

**AMENDED AND RESTATED DECLARATION OF RESIDENTIAL  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR 5401 NORTH**

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

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

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**AMENDED AND RESTATED DECLARATION OF RESIDENTIAL  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR 5401 NORTH RESIDENTIAL**

THIS AMENDED AND RESTATED DECLARATION OF RESIDENTIAL COVENANTS, RESTRICTIONS AND EASEMENTS FOR 5401 NORTH ("Declaration") is made this 3<sup>rd</sup> day of August, 2016, by EV-5401 North, L.L.C., a Louisiana limited liability company ("Declarant").

**RECITALS**

A. Declarant is the owner of that certain property located in Wake County, North Carolina, described in Exhibit "A" hereto (the "Property"). Declarant intends that various portions of the Property be set aside for the collective use of the owners and residents of the planned community known as 5401 North to be created on the Property.

B. In order to preserve and enhance the value of the homes built on the Property and to promote the welfare of their owners and occupants, Declarant desires to submit the Property to the Declaration.

C. In order to facilitate the objectives described herein, Declarant has formed a North Carolina non-profit corporation called 5401 North Homeowners' Association, Inc. ("Association"), which shall be responsible for the enforcement and performance of certain obligations under the Declaration.

D. Declarant executed and recorded that certain Declaration for 5401 North Residential in the Wake County Registry on December 16, 2015, in Book 16242, Page 22 (the "Initial Declaration"). Declarant now wishes to replace that Initial Declaration in its entirety with this Declaration.

NOW, THEREFORE, Declarant declares that the Property, together with such additions thereto as are hereafter made, shall be held, transferred, sold, conveyed, leased, mortgaged, used, occupied and improved subject to the easements, covenants, conditions, restrictions, servitudes, charges and liens created or provided for by the Declaration.

1. **DEFINITIONS.** As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise. Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article.

1.1 "Act" means the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as "G.S. 47F," with the particular section number following the G.S. 47F reference (for example, G.S. 47F-1-101).

- 1.2 "Architectural Review Board" or "ARB" means the committee created pursuant to Article 14 hereof.
- 1.3 "Articles" means the Articles of Incorporation of the Association which have been filed in the office of the Secretary of the State of North Carolina (a copy of which is attached hereto as Exhibit "B"), as amended from time to time.
- 1.4 "Assessment" means any of the types of assessments defined below in this Section.
- 1.4.1 "Attached Townhome Assessment" means the amounts charged to each Attached Townhome subject to assessment by the Association representing its proportionate share of the Attached Townhome Expenses as determined in accordance with Sections 11.5 and 11.8.
- 1.4.2 "Common Assessment" means the amounts charged to each Lot subject to assessment by the Association under Article 11, representing the Lot's share of the Common Expenses as determined in accordance with Sections 11.5 and 11.6.
- 1.4.3 "Individual Assessment" means the amounts charged to one or more Lots by the Association in connection with (.1) the enforcement of the Governing Documents as a result of the acts or omissions of the Owner or Permitted Users of a Lot, their respective agents, contractors, subcontractors, employees, licensees or invitees for their failure to duly perform their obligations under the Governing Documents, or (.2) in order to reimburse the Association for expenses incurred by the Association due to that Owner's failure to Maintain his Lot or Unit pursuant to the standards set forth in this Declaration, or (.3) to reimburse the Association for injury, loss or damage to the Association or to any Common Area, Association Property or other Lot caused by the Owner or Permitted Users, or their respective agents, contractors, subcontractors, employees, licensees or invitees, and not covered by insurance, or (.4) for any other purpose expressly authorized by this Declaration.
- 1.4.4 "Special Assessment" means and includes the following: the amounts charged to each Lot subject to assessment by the Association for any of the following purposes: (.1) unbudgeted expenses or expenses in excess of the amounts budgeted; (.2) expenses incurred by the Association for repair, replacement or reconstruction of any Improvements on any portion of the Common Areas or Association Property; (.3) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement on any portion of the Common Areas or Association Property; (.4) expenses incurred by the Association for Restoration of Insured Attached Townhome Property in the event the insurance proceeds are insufficient to pay the Restoration Costs or in the event the injury, loss or damage resulted from an uninsured loss; or (.5) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement to the

Attached Townhomes in connection with Attached Townhome Services. If Special Assessments are assessed for Common Expenses or for any purpose identified in clause (.2) or (.3) above, they shall be assessed against all Lots subject to assessment under Article 11. If Special Assessments are assessed for Attached Townhome Expenses, they shall be assessed against all Attached Townhomes subject to assessment within the particular Collection under Article 11. If Special Assessments are assessed for any purpose identified in clause (.4) above, they shall be assessed against the Owners of the damaged Attached Townhomes in the same proportion which the Restoration Costs attributable to their Attached Townhomes bears to all Restoration Costs of the damaged Attached Townhomes as provided in Article 9. If Special Assessments are assessed for any purpose identified in clause (.5) above, they shall be assessed against all Attached Townhomes benefited by the installation or construction of capital improvements as provided under Article 11.

- 1.4.5 Stormwater Assessment, as defined in the Stormwater Covenants, to the extent not included in the Common Assessment or collected by the City.
- 1.5 "Association" means the property owners' association for the Property, namely 5401 North Homeowners' Association, Inc., a North Carolina non-profit corporation, and its successors and assigns. The Association is the entity responsible for the administration, enforcement and performance of certain duties under the Declaration.
- 1.6 "Association Property" means all personal property owned by the Association. Association Property shall also include all personal property in which the Association holds possessory or use rights.
- 1.7 "Attached Townhome" means a two or more story Unit which has no Units located above or below it and which shares one or more Party Walls with adjacent Unit(s).
- 1.8 "Attached Townhome Building" means an Improvement consisting of two or more Attached Townhomes notwithstanding that each Attached Townhome therein is located on a separate Lot.
- 1.9 "Attached Townhome Expenses" means all actual and estimated expenses which the Association incurs or expects to incur to provide Attached Townhome Services for the benefit of Owners of Attached Townhomes, including any of the following in connection therewith: Maintaining (including reasonable reserves for capital improvements, repairs and replacements) and providing labor, materials, goods, services, or benefits in connection with Attached Townhome Services, all as may be determined from time to time by the Board of Directors of the Association in accordance with the Declaration. Attached Townhome Expenses include the following:

- 1.9.1 expenses of compensation, benefits and related administration costs, payroll taxes, ERISA related liabilities, and other employment costs for those engaged in providing Attached Townhome Services;
  - 1.9.2 expenses of performing Attached Townhome Services (including unpaid Attached Townhome Assessments and Special Assessments due the Association and not paid by the Owners responsible for payment);
  - 1.9.3 the cost of inventories and operating supplies consumed in the performance of Attached Townhome Services;
  - 1.9.4 all costs and fees of independent professionals or other third parties who are retained by the Association in connection with Attached Townhome Services; all costs and fees of consultants, professionals and operational experts who are retained or employed by the Association for specialized services in connection with the Attached Townhome Services;
  - 1.9.5 all costs and fees of independent contractors, accountants, attorneys, operational experts and other consultants, professionals and third parties who are retained or employed by the Association for services in connection with the Attached Townhome Services;
  - 1.9.6 all costs and expenses incurred by the Association in procuring and Maintaining the insurance on the Attached Townhomes required by Section 8.3 of the Declaration.
  - 1.9.7 all costs and expenses of compliance by the Association with applicable legal requirements pertaining to Attached Townhome Services;
  - 1.9.8 debt service on any secured or unsecured loan incurred by the Association in connection with Attached Townhome Services;
  - 1.9.9 amounts paid by the Association for the discharge of any lien or encumbrance in connection with Attached Townhome Services; and
  - 1.9.10 any other expenses incurred by the Association as are specifically provided for elsewhere in the Declaration or are otherwise reasonably incurred by the Association in connection with the Attached Townhome Services or for the benefit of the Owners of Attached Townhomes and their Permitted Users.
- 1.10 "Attached Townhome Owner" means the Owner of an Attached Townhome.
- 1.11 "Attached Townhome Services" means those goods, services, items or benefits provided by the Association for the benefit of the Attached Townhomes pursuant to this Declaration, any Supplemental Declaration or agreement approved by a majority of the voting interests of the Attached Townhome Owners present in

person or by proxy at a meeting of the Attached Townhome Owners. Attached Townhome Services include the following:

- 1.11.1 Exterior Maintenance for Attached Townhomes;
- 1.11.2 Maintaining Lot Landscaping for Attached Townhomes;
- 1.11.3 Procurement and Maintenance of the insurance coverage described in Section 8.3 of the Declaration for the Insured Attached Townhome Property; and
- 1.11.4 Restoration of those portions of the Attached Townhomes constituting Insured Attached Townhome Property when damaged by casualty or loss as provided in Article 9 of the Declaration.

The Association has the right in its sole and absolute discretion to change, add, modify, expand, reduce or eliminate Attached Townhome Services upon not less than ninety (90) days prior written notice to the Attached Townhome Owners.

- 1.12 "Board" or "Board of Directors" means the board of directors of the Association, and is the executive board as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.
- 1.13 "Bylaws" means the Bylaws of the Association adopted by the Board (a copy of which is set forth as Exhibit "C" hereto), as amended from time to time.
- 1.14 "City" or "City of Raleigh" means the City of Raleigh, North Carolina, a North Carolina municipal corporation.
- 1.15 "City Code Covenant" means any Declaration of City of Raleigh Required City Code Provisions for Developments with Common Elements and Common Expenses made by Declarant and recorded in the Registry.
- 1.16 "Class A Member" shall have the meaning set forth in Section 4.2.1.
- 1.17 "Class B Member" shall have the meaning set forth in Section 4.2.2.
- 1.18 "Code" means the Municipal Code of Ordinances for the City of Raleigh, as amended and supplemented from time to time.
- 1.19 "Collection" means a group of Units having similar features or characteristics which are designated as such on Exhibit "D" to this Declaration or in a Supplemental Declaration. A group of Units may be designated as a separate Collection for purposes of receiving goods, services or benefits, such as Exterior Maintenance, that are not provided to all of the Units or provided at a different level or frequency. A Collection may be comprised of more than one group of Units or type of Improvement within the Property, and the Lots within the Collection need not be contiguous or adjacent. For so long as Declarant or its affiliates own any portion of the Community, the Lots within any Collection shall

be determined by Declarant in its reasonable discretion and thereafter by the Association.

1.20 "Common Areas" means all real property and interests in real property, together with any Improvements situated thereon, intended for the common use and benefit of the Association, the Owners, and/or the Permitted Users of the Property, and designated as a Common Area in the Declaration, on a Subdivision Plat or other document recorded in the Registry. Common Areas may be owned or leased by the Association or dedicated to the Association on a Subdivision Plat or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Property and that serves more than one (1) Lot or a right of the Association to use of a portion of a public street right of way pursuant to an encroachment agreement with the City). Common Areas include: (.1) those areas identified as "Common Areas" in this Declaration, any Supplemental Declaration, or in Exhibit "F" to this Declaration; (.2) the "Stormwater Control Facilities" as defined in any Stormwater Covenant; (.3) those areas defined as "Common Elements" in any City Code Covenant; and (.4) landscaped areas in rights of way adjacent to the Property, such as landscape areas in buffers, berms or traffic circles. No portion of the Future Development Property shall be deemed to be a Common Area unless and until it is declared to be a Common Area in a Supplemental Declaration.

