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WAKE COUNTY, NC 250
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COUNTY OF WAKE
STATE OF NORTH CAROLINA

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**AMENDED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR NOBLE TOWNES**

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NORTH CAROLINA
WAKE COUNTY

KNOW ALL MEN BY THESE PRESENTS, that this Amended Declaration of Covenants, Conditions and Restrictions for NOBLE TOWNES, formerly known as Whitaker Townes, is made and entered into on this the 5th day of April, 2010, by GHC – WHITAKER TOWNES, LLC, a North Carolina limited liability company (hereinafter referred to as the "Declarant"), and NOBLE TOWNES OWNER ASSOCIATION, INC. ("Association").

RECITALS

1. Declarant is the owner of the real property described on attached Exhibit A which is incorporated herein by this reference and being all of the lots located in the community known as "Noble Townes", formerly known as Whitaker Townes ("Lots"). The Association is the owner of the real property described on attached Exhibit B which is incorporated herein by this reference and being all of the Common Areas ("Association Property"). The Association Property and the Lots may be referred to collectively herein as the "Community".
2. The Community is subject to those Declaration of Whitaker Townes recorded in Book 3005 Page 395, which was subsequently amended by the Revised Declaration of Whiakter Townes recorded in Book 3075 Page 249 of the Wake County Registry (collectively referred to herein as the "Original Covenants") which created a residential community of single-family townhomes (*the* "Townhomes") together with any private streets, roads, bike paths, footways, open spaces, common areas, landscaping, entrances, drainage facilities, access easements, site lighting and signage, and any recreation area(s) and any other common facilities shown on any Recorded Plat (as hereinafter defined) (sometimes referred to collectively herein as the "Facilities") for the benefit of the Community.
3. Declarant and the Association desire to amend and replace the Original Covenants with these Amended Declaration of Covenants, Conditions and Restrictions For Noble Townes to provide for the preservation of the values and amenities in the Community and for the maintenance of the Facilities and Common Area (as hereinafter defined) and, to this end, desires to subject the real property described in Article One, and any additions thereto, to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is, and are, for the benefit of said real property and each owner of a portion thereof.

DECLARATION

NOW THEREFORE, the Declarant and the Association declare that the Original Covenants for the real property described in Article One and any additions thereto are hereby modified and otherwise replaced with this Amended Declaration of Covenants, Conditions and Restrictions For Noble Townes whereby such real proeprty shall continue to be held, used, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and restrictions") as hereinafter set forth. To the extent not inconsistent with this Declaration, the provisions of the North Carolina Planned Community Act, General Statutes of North Carolina Chapter 47F et al, are hereby adopted and incorporated herein by this reference.

**ARTICLE ONE
PROPERTY SUBJECT TO THIS DECLARATION**

Section 1.1 Existing Property. The real property which is, and shall be, held, used, transferred, sold, conveyed and occupied subject to this Declaration (the "Property") is located in Wake County, North Carolina, is or will be commonly known as NOBLE TOWNES, and is more particularly described on Exhibit

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A and Exhibit B, attached hereto and incorporated herein by reference.

Section 1.2 Additions to Property. Real property in addition to the Property may hereafter become subject to this Declaration in the following manner:

(a) Additions in Accordance with a Master Plan of Development. The Declarant, its successors and assigns, shall have the right but not the obligation, without further consent of the Association or its Members, to bring within the scheme and operation of this Declaration all or any portions of the real property that are contiguous to the Property, as the Property is increased from time to time under the terms hereof, but such right shall cease to exist on **January 31, 2020**.

The additions authorized under this and the succeeding subsection shall be made by filing of record, in the Office of the Register of Deeds of Wake County, one or more supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property or properties, executed by the Declarant and, if different, the owner(s) of the additional property, which shall extend the operation and effect of this Declaration to such additional property or properties (hereinafter sometimes referred to as a "Supplemental Declaration").

Any Supplemental Declaration(s) may specify such specific use restrictions and other covenants, conditions and restrictions to be applicable to the added property and may contain such complementary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of the Declarant and, if different owner(s), the owner(s) of the additional property, to reflect and adapt to any difference in character of the added properties. In no event, however, shall any such Supplemental Declaration modify or add to the covenants and restrictions established by this Declaration so as to negatively affect the Property; however, this provision shall not be interpreted to prohibit or prevent any properly instituted change in the amount of the Assessments (as hereinafter defined) payable by a Member of the Association by reason of any such additions.

(b) Other Additions. Upon approval in writing of the Association, pursuant to authorization by the Members, voting as provided in Section 7.2 hereof at a duly called meeting, the owner of any property who desires to add such property to the scheme of this Declaration and subject such property to the jurisdiction of the Association must file of record a Supplemental Declaration as described in subsection (a) above. Any approval by the Association pursuant to this subsection shall be evidenced by the Association executing any such Supplemental Declaration(s). The Declarant shall have the right to approve any such addition to the scheme of this Declaration except during such times when Class B membership is terminated pursuant to Section 7.2(b).

(c) Mergers, Combinations or Consolidations. Upon merger, combination or consolidation of the Association with another association, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights, and obligations of another association may, by operations of law, be added to those of the Association as the surviving corporation pursuant to a merger, combination or consolidation. The surviving or consolidated association may administer the restrictions established upon any other properties, as one scheme. No such merger, combination or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this Declaration within the Property, except as herein provided.

(d) Conveyance of Common Areas and/or Common Properties. Following the recording of a Supplemental Declaration but prior to the conveyance of the first Lot within the additional property, the owner of the additional property shall convey to the Association title to all Common Areas located within the

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additional property.

Section 1.3 Access Easement Reserved. The Declarant reserves unto itself for the benefit of Declarant, its successors and/or assigns, a non-exclusive and alienable easement and right of ingress, egress and regress over and across all private streets and roads within the Property, if any, for access to and from other real property of Declarant or its successors and/or assigns. Such easement shall include the ability for the Declarant to complete any development obligations or other improvements on Common Area previously conveyed to the Association. Furthermore, such easement shall continue until that time when all new construction has ceased on additions to the Property acquired under Section 1.2, and any damage caused by Declarant, its agents, successors and/or assigns to the private streets and roads within the Property when exercising its rights created by this Section shall be repaired at the expense of Declarant, its successors, or assigns. In addition, an easement and right of ingress, egress and regress over and across all private streets and roads, as and where they are located from time to time within the Property, if any, is hereby granted to any applicable government agency, for the purpose of fulfilling their duties, including, without limitation, law enforcement, fire protection, garbage collection, delivery of the mail, and any other service related to keeping the peace and preserving collection, delivery of the mail, and any other service related to keeping the peace and preserving the general welfare.

ARTICLE TWO
DEFINITIONS

The following words when used in this Declaration or any amended or Supplemental Declaration (unless the context shall require otherwise) shall have the following meanings:

“Act” shall mean the North Carolina Planned Community Act, General Statutes of North Carolina Chapter 47F et al, and any amendments thereto.

“Architectural Guidelines” shall have the meaning assigned to it in Section 4.4 of this Declaration.

“Assessment(s)” shall mean and refer to the assessment(s) and charges levied by the Association against Members who are the Owners of Lots in the Property and shall include annual, special, insurance, and Special Individual Assessments as described in Article Nine of this Declaration.

“Association” shall mean and refer to the **Noble Townes Owners Association, Inc.**

“Board” shall mean and refer to the Board of Directors of the Association.

“Boundary Plat” shall mean and refer to that certain plat of survey recorded in **Book 2009, Page 1283**, Wake County Registry, which survey depicts all of the property to be encumbered and benefited by this Declaration at the time of recording hereof.

“Builder” shall refer to any general contractor who purchases a Lot to construct a Building.

“Building” shall mean and refer to any building located upon the Property that contains Dwelling Units.

“Bylaws” shall mean and refer to the bylaws of the Association and all amendments thereto.

“Committee” shall mean and refer to the architectural control committee established pursuant to Article Four hereof.

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"Common Area(s) or "Common Properties)" shall mean and refer to those areas of land described or referred to as "Amenity Area", "Amenity Areas", "Common Open Space", "Common Open Spaces", "COS", "Common Property", "Common Properties", "Common Area", "Common Areas" or stormwater device or any other term indicating that the area is intended as open space for the Community in any declaration of covenants, conditions and restrictions to which the Property is submitted or subjected by the Declarant, or shown on any Recorded Plat, executed by the Declarant and any other owner of such areas of land, of the Property and labeled thereon as "Amenity Area", "Amenity Areas", "Common Open Space", "Common Open Spaces", "COS", "Common Property", "Common Properties", "Common Area", "Common Open Spaces", "COS", "Common Property", "Common Properties", "Common Area" or "Common Areas", or shown on a Recorded Plat as play area open space, private streets, roads, bike paths, or pedestrian walkways (together with all improvements located thereon) which are a part of the Property and as such are intended to be devoted to the common use and enjoyment of the Members, subject to special rights and limitations, if any, granted to or imposed on Owners of particular Lots. The Common Areas shall also include any stormwater device that serves more than one (1) Lot, any utility line located outside public street rights-of-way and any utility line located outside public street rights-of-way and public utility easements, and any shared facility or property required to be shared by governmental regulations. The Common Areas shall include any Facilities, if any, constructed by the Declarant or the Association. It is intended that the Common Area shall be conveyed to the Association for the benefit of each of the Owners.

"Common Expenses" shall mean and refer to:

- (i) Expenses of administration, operation, utilities, maintenance, repair or replacement of the Common Areas, including payment of taxes and public assessments levied against the Common Areas;
- (ii) Expenses declared Common Expenses by the provisions of this Declaration or the Bylaws;
- (iii) Expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners in the Property, in accordance with the Bylaws or this Declaration;
- (iv) Any valid charge against the Association or against the Common Areas as a whole;
- (v) Any expenses incurred by the Association in connection with the discharge of its duties hereunder and under the Bylaws and its articles of incorporation;
- (vi) Any contribution of funds required of the Association pursuant to contracts entered into by the Association, or entered into by the Declarant during the Declarant control period.

"Community" shall have the meaning assigned to it in the Recitals of this Declaration.

"Declarant" shall mean and refer to GHC - WHITAKER TOWNES, LLC, its successors and assigns, and any person or entity who is specifically assigned the rights and interests of Declarant hereunder or under a separate instrument executed by the Declarant and recorded in the Wake County Registry.

"Dwelling Unit" shall mean and refer to any improvement or portion thereof situated on a Lot intended for use and occupancy as one (1) single-family dwelling, irrespective of the number Lot intended for use and occupancy as one (1) single-family dwelling, irrespective of the number of Owners thereof (or the form of ownership) located within the Property and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) a single family unit of an attached homes structure, such as individual townhouses and condominium units, and patio or zero lot line homes. Where appropriate by context, the term

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shall include both the improvements and the real property on which the improvements are situated.

"Facilities" shall have the meaning assigned to it in the Recitals of this Declaration. Facilities may be located on Common Area but need not be. "Facilities" shall include all improvements made to Common Area.

"FHA" shall mean and refer to the Federal Housing Authority of the United States Department of Housing and Urban Development

"HUD" shall mean and refer to the United States Department of Housing and Urban Development.

"Limited Common Elements" shall mean and include those portions of the Common Elements, if any, which are reserved for use by a certain Lot or Lots to the exclusion of other Lots as designated on the Plat.

"Lot" shall mean and refer to any improved or unimproved numbered parcel of land within the Property which is intended for use as a site for a Dwelling Unit, as shown upon any Recorded Plat of any part of the Property and labeled thereon as a "Lot", and shall not include Common Areas or any property in the Property not yet subdivided for sale as an individual lot. No property in the Property shall be developed as a Dwelling Unit until designated as a Lot on a Recorded Plat. Property designated as a Lot may later be designated for some other use on a Recorded Plat, including a roadway linking the Community to adjacent land or developments.

