTAMY HOMES LLC, a North Carolina
limited liability company

By: _____

STATE OF NORTH CAROLINA

)

) ACKNOWLEDGEMENT

COUNTY OF _____

)

The foregoing Declaration was acknowledged before me this ____ day of _____,
_____ by _____, as _____ of Mattamy Homes LLC, a North Carolina limited
liability company.

Notary Public for North Carolina (SEAL)

My Commission Expires: _____

EXHIBIT “A”

LEGAL DESCRIPTION

EXHIBIT "B"

**BYLAWS OF
MAGNOLIA PARK OWNERS ASSOCIATION, INC.**

BYLAWS OF
MAGNOLIA PARK OWNERS ASSOCIATION, INC.

ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1. Name. The name of the corporation is Magnolia Park Owners Association, Inc. (the "Association"), a North Carolina nonprofit mutual benefit corporation. The Association is a corporation governed both by North Carolina Planned Community Act (N. C. Gen. Stat. Chap. 47F) and by the North Carolina Nonprofit Corporation Act (N. C. Gen. Stat. Chap. 55A).

1.2. Principal Office. The initial principal office of the Association shall be 11000 Regency Parkway, Suite 1110, Cary, Wake County, North Carolina 27518. The Association may have such other offices, either within or outside the State of North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions. The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Magnolia Park filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

ARTICLE 2: ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

2.1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference. The Declarant may establish additional classes of membership as set forth in the Declaration.

2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other location as the Board may designate, either within Magnolia Park or otherwise as convenient and practical. Meetings may be held by means of telephone conference, video conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation by one of these methods shall constitute presence in person at such meeting.

2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Meetings shall be of the Voting Delegates. Subsequent regular meetings shall be held annually on a date and a time set by the Board.

2.4. Special Meetings. The president may call special meetings. In addition, it shall be the duty of the president to call a special meeting within thirty (30) Days if so directed by resolution of the Board or upon a petition signed by Voting Delegates representing at least five percent (5%) of the total Class "A" votes in the Association or upon written request of the Declarant.

2.5. Notice of Meetings. Written notice stating the place, day, and time of any meeting of the

Voting Delegates shall be delivered to each Voting Delegate entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) Days before the date of such meeting, by or at the direction of the president or the secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Voting Delegate may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof, unless a specific objection as to the lack of proper notice is given at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Voting Delegates representing a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) Days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Voting Delegates in the manner prescribed in Section 2.5.

2.8. Voting. The voting rights of the Members shall be as set forth in the Declaration and in these Bylaws, and such voting rights provisions are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access. Notwithstanding the foregoing, where a matter affects fewer than all Lot Owners, then any percentage of votes described herein as being needed to approve or take an action shall be read to mean said percentage of votes of affected Owners rather than all Owners. For example if an amenity is used and funded by only a portion of the Owners, then those Owners and only those Owners may vote on matters related to the amenity, and those owners and only those Owners constitute the universe of votes towards which the applicable percentage is applied to determine consent/action.

2.9. List for Voting. After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Voting Delegates entitled to notice of such meeting. The list shall show the address of the Voting Delegate and the number of votes each is entitled to vote at the meeting. The list for voting shall be made available for inspection in accordance with North Carolina law.

2.10. Proxies. Any Member who is entitled to cast only the vote(s) for such Member's Lot(s) pursuant to the Declaration may cast such vote in person or by proxy. On any matter as to which a Member is entitled to personally cast the vote for such Member's Lot, such vote may be cast in person (if a corporation, partnership, limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of North Carolina law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these Bylaws. Every proxy shall be in writing specifying the Lot(s) for which it is given, signed by the Member of such Member's duly authorized attorney-in-

fact, dated, and filed with the secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11. Quorum. The presence of ten percent (10%) of the Class "A" votes entitled to be cast shall constitute a quorum at all meetings of the Association. If a quorum is present at a duly called or held meeting, business may be continued until adjournment, notwithstanding the withdrawal of Voting Delegates leaving less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

2.12. Conduct of Meetings. The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions at such meetings.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Association may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by all Voting Delegates entitled to vote on such matter. Such consents shall be signed within sixty (60) Days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of North Carolina. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Voting Delegates at a meeting. Within ten (10) Days after receiving authorization for any action by written consent, the secretary shall give written notice to all Members summarizing the material features of the authorized action.

ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class "B" Member or serving as a representative of the Declarant, the directors shall be eligible Members or residents; provided however, no Owner and resident representing the same Lot may serve on the Board at the same time. No Owner or resident shall be eligible to serve as a director if any assessment for such Owner's or resident's Lot is delinquent. A "resident" for the purposes of these Bylaws shall mean any natural person eighteen (18) years of age or older whose principal place of residence is a Lot within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, member, manager, employee, trustee, or fiduciary of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided that no Member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by or serving as representatives of the Class "B" Member of the Declarant.

3.2. Number of Directors. The Board shall consist of three (3) to seven (7) directors, as

provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three (3) directors appointed by the Class "B" Member as provided in Section 3.3 and shall be increased as provided in Section 3.5. After the termination of the Class "B" membership, the Board may, by resolution, increase or decrease the number of directors.