1.21 "Common Expenses" means all of the actual and estimated expenses of the Association for owning, leasing, administering, Maintaining, managing, operating, insuring, repairing, and replacing the Common Areas and Association Property (including unpaid Common Assessments and Special Assessments not paid by the Owner responsible for payment), and performing its rights and responsibilities under the Act and the Governing Documents and including the following:

- 1.21.1 expenses of compensation, benefits and related administration costs, payroll taxes, ERISA related liabilities, and other employment costs for those engaged in operating, managing and Maintaining, the Common Areas and Association Property;
- 1.21.2 expenses of operating, managing and Maintaining the Common Areas and Association Property;
- 1.21.3 expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;
- 1.21.4 the costs of property and liability insurance, workers' compensation insurance, and other insurance covering or connected with the Common Areas, Association Property or the Association; costs of bonding the members of the Board, officers of the Association and the Management Company; costs of errors and omissions liability insurance for officers of the Association, members of the Board, members of the ARB and members of any committees appointed by the Board;

- 1.21.5 ad valorem taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association or any Association Property;
- 1.21.6 allocations to reserve funds;
- 1.21.7 costs and expenses to inspect, monitor, maintain, repair, and replace any Stormwater Control Facilities that serve the Property, including Stormwater Assessments for the Property and any assessments or right to assess assigned to the City pursuant to the Stormwater Covenants;
- 1.21.8 fees for services engaged by the Association;
- 1.21.9 costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other governmental entity, each as amended from time to time, including any Stormwater Covenant, and any City Code Covenant;
- 1.21.10 financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- 1.21.11 expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses;
- 1.21.12 expenses which the Members agree are to be Common Expenses of the Association;
- 1.21.13 expenses of Maintaining the Lot Landscaping;
- 1.21.14 management, administrative, recordkeeping, bookkeeping, overhead and general expenses for the Association;
- 1.21.15 all costs and fees of independent contractors, accountants, attorneys, operational experts and other consultants, professionals and third parties who are retained or employed by the Association for services in connection with the Association, Common Areas, Association Property or Lot Landscaping or any other obligation of the Association;
- 1.21.16 the costs of all utilities, telecommunications, data processing charges, landscaping, irrigation and other services benefiting the Common Areas or Association Property;
- 1.21.17 the cost of repair and replacement of all furniture, fixtures and equipment used in connection with the Common Areas, Association Property or the Association;

- 1.21.18 the cost of inventories and operating supplies consumed in the operation of the Common Areas, Association Property or the Association;
  - 1.21.19 the cost of personnel training and development including attendance by employees at training and development programs designated by the Association;
  - 1.21.20 all management fees;
  - 1.21.21 all costs and expenses of compliance by the Association with applicable legal requirements pertaining to the operation of the Common Areas, Association Property or Association;
  - 1.21.22 the expenses of marketing, advertising and promoting the Community, Common Areas or Association Property;
  - 1.21.23 amounts paid by the Association to promote the health, safety, welfare and recreational opportunities of the Owners and their Permitted Users;
  - 1.21.24 debt service on any secured or unsecured loan incurred by the Association in connection with the Common Areas, Association Property or Association;
  - 1.21.25 amounts paid by the Association for the discharge of any Mortgage, lien or encumbrance against the Common Areas or Association Property; and
  - 1.21.26 any other expenses incurred by Association as are specifically provided for elsewhere in the Declaration or are otherwise reasonably incurred by the Association in connection with the Association, Common Areas or Association Property or for the benefit of the Owners and their Permitted Users.
- 1.22 "Community" means that planned community known as 5401 North and depicted on the Site Plan.
- 1.23 "County" means Wake County, North Carolina.
- 1.24 "Declarant" means EV-5401 North, LLC, a Louisiana limited liability company, its successors and those assigns to which Declarant may assign all or a portion of its rights hereunder in a written assignment recorded in the Registry. In the event of a partial assignment, the assignee shall not be deemed Declarant, but may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a nonexclusive basis.
- 1.25 "Declarant Control Period" means as any period of Declarant control of the Association, as provided in G.S. 47F-3-103(d) of the Act and established in this Declaration. For purposes of the Declaration and other Governing Documents, "Declarant Control Period" refers to the period during which Declarant shall have

the right to control the Association and appoint all of the Board of Directors. The Declarant Control Period shall expire on first to occur of the following events:

- 1.25.1 January 1, 2025; or
  - 1.25.2 The later of 120 days or the annual meeting following the date on which seventy-five (75%) percent of the Units in all phases of the Community that will ultimately be subject to the Declaration have been conveyed to Class A Members; or
  - 1.25.3 When Declarant records a notice in the Registry expressly terminating its Class B membership.
- 1.26 "Declarant's Permittees" means Declarant's officers, directors, partners, joint venturers, managing members (and the officers, directors and employees of any such corporation, partnership, joint venture or limited liability company), employees, beneficiaries, agents, independent contractors (including both general contractors and subcontractors), suppliers, visitors, licensees and invitees and those of any affiliate of Declarant.
  - 1.27 "Declaration" and "this Declaration" means (and, except as otherwise provided in Section 1.66, "herein", "hereto", "hereof", "hereunder" and words of similar import shall refer to) this document together with all exhibits and amendments to the document and Supplemental Declarations thereto.
  - 1.28 "Single Family Home" means a Lot on which a Unit consisting of single family detached dwelling is constructed. In the event a garage or carport serving the Unit is located on the Lot, the term "Single Family Home" shall include such garage or carport regardless of whether it is attached to or forms a part of the structure in which the dwelling is located.
  - 1.29 "Eligible Mortgagee" means a First Mortgagee which owns, services, insures or guarantees a First Mortgage encumbering a Unit which has notified the Association in writing of its name and address and status as a holder, insurer or guarantor of a First Mortgage. Such notice will be deemed to include a request that the Eligible Mortgage Holder be given the notices and other rights described in Article 17.
  - 1.30 "Exterior Maintenance" means all labor, materials, goods and services necessary or desirable to Maintain in good repair and condition, operate, inspect, test, repair, preserve, perform minor alterations, clean, and/or any other action or activity commonly or customarily regarded as Maintenance of the following the standard original exterior portions of an Attached Townhome:
    - 1.30.1 periodic cleaning and periodic painting of exterior paintable surfaces of exterior walls and entry doors, together with caulking;
    - 1.30.2 repair and replacement of the roof of each Attached Townhome, including roof shingles, flashing, fascia, soffit, decking, gutters and downspouts, and boots around vents and fresh air returns, but

excluding roof trusses, joists, or any other structural element of the roof; and

- 1.30.3 such other exterior portions of an Attached Townhome as the Board from time to time may elect to provide on not less than ninety (90) days prior written notice to the Owners of Attached Townhomes.

The cost of Exterior Maintenance for Attached Townhomes shall be an Attached Townhome Expense. As to any Single Family Homes, the Association has not obligation to provide Exterior Maintenance unless and to the extent a Supplemental Declaration imposes on the Association the obligation to perform Exterior Maintenance for such Single Family Homes.

Exterior Maintenance shall not include repair, replacement or reconstruction of any of the following parts or components of an Attached Townhome: windows or doors; Hardi-board, rebar, mortar, tie beams, roof trusses or joists, or any structural element of the exterior walls or roof; all or any portion of the plumbing, electrical or mechanical systems whether located inside or outside of the Attached Townhome; all patios, terraces, decks and stairs; all exterior lighting fixtures and bulbs; and all sidewalks, driveways and front porches (except for the roof and decorative columns of a porch which are the Maintenance responsibility of the Association to the extent described in this Section). All portions of an Attached Townhome other than those which are Maintained by the Association as part of Exterior Maintenance shall be the Owner's responsibility except in the event of a loss or casualty for which the Association has the obligation to Restore the damaged portions of the Insured Attached Townhome Property.

- 1.31 "Fiscal Year" means the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.
- 1.32 "Future Development Property" means the real property more particularly described in Exhibit "H" attached hereto, as amended from time to time, which may be developed as Lots, Units or Common Areas; however, the boundaries, location, size, configuration, and uses of any such Lots, Units, and Common Areas have not been determined as of this Declaration. Declarant has no obligation to declare all or any portion of the Future Development Property to be Lots, Units or Common Areas.
- 1.33 "Governing Documents" means collectively the Declaration (including any Supplemental Declaration), Articles, Bylaws, Development Standards, architectural guidelines and the rules and regulations of the Association and all exhibits to any of the foregoing, all as they may be amended, restated or supplemented from time to time.
- 1.34 "Guest" means any Person who is physically present in or occupies a Unit on a permanent or temporary basis at the invitation of the Owner or Tenant without the payment of consideration. Any Person who is physically present in or occupies a Unit at the invitation of the Owner or Tenant for consideration shall be deemed a "Tenant."

- 1.35 "Improvement" means any structure or artificially created condition or appurtenance located on the Property, including any building constructed on any Lot, any additions and structural alterations to any Unit or Lot, any walkway, sprinkler pipe, road, driveway, parking area, fence, screening wall, retaining wall, stairway, deck, landscaping, hedge, fountain, tree, planting, shrub, windbreak, pole, swimming pool, pool deck, sign, screen enclosure, sewer, drain, disposal system, grading, paving, or exterior heating, ventilating or air-conditioning equipment or water softener fixture or equipment.
- 1.36 "Include," "includes," or "including" is intended to include of the particular matter described and to be interpreted as if it were followed by either the phrase "without limitation" or "but not limited to," unless otherwise clearly obvious from the context.
- 1.37 "Initial Declaration" means (and, when following an Article, Section, page or Exhibit designation, the word "hereto" shall refer to) the Declaration as initially recorded in the Registry.
- 1.38 "Insured Attached Townhome Property" shall have the meaning set forth in Section 8.3.1.1.
- 1.39 "Lot" means that portion of the Property (.1) which is developed or intended for development, use and occupancy as a Unit and is shown as a numbered or letter parcel on any Subdivision Plat of any part or all of the Property and is declared to be a Lot in the Declaration, Supplemental Declaration or Exhibit "G" to this Declaration and (.2) which is not a Common Area, dedicated street or transit right of way or greenway or park lands owned in fee simple by the City. Declarant may declare a portion of the Property to be a "Lot" subject to the Governing Documents on a Subdivision Plat, re-plat, or by this Declaration, any Supplemental Declaration or any other recorded instrument. The term "Lot" shall include any Unit constructed thereon. No portion of the Future Development Property shall be deemed to be a Lot unless and until it is expressly declared to be a Lot in a Supplemental Declaration.
- 1.40 "Lot Landscaping" means the following portions of a Lot which are Maintained by the Association, as determined from time to time by the Board (.1) the grass, shrubs, trees and other landscaping materials located in the front, side or back yards, and (.2) those irrigation lines and facilities, if any, installed on a Lot by Declarant, a Participating Builder or Association. Neither Declarant, a Participating Builder nor the Association shall have any obligation to install any irrigation lines or facilities. Lot Landscaping does not include any spa, pool, fountain, patio, courtyard paving, screening, landscaping within an enclosed or gated area or similar Improvement located on a Lot.
- 1.41 "Maintain," "Maintenance," "Maintaining," or any similar term used in this Declaration includes any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

- 1.42 "Member" means each Person who or which holds membership in the Association by virtue of his ownership of a Lot.
- 1.43 "Mortgage" means any mortgage or deed of trust encumbering a portion of the Property, including a Lot. "First Mortgage" means any recorded Mortgage with first priority or seniority over other Mortgages on a particular portion of the Property.
- 1.44 "Mortgagee" means any beneficiary, payee or holder of any Mortgage, and the term Mortgage is deemed to refer to both mortgages and deeds of trust. "First Mortgagee" means any beneficiary, payee or holder of a First Mortgage.
- 1.45 "Operating Deficit" means the difference between the total amount of the Assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (.1) amounts levied against a Lot, but which are not paid, and (.2) Special Assessments for capital improvements.
- 1.46 "Owner" means the record Owner, whether one or more Persons, of fee simple title to any Lot or Future Development Property, and shall include Declarant as to any Lot or Future Development Property owned by Declarant. "Owner" shall not include any Person who holds an interest in a Lot or Future Development Property merely as security for the performance of an obligation or as a Tenant or as a purchaser under an executory contract of sale.
- 1.47 "Participating Builder" means any Person which acquires any portion of the Property from Declarant for the purpose of constructing improvements for sale to consumers or who purchases any portion of the Property for development and resale in the ordinary course of its business.
- 1.48 "Party Wall" shall have the meaning set forth in Section 10.3.
- 1.49 "Party Wall Co-Owner" shall have the meaning set forth in Section 10.3.
- 1.50 "Permitted Users" means the Tenants or Guests of an Owner.
- 1.51 "Person" includes any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental entity (including the City), or other entity.
- 1.52 "Property" means, collectively, all of the real property and interests in real property subject to any part or all of the terms of this Declaration. The Property is legally described in Exhibit "A" hereto (including all Improvements thereon), plus whatever additional real property (together with all Improvements thereon) is declared to be Property in any Supplemental Declaration, less whatever portions of the Property (together with all Improvements thereon) are declared to be withdrawn from the provision of this Declaration in any Supplemental Declaration.
- 1.53 "Registry" means the office of the Wake County Register of Deeds (or any successor office under applicable law). All references herein to recording or to any requirement to record a document or Subdivision Plat refer to recording in

the Registry of the County or Counties in which the applicable portion of the Property is situated.