"Member" shall mean a member of the Association and shall refer to an Owner in the Property.

"Mortgagee" shall mean the mortgagee of any first priority loan on a Lot.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property. Notwithstanding any applicable theory of any lien or mortgage law, "Owner" shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. (Note: the words "Member" and "Owner" are meant to describe all of the owners within the Community interchangeably as semantics dictate throughout this Declaration.)

"Property" shall have the meaning assigned to it in Article One of this Declaration and any additions thereto as are made subject to this Declaration by any Supplemental Declaration(s) under the provisions of this Declaration.

"Recorded Instrument" shall mean and refer to any document relating to the Property, or any portion thereof, recorded in the Wake County Registry and executed by the Declarant (during Class B (as hereinafter defined in Section 7.2 (b)) membership and until two years after termination thereof, and by the Association otherwise) to show its consent thereto (and by any other Owner(s) of property described therein and affected thereby if different). In any case in which the designation or description of the same property described in two different Recorded Instruments is different (for example, property is designated as a Lot in one instrument and a street in another, or legal boundaries of areas are described differently in different Recorded Instruments), the designation and description on the later-recorded of the Recorded Instruments shall control.

"Recorded Plat" shall mean and refer to any map of the Property, or any portion thereof, recorded in the Wake County Registry and executed by the Declarant or the Association to show its consent thereto (and any Owner(s) of such property, if different) including that certain plat of survey Summit Coastal Surveying & Mapping titled "Recombination And Common Are Exchange & Land Swap Lots 1-24 and Common Space of Noble Townes" dated October 10, 2009 and recorded in **Book 2009, Page 1283**, Wake County Registry, which depicts all of the property to be encumbered and benefited by this

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Declaration at the time of recording hereof. In any case in which the designation and/or boundary lines of the same property shown on two different Recorded Plats are different (for example, property is designated as a street on one plat and as a Lot on the other, or boundary lines are shown differently on two different Recorded Plats), the designation and boundary lines on the later-recorded of the Recorded Plats shall control.

"Rules and Regulations" shall have the meaning assigned to it in Section 7.8 of this Declaration.

"Special Individual Assessments" shall have the meaning assigned to it in Section 9.5 of this Declaration.

"Supplemental Declaration" shall have the meaning assigned to it in Section 1.2 of this Declaration.

"Townhomes" shall have the meaning assigned to it in the Recitals of this Declaration.

"VA" shall mean and refer to the United States Department of Veterans Affairs.

ARTICLE THREE GENERAL PROVISIONS

Section 3.1 Duration. The covenants and restrictions of this Declaration shall run with the land, and shall inure to the benefit of, and be enforceable by, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended in accordance with the provisions of Article Twelve hereof. Amendments made in conformity with that Article may alter any portion of the Declaration hereof, including but not limited to the duration and amendment provisions hereof.

Section 3.2 Termination. The termination of this Declaration shall require the assent of at least eighty percent (80%) of the votes in the Association, taken at a meeting duly called and of at least eighty percent (80%) of the votes in the Association, taken at a meeting duly called and held for this purpose, and shall be evidenced by a termination agreement recorded in the Wake County Registry and otherwise complying with the terms of North Carolina General Statutes Section 47F-2- 118.

Section 3.3 Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier (such as, but not limited to Federal Express) and addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. In the event that a Member or Owner's address is absent from the Association's records, the notice may be sent to the address listed on the Wake County tax records at the time of the mailing. The sender shall not be required to cause title to any Lot to be examined. Notice to any one of the Owners, if title to a Lot is held by more than one, shall constitute notice to all Owners of that Lot.

Section 3.4 Enforcement. The Association, Declarant and/or any Owner may enforce these covenants and restrictions. Furthermore, notwithstanding any provision granting the Association the right to specifically act hereunder when an Owner fails to comply with the covenants and restrictions contained herein, the Declarant and/or any Owner are entitled to enforce the terms hereof. In addition to specific rights granted herein to the Association to act in response to a violation of the covenants and restrictions contained herein, enforcement of these covenants and restrictions may be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to

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recover damages, or both, and against the land to enforce any lien created by these covenants and restrictions; and failure by the Association, Declarant or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

The Association or the Declarant may impose fines or suspend Community privileges or services in the event of an Owner's failure to comply with the requirements of this Declaration or any architectural guidelines or rules promulgated by the Declarant, the Committee or the Association. In such circumstances, a hearing shall be held before an adjudicatory panel appointed by the Board to determine if an Owner should be fined or if Community privileges or services should be suspended. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings under this Section shall be held before the Board. The Owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If the Board, after weighing any evidence provided by the Owner, decides that a fine should be imposed, a fine not to exceed **one hundred dollars (\$100.00)** or such higher amount as may be allowed by the Act may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs or continues. Such fines shall be Assessments secured by liens as more particularly described in Article Nine hereof. If it is decided that a suspension of Community privileges or services should be imposed, the decided that a suspension of Community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The proceedings imposing fines shall be conducted in accordance with the provisions of the North Carolina Planned Community Act (North Carolina General Statutes Chapter 47F et al as it may be amended from time to time).

Section 3.5 Severability. Invalidation of any one of these covenants and restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

ARTICLE FOUR ARCHITECTURAL CONTROL

Section 4.1 Purposes. The Declarant desires to provide for the preservation of the values in the Property with respect to vegetation and any improvements to be constructed or altered on any Lot constituting a portion of the Property, and to that end, will establish an architectural control committee, in accordance with Section 4.4 hereof, in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on the Lot in relation to surrounding structures, natural features and topography.

Section 4.2 Architectural Restrictions.

- (a) No fence, other than a fence constructed by Declarant, shall be constructed or erected upon any Lot.
- (b) Only one (1) Dwelling Unit may be constructed on any Lot.
- (c) No Dwelling Unit containing more than two (2) stories.
- (d) No structure shall be constructed, placed or installed upon any Lot, in any location which encroaches beyond any front, side or rear building set-back line applicable to any Lot.
- (e) No building, wall, patio, playhouse, mail-box, pool, basketball hoop or other structure shall be commenced, constructed, installed, erected or maintained upon any Lot, nor shall any exterior addition to, change in (including, without limitation, any change in the type of roofing material or in the color of the paint, stain or varnish), or alteration of, any Dwelling Unit located on any Lot be made until complete and final plans and specifications, setting forth the information hereinafter described, shall have been submitted to, and approved in writing by, the Committee. It shall be duty of the Committee to approve or disapprove each request for approval of the construction of a structure on a Lot, or the alteration of an existing structure located on any Lot.

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Section 4.3 Architectural Control. Unless expressly authorized in writing by the Committee, no Dwelling Unit, fence, wall, driveway, patio, building or other structure or improvement whatsoever shall be constructed or maintained, nor shall any exterior addition or alteration to any Dwelling Unit, fence, wall, driveway, patio or other building or structure or improvement be started, nor shall any clearing or site work be commenced or maintained upon any Lot in the Property, until plans and specifications therefor showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, driveway, parking, decorative landscape planting, floor plans and elevations therefor (all of which are hereinafter referred to collectively as the "Plans"), and any application fee set by the Association, shall have been submitted (the Plans in triplicate) to, and approved in writing by, the Committee, as to harmony of external design and location in relation to any surrounding structure, natural features and topography. The Committee shall have the absolute and exclusive right to refuse to approve any such Plans which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole and uncontrolled discretion of the Committee shall be deemed sufficient. The Committee may promulgate design standards from time to time to be adhered to by the Plans for the Lots or Dwelling Units in the Property. A current copy of all design standards shall be kept on file in the principal office of the Association.

In no event shall the Committee approve any Plans in which the height or setback of the improvements on the Lot violates the limits established by the City of Raleigh.

(a) The plans and specifications which must be submitted to the Committee prior to the alteration of any existing Dwelling Unit on any Lot, as hereinabove provided, shall contain at least the following information:

(i) An as-built survey of the Lot (consisting of the final survey of the Lot, if available) clearly depicting the location, shape and size of the proposed structure; and

(ii) Building plans of the proposed structure which shall include an exterior elevation drawing of the proposed structure; and

(iii) In the case of a proposed alteration to or change in a Dwelling Unit, a description of the proposed alteration or change, including a color and material sample, if applicable; and

(iv) In either case, such additional information as the Committee may require concerning the proposed structure or alteration.

(b) All approvals and disapprovals by the Committee of the plans and specifications for any structure to be constructed or altered on any portion of the Property shall be conclusive and binding upon all Owners.

(c) The Association shall upon demand at any time, furnish to any Owner of any Lot a certificate in writing signed by an officer of the Association, stating whether any building, wall, patio, playhouse, mail-box or other structure erected upon such Owner's Lot, or any exterior addition to, change in, or alteration of any Dwelling Unit or any other structure owned by such Owner on a Lot, is in compliance with the provisions of this Section, and such certificate shall be conclusive as to whether the same is in such compliance as of the date the certificate was issued.

(d) In the event that any construction or alteration work is undertaken or performed upon any Lot without application having been first made and approval obtained as provided in paragraph (a) of this Section, said construction or alteration work shall be deemed to be in violation of this covenant, and the person upon whose Lot said construction or alteration work was undertaken or performed may be required to restore to its original condition, at its sole expense, the property upon which said construction or alteration was undertaken or performed. Upon the failure or refusal of any person to perform the restoration required herein, the Committee or their authorized agents or employees, may, after fourteen (14) days' notice to such

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person, enter upon the property upon which such unauthorized construction or alteration work has been performed, and make such restoration as the Committee, in the exercise of its discretion, may deem necessary or advisable. The person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs that the Association may incur in the performance of such restoration work, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the Assessments provided for in Article Nine of this Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due annual Assessment payment, as provided in Section 9.8 of this Declaration, or at such earlier time, and in such installments, as the Committee shall determine.

Section 4.4 Architectural Control Committee. The Board shall be authorized to appoint an architectural control committee (the "Committee") to advise it and assist it in connection with its performance of its responsibilities under Section 4.3 of this Article. The functions which may be performed by the Committee shall include reviewing plans and specifications which are submitted in connection with proposals to construct or alter improvements upon the Lots and to make recommendations with respect to such plans and specifications. The Committee shall also be authorized to promulgate from time to time design guidelines and/or rules and regulations governing construction on or alteration of the Dwelling Units within the Property (the "Architectural Guidelines"). Notwithstanding, the Committee shall not be responsible for the structural integrity, soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements and regulations.

Section 4.5 Application of this Article.

- (a) This Article shall apply to any additions to the Property subsequently made subject to this Declaration and the terms and provisions of any Supplemental Declaration.
- (b) Repainting using an existing paint color, re-roofing, minor repairs, and the like shall not require the approval of the Committee if done or made in accordance with the construction or design guidelines promulgated or adopted by the Committee or the Association.
- (c) Notwithstanding anything to the contrary contained herein, the **Declarant's** construction of improvements on any Lot or on any Common Area shall be exempt from the provisions of this Article. Nothing contained in this Article shall be construed as prohibiting or conditioning any construction by Declarant upon any Lot or Common Area while such property is owned by the Declarant. The exemption of Declarant from the provisions of this Article shall survive the termination of the Class B membership.