3.3. Directors During Class "B" Control Period. Subject to the provisions of Section 3.5, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member during the Class "B" Control Period. Directors appointed by or serving as representatives of the Class "B" Member or the Declarant shall not be subject to the qualifications for directors set forth in Section 3.1. In addition, the number of directors shall be set by the Class "B" Member in its sole discretion.

3.4. Nomination and Election Procedures.

(a) Nomination of Directors. The Board may, but need not, establish a nominating committee consisting of a chairperson, who shall be a member of the Board, and three (3) or more Members or representatives of Members. If established, the nominating committee shall be appointed by the Board not less than thirty (30) Days prior to each election to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at the election. A nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 3.5 below. In making its nominations, a nominating committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Nominations shall also be permitted from the floor at a meeting of the Association. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. Directors appointed by or serving as representatives of the Class "B" Member or the Declarant shall not be subject to these nomination requirements.

(b) Election Procedures. Each Voting Delegate may cast all votes assigned to the Lots which such Voting Delegate represents for each position to be filled from the slate of candidates on which such Voting Delegate is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5. Election and Term of Office. Notwithstanding any other provision of these Bylaws:

(a) At the first Association meeting occurring after Class "A" Members other than Builders own ninety percent (90%) of the Lots located on the property described in Exhibit "A" of the Declaration, or whenever the Class "B" Member earlier determines, the Association shall hold an election at which the Voting Delegates shall be entitled to elect one (1) of the directors, who shall serve a term of two (2) years or until the occurrence of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the occurrence of the event described in subsection (b), a successor shall be elected for a like term. The remaining directors shall be appointees of the Class "B" Member.

(b) At the first Association meeting occurring after termination of the Class "B" Control Period, the Board shall be increased to five (5) directors and an election shall be held. Four (4) directors shall be elected by the Voting Delegates. Two (2) directors shall serve a term of two (2) years, and two

(2) directors shall serve a term of one (1) year, as such directors determine among themselves.

Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint, remove and replace one (1) director. Upon termination of the Class "B" membership, the director appointed by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Voting Delegates shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two (2) years.

Upon the expiration of the term of office of each director elected by the voting Delegates, the Voting Delegates shall elect a successor to serve a term of two (2) years. The directors elected by the Voting Delegates shall hold office until their respective successors have been elected.

3.6. Removal of Directors and Vacancies. Any director elected by the Voting Delegates may be removed, with or without cause, by Voting Delegates representing a Majority of the votes entitled to be cast for the election of such director, but shall not be subject to removal solely by the class "B" Member. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Voting Delegates entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Voting Delegates who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) Days delinquent (or is the resident of a Lot that is delinquent or is an officer, director, partner, member, employee, or trust officer of a Member who is delinquent) in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Delegates entitled to fill such directorship may elect a successor for the remainder of the term.

In the event of death, disability, or resignation of an elected director or the adoption of a Board resolution increasing the number of directors, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Delegates entitled to fill such directorship may elect a successor for the remainder of the term.

This section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member or the Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or the Declarant.

B. Meetings.

3.7. Organizational Meetings. Within thirty (30) Days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each quarter.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the president or vice president or by any two (2) directors or as set forth in Section 2.4

above.

3.10. Notice. Notice of a regular meeting shall be communicated to directors not less than four (4) Days prior to the meeting. Notice of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (1) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) electronic mail or e-mail using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an electronic mail or e-mail address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, electronic mail, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, electronically mailed, e-mailed, or given to the telegraph company.

3.11. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12. Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

3.13. Quorum of Board of Directors. At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) Days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.14. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Voting Delegates representing a Majority of the total Class "A" votes

in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.15. Conduct of Meetings. The president shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

3.16. Open Meetings. Subject to the provisions of Section 3.12 and 3.17, all meetings of the Board shall be open to all Voting Delegates and, if required by law, all Members, but attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on an attendee's behalf by a director. In such case, the president may limit the time any individual may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude Persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.17. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.18. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things which the Governing Documents or North Carolina law do not direct be done and exercised exclusively by the Voting Delegates or the membership generally.

3.19. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Common Areas;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it

shall approve and using such funds to operate the Association, provided any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;

- (f) making and amending rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) contracting for repairs, additions, and improvements to or alterations of the Common Areas in accordance with the Governing Documents;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the costs of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;
- (n) permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of Magnolia Park; and
- (o) indemnifying a director, officer or ARB committee member, or former director, officer or ARB committee member of the Association to the extent such indemnity is required or permitted under North Carolina law or the Governing Documents.

3.20. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager.

The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fee, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and
- (f) an annual financial report shall be made available to all Members within one hundred twenty (120) Days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines.

3.22. Borrowing. The Association shall have the power to borrow money for any legal purpose; provided however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of Voting Delegates representing at least sixty-seven percent (67%) of the total votes allocated to Lots prior to borrowing such money.

3.23. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common and/or long-term management, operational, or other agreements with trusts, condominiums, cooperatives, other owners within and outside Magnolia Park, and/or Declarant.