- 1.54 "Declaration" means (and, when following an Article, Section, page or Exhibit designation, the word "hereto" shall refer to) this Amended and Declaration as initially recorded in the Registry.
- 1.55 "Restore," "Restoration," "Restoring" or any similar term used in this Declaration includes any one or more of the following, as the context requires: debris removal, alteration, re-construction, installation, inspection, examination, repair, replacement, repainting, restoration of an Improvement lost or damaged by fire or other casualty, deterioration or obsolescence, or any taking by condemnation or eminent domain proceedings.
- 1.56 "Restoration Costs" shall have the meaning set forth in Section 9.6.3.
- 1.57 "Site Plan" means the graphic representation of the proposed plan for development of the Community depicted on Sheet C-3 entitled "5401 North Lot 20 (Phases 13-23) Construction Drawings & Final Site Review," dated August 20, 2015, prepared by The John R. McAdams Company, Inc. under Filename CRC14010-MP1, as approved by the City, as amended from time to time. Declarant reserves the right to alter or modify the Site Plan as it deems desirable in its sole discretion.
- 1.58 "Stormwater Covenant" means any covenant recorded in the Registry as required by the Code relating to Stormwater Control Measures for the Property or any part thereof, and includes all amendments and supplements to such agreements. The Stormwater Covenant includes those certain Declaration of Maintenance Covenant and Grant of Protection Easements for Stormwater Control Facilities made by Declarant and the Association and recorded in the Registry.
- 1.59 "Stormwater Control Measures" or "Stormwater Control Facilities," such terms being used interchangeably in this Declaration and shall have the meaning set forth in the Stormwater Covenants. All Stormwater Control Measures are Common Area.
- 1.60 "Stormwater Operations Maintenance Manual and Budget" means that manual, however named, attached to and incorporated into the Stormwater Covenants as an exhibit for the Maintenance of Stormwater Control Measures and the payment of the costs thereof.
- 1.61 "Subdivision Plat" means any recorded graphic representation drawn to scale showing the showing the location and geographic boundaries of individual lots, tracts, parcels, blocks, subdivisions, open spaces, rights of way, easements and if applicable common areas for all or portions of the Community, as approved by the City, as amended from time to time. Declarant reserves the right to alter, modify or re-plat all or any portion of a Subdivision Plat as it deems desirable in its sole discretion.

- 1.62 "Supplemental Declaration" means any instrument recorded by Declarant or the Association in the office of the Registry for the purpose of: adding additional property to the Property; declaring Future Development Property or other property to be Lots, Units, Attached Townhomes, Single Family Homes, Collections or Common Areas; requiring the Association to perform Lot Landscaping for portions of the Property; requiring the Association to perform Exterior Maintenance for portions of the Property; withdrawing property from the Property; or changing the designation of certain property as Lots, Units, Attached Townhomes, Single Family Homes, Collections, Common Areas or Future Development Property.
- 1.63 "Tenant" means any Person who is physically present in or is entitled to occupy a Unit in exchange for consideration. Tenants shall not be Members of the Association, but shall, through the Owner, be entitled to certain rights and undertake certain obligations with respect to the Unit.
- 1.64 "Unit" means a Lot on which has been constructed an Improvement intended for use as a single residential dwelling unit, whether such unit is located in a single family, duplex, townhouse or multiunit building. The term "Unit" refers to an Attached Townhome or a Single Family Home.
- 1.65 "Working Capital Contribution" shall have the meaning set forth in Section 11.23.
- 1.66 Interpretation and Flexibility. In the event of any ambiguity or question as to whether any Person, property or Improvement falls within any of the definitions set forth in this Article 1, the determination made by Declarant in such regard (as evidenced by a recorded Supplemental Declaration stating same) shall be binding and conclusive. Moreover, Declarant may also, by way of Supplemental Declaration, alter or amend the application of any portion of the Declaration as to any specified portion(s) of the Property to reflect any unique characteristics thereof. Provided, however, such altered or amended application may not go so far as to be unequivocally contrary to the overall, uniform scheme of development for the Property contemplated in the Declaration.

## 2. **GENERAL PLAN OF DEVELOPMENT; PROPERTY SUBJECT TO THE DECLARATION; ADDITIONS THERETO.**

- 2.1 General Plan. Declarant is the owner of real property referred to as the "Property" more particularly depicted on Exhibit "A.". Declarant presently plans to develop all or a portion of the Property as a multi-phased, planned community comprised of residential, recreational and related uses.
- 2.2 Legal Description. The initial real property which shall be held, transferred, sold, conveyed and occupied subject to the Declaration is more particularly described in Exhibit "A" attached hereto and shall initially constitute the "Property." The real property and Improvements thereto described in Exhibit "F" attached hereto are hereby declared to be "Common Areas." The real property and Improvements thereto described in Exhibit "G" attached hereto are hereby declared to be "Lots." Each group of Lots and Improvements declared to be a "Collection" are identified in Exhibit "D" attached hereto. The real property and Improvements thereto

described in Exhibit "H" attached hereto are designated as "Future Development Property."

- 2.3 Future Development. Declarant does not represent or warrant that the development shown in any Site Plan, drawings, renderings, plans or models for the Future Development Property will be carried out or that the Future Development Property will actually be developed or built. Any Site Plan or drawings, renderings, plans or models for the Future Development Property are conceptual in nature and do not represent a final development or improvement plan. No portion of the Future Development Property shall be deemed to be a Lot, Unit, Attached Townhome, Single Family Home, Collection or Common Area unless and until it is declared to be such in a Supplemental Declaration executed by Declarant and the Owner of the Future Development Property if other than Declarant. Declarant has no obligation to declare all or any portion of the Future Development Property to be Lots, Units, Attached Townhomes, Single Family Homes, a Collection or Common Areas.

The Owners acknowledge, covenant and agree that Declarant will have no liability to the Owners for any changes to, or failure to complete any development or Improvements in accordance with the Site Plan, or any drawings, renderings, plans or models. Each Owner acknowledges that the development of the Property may extend over a number of years, and agrees and consents to all changes in the uses or density of Units within the Property and the architectural scheme of the Property. Each Owner acknowledges and agrees that the Owner is not entitled to rely upon, and has not received or relied upon, any representations, warranties, or guarantees whatsoever as to the current or future: (.1) design, construction, completion, development, use, benefits, or value of land within the Property; (.2) number, types, sizes, prices, or designs of any Unit, structure, building, facilities, amenities or improvements built or to be built in any part of the Property; or (.3) use or development of any land adjacent to or in the vicinity of the Property.

- 2.4 Supplements. Declarant has the right, but not the obligation, to develop the land constituting the Property in "phases" from time to time and to declare such portions of the Property to be Lots, Units, Attached Townhomes, Single Family Homes, a Collection or Common Areas by Supplemental Declaration. So long as Declarant owns any property in the Community, Declarant may designate as "Property" other land in the Community or any adjacent property (including the Improvements thereon) by recording Supplemental Declarations, which shall not require the consent of the then existing Owners or the Association. If Declarant is not the owner of the land to be added to the Property as of the date the applicable Supplemental Declaration is to be made, then the owner(s) of such land shall join in such Supplemental Declaration. Once so added, such land shall be deemed a part of the Property for all purposes of the Declaration, except as modified pursuant to Section 1.66 hereof, if at all. Nothing in the Declaration shall, however, obligate Declarant to add to real property designated as the Property or to develop the Future Development Property or any other real property (adjacent or otherwise) under the common scheme contemplated by the Declaration, nor to prohibit Declarant (or the applicable Declarant-affiliated Owner) from changing the development plans with respect to the Property.

All Owners by acceptance of their deeds to or other conveyances of their Lots thereby automatically consent to any such change, addition, withdrawal or deletion thereafter made by Declarant (or the applicable Declarant-affiliated Owner thereof) and shall evidence such consent in writing if requested to do so by Declarant at any time (provided, however, that the refusal to give such written consent shall not obviate the general effect of this provision).

Any such Supplemental Declaration may submit the Property added by it to such additions to and modifications of the Governing Documents as may be necessary or convenient in Declarant's judgment to reflect or adapt to any changes in circumstances or difference in the character of the added properties or Improvements thereon.

Declarant reserves the right to modify the voting interests, Assessment rates and Assessment commencement dates by Supplemental Declaration.

- 2.5 Withdrawal. Declarant reserves the right to amend the Declaration unilaterally at any time, without the consent of any Owner, for the purpose of removing any portion of the Property then owned by Declarant or its affiliates or the Association from the provisions of the Declaration for any of the following reasons:

- 2.5.1 to the extent included originally in error;
- 2.5.2 to the extent that Declarant is transferring that portion of the Property to another property owners' association or any governmental entity, in which event Declarant shall be entitled to retain all consideration paid for any portion of the Property so conveyed; or
- 2.5.3 as a result of any change in the plans for the Community desired to be effected by Declarant with the approval of the City, if applicable.

Any withdrawal of land not owned by Declarant shall not be effective without the written consent or joinder of the then-owner(s) of the withdrawn land.

- 2.6 Disclaimer of Implication. Only the Property described in Exhibit "A" hereto is submitted to the Governing Documents by this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required by Section 2.4 with respect to it, no other portion of the Community, if any, shall be in any way affected by the Governing Documents, and every such portion may be freely sold, conveyed or otherwise disposed of by their owner or owners free and clear of the Governing Documents.
- 2.7 Amendment. This Article 2 shall not be amended without the prior written consent of Declarant, so long as Declarant (or any of its affiliates) owns any portion of the Community.

### 3. COMMON AREA PROVISIONS.

- 3.1 Common Areas. Certain portions of the Property are designated as Common Areas and are designed and intended for the common, non-exclusive use of Declarant, Owners of all Lots that may from time to time constitute part of the

Property, and all of the respective Permitted Users and invitees of Declarant and the Owners, all as provided and regulated herein or otherwise by the Association. Common Areas (when designated as such by Declarant) may include private streets and roadways, entrance features, private alleys, a pool, pool deck, clubhouse, signs erected by Declarant to identify the Community, structures, preserve areas, open space, mailboxes serving the Units, off-street parking areas, sidewalks and street lights and such similar items or property which may hereafter be added by a deed conveying same to the Association or on a Subdivision Plat relating to such Common Area or in a Supplemental Declaration. Common Areas shall not include any property owned by another property owners' association, any public utility installations on Common Areas and any other property of Declarant not intended to be made Common Areas. Declarant shall have the right, subject to obtaining all required governmental approvals and permits, to construct on the Common Areas such facilities as Declarant deems appropriate. The timing and phasing of all such construction shall be solely within the discretion of Declarant. The initial Common Area is described on Exhibit "F."

Without limiting the generality of Section 1.66, in the event that Declarant determines that a particular portion of the Property is or is not a Common Area hereunder (in the manner provided in Section 1.66), such determination shall be binding and conclusive. It is specifically contemplated that the Common Areas may change from time to time in connection with changes in development plans and other factors not now known (including by increase, decrease or transfer to another property owners' association or a governmental entity). Accordingly, references in the Declaration to the Common Areas shall be deemed to refer to the Common Areas as they may exist as of the relevant time.

3.1.1 The Declaration is subject to any other easement currently of record which affects any of the Property. Any easement in favor of the Association and its benefits and burdens shall be deemed a Common Area. Additionally, Declarant reserves on behalf of the Association the right to accept any easements in favor of the Association over, under, across or through any portion of the Property or real property which abuts or is adjacent to the Property, and such easements shall be deemed a Common Area to the extent of such easements created. Any real property shall be considered adjacent to or abutting the Property even though a street, lake or canal may lie between any of such properties.

3.1.2 Declarant will endeavor to specifically identify (by recorded legal description, signage, physical boundaries, site plans or other means) the Common Areas of the Property, but such identification shall not be required in order for a portion of the Property to be Common Area hereunder. The Association need not have title to a portion of the Property in order for such portion to be designated as a Common Area.

3.2 Prior to Conveyance. The Owners shall have no right in or to any portion of the Community unless and until same is declared to be a Common Area in the Declaration or any Supplemental Declaration and actually constructed, completed, and conveyed to, leased by, dedicated to, and/or Maintained by the

Association. Declarant has no obligation or responsibility to construct or supply any such Common Area of the Association, and no party shall be entitled to rely upon any statement contained in the Declaration as a representation or warranty as to the extent of the Common Areas to be owned, leased by, or dedicated to the Association. So long as Declarant (or any of its affiliates) owns any portion of the Community, Declarant shall retain the right to add to, delete from, modify any of the Common Areas.

- 3.3 Conveyance or Dedication of Common Areas. Common Areas shall be conveyed to the Association in fee simple without any encumbrances except this Declaration, drainage, greenway, utility, conservation and other easements, restrictions, reservations, conditions, limitations, and declarations of record at the time of conveyance, zoning, land use regulations and survey matters and the lien of real property taxes not yet due and payable, except for those areas which the Code requires be conveyed to the City. Title to Common Areas shall be conveyed to the Association at the earlier of the expiration of the Declarant Control Period or when required by the Code or Act. The Association shall accept all Common Areas, including the Improvements installed thereon by Declarant, deeded to it and/or dedicated to it on any recorded Subdivision Plat of the Property, whether or not the conveyance or dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Property. The Association shall be responsible for the Maintenance of all Common Areas (whether or not conveyed or to be conveyed to the Association) in a continuous and satisfactory manner without cost to the general taxpayers of the City.

The conveyance or transfer of Common Areas shall be "As Is." The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, Maintenance and operation of the Common Area and other obligations relating to the Common Area imposed herein. The Association hereby agrees to indemnify and hold Declarant harmless on account thereof. The Association, by its joinder in the Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. THE ASSOCIATION AGREES TO ACCEPT "AS IS" THE CONVEYANCE OF THE COMMON AREA AND THE PERSONAL PROPERTY AND IMPROVEMENTS APPURTENANT THERETO, WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION OR FITNESS OF THE COMMON AREA, OR PORTIONS THEREOF AND THE PERSONAL PROPERTY AND IMPROVEMENTS THEREON.