**ARTICLE FIVE
RESTRICTIONS ON USE AND RIGHTS OF THE
ASSOCIATION, DECLARANT AND OWNERS**

The following restrictions are placed on the Property (including without limitation all Lots and Common Areas) and the use thereof:

Section 5.1 Permissible Uses. No Lot shall be used except for single-family residential purposes allowed under applicable zoning regulations (with the exception of any sale center or model home constructed or used by the Declarant, or his agent who has received the prior written permission of Declarant). The term single-family shall include no more than three (3) unrelated people. No Lot shall be used for any commercial, business or professional purposes. Specifically, no "Model Home" or "Open House" type of operation shall be allowed within the Property other than with Declarant's explicit written permission, notwithstanding Declarant's right to operate such "Model Home" or "Open House", at its discretion, anywhere within the Property at any time. Notwithstanding the foregoing, nothing set forth in this Section shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Lot or any Dwelling Unit as the Declarant shall determine; or (b) the Owner of any Dwelling Unit from using a portion of such Dwelling

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Unit as a home office, provided that such use does not create regular customer or client traffic to and from such Dwelling Unit and no sign, logo, symbol, or nameplate identifying such business is displayed anywhere on such Dwelling Unit or Lot.

No building of any type shall be erected, altered, placed, or permitted to remain on any Lot other than a Dwelling Unit and accessory structures that comply with any applicable zoning regulations and the requirements of Articles Four and Five of this Declaration. The Lots within the Property shall be limited to one single-family attached Dwelling Unit and accessory structures with appropriate setbacks approved in accordance with the terms of this Declaration structures with appropriate setbacks approved in accordance with the terms of this Declaration and complying with the requirements of the Raleigh City Code and the site plan for the Property approved by the City of Raleigh.

No Dwelling Unit may be rented for a period less than six (6) months, and any such rental of a Dwelling Unit shall be subject to any rules and regulations implemented by the Board of Directors.

Section 5.2 General Care and Maintenance. Each Owner shall (a) keep the interior of its Dwelling Unit including, but not limited to, all appliances and utility systems, and the exterior of its Dwelling Unit in a safe condition at all times; (b) permit no unsafe or unsanitary conditions in its Dwelling Unit or on its Lot; (c) comply with any and all obligations imposed upon Owners by applicable laws, statutes, ordinances, rules and regulations of federal, state or municipal governmental authorities, and building and housing codes for the use, occupancy, contraction of and maintenance of any improvements upon or within its Lot or Dwelling Unit; and (d) not deliberately or negligently destroy, deface, damage or remove any part of any Dwelling Unit, or the Common Areas, or knowingly permit any person to do so. If an Owner fails to comply with the standards or requirements of the Association relative to maintenance after written notice to do so the Association shall have the right to undertake the necessary maintenance or repairs at the expense of the defaulting Owner, as provided in Section 7.9. (See also Article Eleven.)

Section 5.3 Offensive Activity. No noxious or offensive activity shall be conducted upon any portion of the Property, nor shall anything be done thereon which may be or may become an embarrassment, discomfort, annoyance or nuisance to any other Owner, tenant or guest thereof or which may endanger the health or safety of any other Owner, tenant or guest thereof within the Property.

Section 5.4 Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Property, or cause or allow any disturbance, including, but not limited to, shouting, singing, or playing any musical instruments, radio, stereo, or television, in a manner that unreasonably disturbs any other Owner within the Property.

Section 5.5 Fire Hazards. No Owner shall make any alterations to its Dwelling Unit or bring or keep anything therein which will increase the risk of fire, conflict with fire laws or the regulations of the applicable governmental entity, or increase the premiums of any insurance policy on the Buildings or portions thereof on the Property maintained by the Association.

Section 5.6 Rubbish. All trash, garbage and other waste shall be kept in clean and sanitary containers within each Dwelling Unit or appropriate containers on the Lot but which shall be screened from public view except on garbage collection days. The Owner of each Lot shall be responsible for placing such garbage in a roll-out container and rolling the container out to the designated trash pick-up area on a regular basis.

Section 5.7 Animals. No livestock, poultry or other animals shall be kept or maintained in any Dwelling Unit or on any Lot, except for a reasonable number of common household pets, such as cats and dogs which otherwise comply in all respects with the provisions of this Declaration. No pets may be kept or

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bred for any commercial purposes, and no savage or dangerous pets may be kept on the Property. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. All pets must be housed inside a Dwelling Unit, and no pet shall be permitted upon the Common Area unless carried or leashed by a person that can control the pet. Pets shall not be permitted to defecate in the Common Area, or urinate on the shrubbery, and each Owner shall clean up immediately after its pet if an accident occurs. All pets shall be registered and/or inoculated as required by law. Each Owner shall hold the Association harmless from any claim resulting from any action of its pet, and shall repair at its expense any damage to the Common Area caused by its pet. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the Owner to remove the pet permanently from the Property upon not less than ten (10) days' written notice.

Section 5.8 Decks; Patios; Porches. Any deck, patio or porch that is a part of any Dwelling Unit shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the overnight storage of garbage, or for the drying of laundry. In particular, towels, blankets, sheets or banners shall not be hung on the deck, porch or balcony railings, and any dead plants shall be removed promptly. No indoor-outdoor carpeting, hot tub, or other pool shall be installed on any deck, patio or porch. Any furniture on the deck, patio or back porch shall be appropriate outdoor furniture and shall be maintained in a neat, tidy, and good condition. No furniture, wind chimes, bird feeders, grills or other objects may be kept or stored on the front porch of any Dwelling Unit. If permitted by applicable building codes and zoning ordinances, an Owner may use or store a cooking grill on a rear deck, patio or back porch, but such Owner shall be responsible for complying with all applicable laws, ordinances, and regulations in connection with such storage and use. All other personal property (such as bicycles, lawn care equipment and recreational equipment) shall be stored inside a Dwelling Unit.

Section 5.9 Signage. No commercial signs or billboards of any kind (except one sign per Lot of not more than four square feet containing the words "for sale" and located in the window of the affected Dwelling Unit, provided, however, that in no event shall any Owner other than Declarant place such "for sale" sign be permitted until such time as the last Lot within the Property has been conveyed by Declarant) shall be displayed in public view on any Lot, facility, appurtenance, short or long term parked vehicle, accessory building or structure unless approved by the Committee, who may also from time to time provide design criteria and color schemes for approved signage. Notwithstanding the foregoing, the Declarant, subject to the regulations or ordinances promulgated by the City of Raleigh, shall have the right to locate sign or signs on any Lot that Declarant owns or in the Common Area indicating the location of sales and rental centers, identify model homes or living units, any Facilities and such other informational signs of any type as may be necessary or desirable, or containing the words "For Sale" or "For Lease", in Declarant's sole opinion, to facilitate Declarant's plans for development and sales at the Community. The provisions of this Section shall not prevent the placement of permanent signs identifying the Property at its entrances. The provisions of this Section shall not prohibit small signs customarily incidental to residential use, subject to reasonable rules and limitations established by the Board or the Committee.

Section 5.10 Fences. No fence, wall or patio enclosure shall be erected, maintained or permitted upon the Property, other than those installed by Declarant prior to the initial conveyance of each Lot.

Section 5.11 Clotheslines. No clothesline of any type shall be placed, used or allowed to remain on any Lot.

Section 5.12 Use of Common Area in General. No Owner shall obstruct the entrances, streets, sidewalks, driveways, parking areas and other facilities in the Common Area in any way, or use them for other than their intended purposes. The Common Area shall not be used for the storage of supplies, personal

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property or trash or refuse Many kind except in Common Area trash receptacles placed at the discretion of the Board. There shall be no bicycles, tricycles, wagons, toys, grills, campers, boats, stored cars, or other miscellaneous personal property parked or left in the Common Area at any time. All bicycles shall be parked in the area designated for bicycles. In general, no activity shall be carried on nor conditions maintained by any Owner either in its Dwelling Unit, on its Lot or upon the Common Areas which despoils the appearance of the Property.

Section 5.13 Vehicles; Parking. All vehicles must be parked in the asphalt parking area and may not obstruct or interfere with the ingress or egress of others. All parking in the Common Areas shall be on a first-come, first served basis, and subject to any rules or regulations that may be promulgated by the Association unless otherwise designated by the Association who may promulgate rules for the same. No house trailer or mobile home, school bus, truck or commercial vehicle over three-fourths (3/4) ton capacity or having ladder or pipe or similar racks or utility beds, boat or boat trailer, motor home, camper, or van (not to include passenger vans for non-commercial use), junked or wrecked vehicle, or vehicle on blocks shall be kept, stored or parked overnight either on any street or Common Area or on any Lot. Nothing contained herein shall be interpreted, construed or applied to prevent Declarant from locating construction vehicles within the Property as necessary. No significant automobile repair shall be allowed on the Property including, without limitation, oil changes. The Association shall have the right to tow any vehicle in violation of this Section at its owner's expense.

Section 5.14 Division of Lots; No Time Sharing; Leasing.

- (a) No Lot shall be further subdivided into Multiple Dwelling Units.
- (b) No Lot or ownership interest may be subdivided to permit time sharing or other devices to effect interval ownership unless approved by the Association subject to conditions which maybe imposed by the Association. For purposes of this Section "time sharing" or "other devices to effect interval ownership" shall include, but not be limited to, ownership arrangements, including uses of corporations, trusts, partnerships, leases or tenancies in common, in which four or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling Unit and such owners have a formal or informal right-to-use or similar agreement.
- (c) Leasing of a residence shall be permitted provided that the minimum terms of the lease shall be six (6) months; provided, however, that any Owner, including Declarant, may rent a Dwelling Unit for a period of less than six (6) months to a bona fide contract purchaser who is legally obligated to acquire title to such Dwelling Unit within such six (6) month period. Subject to the foregoing restrictions, an Owner shall have the right to lease its Dwelling Unit; provided that said lease is in writing and (pursuant to a standard lease rider furnished by the Association) is made subject to all provisions of this Declaration, including (but not limited to) the Bylaws of the Association, the Rules and Regulations and the other documents referred to herein and therein; and provided further that any failure of such lessee to comply fully with the terms and conditions of such documents shall constitute a default under such lease. Copies of all leases must be furnished to the Association prior to the commencement of the term thereof. No leasing shall, however, relieve an Owner from its obligations hereunder and such Owner shall remain primarily responsible for compliance with this Declaration, the Bylaws and the Rules and Regulations. The Association shall have the authority to impose fines, for which the Owner and tenant shall be jointly and severally liable, for any such violations of the Declaration, Bylaws or Rules and Regulations. In the event that a tenant of a Dwelling Unit fails to comply with any of the provisions of this Declaration, the Bylaws or the Rules and Regulations then, in addition to all other remedies which it may have, the Association may notify the Owner of such violation(s) and demand that the same be remedied through the Owner's efforts within thirty (30) days after such notice. If any such

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violation is not remedied within such thirty (30) day period, then the Owner shall immediately thereafter, at its own cost and expense, institute and diligently prosecute an eviction action against his tenant on account of such violation(s). Such action shall not be compromised or settled without the prior written consent of the Association. In the event that the Owner fails to fulfill the foregoing obligation, then the Board shall have the right, but not the duty, to institute and prosecute such action as attorney-in-fact for the Owner and at the Owner's sole cost and expense, including all legal fees and costs incurred. Any such fines assessed or costs and expenses incurred in accordance with this Section shall be due and payable upon demand by the Association and shall be deemed to constitute a lien on the particular Lot involved, and collection thereof may be enforced by the Board in the same manner as the Board is entitled to enforce collection of Assessments. Notwithstanding anything contained herein to the contrary, Declarant and any Dwelling Unit owned by Declarant, shall be excluded from the rental period limitations set forth in this section.

Section 5.15 Exterior Restrictions. Except as in accordance with the Rules and Regulations, nothing shall be hung, painted or displayed on the outside of the windows (or inside, *if* visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Dwelling Units, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of Dwelling Units, or any part thereof, nor relocated or extended, without the prior written consent of the Committee. Notwithstanding the foregoing, blinds, curtains, window shades and the like shall be permitted within a Dwelling Unit without prior Committee approval so long as that portion of such blinds, curtain and window shades visible from the outside is in compliance with the Rules and Regulations. Window air conditioners are prohibited. Notwithstanding the foregoing, Declarant shall have the right to display signs for promotional sales, exhibits, direction and administrative purposes upon any portion of the Common Area and on or in any Lot or Dwelling Unit owned or leased by it.