3.24. Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed pursuant to Article 5, within ten (10) Days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within ten (10) Days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided however, the Board or covenants committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) Day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the ten (10) Day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board of covenants committee may impose a sanction without further notice to the violator.

(b) Hearing. If a hearing is requested within the allotted ten (10) Day period, the hearing shall

be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may adopt a schedule of sanctions for violations of the Governing Documents.

(c) Appeal. If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within ten (10) Days after the hearing date.

(d) Application of the Act. Notwithstanding any terms and provisions herein, if any of the same conflict (meaning they cannot both be given effect) with any requirements of the Act, then the Act shall control. Without limitation, any fines assessed by the Board or a delegate thereof shall be assessments secured by liens under Section 47F-3-116 of the Act.

ARTICLE 4: OFFICERS

4.1. Officers. The officers of the Association shall be a president, secretary, and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may, but need not members of the Board. The Board may appoint such officers, including one or more vice presidents, one (1) or more assistant secretaries and one (1) or more assistant treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each election of new directors. Such officers shall serve until their successors are elected.

4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The secretary shall be responsible for preparing minutes of meetings of the Association and the Board and for authenticating records of the Association.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance

of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.14.

ARTICLE 5: COMMITTEES

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Unless otherwise provided by the Board, committee members shall be eligible Members or residents; provided however, no Class "A" Member may have more than one (1) representative on a committee at any time. No committee appointed by the Board shall be empowered to take any affirmative action nor to bind the Board or the Association without the consent of the Board.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to the Declaration, these Bylaws and, specifically, Section 5.1, the Board may appoint a covenants committee consisting of at least three (3) and no more than seven (7) Members. Acting in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board may adopt, the covenants committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these Bylaws.

ARTICLE 6: MISCELLANEOUS

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these Bylaws.

6.3. Conflicts. If there are conflicts between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these Bylaws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

6.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, Bylaws, and Articles of Incorporation, any amendments and supplements to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board, and committees, Member and Board resolutions, written communications to Members generally within the past three years including financial statements furnished to Members, names and addresses of directors and officers then serving and the most recent reports filed with the

Secretary of State. If a Member acts in good faith and for a proper purpose, and describes with reasonable particularity the purpose and the records the Member desires to inspect, the Member may also inspect accounting records and the membership list. The Board shall provide for such inspection to take place at the office of the Association or at such other place within Bull Creek Peninsula as the Board shall designate during normal business hours.

(b) Rules for Inspection. The Board may establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these Bylaws, all notices, demands, bills, statements, and other communications under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member or Voting Delegate, at the address which the Member or Voting Delegate has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Lot of such Member or Voting Delegate; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request in writing additional methods of receiving notice, including but not limited to, facsimile, electronic mail or e-mail.

6.6. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, the Declarant may unilaterally amend these Bylaws for any purpose. Thereafter, the Declarant may unilaterally amend these Bylaws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely

affect the title to any Lot unless the Owner shall consent thereto in writing. In addition, during the Development Period, the Declarant may unilaterally amend these By- Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. Any amendment to these Bylaws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

(d) Dissolution. The Association shall be dissolved upon the termination of the Declaration, or upon the written assent given in writing and signed by not less than sixty-seven percent (67%) of the total Class "A" votes in the Association, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by the Declaration or by reason of merger and/or consolidation with any other association as allowed by the Declaration), any portion of the Common Area not under the jurisdiction and being maintained by the Association, shall be offered to the appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted by the Association. If the appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be conveyed by the Association to the appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located, and subject to all other applicable rights of way and easements and subject to ad valorem property taxes subsequent to the date of such conveyance.

In the event that the appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would

most nearly conform to the purposes and uses to which the Common Area was required to be devoted by the Declaration, such conveyance to be made subject to the rights of Owners and other matters set forth in the immediately preceding paragraph.

EXHIBIT “C”

DESIGN GUIDELINES AND RULES

(attached on following pages)

EXHIBIT "D"

Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").
2. The Parties shall select arbitrators ("Party Appointed Arbitrators") as follows: if all the Parties do not agree upon one neutral arbitrator ("Neutral") to resolve the Claim, then all the Claimants shall agree upon one Party Appointed Arbitrator, and all the Respondents shall agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one Neutral so that the total arbitration panel ("Panel") has three arbitrators.
3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Governing Documents, or the American Arbitration Association, or such other independent body providing arbitration services, for any dispute relating to the design or construction of improvements on the Properties, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral or Appointed Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral or Appointed Neutral after receipt of that Neutral's Bias Disclosure, such Neutral or Appointed Neutral shall be replaced in the same manner in which that Neutral or Appointed Neutral was selected.
5. The Appointed Neutral or Neutral, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.
7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine any relevant legal issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.
8. There shall be no stenographic record of the proceedings.
9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The

Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

10. If the Arbitrator decides that it has insufficient expertise to determine a relevant issue rose during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

11. No formal discovery shall be conducted in the absence of express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing; provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

12. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

13. There will be no post-hearing briefs.

14. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

15. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

16. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.