- 3.4 Operation After Conveyance. After the conveyance or transfer of any portion of the Common Area to the Association, the portion of the Common Area so conveyed or transferred shall be owned, operated, Maintained and administered by the Association for the use and benefit of the Owners, in accordance with the Governing Documents. Subject to the Association's right to grant easements, leaseholds and other interests as provided herein, the Association may not convey, transfer or encumber all or a portion of the Common Areas to a third party without (a) the approval of eighty (80%) percent of the total voting interests of the Owners; and (b) the written consent of Declarant so long as Declarant (or any of its affiliates) owns any portion of the Community.

- 3.5 Taxes. It is intended that all real estate taxes assessed against the Common Areas owned or to be owned by the Association shall be (or have been, because the purchase prices of the Units have already taken into account their proportionate shares of values of the Common Area) proportionally assessed against and payable as part of the taxes of the Units within the Property. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment (subject to protest or appeal before or after payment) of the same, including taxes on any Improvements and any personal property thereon accruing from and after the date this Declaration or Supplemental Declaration designating the portion of the Property as Common Areas was recorded. Such taxes shall be prorated between Declarant (or the then Declarant-affiliated Owner thereof) and the Association as of the date of such recordation. Any taxes on the Common Areas shall be Common Expenses of the Association.
- 3.6 Assumption of Risk. Without limiting any other provision herein, each Person using any portion of the Common Areas accepts and assumes all risk and responsibility for liability, injury, loss or damage connected with use of such Common Areas. The Person also expressly indemnifies and agrees to hold harmless Declarant, the Association and all employees, directors, representatives, officers, agents, and partners of the foregoing, from any and all damages, whether direct or consequential, arising from or related to the Person's use of the Common Areas, including attorneys' fees and costs at trial, upon appeal or otherwise.
- 3.7 Negligence. The expense of any Maintenance, repair or construction of any portion of the Common Areas necessitated by the negligent or willful acts of an Owner, its Permitted User or other Person utilizing the Common Areas, through or under such Owner, shall be borne solely by such Owner and the portions of the Property owned by that Owner shall be subject to an Individual Assessment for that expense.
- 3.8 Partition. Except as permitted in the Declaration, there shall be no judicial partition of the Common Areas or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition of the Common Areas or any part thereof, unless the Property has been removed from the provisions of the Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to the Declaration.

#### 4. **MEMBERSHIP, GOVERNANCE AND VOTING RIGHTS IN THE ASSOCIATION**

- 4.1 Membership. Declarant and every Owner within the Property shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. The foregoing is not intended to include any Person that holds an interest merely as security for the performance of an obligation. Upon

termination of ownership, an Owner's membership with respect to the transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot. The Owner of the Future Development Property shall be a Member of the Association but no votes shall be allocated to any portion of the Future Development Property unless and until such portion is declared to be Lots by Declarant and Owner of the Future Development Property, if other than Declarant.

- 4.2 Voting Rights. Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. The Association shall have two (2) classes of Members:

4.2.1 Class A. Class A Members shall be all Owners of Lots, with the exception of Declarant so long as Declarant is a Class B Member. Unless otherwise provided in a Supplemental Declaration, a Class A Member shall be entitled to one (1) vote for each Unit developed or intended to be developed on a Lot owned by the Class A Member.

4.2.2 Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Class A vote and three (3) votes for Lot owned by a Class B Member. The Class B membership shall cease and be converted to Class A membership on the expiration of the Declarant Control Period.

4.2.3 Co-Owners. When more than one Person holds an interest in any portion of the Property, all such Persons shall be Members of the Association and may attend any meeting of the Association. The votes for such portion of the Property shall be exercised or cast in the manner provided by the Declaration and Bylaws.

- 4.3 Modifications. Declarant shall have the right in its sole discretion to modify the voting allocations set forth in Section 4.2 and to set forth such modified allocations in a Supplemental Declaration.

- 4.4 Selection of Voting Members. The Person entitled to act as the Voting Member for an Owner shall be determined in accordance with the Bylaws.

- 4.5 General Matters. When reference is made in the Governing Documents to a majority or specific percentage of Owners, Members (or Voting Members), such reference shall be deemed to be reference to a majority or specific percentage of the voting interests of Members represented by their respective Voting Members at a duly constituted meeting thereof (i.e., one for which proper notice has been given and at which a quorum exists) and not of the number of the Members themselves or number of Lots or the total aggregate number of voting interests unless the Declaration or Act expressly requires a majority or specific percentage of the "total voting interests," in which case the majority or specific percentage shall be computed on the total aggregate number of voting interests in the Association.

## 5. CERTAIN EASEMENTS AND RIGHTS

- 5.1 Owners' Rights of Use. Each Owner and Permitted User on the Property shall have a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right rights of ingress and egress to and from all Common Areas throughout the Property, subject to such rules and regulations as are allowed under the Governing Documents to be imposed by the Association and subject to suspension of use rights allowed in the Governing Documents; provided that no suspension of rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by G.S. 47F-3-107.1 of the Act. But the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot or Future Development Property through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.
- 5.2 Limitations on Use of Common Areas. All rights of use and enjoyment in the Common Areas are subject to the following:
- 5.2.1 Easements over and upon the Common Areas in favor of the Association and its Members shall not be deemed to grant any easements or use rights which are not specifically granted elsewhere herein or in any other documents to which the Property (or any applicable portion(s) thereof) are now or hereafter made subject.
- 5.2.2 The Association's rights include the following:
- 5.2.2.1 To suspend the rights of an Owner and his Permitted Users to use the Common Areas (except legal access and drainage easements) as set forth in Subsection 11.16.6 for any period during which any applicable Assessment remains unpaid subject to the requirements of the Act, Article 13 and Subsection 11.16.6 of the Declaration.
- 5.2.2.2 To require that vehicles of all or certain types of Owners or Permitted Users bear appropriate decals and may charge a reasonable fee for such decals.
- 5.2.2.3 To adopt and enforce rules and regulations governing the use of the Common Areas. Any rule and/or regulation so adopted by the Association shall apply until rescinded or modified.
- 5.2.2.4 To reasonably limit the number of Owners, Permitted Users or invitees using the Common Areas and the hours of operation of the Common Areas.
- 5.2.3 Declarant shall have the right to construct, erect and build Improvements over such streets, drives, roadways, sidewalks, paths, walks and parking areas within or upon the Common Area. Notwithstanding the foregoing, as long as Declarant or any of its affiliates owns any property in the Community, Declarant, by

Supplemental Declaration or other written instrument, may limit or restrict access to certain private streets, drives, roadways, walkways, paths and parking areas within or upon the Common Area.

- 5.2.4 Declarant and Declarant's Permittees shall have the right from time to time to enter upon the Common Areas and other portions of the Property (including Lots and Units) for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion or alteration of any Improvements or facilities on the Common Areas or elsewhere in the Property that Declarant and Declarant's Permittees, as appropriate, elect to effect.

WITH RESPECT TO THE USE OF THE COMMON AREAS, RECREATION FACILITIES AND THE PROPERTY GENERALLY, ALL PERSONS ARE REFERRED TO SECTIONS 20.11 AND 20.13 HEREOF WHICH SHALL AT ALL TIMES APPLY THERETO.

- 5.3 Right to Grant or Relocate Easements. Declarant (as long as Declarant or any of its affiliates owns any property in the Community) and thereafter the Association shall have the right to grant, convey and relocate easements, licenses or rights of way in, on, over or under the Common Areas for purposes consistent with the terms of the Declaration, including constructing, installing, erecting, operating or Maintaining thereon, therein and thereunder: (.1) streets, walks, trails, driveways, parkways, landscaping, parks and open space areas; (.2) lines, cables, wires, conduits, facilities and other devices for the transmission of electricity, heating, cooling, water, sanitary sewerage, gas, television, telephone, voice or electronic data and other similar purposes; (.3) Stormwater Control Facilities; (.4) irrigation systems; (.5) any Improvements or uses for the general health or welfare of the Owners, for the Maintenance of the Property, or any portion thereof, or for the purpose of carrying out any provision of the Declaration; and (.6) any similar Improvements or uses not inconsistent with the use of such property pursuant to the Declaration as Declarant shall deem necessary or desirable. Notwithstanding the foregoing, such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use and enjoyment of the Common Areas or the use of or ingress and egress to the Lots and Future Development Property for their intended purposes.

- 5.4 Association Easements over Lots and Units. The Association and its duly authorized agents, employees or independent contractors shall have an easement over each Lot and Unit as may be reasonably necessary to carry out any provision of the Declaration, including the Maintenance of Common Areas, performance of Lot Landscaping, Exterior Maintenance, Restoration of the Insured Attached Townhome Property, enforcement of the Declaration, inspection (in a reasonable manner) in order to determine whether any Maintenance is necessary, performance of remedial work, and to the extent that the Association is obligated or authorized to perform any Lot Landscaping, Exterior Maintenance, or Restoration of the Insured Attached Townhome Property, to perform such Lot Landscaping, Exterior Maintenance, or Restoration of the Insured Attached Townhome Property provided that any such entry is during reasonable hours. Nothing contained in this Section shall be construed or interpreted to impose upon the Association the obligation to Maintain any of the

Property except as expressly set forth in the Declaration. Neither Declarant, the Association, nor any of their respective directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any portion of the Property or failure to Maintain the same. Declarant, the Association, or any other authorized Person undertaking such Maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the Maintenance of any portion of the Lots, Units, Common Areas or Improvements thereon or portion thereof. In addition, the Association may, without notice, perform such emergency Maintenance as it may determine is necessary for the safety of any Person or to prevent damage to any property. The provisions of this Section shall not be deemed to create any right of the Association to enter upon the property of Declarant.

- 5.5 Utility Easements. Utilities in the Common Areas for the service of the Property shall be installed underground except as otherwise permitted by Declarant.
- 5.6 Access for Governmental Agencies; Service and Emergency Easements. A non-exclusive, perpetual right of access over all Lots, and Future Development Property and Common Areas (including private streets, if any) on the Property is established for the benefit of governmental entities for installing, removing and reading utility meters, Maintaining and replacing utility facilities and lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and public or private mail and package delivery.
- 5.7 Easements for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Common Area reserved herein, there shall be, and Declarant hereby reserves and grants for itself and all future Owners and their family members, Permitted Users, invitees, contractors, Mortgagees and the Association, a perpetual, non-exclusive easement for: (.1) vehicular traffic over all streets dedicated to the public use, if any, and private streets, roadways and alleys within or upon the Common Area; (.2) pedestrian traffic over, upon and across all sidewalks, walkways, walking trails and paths within or upon the Common Area; and (.3) vehicular parking on such portions of the Common Area as from time to time may be intended and designated for general parking purposes by the Board of Directors.
- 5.8 Encroachments; Easements. If (.1) any Improvement on the Common Area encroaches upon any Lot; (.2) any Improvement on any Lot encroaches upon the Common Area or another Lot; or (.3) any encroachment shall hereafter occur as a result of (a) construction of a Unit or Improvement to a Common Area; (b) settling or shifting of a Unit, Attached Townhome Building or Improvement to Common Area; (c) any alteration or repair to a Unit, Attached Townhome Building or Improvement to Common Area made by or with the consent of the Owner, Association or Declarant, as appropriate, or (d) any Restoration of the Improvements to a Unit, Lot, Attached Townhome Building or Common Area (or any portion thereof) damaged by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit, Lot or Common Area, then, in such event, a valid easement is granted and shall exist for such encroachment and for the maintenance of the same so long as the Improvements causing the encroachment shall stand. This provision shall not

entitle any Owner to intentionally construct Improvements which encroach upon any other portion of the Property and no easement for encroachment shall exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, Permitted User or the Association.

5.9 Support and Other Easements for Attached Townhomes. Each Attached Townhome shall have the following easements: (.1) for lateral and subjacent support of, in and to all exterior walls, Party Walls, structural members, roof, footings and foundations of the Unit or other Improvements which abut or support the Attached Townhome; (.2) for Maintenance of common construction improvements, such as footings, supports and foundations, which abut or support the Attached Townhome; (.3) for attachment of the Attached Townhome to the Party Wall(s) it shares with the adjacent Attached Townhome(s); and (4) of necessity in favor of, all other Units within Attached Townhome Building in which it is located and any other structure or improvement which abuts or supports an Attached Townhome.