Section 5.16 Antennas. No antennas, aerials, satellite dishes or other receptive devices shall be installed on any Common Area, Lot, or exterior of a Dwelling Unit as long reception through another source (including cable) is obtainable.

Section 5.17 Unightly Conditions. It is the responsibility of each Owner to prevent any unclean, unsightly or unkept conditions to exist on his Lot, Dwelling Unit, or grounds which shall tend to decrease the beauty of the Property, specifically or as a whole.

During the construction or maintenance of any improvement to a Lot in the Property, the Lot, roads, bike paths, landscaping and Common Area adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Notwithstanding the foregoing, Declarant shall be exempt from the requirements of the preceding sentence during the initial construction of improvements by the Declarant (the "Initial Construction of Improvements"). Any damage to the street, curb, sidewalk or to any part of any Common Area or utility system caused by an Owner or an Owner's contractor shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

In the event the Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain the Lot or Dwelling Unit, and adjoining areas, as specified herein, or allow damage to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot or Dwelling Unit, and adjoining area. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Association and will become a continuing lien on the

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Lot until paid.

Notwithstanding anything to the contrary or apparently to the contrary herein, the Declarant shall be exempt from the provisions set forth in this Section.

Section 5.19 Other Use Restrictions. In accordance with Section 1.2 hereof, a Supplemental Declaration may set forth additional use restrictions that will apply to the Property.

**ARTICLE VI
ADDITIONAL RIGHTS RESERVED TO DECLARANT**

Section 6.1 Withdrawal of Property. The Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Article One, for the purpose of removing any portion of the Property that has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots then subject to the Declaration by more than ten percent (10%). Such amendment shall not require the consent of any person other than the Owner(s) of the property to be withdrawn. If the property is or includes Common Area, the Association must first consent to such withdrawal. The Declarant shall not otherwise have the right to withdraw any of the Property from the terms of this Declaration without the consent of at least two-thirds (2/3) of the Lot Owners other than the Declarant.

Section 6.2 Right to Develop. After the conveyance of Common Areas to the Association, the Declarant and its employees, agents, contractors and designees shall have a right of access and use and an easement over and upon all of the Common Areas for the purpose of making, constructing and installing such improvements to the Common Areas as it deems appropriate in its sole discretion. Damage done to the Common Areas shall be repaired, restoring the Common Area to its original condition, to the extent such repair and restoration is reasonably practicable.

Every person that acquires any interest in the Property, by acceptance of a deed made subject to this Declaration or recorded after this Declaration, acknowledges that the Community is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise object to (a) changes in uses or density of property outside the Townhomes in which such person holds an interest, or (b) changes in the site plan filed with the County of **Wake and the City of Raleigh** in connection with the Property as it relates to property outside the Community. Although it is Declarant's intention to develop the Community in accordance with approved site plans, Declarant shall have the right, without the consent or approval of the Owners to develop the Community at its own pace, in phases, in any order, add Common Area, increase the number of Dwelling Units, change Dwelling Unit types, withdraw real property from the development and alter the site plan with approval of governmental authorities.

Section 6.3 Right to Transfer or Assign Declarant Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. Except for any Declarant rights that automatically transfer to the Association pursuant to the terms hereof, no such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Wake County Registry. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record a written assignment necessary to evidence Declarant's consent to such exercise.

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Section 6.4 Marketing. Until such time as the last Lot is conveyed by Declarant, Declarant shall be entitled to operate one or more "model" homes within the Property (including within any unsold Dwelling Unit) and to otherwise engage in all reasonable activities intended to market and sell Dwelling Units, including, without limitation, locating marketing and directional signs and flags within the Property and locating construction and sales trailers within the Property. Declarant shall have the right to use, without charge, any portion of the Common Area for sales, management, marketing and construction purposes with respect to the Dwelling Units located or to be located within the Property; provided that such use shall not unduly interfere with the use of the Common Area by the Members for the purposes for which they are reasonably intended. Such right shall continue until Declarant no longer owns any Lots in the Property.

Section 6.5 Right to Redesignate Certain Property. The Declarant, until one year after the last termination of Class B membership, hereby reserves for itself and its successors and assigns the right to redesignate property types or boundary lines shown on a Recorded Plat by recording a new Recorded Plat showing such changes and executed by the Declarant or its successors or assigns and any Owners of property redesignated or for which the boundary line is thereby changed.

ARTICLE SEVEN
MEMBERSHIP; VOTING RIGHTS IN THE ASSOCIATION;
RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

Section 7.1 Membership. Every person or entity who is a record Owner of a fee simple interest in any Lot in the Property is subject by this and any other declarations made in connection herewith to all rights, responsibilities and assessments of the Association and shall be a Member of the Association, provided, however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

Section 7.2 Voting Rights. The Association shall have two (2) classes of voting memberships:

- (a) Class A. The Class A Members shall be all Owners of lots within the Property, other than the Declarant as long as Class B membership exists. Any Class A Member in the Property shall be entitled to one (1) vote for each Lot which it owns. In the case of multiple ownership of any Lot, however, those multiple Owners shall be treated collectively as one Owner.
- (b) Class B. The Class B Member shall be the Declarant, who shall be entitled to twenty (20) votes for each Lot owned by it within the Property. The Class B membership shall cease and be converted to Class A membership on the happening of the first to occur of the following events:
 - i) Declarant has sold and closed the sale of all Lots within the Property, or
 - ii) Declarant voluntarily surrenders control of the community to the Association by written notice.

If the Class B membership has been terminated or has expired and subsequently additional properties owned by the Declarant become subject to this Declaration pursuant to Section 1.2 prior to the date stated in subsection (ii) above, the Class B membership shall immediately be reinstated as of the date such additional properties become subject to this Declaration and shall not terminate except in accordance with subsection (i) and (ii) above. Following the termination of Class B membership, the Declarant shall become a Class A member.

Section 7.3 Voting; Proxies; Quorum.

- (a) If only one of the multiple Owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the

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multiple Owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

(b) Votes allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.

(c) No votes allocated to a Lot owned by the Association may be cast.

(d) Unless the bylaws provide otherwise or a different percentage is specifically provided for herein, a quorum is present throughout any meeting of the Association if persons entitled to cast ten percent (10%) of the votes which may be cast are present. When a quorum is present at any meeting, a majority of the votes entitled to be cast by the Members present or represented by proxy shall decide any question brought before the meeting unless the question is one upon which, by express provision of the Covenants or the Bylaws, a different vote is required, in which case such express provision shall govern and control.

Section 7.4 Rights and Responsibilities of the Association. Subject to the provisions as set forth in this Declaration, the Association has exclusive management and control of the Common Areas and all improvements thereon and all furnishings, equipment and other personal property relating thereto. The Association's duties with respect to such Common Areas include, but are not limited to, the following:

- (a) maintenance of the Common Areas;
- (b) management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment, and personal property constituting part of the Common Areas or located upon the Common Areas so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;
- (c) all landscaping of the Common Areas;
- (d) maintenance of adequate public liability insurance, in an amount not less than \$1,000,000 per occurrence insuring the Association and its officers and directors, and adequate property casualty or hazard insurance with a minimum replacement value of one hundred percent (100%) after application of any deductibles, for the benefit of the Association with respect to the Common Areas;
- (e) payment of all taxes and assessments validly levied, assessed or imposed with respect to the Common Areas;
- (f) maintenance of private streets and recreational and other facilities located on the Common Areas;
- (g) payment of assessments for public and private capital improvements made to or for the benefit of the Common Areas;
- (h) procurements and maintenance insurance as required under Article Ten;
- (i) maintenance to be performed pursuant to Article Eleven; and
- (j) ownership, management, operation, maintenance, repair and servicing of utility lines, including, but not limited to, water, electricity, gas, telephone, television, cable and sewer pipes located within the Common Area to the extent such utility lines are not owned and maintained by the utility companies or the City of Raleigh, as appropriate.

During the existence of Class B membership, the insurance as required in subsection (d) above may be provided by a self-insurance program maintained by the Declarant. The Association may in its discretion also provide other services as and to the extent the Association deems appropriate, such as, but not limited to, security services or devices including, but not limited to, operation of the entry guard house and any other security gates, security personnel and overall traffic control.

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Section 7.5 Construction of Streets and Roads. The Association shall be required to undertake the management, operation, maintenance, repair, servicing, replacement and renewal of any private streets and roads constituting Common Area and all improvements thereon. The maintenance obligations of the Association for the streets and roads shall only be to the extent such activities are not performed by the applicable governmental entities.

Section 7.6 Third-Party Services. The Association may obtain and pay for the services of any person or firm to manage its affairs to the extent the Board deems advisable, as well as such other person or firm as the Board determines is necessary or desirable, whether such person or firm is furnished or employed directly by the Association or by any person or firm with whom it contracts. Without limitation, the Board may obtain and pay for legal, accounting, engineering or other professional services necessary or desirable in connection with the Common Areas or the enforcement of this Declaration, the Association's Articles of Incorporation, Bylaws, rules or regulations.

The Association may, acting through its Board, contract with other residential associations or commercial entities, neighborhoods or clubs to provide services or perform services on behalf of the Association and its Members. In addition, the Association *may* contract with other residential associations or commercial entities, neighborhoods or clubs within the Community to provide services in or perform services on behalf of such other associations, neighborhoods or clubs.

Section 7.7 Ownership By the Association. The Association may acquire, hold, exchange and dispose of real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in this Declaration, the Association's articles of incorporation or the Bylaws.

Section 7.8 Rules and Regulations. The Association, from time to time, may adopt, alter, amend, rescind and enforce reasonable rules and regulations relating to the Property, including without limitation, rules and regulations governing the use and operation of the Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration (the "Rules and Regulations"). The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property.

Section 7.9 Non-Performance By Owner. The Association may perform any duty required of an Owner hereunder or under the Bylaws and assess the costs thereof against the Owner's Lot(s), as a Special Individual Assessment in accordance with the provisions of Section 9.5 hereof. The Association shall first provide thirty (30) days' written notice to the Owner of its intention to perform such duties and charge the Owner for the cost thereof, and it shall so perform the duties and charge the Owner for the cost thereof only if the duties are not fully performed at the end of the 30-day period.

Section 7.10 Landscaping. The Association may provide for or perform itself the services of landscaping and maintenance of right-of-way dedication areas on or adjacent to the Property so as to ensure an aesthetically pleasing and uniform look along roads, streets, rights-of way, or Common Areas that are within or adjacent to the Property. Expenses of the Association in performing these tasks, should the Association choose to assume responsibility for these tasks, shall be a Common Expense.

ARTICLE EIGHT
PROPERTY RIGHTS IN THE COMMON AREAS

Section 8.1 Members' Easements of Enjoyment. Subject to the provisions of Section 8.3, every

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Member shall have a right and easement of enjoyment to all of the Common Areas and the Facilities. If necessary because of a lack of access across public streets or rightsof-way to Common Area and Facilities, every Member shall also have an easement of not less than ten (10) feet wide, which shall be shown on a Recorded Plat, for access, ingress, and egress to and from streets, parking areas and walkways or pedestrian walkways in and to all of the Common Area and the Facilities. The foregoing easements shall be appurtenant to and shall pass with the title to every Lot in the Property. In the event any utility lines serving a Lot cross Common Area, every Owner whose utility lines cross such Common Area shall have a non-exclusive right and easement of use across such Common Area that supports such utility lines and such easement shall be appurtenant to and shall pass with the title to such Lot in the Property.

Section 8.2 Delegation of Use. Subject to the provisions of Section 8.3, any Owner may delegate its rights of enjoyment of the Common Areas and the Facilities to the members of its family, its tenants, contract purchasers who reside on the property, or its guests.

Section 8.3 Title to Common Areas. Declarant reserves the right to construct and/or convey the Common Areas in phases. The Declarant may retain the legal title to any Common Areas shown on any Recorded Plat of the Property, until such times as it has completed improvements, if any, thereon and until such times as Declarant so wishes and/or, in the opinion of the Declarant, the Association is able to maintain the same; but, notwithstanding any provision to the contrary herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey by special warranty deed(s) for no consideration, and upon such conveyance the Association shall accept, any such Common Areas to the Association not later than the earlier of the date required by law or the sale of the last Lot in a phase in which Common Area is located. Declarant shall be responsible for any realty transfer tax due and the Association shall be responsible for recording fees and title insurance, if any, associated with such conveyance. All such deeds of conveyance shall be recorded in the Wake County Registry. Acceptance of the deed(s) to such Common Areas shall not constitute a waiver of Declarant's obligation to complete the Common Areas or any improvements thereto. Conveyance of Common Areas to the Association shall be deemed to have been made subject to the right of the Declarant to construct improvements or complete construction thereof, as applicable, on the Common Areas. The conveyance shall be in fee simple without any encumbrances except drainage, greenway and utility easements, and easements reserved hereunder or on Recorded Plats. Title in the Common Areas and private streets, if any, shall be for the perpetual benefit of the Members, and private or public ownership for any purpose other than for the benefit of the Members is prohibited.

Upon conveyance of the Common Areas by the Declarant to the Association, the Association shall not subsequently subdivide or Convey the Common Areas, except as follows:

- (a) The Association may convey or mortgage the Common Areas with the consent of at least seventy percent (70%) of the votes of the Association, who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws for such special meeting. In the event the Association votes to mortgage all or any part of the Common Areas, the rights of the mortgagee must be subordinated to the rights of the Owners and the Association.
- (b) In the event the Association is dissolved, the Common Areas shall be first offered to the City of Raleigh in fee simple. If the City of Raleigh refuses such property, then it shall be offered to another nonprofit organization that shall agree to maintain it.
- (c) In the event that it is determined by the Declarant that the Common Areas were conveyed to the Association by mistake, upon the request of the Declarant, the Association shall convey the Common Areas back to the Declarant without the necessity of a vote by the Members.

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- (d) The Association may exchange Common Areas for other properties when all of the following are met:
- (i) written notice of the exchange is given to all Members except in cases where the exchange is done to eliminate an encroachment;
 - (ii) after notice is given, if required, the Association approves the exchange in accordance with the requirements of conveying such property herein;
 - (iii) the exchanged properties and other considerations are of like value and utility to the Association;
 - (iv) the acreage and configuration of the remaining open space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Raleigh City Code; and
 - (v) the exchange is approved by the Planning Director of the City of Raleigh.

Conveyance of Common Areas to the Association shall be made subject to the right of the Declarant to construct common improvements or complete construction thereof, as applicable, on the Common Areas. The right of Declarant to construct or complete construction of such improvements shall terminate three (3) years after the termination of Class B membership.

Section 8.4 Extent of Members' Easements. The rights of Members of the Association shall in no way be altered or restricted because of the location of Common Areas in any additions to the Property in which such Member is not a resident. The use of Common Areas belonging to the Association shall be a membership entitlement. The rights and easements of enjoyment created herein shall be subject, however, to the following:

- (a) the right of the Declarant, in its sole discretion, to grade, pave or otherwise improve any road or street shown on any Recorded Plat;
- (b) the right of the Association to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Areas, including the right to limit the number of guests, to regulate hours of operations and behavior, and to curtail any use or uses it deems necessary for either the protection of the Facilities or the peace and tranquility of adjoining residents;
- (c) the right of the Association, as provided in its Articles of Incorporation or Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment of that Member remains unpaid, and for any period not to exceed sixty (60) days for any infraction of any published rules and regulations adopted by the Board;
- (d) the right of the Association to lease and use any of the Common Areas for functions, lessons, or special events and to allow the *lessee* to charge admission or other fees for functions, lessons, or special events;
- (e) subject to any governmental regulations, the right of the Association or its assignee to charge reasonable admission and other fees for use of any of the Association's Facilities situated upon its Common Areas; and
- (f) the right of the Association to dedicate or transfer all or any part of the Common Areas (which includes streets and roads) or private water/sewer lines to any public agency, authority or utility

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(public or private) for such purposes and subject to such conditions as may be agreed to by the Members. Except as provided below, no such dedication or transfer shall be effective unless the Declarant and the Members entitled to cast at least seventy-five percent (75%) of the Class A votes agree to such dedication or transfer and signify their agreement by a document certified by the Association that a vote was taken at a duly called meeting and that sufficient assent for the dedication or transfer was had and recorded in the Wake County Registry; provided that, notwithstanding the foregoing, the Declarant (during Class B membership), and thereafter, the Association shall each have the right, power and authority to grant easements and rights-of-way for the installation and maintenance of drainage facilities and of utilities, whether private, public or quasi-public, including cable television, water, gas and sewer upon, over, under and across any Common Area, without the assent of the Members when, in the sole opinion of the Declarant or the Board, as applicable, such easements are required or reasonably necessary for the development and/or the convenient use and enjoyment of the Property and, in the sole opinion of the Declarant or the Board, as applicable, will not unreasonably interfere with the overall use and enjoyment of the Common Areas; and provided further this Subsection shall not preclude the Board from conveying at such purchase price as the Board deems appropriate strips or portions of the Common Areas to any Owner in order to resolve any gap, gore, overlap or other boundary line conflict or to make the Lot more usable as a home site provided such conveyance does not in the good faith judgment of the Board adversely affect the overall use and enjoyment of the Common Areas.

Section 8.5 Conveyance or Encumbrance of Common Areas. Portions of the Common Area may be conveyed or subjected to a security interest by the Association if at least two-thirds (2/3) of the Class A Members consent and with the affirmative vote of at least seventy percent (70%) of the total votes in the Association, made in writing and kept on file with the Association for at least five (5) years. Proceeds of the sale or financing of a Common Area shall be an asset of the Association. The Association, on behalf of the Owners, may contract to convey Common Area or subject it to a security interest, but the contract is not enforceable against the Association until approved by the Members as described herein. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any Owner or the Association in or to the Common Area conveyed or encumbered, including the power to execute deeds or other instruments. Any purported conveyance, encumbrance, or other voluntary transfer of Common Area, unless made pursuant to this Section, is void. No conveyance or encumbrance of Common Area pursuant to this Section may deprive any Lot or Dwelling Unit of its rights of access and support.

Section 8.6 Private Roads. In the development of the Property, the Declarant may construct certain private streets or roads within the Property connecting parcels of the Property to public rights of way. The Owners shall have a perpetual, non-exclusive easement but no more than an easement for vehicular or pedestrian ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private streets and roads to and from all portions of the Property, and there shall be no public rights of any kind therein, unless approved by the Members in accordance with the provisions of Section 8.3. Declarant reserves the right to name and revise from time to time the names or other designations given to such private streets or roads. Subject to the approval of the Raleigh Planning Department, the Declarant reserves the right to name and revise from time to time the names or other designations given to such private streets or roads. In no case shall the City of Raleigh be responsible for failing to provide emergency or regular fire, police, or other public service to the Property or the Owners, their guests or tenants, when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, or the Owners. In no case shall the City of Raleigh or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and the Owners in that such private streets will not be inspected by the City to ensure that they were constructed to the minimum standards sufficient to allow their inclusion for public maintenance. The Association shall also be responsible for any curbs, gutters, storm drains and the like associated with the private streets.

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ARTICLE NINE
COVENANT FOR PAYMENT OF ASSESSMENTS

Section 9.1 Creation of the Lien and Personal Obligation for Assessments. Each Member, other than the Declarant, who is the Owner of any Lot, by acceptance of a deed therefor, and all other Members, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay as limited below, to the Association:

- (a) annual assessments or charges as herein or in the Bylaws provided;
- (b) special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein or in the Bylaws provided);
- (c) Special Individual Assessments, as defined and described in Section 9.5; and
- (d) working capital assessments of **Four Hundred Dollars (\$400.00)**, due and payable by the grantee at the time such Lot is conveyed by the Declarant.

The annual and special Assessments and any Special Individual Assessments of an Owner and any fines, liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who is (are) the Owner(s) of such properties at the time when the Assessment fell due. Payment of the working capital assessment shall not reduce the annual assessment.

Section 9.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, access, maintenance of property values, security, safety and welfare of the residents of the Property and other Members, and in particular for:

- (a) Improvement, maintenance, and replacement of any of the Association's Common Areas including, without limitation, the Facilities;
- (b) payment of the Common Expenses;
- (c) implementation and enforcement of proper maintenance of exteriors of Dwelling Units and related improvements on improved Lots in the Property, if necessary, subject to reimbursement by the Owner(s) of such property pursuant to Sections 11.1 and 11.2 of this Declaration;
- (d) establishment of capital replacement reserves; and
- (e) acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Association's Common Areas, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, to perform any maintenance as provided herein including Section 11.1 pertaining to lawn care of each Lot, the payment of taxes assessed against those Common Areas, the procurement and maintenance of insurance related to those Common Areas, its recreational facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes.

Section 9.3 Assessment of Uniform Rates within Different Categories or Forms of Ownership. Both annual and special Assessments shall be fixed at uniform rates for each Dwelling Unit and vacant Lot within the Property. Except as specified in Sections 9.13 and 9.14, there will be no difference between assessments as to vacant Lots or between assessments as to Dwelling Units.

Section 9.4 Special Assessments for Capital Improvements.

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(a) In addition to the regular annual Assessments, the Association may levy in any assessment year, a special Assessment, applicable to that *year* only, for the purpose of, without limitation, defraying, in whole or in part, the cost of professional or consulting fees, any construction or reconstruction, unexpected repairs or replacement of any capital improvement (including, without limiting the generality thereof, any lake, waterway, or pond) located upon the Association's Common Areas (in the discretion of the Association), including the necessary fixtures and personal property related thereto.

(b) In addition to the foregoing special Assessment approved by the Members, as described in the preceding paragraph, the Association may levy a special Assessment, in the event of emergencies in which the Association perceives a threat to persons or to property, without the consent of the Members.

Section 9.5 Special individual Assessments. In addition to the regular annual Assessments and the special Assessments for capital improvements described above, the Association may levy, from time to time, on a particular Lot rather than on all Lots or types of Lots in the Property, special individual Assessments, immediately due and payable, consisting of any fines assessed by the Association under authority contained herein or in the Bylaws for an Owner's violations of the terms and conditions of this Declaration, any liquidated damages or summary charges imposed under authority contained in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement of any rules and regulations, the collection of Assessments (both annual and special) or the collection of damages or charges arising under the Bylaws, all of the foregoing of which shall comprise "Special Individual Assessments".

Section 9.6 Application of Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses (including expenses for special Assessments described in Section 9.4 hereof), the funding of a reasonable operating expense surplus, and any prepayment of reserves (as established by the Board or as otherwise required by law), shall be paid to the existing Owners in proportion to their Commons Expense liabilities or credited to them to reduce their future Assessments for Common Expenses, the election of which application of the funds shall be made by the Board.

Section 9.7 Quorum for any Action Under Sections 9.4 and 9.14. The quorum required for any action authorized by Sections 9.4 and 9.14 hereof shall be as follows: At the first meeting called as provided in Section 9.9, the presence at the meeting of Members, or of proxies, entitled to cast ten percent of all the votes of the membership shall constitute a quorum.