5.10 Utility and Other Services; Stormwater Control Facilities. In the event that any Attached Townhome Building contains utilities, telecommunications and security systems, irrigation and other services and systems and/or Stormwater Control Facilities which serve more than one Unit or Lot, then there shall be an easement reserved in favor of the Association and/or the entities providing such utilities, telecommunications and security systems, and irrigation and other services and systems and/or drainage facilities under, through and over each Unit therein and the Lot on which it is located as may be required from time to time in order to Maintain such utilities, telecommunications and security systems, irrigation and other services and systems and drainage facilities so long as the easement does not materially adversely affect the Owner's use and enjoyment of its Unit as a residence. Stormwater Control Facilities serving more than one Lot shall be Maintained continuously in good condition by the Association and easements are granted hereby over all Lots in favor of all Owners and the Association with respect thereto.

No Owner shall do anything within or outside its Unit that interferes with or impairs, or may interfere with or impair, the provision of such utilities, telecommunications and security systems, and other services and systems and/or Stormwater Control Facilities or the use of easements for the foregoing purposes. The Association or its agent shall have a right of access to each Lot and Unit thereon to Maintain the pipes, wires, ducts, vents, cables, conduits and other facilities for utilities, telecommunications and security systems, and other services and systems and for Stormwater Control Facilities located on the Lot or elsewhere in the Property and serving an Attached Townhome Building, and to remove any improvements interfering with or impairing such facilities or easements reserved herein. Such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit. Except in the event of an emergency (which shall not require prior notice), entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Owner is absent when the giving of such notice is attempted).

- 5.11 Easements of Support. Whenever any structure included in the Common Areas adjoins any structure included in any other portion of the Property, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure.
- 5.12 Easements Appurtenant. The easements provided in Article 5 shall be appurtenant to and shall pass with the title to each Lot and, if applicable, title to Future Development Property.

## 6. FUNCTIONS OF THE ASSOCIATION.

- 6.1 Powers and Duties. Subject only to such limitations expressly set forth in the Governing Documents, the Association (.1) shall have all of the powers of a North Carolina not-for-profit corporation; (.2) shall have and may exercise any right or privilege given to it expressly in the Governing Documents; (.3) shall have and may exercise any right or privilege given to it by the Act or other law and (.4) shall have and may exercise every other right, privilege, power or authority necessary or desirable to fulfill its obligations under the Governing Documents.
- 6.2 Assessments. The Association shall have the power and duty to impose Assessments on the Owners of Lots with respect to which Assessments have commenced and to collect and enforce payment of such Assessments in accordance with the provisions of Article 11. The Association may exempt portions of the Property from Assessments.
- 6.3 Maintenance of Other Property. The Association may Maintain other property which it does not own, including common areas of another property owners' association or property dedicated to the public, (.1) if such Maintenance is required by the Declaration, any covenants binding the Property or any governmental order, (.2) if the Board of Directors determines that such Maintenance is necessary or desirable to cause compliance with the Declaration or to enhance the appearance or value of the Property, or (.3) if the Maintenance is requested by the Person responsible for such Maintenance and the cost of it is charged to such Person with security or other assurances for payment acceptable to the Board. As to any Maintenance performed by the Association pursuant to the Governing Documents as to property it does not own, the Association shall have the right to file, amend, release and terminate claims of lien.
- 6.4 Rules. The Association shall have the power to adopt, amend and enforce rules and regulations applicable within the Property with respect to any Common Areas and those portions of a Lot or Unit Maintained by the Association, and to implement the provisions of the Governing Documents, including rules and regulations to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate parking; to regulate animals; to regulate signs; to regulate use of all Improvements on Common Areas to assure fullest enjoyment of use by the Persons entitled to enjoy and use the same; to promote the general health, safety and welfare of Persons within the Property; and to protect and preserve property, property values and property rights. All rules and regulations adopted by the Association shall be reasonable and shall be uniformly applied, except such rules may

differentiate between reasonable categories of the Property and Owners, Permitted Users, invitees and contractors. Notwithstanding the foregoing provisions of this Section, the Association shall not have the right or power to amend the Declaration or impose rules and regulations which limit or interfere with the rights of Declarant under the Declaration. A copy of the rules, as they may from time to time be adopted, amended or repealed, may be posted in a conspicuous place in the Association's office or may be mailed or otherwise delivered to each Owner. Upon such mailing, delivery or posting, the rules and regulations shall have the same force and effect as if they were set forth herein; provided, however, that the rules and regulations shall be enforceable only to the extent that they are consistent with the Governing Documents, and may not be used to amend any of such documents. If any Owner has actual knowledge of any rules and regulations, such rules and regulations shall be enforceable against such Owner as though notice had been given.

- 6.5 Borrowing. The Association has the right with the consent of Declarant, as long as Declarant or any of its affiliates owns any property in the Community, to borrow money for any purpose, subject to any limitation in this Declaration, to execute promissory notes, other documents evidencing or securing the indebtedness; provided that in the event the aggregate amount of principal indebtedness incurred by the Association in any Fiscal Year exceeds the greater of \$500,000, as adjusted by the CPI, or forty (40%) percent of the Association's budget for the previous year, then such actions must be approved by Owners holding a majority of the Voting Interests present in person or by proxy at a duly called meeting of the Association at which a quorum is attained. In the event that the Association desires to mortgage, pledge or encumber any or all of its Common Area as security for money borrowed or debts incurred, then the Association must obtain the approval of eighty (80%) percent of the total voting interests of the Owners.
- 6.6 Marketing. The Association may provide a suitable and continuing program to promote the Community as a desirable residential community, including advertising, organizing and coordinating major events, advertising, placing articles in news media, and establishing uniform standards for promotional events.
- 6.7 Special Events. Declarant and the Board of Directors shall have the right, but not the obligation, to grant special use rights, permits and privileges in the Common Area and Improvements thereon for special events, festivals, street fairs, valet parking and other usage. In addition, the Association shall have the right to enter into agreements with another property owners' association or others for purposes relating to, the joint or cooperative marketing, advertising and promoting the Community, regulating and providing parking within the Community, including special event parking, and other areas of interest to the Association and its Members.
- 6.8 Indemnification. The Association shall be obligated to and shall indemnify Declarant and hold it harmless from all liability, loss, cost, injury, damage and expense, including attorneys' fees, arising with respect to any operations of or services provided by the Association hereunder.

## 7. MAINTENANCE OF UNITS, LOTS AND COMMON AREAS

### 7.1 Exterior of Improvements.

7.1.1 To the extent that the Association has the express obligation to perform Attached Townhome Maintenance for any Improvements to the Lot pursuant to this Declaration, any Supplemental Declaration, or other declaration of covenants and restrictions or similar recorded instrument, then the Association shall be responsible for performing those obligations which have been delegated to it in a neat, orderly and attractive manner consistent with the standards set forth in Section 7.6.

7.1.2 The Maintenance of all Improvements located on the Lot which has not been expressly delegated to the Association pursuant to this Declaration, any Supplemental Declaration, or pursuant to a declaration of condominium or declaration of covenants and restrictions or similar recorded instrument shall be the sole obligation of the Owner(s) of such Lot or Unit. Other than the Lot Landscaping Maintained by the Association, each Owner shall Maintain the trees, shrubbery, grass and other landscaping, and all parking, pedestrian, recreational and other open areas on his Lot in a neat, orderly and attractive manner and consistent with the standards set forth in Section 7.6.

By way of example and not limitation, the Association shall provide Attached Townhome Services for each Attached Townhome. However, each Attached Townhome Owner is solely responsible for all other Maintenance to the Unit and Lot which is not expressly included in the definition of Attached Townhome Services. Without intending to limit the foregoing sentence, each Attached Townhome Owner shall Maintain or cause to be Maintained all portions of the Lot and Improvements thereon (including all appliances, interior walls, structural components, and plumbing, electrical and mechanical systems of his Unit) located on his Lot in a neat, orderly and attractive manner consistent with the standards set forth in Section 7.6.

7.2 Lot Landscaping. The Association shall Maintain the Lot Landscaping in the front, side and back yards of each Lot in a neat, orderly and attractive manner. The Association shall not be obligated to Maintain any Lot Landscaping in within any enclosed or fenced areas on a Lot. Nor shall the Association be required to perform Lot Landscaping when an unsafe condition exists on a Lot, including a loose animal. The Maintenance of the Lot Landscaping may include, but shall not necessarily be limited to: the cutting or trimming of grass, trees and shrubs; the re-seeding, re-sodding or replanting of grass; the replanting trees or shrubs; the re-mulching and weeding of mulched areas, the repair and replacement of Lot irrigation installed by Declarant, a Participating Builder or the Association; and the routine, customary application of fertilizer, pesticide and algaecide or fungicide, if necessary or recommended. The Association shall not be required to Maintain any shrubbery, grass and other landscaping other than the usual and customary landscaping provided by Declarant or Participating Builder or its

replacement provided by the Association. The Association shall have the right to remove any Lot Landscaping which becomes a nuisance. The Association shall have the sole discretion to determine the time at which such Lot Landscaping shall take place, the manner and materials to be used. The replacement of Lot Landscaping of any particular Lot, which is necessitated by deterioration of existing materials, shall also be the responsibility of the Association.

### 7.3 Remedies for Noncompliance.

7.3.1 In the event of an Owner fails to Maintain or cause to be Maintained his Improvements and Lot in accordance with this Article 7, the Association shall have the right (but not the obligation), upon five (5) days' prior written notice to the Owner at the address last appearing in the records of the Association, to enter upon the Owner's Lot and perform such work as is necessary to bring the Lot or Improvements, as applicable, into compliance with the standards set forth in Section 7.6. Such work may include, but shall not necessarily be limited to, the repainting or re-staining of exterior surfaces of an Improvement, the repair of walls, fences, roofs, doors, windows and other portions of Improvements on a Lot; and such other remedial work as is judged necessary by the applicable entity.

7.3.2 The remedies provided for herein shall be cumulative with all other remedies available under the Declaration or other applicable covenants or deed restrictions (including the imposition of Individual Assessments or the filing of legal or equitable actions).

7.4 Costs of Remedial Work; Surcharges. In the event that the Association performs any remedial work on an Improvement or Lot pursuant to this Article or any other applicable covenants or deed restrictions, the costs and expenses thereof shall be deemed an Individual Assessment under Article 11 of the Declaration and may be immediately imposed by the Association. In order to discourage Owners from abandoning certain duties hereunder and, additionally, to reimburse itself for administrative expenses incurred, the Association may impose a surcharge of not more than twenty-five (25%) percent of the cost of the applicable remedial work, such surcharge to be a part of the Individual Assessment. No bids need be obtained for any of the work performed pursuant to this Section and the Person(s) performing such work may be selected by the applicable enforcing entity in its sole discretion.

### 7.5 Right of Entry; Right to File Notices of Lien Rights.

7.5.1 There is hereby created an easement in favor of the Association and its designees, over each Lot including the Unit thereon for the purpose of entering onto the Lot in the performance of Lot Landscaping, Attached Townhome Services, and any other Maintenance for which the Association has Maintenance responsibility, or for which the Association is otherwise permitted or required to perform the Maintenance and any other herein described, provided that the Association shall exercise such easement for entry into a Unit during reasonable hours.

- 7.5.2 The Association shall have the right to file notices of lien rights, claims of lien, amendments thereto, notices of termination and satisfactions as to any Lot for which it has the obligation to perform Lot Landscaping, Attached Townhome Services, or any other Maintenance, or for which the Association is otherwise permitted or required to perform the Maintenance.
- 7.6 Standards for Maintenance; Restoration. All Maintenance and Restoration of Property, Units, Lots and the performance of Lot Landscaping and Attached Townhome Services shall be performed in a manner consistent with the general appearance of the developed portions of the Property and, as to Units, the portion of the Property in which the Unit is located. The minimum (though not sole) standard for the landscaping shall be the more stringent of the following: the Community standard or the general appearance of the Property (and the applicable portion thereof as aforesaid) as initially landscaped (such standard being subject to being automatically raised by virtue of the natural and orderly growth and maturation of applicable landscaping, as properly Maintained). The minimum (though not sole) standard for Maintenance and Restoration of Property, Units and Lots shall be the more stringent of the following: the Community standard or the prevailing standard for the portion of the Property in which the Unit is located taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness, in the judgment of Declarant or the ARB (as hereinafter defined). The Person responsible for Maintenance (the Association or Owner, as applicable) shall repaint, re-stain, or refinish, as appropriate, the exterior portions of his Improvements (with the same colors and materials as initially used or as approved by Declarant or the ARB) as often as is necessary to comply with the foregoing standards.
- 7.7 Other Maintenance Services. The Association may also assume Maintenance responsibilities with respect to any other Lots in addition to those that may be designated in this Declaration or in any Supplemental Declaration. This assumption of responsibility may take place by agreement with Owners of Lots or because, in the opinion of the Board of Directors, the level and quality of service then being provided is not consistent with the standards set forth in Section 7.6. All costs of Maintenance pursuant to this Section 7.7 shall be assessed as a Special Assessment or Individual Assessments only against the Lots to which the services are provided, unless specifically provided otherwise in a Supplemental Declaration. The provision of services in accordance with this Section shall not constitute discrimination within a class.
- 7.8 Common Area Maintenance. The Association shall at all times Maintain in good repair, operate, manage, insure, and replace as often as necessary the Common Areas and all Improvements situated on the Common Areas (upon completion of construction by Declarant or its affiliates, if applicable) in a neat, orderly and attractive manner consistent with the standards set forth in Section 7.6. Without limiting the generality of the foregoing, the Association shall assume all of Declarant's, its affiliates' (and its and their predecessors') responsibility to the City, its respective governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas, including roads and entry features, and shall indemnify Declarant and its affiliates and hold Declarant and its affiliates harmless with respect thereto.

- 7.9 Maintenance of Stormwater Control Facilities. If the Stormwater Control Facilities are not owned or Maintained by the City or another property owners' association, Declarant reserves the right to require the Association to Maintain, operate, repair and replace the Stormwater Control Facilities in accordance with the Stormwater Operations Maintenance Manual and Budget (as defined in the Stormwater Covenants) as a Common Expense in order to provide drainage, water storage, conveyance, or other stormwater management capabilities as required by the City.
- 7.10 Street Lighting. If the street lighting is not Maintained by the City or another property owners' association, Declarant reserves the right to require that the Association Maintain street lighting (the term "street lighting" shall include light poles and appurtenances thereto, the light bulbs and wiring therefor) located within the Property and on nearby property and the cost of electricity therefor, and the cost and expense for the foregoing in such a case shall be a Common Expense, notwithstanding that such street lighting may be located on portions of the Property which are not owned by the Association or are not Common Areas.

## 8. **INSURANCE FOR COMMON AREAS AND ATTACHED TOWNHOMES.**

- 8.1 Insurance for Common Areas. Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association shall procure and Maintain (.1) property insurance on the Common Areas, insuring against all risk of loss commonly insured against, including fire and extended coverage; (.2) commercial general liability insurance, with combined single limits of not less than two million dollars (\$2,000,000.00) or such higher limits as may be required by the Board from time to time, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use ownership or Maintenance of the Common Areas; (.3) fidelity insurance or bonding covering all persons who control or disburse Association funds, which shall include those individuals authorized to sign Association checks and the president, vice president(s), secretary and treasurer of the Association in such amount as may be determined by the Board; and (.4) director, officer and employee liability insurance for its directors, officers and employees in such amounts as the Board shall deem adequate, utilizing the broad form of policy coverage for all directors and officers and, if reasonably available, committee members of the Association. The Association shall obtain and Maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial for the protection or preservation of the Common Areas and other property of the Association or otherwise is in the best interests of the Association. The premiums for such insurance shall be a Common Expense paid from the Common Assessments as established pursuant to this Declaration.
- 8.2 Purchase, Custody and Payment of Policies Insuring Attached Townhomes. The Association, acting through the Board of Directors, shall use commercially reasonable efforts to obtain and Maintain at all times insurance which meets or exceeds the insurance requirements set forth in this Article 8. This insurance may consist of one or more stand-alone policies obtained by the Association or a master or group insurance policy or program available to Attached Townhome

Owners provided that such policy or program meets or exceeds the requirements set forth in this Article 8.

- 8.2.1 Purchase. All insurance policies purchased by the Association shall be issued by insurance companies authorized to do business in North Carolina or by reputable surplus lines carriers offering policies for property in North Carolina.
- 8.2.2 Named Insured. The named insured on all insurance policies purchased by the Association shall be the Association, individually, and as agent for the Attached Townhome Owners covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Attached Townhome Owners and their mortgagees shall be deemed additional insureds.
- 8.2.3 Custody of Policies and Payment of Proceeds. All policies and endorsements thereto shall be held by the Association, and all policies shall provide that payments for losses made by the insurer shall be paid to the Association, as trustee for the Attached Townhome Owners and their respective Mortgagees, to be held and disbursed in accordance with the provisions of the Declaration.
- 8.2.4 Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to any mortgagee who holds a Mortgage encumbering an Attached Townhome covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration date of each policy that is being renewed or replaced, as appropriate.
- 8.2.5 Attached Townhome Personal Property and Liability. Except for the Insured Attached Townhome Property as specifically provided herein, the Association shall not be responsible to any Attached Townhome Owners to obtain any other insurance coverage for the Attached Townhomes, including coverage for the Excluded Property, for the personal liability, living expenses, loss of use or for any other risks of any Owner or Tenant not otherwise insured in accordance herewith.
- 8.3 Attached Townhome Building Coverage. The Association shall use commercially reasonable efforts to obtain and Maintain insurance covering the following, the cost of which shall be an Attached Townhome Expense:
  - 8.3.1 Property. A blanket property insurance policy providing "special perils" coverage for the "Building Shell" of each Attached Townhome Building located on the Property from time to time, in an amount not less than one hundred (100%) percent of the full insurable replacement value thereof (before application of reasonable deductibles). If "special perils" coverage is not available, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. Subject to the provisions of this

Article 8, the Association may additionally obtain such other property insurance for the Attached Townhomes as the Association may determine to be necessary or desirable.

8.3.1.1 Scope of Property Insurance Coverage for Attached Townhomes. The "Building Shell" shall consist of the following components of each Attached Townhome Building: (.1) all structural components, including the foundation, footers, pilings, girders, beams, supports, walls (including all exterior walls, weight bearing walls, Party Walls and all other walls of an Attached Townhome) and all studs, drywall, sheetrock or gypsum board attached to such walls; all slabs, pillars, columns, insulation, exterior finishes or facades attached or affixed to any of the foregoing; all floor slabs; and all roofs, roof trusses, roof support elements, fascia, soffits, roofing materials and insulation; (.2) essential and permanent installations and equipment for electrical, plumbing, and mechanical systems, if any, which are utilized for, serve or pass through more than one Attached Townhome within an Attached Townhome Building; (.3) exterior windows, exterior doors in the perimeter walls bounding an Attached Townhome; garage doors, skylights and exterior glass; and (.4) pipes, conduits, ducts, vents and other service and utility lines which are utilized for, serve, or pass through more than one Attached Townhome; all of the foregoing as shown on the construction plans used to obtain building permits for the Attached Townhome Buildings (collectively the "Insured Attached Townhome Property").

8.3.1.2 Property Excluded from Insured Attached Townhome Property. Notwithstanding the foregoing, the Insured Attached Townhome Property shall not include, and shall specifically exclude the following ("Excluded Property"): all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by any Owner, Tenant, Guest or predecessor in interest; all paint, coating, covering, finish, millwork or other item applied to, attached to or suspended from the ceiling; all carpeting, tile, slate, wood, parquet, marble, flooring, paint, coating, covering, finish, millwork or other item of flooring; and all paint, tile, wallpaper, finishes, coatings, coverings, millwork or other item applied to, attached to or suspended from the walls or surfaces of an Attached Townhome; all additions, alterations, betterments or improvements owned, supplied or installed by any Owner, Tenant, Guest or predecessor in interest; and all ventilation, air conditioner and heating equipment and duct work for ventilation, heating and air conditioning systems; all plumbing and electrical fixtures, all appliances; all water heaters and built-in cabinets and countertops, and window

treatments within any Attached Townhome; all electrical, plumbing and mechanical lines, chutes, flues, ducts, conduits, wires, pipes, chases, equipment or other apparatus serving only one Attached Townhome; all mechanical, electrical or plumbing equipment outside the exterior walls of an Attached Townhome but located on a Lot; all Lot Landscaping; and all replacements of any of the foregoing.

- 8.3.2 Flood Insurance covering loss or damage to the Insured Attached Townhome Property in the event it is located in Flood Zone A or V as defined by the Federal Emergency Management Agency (FEMA). The Association may obtain such insurance through any available governmental programs providing for such coverage.
- 8.3.3 Liability. The Association has the right but not the obligation to obtain general liability insurance covering loss or damage to Persons or property resulting from the acts or omissions of the Association, its officers, directors, employees, contractors, agents or invitees on or about or in connection with the Attached Townhomes or adjoining driveways and walkways, with such coverage as shall be required by the Board of Directors, but with a minimum combined single limit liability of not less than \$2,000,000 (or such higher limits as may be reasonably required by the Board from time to time) for each accident or occurrence, and with a cross liability endorsement to cover liabilities of the Attached Townhome Owners as a group to any Attached Townhome Owner, and vice versa.
- 8.3.4 Optional Coverage. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (.1) subrogation against the Association and against the Attached Townhome Owners individually and as a group, (.2) pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (.3) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Attached Townhome Owners or as a result of contractual undertakings. Additionally, each policy shall provide that the insurance provided shall not be prejudiced by any act or omissions of individual Attached Townhome Owners that are not under the control of the Association, and that the policy shall be primary, even if an Attached Townhome Owner has other insurance that covers the same loss.

Every property insurance policy obtained by the Association, when deemed appropriate by the Board, shall have the following endorsements: (.1) an agreed value endorsement waiving any co-insurance penalty, (.2) inflation guard, (.3) an ordinance and law coverage endorsement covering increased costs resulting from changes in laws or codes, (.4) costs of demolition and removal of the damaged structure, and (.5) steam boiler coverage, if applicable.

- 8.4 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association. Prior to obtaining any property insurance policy or any renewal thereof, the Board of Directors shall obtain an insurance appraisal or update of a prior appraisal from a reputable appraiser or insurance expert of the full insurable replacement value of the Insured Attached Townhome Property, without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Article 8. The full replacement value of the Insured Attached Townhome Property shall be determined in the foregoing manner at least once every two (2) years.
- 8.5 Premiums. Premiums for insurance policies purchased by the Association pursuant to Section 8.1 shall be a Common Expense. Premiums purchased by the Association pursuant to Sections 8.2 and 8.3 shall be an Attached Townhome Expense. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 8.6 Share of Proceeds.
- 8.6.1 Common Areas. All insurance policies obtained by or on behalf of the Association pursuant to Section 8.1 shall be for the benefit of the Association.
- 8.6.2 Attached Townhomes. All insurance policies obtained by or on behalf of the Association pursuant to Sections 8.2 and 8.3 shall be for the benefit of the Association, the Owners of those damaged Attached Townhomes for which the proceeds were paid and their Mortgagees, as their respective interests may appear. The Association shall have the duty to receive such proceeds as are paid and to hold them in trust for the purposes elsewhere stated in the Declaration.
- 8.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Attached Townhome Owner and for each owner of a Mortgage or other lien upon an Attached Townhome to adjust all claims arising under insurance policies purchased by the Association for the Insured Attached Townhome Property and to execute and deliver releases upon the payment of claims.
- 8.8 Distribution of the Proceeds for Damaged Attached Townhomes. Proceeds of insurance policies obtained by the Association for the Insured Attached Townhome Property and received by the Association shall be distributed to or for the benefit of the beneficial owners in the manner hereafter provided in Article 9 entitled "Restoration of Attached Townhomes After Casualty."
- 8.9 Attached Townhome Owners' Coverage. Unless the Association elects otherwise, the insurance purchased by the Association for the Insured Attached Townhome Property pursuant to Sections 8.2 and 8.3 shall not insure, and the Association shall not be liable for, (.1) any Improvements or personal property lying within the boundaries of any Lot, including any additions, alterations, betterments or improvements installed by any Owner, Permitted User or predecessor in interest; (.2) any personal property of the Owner or any Permitted

User; (.3) liability, including for claims for bodily injury, death or property damage against an Owner or Permitted User occurring within a Lot or Attached Townhome; (.4) living or occupancy expenses, loss of use, loss of rents, or business interruption; (5) loss, damage or theft to any Excluded Property; or (.6) any other risks not otherwise insured by the Association. Each Attached Townhome Owner shall be solely responsible for carrying and paying for insurance as to all such and other risks not covered by insurance carried by the Association. Any such policies of insurance purchased by an Attached Townhome Owner shall, where such provision is available, contain a clause providing that the insurer waives its right to subrogation as to any claim or claims against other Attached Townhome Owners, the Association, and their respective employees, agents, guests and invitees.

8.10 Owner's Liability for Uninsured Losses, Underinsured Losses and Excluded Property. Each Owner of an Attached Townhome shall be responsible for (.1) all losses and damage to the Attached Townhome not insured by the Association's insurance policies, (.2) all Restoration Costs for his Attached Townhome other than those covered by the insurance proceeds paid on account of a loss or damage to the Insured Attached Townhome Property; and (.3) all loss or damage to the Excluded Property.

8.11 Benefit of Mortgagees. Certain provisions in this Article 8 entitled "Insurance for Attached Townhomes" are for the benefit of mortgagees of Attached Townhomes and may be enforced by such mortgagee.