Section 9.8 Date of Commencement of Annual Assessment: Due Dates. The regular annual Assessments provided for herein shall be paid (as determined by the Board) in monthly, quarterly, semiannual, or annual installments. The payment of the regular annual Assessment by Owners shall commence as to each Lot on the first day of the month following the conveyance of that property by the Declarant. The first regular annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual Assessment at least fifteen (15) days in advance of each regular annual Assessment period and the manner of payment by the Owner (ex. check, automatic debit, certified funds, ect.). Written notice of the regular annual Assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board. The Association, upon any qualified demand (as determined by the Board) at any time, shall furnish, for a fee as determined by the Board, a certificate in writing signed by an officer of the Association or the management company (if the association has retained a separate management company to manage the Community) setting forth whether any specific Assessment has been paid. Such properly executed certificate of the Association as to the status of the Assessment is binding upon the Association as of the date of its issuance.

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The first Assessments levied against any additions to the Property not now subject to Assessment, at a time other than the beginning of any Assessment period, shall be an amount which bears the same relationship to the regular annual Assessment as the remaining number of months in that year bear to twelve.

The due date of any special Assessment under Section 9.4 or any other Assessments permitted by the Declaration shall be fixed in the resolution or resolutions authorizing such Assessment.

Section 9.9 Duties of the Board. The Board shall fix the date of commencement, and shall fix the amount of the Assessment or Assessments against each Member, for each Assessment period, at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Members and Assessments applicable thereto which shall be kept in the office of the Association, or at any other place designated by the Board upon notice to the Members, and which shall be open to inspection by any Member. Written notice of the Assessment or Assessments thereupon shall be sent to every Member subject thereto.

Within thirty (30) days after adoption of any proposed budget for the Community, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget shall be deemed ratified at the meeting unless at that meeting a majority of the Owners reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners (or the initial budget if no other budget has been ratified by the Owners) shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board

Assessments to pay a judgment against the Association may be made only against the Lots in the Community at the time the judgment was entered, in proportion to their Common Expense liabilities. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

Section 9.10 Effect of Non-Payment of an Owner's Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association. If the Assessments of an Owner are not paid within thirty (30) days following the date due (being the dates referred to in Section 9.7), then such Assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot(s), which shall bind such Lot(s) in the hands of the then-Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then-Owner to pay such Assessment shall remain his personal obligation for the statutory period; and, in addition, shall pass to his successors in title (as an encumbrance or lien against the Lot) unless expressly waived by the Board.

If the Assessment(s) is not paid within thirty (30) days after the delinquency date, the Assessment(s) shall bear interest from the date of delinquency at the rate of one and one-half percent (1.5%) per month (or the highest rate allowed by law, whichever is less), and the Board, acting on behalf of the Association, may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to file a claim of lien and foreclose such lien against any such Lot(s), in like manner as a deed of trust on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, and there shall be added to the amount of such Assessment, the costs of such action and reasonable attorneys' fees or other cost incurred by the officers of the Association pursuant to authority of the Board. By acceptance of a deed to a Lot, the Owner consents to, and grants to the Association, the power of sale provided herein. A claim of lien shall specify the name and address of the Association, the name of the

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record owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed. In the event a judgment is obtained against any Owner for such Assessments, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. In addition, the Board may set a schedule of late fees also due and payable if an Assessment is not paid within thirty (30) days after the delinquency date, which late fees shall be in addition to the other changes described herein.

Section 9.11 Lien on an Owner's Property. The sale or transfer of a Lot shall not affect any lien for Assessments. However, the sale or transfer of a Lot that is subject to a first mortgage or first deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. The extinguished Assessments shall be collectable as a Common Expense from all Owners in the Community. No such sale or transfer shall relieve a Lot or Owner from liability for any assessments thereafter becoming due, or from the lien thereof.

Section 9.12 Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:

- (a) all Common Areas as defined in Article Two of this Declaration; and
- (b) all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption (Homestead exemptions shall not be considered an exemption.)

Notwithstanding any provision of this Section, no Lot shall be exempt from said Assessments, charges or liens except as described in Section 9.13 hereof.

Section 9.13 Declarant's Obligations for Assessments. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Lot owned by the Declarant shall be subject to any assessment provided for in this Article during any period of time in which Declarant owns such Lot. At such time as any Lot that is owned by the Declarant shall be conveyed or transferred to a third party by the Declarant, all liens and assessments provided for in this Article for the calendar year in which the conveyance occurs shall become immediately levied against such Lot, and the Owner of such Lot shall upon closing thereof immediately become liable for the payment of all such assessments. The amount of the annual Assessment that shall become so payable with respect to any Lot shall be prorated according to the respective portions of the calendar year that such Lot was owned by the Declarant and by such successor owner. Notwithstanding anything contained herein to the contrary, during the period of time that Declarant owns any Lot, Declarant will be responsible for any shortfall in amounts needed for the Common Expenses not to exceed the amount Declarant would have otherwise paid in Annual Dues for Lots owned.

Section 9.14 Maximum Annual Assessment. Until January 1st of the year immediately following the conveyance of the first Lot from the Declarant, the maximum annual Assessment shall be **\$1,200** per Lot. From and after January 1 of the year immediately following the conveyance of the first Lot from the Declarant, the annual Assessment each year shall be increased by no more than five percent (5%) of the previous years' Assessment, unless two-thirds (2/3) or more of each class of the Members present or voting by proxy at a duly called meeting vote to increase the annual Assessments for a given year by more than five percent (5%) above the annual Assessments for the prior year. The Board may fix the annual Assessments at any amount not greater than the maximum described herein or determined by the duly called meeting as described above. The limitation on the increase in the annual Assessments herein shall not apply to any change in the maximum amount of the Assessments undertaken as an incident to (1) a merger or consolidation in which the Association is authorized by law to participate, or (2) as an incident to any additions to the Property or submission of additional property pursuant to Section 1.2 of this Declaration.

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Section 9.15 Reserve Funds. From and after the recording of this Declaration, the Association may establish and maintain a reserve fund or funds for replacement and maintenance of the improvements located on the Common Area or the Property. In that event, the Association shall allocate revenues from Assessments to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any facilities owned by the Association, and for such other purposes as may be determined by the Board.

ARTICLE TEN INSURANCE AND RECONSTRUCTION

Section 10.1 Association Insurance. The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

(a) *Property Insurance*. The Association shall obtain and maintain at all times a policy or policies of property insurance covering all buildings and common area improvements located within the Common Area, in an amount not less than one hundred percent (100%) of the replacement cost of such improvements at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of excavation, paving, foundations and footings, with a commercially reasonable deductible. Such policy shall include insurance for flooding with respect to the Dwelling Units which are located within the one percent annual chance flood plane.

(b) *Liability Insurance*. The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Area; provided, however, that in no event shall the limits of such policy *ever* be less than One Million Dollars (\$1,000,000.00) per occurrence. The Association shall review such limits annually and adjust as needed to appropriately insure against the assessed risk..

(c) *Fidelity Insurance*. The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Association, but in no event less than one-half (1/2) the annual budgeted amount of annual Assessments, or the amount required by any Mortgagee, whichever is greater.

(d) *Other Insurance*. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverage as may be required by any applicable governmental entity or agency ("Agency") (as same may be amended or modified from time to time), and such other insurance coverage as the Board shall determine from time to time to be desirable, specifically including, without limitation, directors and officers liability insurance, performance bonds, payment on labor and material bonds and maintenance bonds. In addition, the Association shall maintain flood insurance on any Lot and Dwelling Unit located within a "special flood hazard area," as designated on a Flood Insurance Rate Map published by the Federal Emergency Management Association, or if otherwise required by any Agency.

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Section 10.2 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible on such policies, shall be paid by the Association and charged as a Common Expense of the Association for all purposes. All such premiums shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies.

Section 10.3 General Standards. All insurance policies maintained by the Association under this Article shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in *Best's Insurance Guide*, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance is obtained from a company with the highest rating available in *Best's Insurance Guide*. Upon request, duplicate originals of all such policies shall be furnished to all Owners and Mortgagees, provided that in lieu of such duplicate original policies the Association may deliver certificates to the Owners and the Mortgagees attesting the fact that such policies and such insurance are in force and effect. The Association also shall furnish to all Owners and Mortgagees evidence that premiums for the insurance required of it have been paid on an annual basis. Notwithstanding the foregoing, during the existence of the Class B membership of the Association, all insurance may be provided by a self-insurance program maintained by the Declarant.

As provided in Section 47F-3-113 of the Act, it shall be the duty of the Association to obtain and maintain in effect at all times a policy of casualty insurance on all improvements located on the Common Elements. The amount of such policy shall be in amount that is no less than eighty percent (80%) of the replacement cost of the improvements to be insured with deductibles in amount to be determined by the Board. It shall also be the duty of the Association to obtain and maintain in effect at all times a comprehensive policy of public liability insurance. The comprehensive policy of public liability insurance shall have a reasonable amount of coverage, as shall be determined by the Board, and shall provide for such deductibles, as shall be determined by the Board. During the existence of the Class B membership of the Association, both insurances may be provided by a self-insurance program maintained by the Declarant.

Section 10.4 Owners' Insurance. Each Owner, by the acceptance of a deed or ground lease of such Owner's Dwelling Unit(s), hereby agrees and covenants to procure and maintain in full force and effect at all times, (i) comprehensive public liability insurance, in an amount of at least \$200,000.00 per occurrence, including liability for injuries to and death of persons, and for property damage, and (ii) hazard insurance against loss or damage to such Owner's Dwelling Unit(s) by fire or other insurable hazard and other appropriate damage and physical loss insurance, an amount equal to not less than one hundred percent (100%) of the full replacement insurable value of such Dwelling Unit(s) and the Association shall be named as an additional insured/loss payee under such hazard insurance policy. If any Owner fails to maintain the insurance required in this Section, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for all costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for Assessments levied against such Owner's Lot(s). Upon the failure of such Owner to reimburse such premiums and costs within ten (10) days after such Owner's receipt of a written demand therefor from the Association, the Association may establish and enforce a lien therefor upon the Owner's Lot(s) in accordance with and subject to the provisions of this Declaration applicable to a lien for Assessments. Each Owner shall file a copy of such policies with the Association within thirty (30) days after purchase of each such Lot.

Notwithstanding the foregoing provisions of this Section, it shall be the duty of the Board to obtain and maintain in effect bonds for termite infestation of the Townhomes.

Section 10.5 Responsibility for Reconstruction or Repair. If any portion of the Common Area is

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damaged by perils covered by the property insurance maintained by the Association in accordance with Section 10.1(a), the Association shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that if any, and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Property. If (a) the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Common Area by fire or other casualty, or (b) the damage or destruction is caused by any casualty not insured against, or (c) insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements within the Common Area shall be accomplished promptly by the Association and the cost of such repairs shall be a Common Expense of the Association.

Each Owner shall have the obligation to maintain in good condition and repair such Owner's Dwelling Unit and all other permitted structures and/or improvements located on such Owner's Lot in accordance with the applicable provisions of this Declaration. If a Dwelling Unit or improved portion of any Lot is damaged by perils covered by the property insurance maintained by the applicable Owner(s) in accordance with Section 10.4, such Owner(s) shall cause such damaged Dwelling Unit to be promptly reconstructed or repaired in accordance with the provisions of this Declaration and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original construction of the applicable Dwelling Unit.

Section 10.6 Procedure for Reconstruction or Repair.

(a) In the event of a casualty causing damage to any portion of the Common Area, the following provisions shall govern and apply:

(i) Immediately after a casualty which causes damage to any portion of the Common Area, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in a condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(ii) If the proceeds of the insurance for such casualty are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the professional fees and premiums, if any), one or more special Assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special Assessments shall be deposited with the Association; provided, however, that the Association may borrow funds to pay for such costs with the assent of two-thirds (2/3) of the Members voting at a meeting duly called for such purpose.