## 9. **RESTORATION OF ATTACHED TOWNHOMES AFTER FIRE OR OTHER CASUALTY.**

9.1 Duty to Restore Damaged Townhome. In the event of damage or destruction to an Attached Townhome from any cause, the Association shall promptly proceed to Restore the Attached Townhome at the same location, on the same lines, of the same size, of the same or similar material as reasonably possible to its value, condition and character which existed immediately prior to such damage or destruction, subject to such changes or alterations as are approved by the ARB in conformity with the provisions of the Declaration and modern construction techniques and methods.

9.2 Plans and Procedures for Restoration. The plans and specifications for any Restoration shall be prepared by an architect licensed in the State of North Carolina. All plans and specifications required in connection with any Restoration shall be subject to review and approval by the ARB. The Association's Representative may also be retained to assist the Association in obtaining bids for the restoration from responsible contractors. Unless the Association and a majority of the voting interests of the Owners of the damaged Attached Townhomes shall otherwise agree, plans and specifications for any Restoration shall be consistent with the then existing building plans. The Association shall retain a responsible contractor to perform the Restoration. The contractor shall work under the administration of the Association and the Association's Representative, if applicable.

- 9.3 Assessments. If the insurance proceeds are not sufficient to defray the estimated Restoration Costs, or if at any time during Restoration or upon completion of Restoration, the funds for the payment of the Restoration Costs are insufficient, in Association's reasonable judgment, to pay in full the balance of the Restoration Costs, the Association may impose Special Assessments in the amount of the deficiency against the Owner of each damaged Attached Townhome in the same proportion as the Restoration Costs attributable to his or her Attached Townhome bears to all Restoration Costs of all damaged Attached Townhomes in sufficient amounts to fund payment of the Restoration Costs.
- 9.4 Application of Insurance Proceeds and Other Funds to Restoration. All insurance proceeds paid in connection with a casualty loss to Insured Attached Townhome Property shall be used to their full extent to fund Restoration Costs. Upon completion of the Restoration of any damage to the Insured Attached Townhome Property, the Association shall refund to the Owners and Mortgagee, as their interests may appear, the amount by which the insurance proceeds and any additional funds paid by the Attached Townhome Owners to the Association exceed the actual Restoration Costs. No Mortgagee shall have any right to have any insurance proceeds applied to the reduction of a Mortgage debt, except for actual distributions thereof made to the Owner of the damaged Attached Townhome and Mortgagee pursuant to the provisions of the Declaration after the Restoration is complete and the Restoration Costs have been paid in full.
- 9.5 Association's Rights. The rights granted to the Association in this Article in the event of any loss, damage or destruction of an Attached Townhome constitute reasonable protections of property values and aesthetic appearance of the Attached Townhomes, and each Attached Townhome Owner agrees to comply with such terms, conditions and procedures as Association may impose.
- 9.6 Report of Damage. If any part of the Insured Attached Townhome Property is lost, damaged or destroyed, then the Board shall cause a report to be prepared by a construction consultant, architect, contractor or engineer qualified to practice in North Carolina; provided, however, that the Restoration Costs for the damaged Insured Attached Townhome Property shall be estimated by at least three (3) reputable general contractors licensed in North Carolina. The report shall be distributed to the Owners of the damaged Attached Townhomes. The report shall include the following information:
- 9.6.1 Date and cause of the damage.
  - 9.6.2 Schedule of damage to the Insured Attached Townhome Property for which the Association has responsibility to Restore.
  - 9.6.3 The estimated "Restoration Costs" to Restore the damage to the Insured Attached Townhome Property. "Restoration Costs" means the cost of repairing, replacing, restoring or reconstructing all loss, damage or destruction to the Insured Attached Townhome Property (including the deductible under the applicable insurance policies) or any part thereof, including all costs of adjusting the loss; inspections, investigations and reports as to the damage; permit and inspection fees, architectural and engineering fees; fees of the Association's

Representative; demolition, removal and disposal fees; costs of securing and protecting the Insured Attached Townhome Property; accounting fees and costs; and attorneys' fees and costs; construction costs, and the Association's fees and costs for reviewing the plans for the Restoration and holding and disbursing the insurance proceeds and other funds.

- 9.6.4 The amount of insurance proceeds and the estimated amount, if any, of the deficiency between the estimated Restoration Costs and the amount of insurance proceeds ("Excess Costs");
  - 9.6.5 Which of the following methods the Board recommends in order to pay the Excess Costs: Special Assessments payable on such terms as conditions as determined by the Board or loans to the Association, the debt service of which shall be assessed to the Owners of damaged Attached Townhome as Special Assessments.
- 9.7 Assessments. The Association may impose Special Assessments against the Owner of each damaged Attached Townhome in the same proportion the Restoration Costs attributable to his or her Attached Townhome bears to all Restoration Costs of all damaged Attached Townhomes in sufficient amounts to provide funds for the payment of the following costs: any required deductible (not included in the Restoration Costs); any losses to the Insured Attached Townhome Property as a result of a casualty not covered by the Association's policies; and if the proceeds of insurance are not sufficient to defray the estimated Restoration Costs, or if at any time during Restoration, or upon completion of Restoration, the funds for the payment of the Restoration Costs are insufficient. Such Special Assessments on account of damage to the Insured Attached Townhome Property shall be in proportion to the Owners' respective share of the total Restoration Costs. Notwithstanding this, if only one Attached Townhome is damaged or if the insurance policy provides that the deductible will apply to each Attached Townhome separately or to each occurrence, each Owner shall be responsible for paying the deductible pertaining to his damaged Attached Townhome, if any.
- 9.8 Prompt Restoration. Whenever the words "prompt restoration" are used in this Article, they shall mean that the Restoration work shall begin not more than sixty (60) days from the date that (.1) the Board of Directors notifies the Owners of the damaged Attached Townhomes that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated Restoration Costs, or (.2) the Board of Directors notifies the Owners of the damaged Attached Townhomes that it holds proceeds of insurance on account of such damage or destruction together with Assessments (if necessary) and/or the right to receive loan proceeds sufficient to pay the estimated cost of such work.
- 9.9 Disbursement of Restoration Funds. Insurance proceeds collected on account of a casualty to Insured Attached Townhomes Property and the Special Assessments collected from the Owners of damaged Attached Townhomes on account of such casualty shall constitute a fund which shall be disbursed in payment of the Restoration Costs in the following manner and order:

- 9.9.1 Association - Lesser Damage. If the amount of the estimated Restoration Costs for the Restoration work which is the responsibility of the Association is less than \$500,000, as adjusted by the CPI, then the funds shall be disbursed for payment of such costs upon the order of the Board of Directors of the Association in the order of priority set forth in Section 9.10.
- 9.9.2 Association - Major Damage. If the amount of the estimated Restoration Costs for the Restoration work which is the responsibility of the Association is more than \$500,000, as adjusted by the CPI, then the funds shall be disbursed for payment of such Restoration Costs in the priority set forth in Section 9.10, together with the approval of a construction consultant, architect, contractor or engineer licensed to practice in North Carolina and retained by the Association to supervise the work and disbursements ("Association's Representative"). Insurance proceeds or other funds for the Restoration shall be disbursed in accordance with safeguards normally associated with construction loan disbursements and the approval of the Association's Representative prior to any disbursement (except if the amount of the casualty is less than \$500,000 as adjusted by the CPI).
- 9.10 Priority of Disbursement of Restoration Funds. The insurance proceeds collected on account of a casualty to Insured Attached Townhomes Property and the Special Assessments collected from the Owners of damaged Attached Townhomes on account of such casualty shall be disbursed in payment of Restoration Costs in the following priority:
- 9.10.1 First, to the costs of the following: adjusting the loss; inspections, investigations and reports as to the damage; permit and inspection fees, architectural fees; fees of the Association's Representative; demolition, removal and disposal fees; securing and protecting the damaged Attached Townhomes; accounting fees and costs; and attorneys' fees and costs.
- 9.10.2 Then, to the costs of the Restoration work to damaged Attached Townhomes for which the Association has the obligation to perform the Restoration work.
- In the event of a dispute or lack of certainty as to whether damage to an Attached Townhome constitutes damage to Insured Attached Townhome Property or Excluded Property, such damage shall be presumed to be damage to Insured Attached Townhome Property.
- 9.11 Excess Restoration Funds. It shall be presumed that the first monies disbursed in payment of Restoration Costs for damage to Insured Attached Townhome Property shall be from the proceeds of insurance policies held by the Association. In the event there is a balance in the restoration fund after payment of all Restoration Costs for which the fund was established, such balance shall be distributed to the beneficial owners of the fund as follows:

9.11.1 Amounts attributable to excess proceeds of insurance policies held by the Association shall be paid jointly to Attached Townhome Owners and their Mortgagees in proportion to their proportionate share of the Restoration Costs.

9.11.2 Amounts attributable to funds paid by an insurer under any insurance policy maintained by an Attached Townhome Owner or by an Attached Townhome Owner as a Special Assessment or other contribution to the restoration fund paid by or on behalf of an Attached Townhome Owner shall be refunded to such Attached Townhome Owner and shall not be made payable jointly to any Mortgagee.

9.12 Legal Variances. If it shall be necessary to obtain a variance, special permit or exception to or change in zoning or other laws ("variance") in order to Restore a damaged Attached Townhome Building to its condition immediately prior to such damage, and if the Association believes it is possible to obtain the variance, and so notifies the Owners of the damaged Attached Townhomes, then the Association shall apply for the variance and the Owners of the Attached Townhomes located in a damaged Attached Townhome Building shall cooperate to obtain the variance. If architectural and/or legal services shall be necessary to obtain the variance, then the Association shall retain an architect and/or attorney to perform such services. The legal and architectural fees and all other costs and expenses of applying for and obtaining the variance shall be considered as part of the Restoration Costs. If a variance is sought in accordance with this Section, there shall be no obligation to commence any Restoration while such variance is diligently being sought.

In the event that any Restoration to be performed pursuant to Article cannot be carried out in compliance with the law, and (.1) the variance is not obtained pursuant to the immediately preceding paragraph within six (6) months of the date of the casualty or (.2) the Board determines that the Association shall not apply for a variance, then necessary adjustments shall be made in the plans and specifications for such restoration so that the Attached Townhome Building, as Restored, shall comply with applicable law.

9.13 Damage to One Attached Townhome. In the event only one Attached Townhome is damaged as a result of a loss and no other Attached Townhomes are affected by the loss or damage, then the Association may delegate to the Owner of the damaged Attached Townhome the obligation to Restore the Attached Townhome. In such event, the Association shall disburse from time to time as work progresses for application to the Restoration Costs of such damaged Attached Townhome the following: (a) the insurance proceeds in the event the damage was the result of an insured loss, and (b) any Special Assessments imposed for Restoration Costs or any other monies for Restoration which may have been deposited with the Association, subject to such disbursement procedures, terms and conditions as Association may reasonably establish. Such procedures, terms and conditions may include the following:

9.13.1 The Association's prior approval of all contractors, architects and engineers retained by the Owner of the Attached Townhome for such work;

- 9.13.2 The Association's prior approval of plans and specifications prepared by a licensed architect, of the budget for the Restoration work and of all changes to the foregoing;
- 9.13.3 Delivery to the Association of evidence satisfactory to the Association that all permits, licenses and approvals required for the Restoration work have been obtained and are in full force and effect;
- 9.13.4 Delivery to the Association prior to each disbursement of such affidavits and certificates as to such matters as the Association may request, including certificates of the approved architect or engineer that (.1) all of the work completed has been done in compliance with the approved plans and specifications, if any, (.2) such disbursement is required to reimburse Owner for payments by Owner to, or which are due to, contractors, subcontractors, materialmen, laborers, engineers, architects or other Persons rendering services or materials for the work, (.3) the amount of such disbursement, when added to all sums previously disbursed by the Association, does not exceed the value of the work done to the date of such certificate, and (.4) the amount of insurance proceeds held by the Association after such disbursement (without taking into account any holdbacks) will be sufficient on completion of the work to pay for the same in full;
- 9.13.5 Delivery to the Association, prior to each disbursement, of waivers or releases of lien for work completed and title searches confirming that there has not been filed with respect to the Attached Townhome any mechanics', construction, or other lien;
- 9.13.6 Retention of not more than ten (10%) percent of such holdbacks out of each disbursement for Restoration work performed as the Association may deem advisable pending completion of the work;
- 9.13.7 Deposit with the Association of such sums in excess of undisbursed insurance proceeds (exclusive of holdbacks) as the Association may from time to time determine are required to complete the Restoration work;
- 9.13.8 Delivery of performance bonds and labor and material payment bonds issued by sureties acceptable to the Association on such terms and in such amounts as the Association shall determine; and
- 9.13.9 Delivery when the work has been completed of a copy of all certificates required by law to render occupancy of the Attached Townhome legal.