(iii) The proceeds of the property insurance referred to in Section 10.1(a) and the sums deposited with the Association from collections of special Assessments proceeds or authorized loans, as provided herein, shall constitute a construction fund which shall be held by the Association and applied to the payment of the cost of reconstruction and repair of the Common Area from time to time as the work progresses, but not more frequently than once in any calendar month. The Association shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request, signed by an architect in charge of the work who shall be selected by the Association, certifying that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and certifying that the sum requested does not exceed the value of the services and materials described in the certificate. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole

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discretion of the Board.

(b) In the event of a casualty causing damage to all or any portion of a Dwelling Unit, the insurance proceeds from any Owner's insurance policy on such Dwelling Unit, unless retained by a Mortgagee of such Dwelling Unit, shall be applied first to the repair, restoration or replacement of the Dwelling Unit. Any such repair, restoration or replacement shall be done in accordance with the original plans and specifications for such Dwelling Unit; unless the Owner desires to construct structures differing from those originally approved and constructed, in which event the Owner shall submit plans and specifications for the differing improvements and structures to the Committee and obtain its approval prior to commencing the repair, restoration or replacement. If any Mortgagee does not permit insurance proceeds to be used to restore any damaged or destroyed Dwelling Unit, the Owner is still obligated to repair, restore or replace the damaged Dwelling Unit, at the Owner's own expense, promptly and expeditiously. If the Owner does not begin to make said repairs, restorations or replacements within a reasonable period of time after the damage or destruction has occurred, the Association shall have the right, but not the obligation, to have said repairs, restorations or replacements completed on the Dwelling Unit. If the Association chooses to proceed in this manner, the Owner of the Dwelling Unit shall be liable to the Association for costs incurred in completing the repairs, replacements or restorations on the Dwelling Unit, to the same extent and in the same manner as the Owner is liable for Assessments levied against such Dwelling Unit and/or associated Lot. Upon the failure of the Owner to pay such costs as may be incurred by the Association within ten (10) days after such Owner's receipt of written demand therefor from the Association, the Association may establish and enforce a lien therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an Assessment lien. If the Association chooses not to proceed to repair, restore or replace the damaged Dwelling Unit, such choice shall not mitigate any legal liability that an Owner who fails to repair its Dwelling Unit after a casualty may have to an adjacent Owner for damage caused to the adjacent Dwelling Unit as a result of such failure to repair. If any Mortgagee does not permit insurance proceeds to be used to restore any damaged or destroyed Dwelling Unit, and both the Owner and the Association choose not to make said restoration, then the Owner or Association shall raze the remaining improvements and structures on such Lot and return the Lot to its natural condition free of all debris. The Owner shall be liable for any costs incurred by the Association in razing such improvements and structures, and also for any subsequent improvements that must be made to adjacent Dwelling Units, in order to maintain their integrity and the appearance of the community and the Townhomes. Upon the failure of the Owner to pay such costs as may be incurred by the Association within ten (10) days after such Owner's receipt of written demand therefor from the Association, the Association may establish and enforce a lien therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an Assessment lien.

**ARTICLE ELEVEN
MAINTENANCE; PARTY WALLS**

Section 11.1 Maintenance by Association. The Association shall be responsible for the following maintenance obligations:

(a) *Common Areas.* The Association shall repair and maintain the Common Area and any improvements, utilities and facilities located on the Common Area in a safe, neat and attractive manner. This responsibility shall also include, without limitation, maintenance, repair and replacement of all landscaping and grassed areas, fencing, private roadways, private alleyways and private streets, private utilities, retaining walls, signage, Common Area driveways and parking areas, sidewalks, walking paths or nature trails and other recreational facilities, and other improvements or utilities situated on the Common Area.

(b) *Exterior of Dwelling Unit.* In addition to maintenance upon the Common Area, the

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Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces [with the exception of entry doors and their appurtenant hardware and all exterior glass including windows and patio doors, all of which shall be maintained, repaired and replaced by the Lot Owner] trees, landscaping, grass, fencing, walks, roof, decks, and other exterior improvements. Such maintenance as to the Lots shall also include the mowing and trimming of grass and raking of leaves; provided, however, it shall be the responsibility of each Owner to water the grass, plants, trees and landscaping on or immediately adjacent to its Lot. The Association shall maintain any portion of any sewer main to which such line is connected, provided that the Owner of each Lot shall be responsible for all repair, replacement and clean out of sewer lines and facilities located upon such Owner's Lot behind the clean-out to (and including the lines and facilities servicing) the townhome unit. Exterior maintenance required by the Association hereunder shall not include the cleaning of patios, walkways, stoops or driveways on the Lots, all of which shall be the responsibility of the Lot Owner. The determination of the need, quality, extent and cost of such maintenance and repairs shall be made by the Board of the Association, which determination shall be reasonable and made upon consistent and non-arbitrary principles adopted by the Board. Notwithstanding, the Association shall not be responsible for the repair and maintenance of windows and/or exterior doors, which items shall be repaired, maintained and replaced at the cost and expense of the Owner.

(c) *Utility lines serving more than One Unit.* The Association shall also maintain, repair and replace any utility lines, fixtures and the like located in a party wall or in the first-floor flooring of a Dwelling Unit when such lines, fixtures and the like serve more than one Dwelling Unit. The cost of such maintenance, repair and replacement shall be shared by all Dwelling Units in the Building affected, unless the cause of the repair or replacement can be attributed to a specific Owner, in which case such Owner shall be responsible for the cost of such repair or replacement. Notwithstanding the foregoing, the Association shall not be responsible for any maintenance or repairs erred by the negligence or intentional misconduct of any Owner, its agents, invitees or family members, which shall be the responsibility of that Owner. Furthermore, in no event shall the Association be responsible for the repair and maintenance of windows and/or exterior doors, which items shall be repaired, maintained and replaced at the cost and expense of the Owner.

(d) *Negligence.* The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, the Owner's family, guests, or invitees, shall be the obligation of such Owner and shall be added to and become a part of the assessment to which such Lot is subject.

(e) *Right to Enter.* After reasonable notice to the occupant (except in the case of an emergency in which no notice shall be required), the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible.

Section 11.2 Maintenance by Owners. Except for the maintenance required of the Association under Section 11.1, each Owner shall keep the Lot owned by him, and all improvements thereon, in a clean and sanitary condition and in good order and repair free of debris, trash and rubbish. Owners shall be responsible for, and shall maintain, repair and replace at their own expense, the entirety of its Dwelling Unit, including without limitation, all walls, including drywall, utilities in walls where such utilities serve just their Dwelling Unit, features in walls (windows, vents, doors), features in roofs (vents and the like), and the heating and air conditioning system serving the Dwelling Unit, even if not located on the Lot on which the Dwelling Unit is located. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the Dwelling Unit, shall be maintained and kept in repair by the Owner thereof, except that utility lines, fixtures and the like serving more than one Dwelling Unit shall be maintained by the Association as provided in Section 11.1.

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If an Owner fails to maintain its Lot and the improvements thereon in accordance with this Article in a manner and condition reasonably satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within twenty (20) days, the Association shall have the right, through its agents, contractors, and employees, to enter upon the Lot of the defaulting Owner and to repair, maintain and restore the Lot and the exterior of the Building and any other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a special Assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable in accordance with the provisions herein. In the event of an emergency (as so deemed by the Board in its reasonable discretion), the Association shall have the right, with or without prior notice to the Owner, to enter any Lot and Dwelling Unit to make emergency repairs necessary for the proper maintenance and operation of the Townhomes.

Section 11.3 Party Walls, Shared Structures and Common Utility Lines.

(a) General Rules of Law Apply. Each wall, roofing joint, fence, driveway or similar structure on a Lot that serves and/or separates any two (2) adjoining Lots shall constitute a "Party Structure". To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support on below-ground construction, and liability for property damage resulting from negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction upon each Lot and any replacement thereof. If any portion of any structure originally constructed, including any Party Structure, any extension of a Party Structure, and utility line or fixture therein, or any common fence, protrudes over an adjoining Lot, or into the Common Area; such structure, wall, line, fixture or fence shall be deemed to be a permitted encroachment upon the adjoining Lot 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. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions of this Section shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Structure shall be shared by the Owners who own such Party Structure in proportion to their ownership.

(c) Destruction by Fire or Other Casualty. If a Party Structure is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if any other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Declaration, an Owner who by its negligent or willful act causes the Party Structure to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) 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.

(f) Easement and Right of Entry for Repair, Maintenance, Reconstruction. Every Owner

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shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a Party Structure. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as *near* the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

(g) Certification With Respect to Contribution. If any Owner desires to sell its Lot, such Owner may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

Section 11.4 Easements. Every Owner and the Association (and the Declarant acting on behalf of the Association prior to the termination of Class B membership) shall and hereby is granted any and all easements necessary or otherwise appropriate to allow each such party to exercise the rights granted and the obligations imposed hereunder. Such easements are for the existence (location) of utility lines, fixtures and the like, walkways and other typical elements of the Building or serving the Building that serve one or more Dwelling Unit but lying in a portion of another Dwelling Unit or Lot and for the installation, repair, maintenance, replacement, upgrade and the like of same, including, without limitation, to change the grade of grounds or to install drainage control devices.

Specifically, but not by way of limitation, easements are hereby established to allow utility lines and fixtures to cross through and under yards (underground where possible), to pass through party walls and to pass through and under the first-floor flooring of Buildings, and for the installation, repair, maintenance, replacement, upgrade and the like of same, specifically including but not limited to electricity, telephone, cable, natural gas, exhaust vents and sanitary sewer lines (which may enter the Building through one Dwelling Unit and thereafter *serve* each Dwelling Unit through separate lines through the walls and/or floors of the Building). Easements are hereby established to allow the existence (location) of walkways leading to each Dwelling Unit from paved areas of the Townhomes, and for the installation, repair, maintenance, replacement, upgrade and the like of same. Easements are hereby established for the exercise of the Association's right and obligation to provide maintenance (including but not limited to Building and yard maintenance and landscaping) in accordance with this Article. Easements are hereby established for each Owner's right and obligation to maintain features of its Dwelling Unit or the Building as described in this Article. Easements are hereby established for the continued existence and maintenance of the structural integrity of the party walls in the Building and the support they provide, and easements are hereby established for the continued existence and the maintenance of the structural integrity of the roof of each Building. Furthermore, easements are specifically granted for gutter systems and spouts collecting water from one Lot and channeling it through the gutter systems and spouts existing on adjacent Lots.

The easements hereby granted and established shall be exercised under the following conditions unless an emergency exists and more expedient use of the easement is appropriate (with an "emergency" being any condition to which a more expedient use of the easement will or will likely prevent significant damage to personal property or any personal injury). Notice to Owners of Dwelling Units affected by the exercise of any such easement shall be provided at least twenty-four (24) hours in advance, and the party entering the Dwelling Unit shall do so in the manner least likely to disrupt the privacy and sanctity of the Dwelling Unit and its occupants. Any damage to the Dwelling Unit or the Building or Common Area caused by the exercise of the rights granted or the obligations imposed hereunder shall be repaired immediately by the party on whose behalf the exercise of easement rights hereunder was performed. In the event of controversy between Owners regarding the exercise of easement rights hereunder, the Association may

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exercise such rights on behalf of one or more Owners (whether or not the right or obligation to perform functions requiring such easements has been reserved for individual Owners or the Association hereunder) and may charge the Owners for whom such exercise has been performed the costs thereof.

Section 11.5 Utilities and Other Easements. All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to any Dwelling Unit must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to the Property on, in, under and over the streets or roads and over any Lot shown on any Recorded Plat of the Property, within up to ten (10) feet of each lot line fronting on a street (but such easement hereby granted shall not extend past or into the footing of any Building erected on a Lot) and over such other areas as are so identified on any Recorded Plats of the Property. In addition, the Association may cut, in the above described easements, as well as anywhere else that such may be required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, Declarant also reserves the right to install and maintain sidewalks leading from the Common Area to a Dwelling Unit's front door, and install, maintain and repair bike and pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association at any time(s) when there is no Class B membership. Any easements first identified on Recorded Instruments or Recorded Plats of property no longer owned by the Declarant must be consented to on the Recorded Plat or other Recorded Instrument by the owner of such property. The Declarant may, but is not required to, release any of the easements reserved herein as to any Lot for which it deems such easement is unnecessary for the efficient development and operation of the Property, but it may do so only until two years after Class B membership has last terminated.

Section 11.6 Construction, Settling and Overhangs. Each Lot and the Common Area shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed, so long as such encroachments exist. Every portion of a Lot and each Dwelling Unit constructed thereon and contributing to the support of an abutting Dwelling Unit shall be burdened with an easement of support for the benefit of such abutting Dwelling Unit. If adjoining Dwelling Units are partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments from the adjacent Lots or Common Area resulting from construction shall be permitted and that a valid easement for such encroachments shall exist.

Section 11.7 Storm Water Management. Until the earlier to occur of the date on which all Lots in the Property shall have been conveyed to an Owner other than Declarant, or the Association has assumed responsibility for all obligations imposed upon it with respect to any storm water management under this Declaration pursuant to the requirements of the City of Raleigh, if any, or the seventh (7th) anniversary of the date of the recording of this Declaration, the Declarant reserves a blanket easement and right on, over and under the Property and any Lot to maintain and to correct the drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, to change the grade of the soil, to install any storm water management facility or to take any other similar action reasonably necessary for such purpose; provided that Declarant shall thereafter restore the affected property to its original condition as near as practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners unless in the opinion of Declarant an emergency exists which precludes such notice.

Declarant, and/or any governmental authorities having jurisdiction with respect to the Property and any Owner, shall have a blanket, perpetual and non-exclusive easement in common in, upon, over, under,

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across and through the Property for surface water runoff and drainage caused by natural forces and elements, grading and/or the improvements located upon the Property. No individual Owner shall directly or indirectly interfere with or alter the drainage and runoff patterns and systems within the Property.

In the event the established drainage over its Lot is changed or altered, each Owner shall cooperate with the Association to adequately provide drainage so as not to overwhelm the existing drainage system or structures. For the purpose hereof, "established" drainage is defined as the drainage that occurs at the time the overall grading of the Property, including the landscaping of each Lot, is completed.

**ARTICLE TWELVE
AMENDMENT TO DECLARATION**

Section 12.1 Owner/Member Initiated. An amendment to this Declaration may be proposed upon a majority vote of the Owners (including the Declarant while the Declarant is an Owner), with only one Owner per Lot voting, whether meeting as Owners or by instrument in writing signed by them. Any proposed amendment to this Declaration shall be transmitted in writing to all current Owners, and there shall be called a special meeting of the Owners for a date not sooner than ten (10) days nor later than sixty (60) days from date of notice. It shall be required that each Owner be given written notice of such special meeting, stating the time and place, and reciting the proposed amendment in reasonably detailed form, which notice, if mailed, shall be mailed not less than ten (10) days nor more than sixty (60) days before the date set for such special meeting. Such notices shall be made in compliance with the provisions of Section 3.3 hereof, and after made in compliance therewith, shall be deemed to be properly given. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Owner. At the meeting, the amendment proposed must be approved by an affirmative vote of seven percent (70%) or more of the votes of Members entitled to vote in order for such amendment to become effective (with the votes being calculated as provided in Sections 7.2 and 7.3 hereof). At any meeting held to consider such amendment, the written vote of any Owner shall be recognized and counted even if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to or at such meeting. If so approved, such amendment of this Declaration shall be properly transcribed and certified by two (2) officers of the Association, pursuant to a form substantially similar to the form attached hereto as Exhibit B, stating that the amendment was duly adopted and approved by the requisite percentage of Owners. The original or an executed copy of such amendment, properly executed with the same formalities as a deed, shall be recorded in the Office of the Register of Deeds of Wake County, and no such amendment to this Declaration shall be effective until so recorded. If any amendment to the Declaration creates an inconsistency in the Bylaws, to the extent such inconsistency exists, the Declaration shall control. Notwithstanding anything herein to the contrary, no meeting of the Association shall be necessary to approve a proposed amendment in the event all Owners (including the Declarant if Declarant owns any property within the Property) execute the proposed amendment to signify their consent thereto. Without the prior written consent of the Declarant, when Declarant is a Class B Member, there shall not be allowed any Owner/Member-initiated amendments to this Declaration for a period of five years from the effective date hereof, and in addition, no Owner/Member-initiated amendments may be made for any reason to Sections 9.13, 11.4, 11.5, and 11.7. The above limitation shall in no way limit or diminish Declarant's rights to make amendments to any part of the Declaration under the powers reserved in Section 12.2 below.

Section 12.2 Declarant's Right to Unilaterally Amend. Declarant, or its successor or assigns, shall be allowed to unilaterally make any amendments to this Declaration necessary, in the Declarant's opinion: for compliance with laws or regulations relating to FFIA, HUD, VA, the Federal National Mortgage Association, or the Office of Interstate Land Sales; necessary to establish the nonprofit qualifications of the Association; to correct any discovered typographical error contained herein; to clarify any ambiguity contained herein; to

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comply with governmental directives; or to add or delete any incidental provisions deemed in the sole discretion of Declarant to be in the best interest of the Property, and the Owners therein. This right may be exercised, and shall be effective only upon the recordation of a "Corrected Declaration" in the Office of the Register of Deeds of Wake County, which Corrected Declaration shall specifically reference this document, and the provision impacted.

The Declarant may also amend this Declaration by filing an amendment in the Wake County Registry executed by only the Declarant if at the time of recording the amendment the Declarant is still the sole owner of all property (excluding streets and rights-of-way) in the Community. Such an amendment need not be certified by the Association.

Section 12.3 When Effective; Recording; Title Searching. An amendment to this Declaration that complies with the provisions of Section 12.1 or Section 12.2 shall be effective when recorded in the Wake County Registry. The amendment shall be indexed under the name of the Declarant or its successor, the Association or its successor, or the Owners of the property in the Property. The failure of the amendment to be indexed under all of the foregoing shall not invalidate such amendment so long as the amendment has been indexed under at least one of the foregoing. Anyone searching title on Lots in the Property should search under the names of the foregoing to discover amendments to this Declaration that may have occurred after the Lot has been conveyed to an Owner from the Declarant.

**ARTICLE THIRTEEN
CAPTIONS, INTRODUCTIONS, RECITALS AND GENDER**

The captions and introductory material herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof. The recitals to this Declaration are hereby incorporated herein and made a part hereof by reference. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine and neuter genders, and the use of the singular shall be deemed to refer to the plural, and the use of the plural shall be deemed to include the singular, whenever the singular, the context so requires.

**ARTICLE FOURTEEN
SEVERABILITY AND GOVERNING LAW**

If any provision of this Declaration is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants and restrictions as contained herein shall be deemed to be severable each from each other without qualification. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

**ARTICLE FIFTEEN
CONSTRUCTION ACTIVITIES**

All Owners, occupants, and users of Lots or Dwelling Units are hereby placed on notice that Declarant, and/or its agents, contractors; subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct excavation, construction, and other activities within the Property. By the acceptance of a deed or other conveyance or deed of trust, leasehold, license, or other interest, and by using any portion of a Lot or Dwelling Unit or the Property generally, the Owners and all occupants and users of Lots or Dwelling Units acknowledge, stipulate, and agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or

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allow their children or other persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot or Dwelling Units where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant, and all of its agents, contractors, subcontractors, licensees, and other designees, successors and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot or Dwelling Units has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of Lots or Dwelling Units within the Property.

**ARTICLE SIXTEEN
DISSOLUTION OR INSOLVENCY OF THE ASSOCIATION**

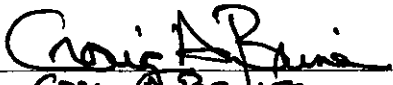
The Association shall be dissolved upon the termination of this Declaration, or upon the written assent given in writing and signed by not less than two-thirds (2/3) of the Members of each class of Members, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Area not under the jurisdiction and/ being maintained by the Association, shall be offered to the City of Raleigh, North Carolina, or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted by the Association. If the City Of Raleigh or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be conveyed by the Association to the City of Raleigh or such other appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot to an easement (if necessary) for reason ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located, and subject to all other applicable rights of way and easements and subject to ad valorem property taxes subsequent to the date of such conveyance.

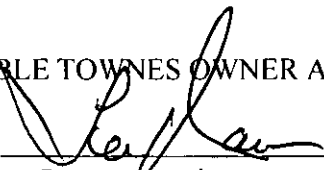
In the event that the **City of Raleigh** or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall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

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IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed, and if corporate, duly authorized, as of the date above written.

GHC - WHITAKER TOWNES, LLC
By: Greenhawk Corporation, Inc., as Manager

BY:  (SEAL)
Name: Craig A. Briner
Title: Manager

NOBLE TOWNES OWNER ASSOCIATION, INC.
By:  (SEAL)
Name: Lee Norris
Title: President

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STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

- ☐ I have personal knowledge of the identity of the principal(s)
☒ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a Driver's License

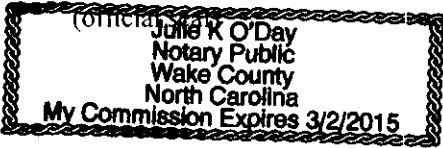
☐ A credible witness has sworn to the identity of the principal(s);
each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Craig A. Briner

(print name of person executing document)

Date: April 5, 2010

Julie K. O'Day
Julie K. O'Day, Notary Public
(print name)

My commission expires: March 2, 2015



STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

- ☐ I have personal knowledge of the identity of the principal(s)
☒ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a Driver's License

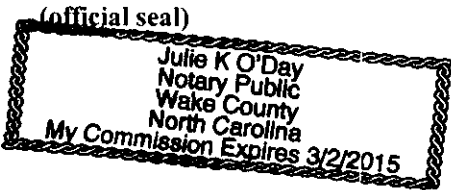
☐ A credible witness has sworn to the identity of the principal(s);
each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Lee Norris

(print name of person executing document)

Date: April 5, 2010

Julie K. O'Day
Julie K. O'Day, Notary Public
(print name)

My commission expires: March 2, 2015



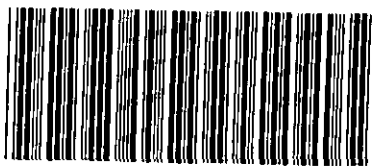
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Exhibit A
Lots

Being all of Lots 1 through 24 as identified on that certain survey and map by Summit Coastal Surveying & Mapping titled “Recombination And Common Area Exchange & Land Swap Lots 1-24, and Common Space of Noble Townes” dated October 10, 2009 and recorded in Book 2009, Page 1283 of the Wake County Registry.

Exhibit B
Association Common Area

Being all of the property identified as “Common Area” on that certain survey and map by Summit Coastal Surveying & Mapping titled “Recombination And Common Area Exchange & Land Swap Lots 1-24 and Common Space of Noble Townes” dated October 10, 2009 and recorded in Book 2009, Page 1283 of the Wake County Registry, **LESS AND EXCEPT** Lots 1 through 24.



BOOK:013901 PAGE:01426 - 01465

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



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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages 40 JP