The Association shall not be obligated to make disbursements more frequently than monthly but shall make monthly disbursements if requested by Owner subject to Owner's compliance with this Section. The Restoration shall be performed and completed by Owner in an expeditious and diligent fashion and in compliance with all applicable laws, rules and regulations.

9.14 Payment of Claims to Delinquent Attached Townhome Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's policy for the Insured Attached Townhome Property for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of Assessments owed to the Association, then the Association may retain and apply the proceeds to the delinquent Assessments. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Attached Townhome Owner.

9.15 Benefit of Mortgagees. Certain provisions in this Article 9 are for the benefit of mortgagees of Attached Townhomes and may be enforced by any of them.

10. **OTHER PROVISIONS RESPECTING ATTACHED TOWNHOMES.** To the extent that Townhomes are constructed on the Property, the following provisions shall apply.

10.1 Attached Townhome Services. In order to maintain a uniform appearance and high standards of Maintenance, the Association shall perform the Attached Townhome Services for the Attached Townhomes in a neat, orderly and attractive manner consistent with the standards set forth in Section 7.6. The cost of performing the Attached Townhome Services shall be an Attached Townhome Expense, and the Owner of each such Townhome shall be obligated to pay the Attached Townhome Assessment for its proportionate share of the Attached Townhome Expenses allocated to the Collection in which its Unit is located. However, the Association shall be entitled to reimbursement from an Owner of an Attached Townhome where the Attached Townhome Service is required as a result of the deliberate, negligent or intentional acts of the Owner or its Permitted Users.

10.2 Exterior Maintenance of Townhomes. The Association shall have the sole discretion to determine the time at which Exterior Maintenance for the Attached Townhomes shall take place, the manner, materials and color to be used. Exterior Maintenance of any individual Attached Townhome, which is necessitated by deterioration of existing paint or surface, shall also be the responsibility of the Association. If an Owner materially modifies the exterior of his or her Attached Townhome, then the Association shall not be responsible for Maintenance of any modified portion of the Attached Townhome exterior; however, the Owner shall not be relieved of its obligation to pay the Attached Townhome Assessments.

10.3 Party Walls.

10.3.1 Repair and Maintenance Obligations. Wherever one Unit is separated from another Unit by a common, shared or party wall ("Party Wall"), the obligations of each Attached Townhome Owner with respect to its Party Walls shall be governed by this Section 10.3. Each Party Wall shall be the joint obligation of each of the Owners of the adjoining Attached Townhomes ("Party Wall Co-Owners"). Each Party Wall Co-Owner shall be responsible for the Maintenance of the surface portion of the Party Wall which is contained within its Attached Townhome. Any Maintenance and the like, including repairs to the paint, plaster or

drywall or gypsum wall board on the surface portion of the Party Wall which is contained within an Attached Townhome, shall be the obligation of that Owner. Each Party Wall Co-Owner shall have the right to use the side of the Party Wall within the Owner's Lot and Attached Townhome in any lawful manner, including attaching structural or finishing materials to it; however, an Owner shall not create windows or doors or place heating or air conditioning equipment in the Party Wall without the consent of the other Party Wall Co-Owner. Any consent given to a Party Wall Co-Owner to create openings in the Party Wall shall be subject to the right of the other Party Wall Co-Owner to revoke its consent on sixty (60) days prior written notice and close up such openings and/or remove such heating or air conditioning equipment. The Party Wall Co-Owners shall be jointly responsible for the structure of the Party Wall; i.e., Maintenance and Restoration of concrete block, rebar, mortar, tie beam, and all other elements of the Party Wall except in the event of a casualty or loss to the Insured Attached Townhome Property for which the Association is responsible for the Restoration.

10.3.2 Easement. Each Party Wall Co-Owner hereby grants to the other Party Wall Co-Owner, its successors and assigns, a perpetual non-exclusive easement and right of entry over and across its respective Lot and Unit for the purposes of performing Maintenance and Restoration to the Party Wall, provided that any such easement is exercised after prior notice and during reasonable hours.

10.3.3 Notice of Party Wall Damage. Except in those circumstances in which the Association is obligated to perform the Restoration of the Party Wall as a result of a casualty or loss, the following provisions apply:

A Party Wall Co-Owner shall perform Restoration of its Party Wall whenever a condition exists which may result in damage or injury to Person or property if the Restoration work is not undertaken. Upon discovering the possibility of damage or destruction, a Party Wall Co-Owner shall notify the other Party Wall Co-Owner and the Association in writing of the nature of the damage, the work required to remedy the situation, and the estimated cost of the Restoration work (the "Party Wall Repair Notice"). The other Party Wall Co-Owner shall then have twenty (20) days from the receipt of the Party Wall Repair Notice either to object to the Restoration work or to pay the Party Wall Co-Owner's share of the cost of the Restoration work. However, in the event of an emergency (i.e., a condition that is immediately threatening to the safety of Persons or property), the Party Wall Repair Notice shall specify that an emergency exists and the other Party Wall Co-Owner shall then have five (5) days from receipt of the Party Wall Repair Notice to either object to the Restoration work or to pay its share of the cost of the Restoration work.

10.3.4 Interest. Any amounts due and unpaid under this Section 10.3 shall bear interest at the rate of eighteen (18%) percent per annum from the date due until paid in full.

10.3.5 Association Help. If at any time any Attached Townhome Owner (hereinafter in this Subsection, the "Non Performing Owner") shall not be proceeding diligently with any Restoration required of it under this Declaration, then the other Attached Townhome Owner(s) shall give written notice to the Association specifying the respect in which such Non Performing Owner is not proceeding diligently with his or her Restoration work. If, upon expiration of thirty (30) days after the giving of notice, the Restoration work is not proceeding diligently, then the Association may perform such Restoration in accordance with the then existing building plans and may take all appropriate steps to carry out the same, including entry onto the Lot of any Owner to the extent necessary to perform the Restoration work. The Association shall be entitled to impose an Individual Assessment on the Party Wall Co-Owners responsible for the cost of such Restoration.

10.4 Indemnity. Each Townhome Owner agrees to indemnify Declarant, the Association and the other Party Wall Co-Owner for injury or personal or property damage, when such injury or damage shall result from, arise out of, or be attributable to its failure to perform or comply with its duties and obligations under Article 10 of the Declaration.

10.5 Transfer of Title. In any transfer of title to an Attached Townhome, the Owner of such Attached Townhome ("Grantor") and the purchaser ("Grantee") of such Attached Townhome shall be jointly and severally liable for all unpaid amounts pertaining to the Party Walls accrued up to the date of the conveyance without prejudice to the rights of the Grantee against the Grantor, but the Grantee shall be exclusively liable for those accruing after the conveyance. The lien rights of any Owner of an Attached Townhome against another Attached Townhome for amounts due under this Article 10 shall be subordinate to the lien of any First Mortgage, Assessment by the Association. If the holder of a First Mortgage or other purchaser acquires title as a result of a foreclosure or deed in lieu of foreclosure of the First Mortgage, the purchaser and any successors and assigns shall not be liable for the amounts which became due prior to the acquisition of title in the foreclosure action. Any unpaid amounts which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be divided between Party Wall Co-Owners, payable by and a lien against both Lots sharing the Party Wall, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

## 11. COVENANT FOR ASSESSMENTS AND OTHER AMOUNTS.

11.1 Obligation for Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all Assessments and other charges required by this Declaration, including the following: (.1) Common Assessments; (.2) Attached Townhome Assessments; (.3) Stormwater Assessments; (.4) Special Assessments; (.5) Individual Assessments for any expense under the Code or this Declaration for which the Association becomes obligated to pay and pays on behalf of an Owner or otherwise is authorized by the Declaration; (.6) fines for

violations of the provisions of this Declaration or other Governing Documents or Assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, Tenants, Guests, agents or contractors; (.7) Working Capital Contributions; (.8) late payment charges, interest on unpaid Assessments, costs of collection, including court costs, service charges, and attorneys' fees as provided in the Act, and charges for dishonored checks, all as established by the Board from time to time; and (.9) all other Assessments and charges imposed or allowed to be imposed by this Declaration. No Unit shall be assessed separately from the Lot on which it is situated.

- 11.2 Purpose of Assessments. The Common Assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which the Common Assessment applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such Assessments may be used for payment of any Common Expenses as determined by the Board. The Attached Townhome Assessment primarily is for the purpose of funding the Attached Townhome Expenses of the Association for the Attached Townhomes, including monies allocated for reserve funds, for the Fiscal Year to which the Attached Townhome Assessment applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such Assessments may be used for payment of any Attached Townhome Expenses as determined by the Board.
- 11.3 Classes of Membership. Declarant has the authority to create different classes of membership in the Association and to impose different levels of Assessments and other Assessments for different classes of membership pursuant to a Supplemental Declaration.
- 11.4 Amount of Assessments. The Association is at all times empowered to levy Common Assessments against the Lots and the Owners of Lots within the Property for the payment of Common Expenses; to levy Attached Townhome Assessments against the Attached Townhomes and the Attached Townhome Owners within the Property for the payment of Attached Townhomes Expenses and to levy such other Assessments as are authorized by the Declaration.
- 11.5 Budgets. All budgets of the Association shall be prepared and proposed in good faith and with the intent to cover all reasonably necessary Common Expenses and Attached Townhome Expenses for the applicable Fiscal Year of the Association, including reasonable reserves for replacement and deferred Maintenance. Prior to the beginning of each Fiscal Year, the Board shall adopt budgets for such Fiscal Year which shall estimate all of the Common Expenses and Attached Townhome Expenses of the Association during the Fiscal Year, including reserves.

In determining the budget for Common Expenses, the budget shall be based on the estimated Common Expenses for the Lots which have been declared to be part of the Property and any additional Lots reasonably anticipated to be added to the Property during the Fiscal Year to which the budget relates. In determining the budget for Attached Townhome Expenses, the budget be based on estimated Attached Townhome Expenses for the Attached Townhomes which have been declared to be part of the Property and have been conveyed by Declarant or a

Participating Builder and any additional Attached Townhomes reasonably anticipated to be added to the Property and conveyed by Declarant or a Participating Builder during the Fiscal Year to which the budget relates.

The budgets shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than the amount to be generated through Common Assessments and Attached Townhome Assessments.

The Board shall then establish the Common Assessments for each Lot and the Attached Townhome Assessment for each Attached Townhome and shall notify each Owner in writing of the amount, frequency, and due dates of such Assessments. The Board may round any Assessments charged by the Association to the nearest dollar.

The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessments against each Lot or Attached Townhome for each Assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, except as to emergency Assessments. The Association shall at that time prepare a roster of the Lots, the Owners thereof and the Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner or First Mortgagee. In the event no such notice of a new Assessment is given, the Assessment amounts payable shall be equal to one hundred ten (110%) percent of the amount payable for the last quarter of the previous Fiscal Year, until changed in the manner provided for herein.

From time to time during the Fiscal Year, the Board may modify the budget. Pursuant to the revised budgets or otherwise, the Board may, upon written notice to the Owners, change the amount, frequency or due dates of the Assessments. In no event shall any such Assessment be due less than ten (10) days from the date of the notification of such Assessment.

- 11.6 Common Assessments. The Board of Directors shall assess all Lots for the actual and estimated Common Expenses incurred by the Association, which may include a reasonable reserve for capital repairs and replacements, all as may be determined from time to time by the Board of Directors in accordance with the Declaration. Unless this Declaration, a Supplemental Declaration or any other recorded instrument shall provide otherwise, the Owner of a Lot shall become obligated to pay the full amount of the Common Assessment commencing on the day Declarant or a Participating Builder conveys the Unit thereon to an Owner other than Declarant or a Participating Builder. Prior to the time a Unit is constructed on a Lot and conveyed to a Person other than Declarant or a Participating Builder, the Owner, which is to include Participating Builders, of a Lot shall be obligated to pay Common Assessments equal to fifty (50%) percent of the amount of the Common Assessment assessed against a constructed and conveyed Unit; provided, however, Declarant may exercise its rights to pay the Operating Deficit under Section 11.22 in lieu of paying Common Assessments on its Lots. At the time that the budget for the Common Expenses is prepared by the Board as required by Section 11.5 above, the Board shall determine the amount of the Common Assessments that are applicable to each Lot for such Fiscal

Year. In determining the amount of each Lot's Common Assessment, the Board may also consider the estimated income from Common Assessments on any additional Lots reasonably anticipated to be added to the Property by Declarant during the Fiscal Year to which the budget relates.

- 11.7 Special Assessments for Common Expenses. In addition to the Common Assessments on the Lots, the Board of Directors may assess, from time to time, Special Assessments to defray, in whole or in part, (.1) unbudgeted expenses or expenses in excess of the amounts budgeted for Common Expenses; (.2) expenses incurred by the Association for repair, replacement or reconstruction of any Improvements on any portion of the Common Areas or Association Property; (.3) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement on any portion of the Common Areas or Association Property. In the event that the amount of the Special Assessments for Common Areas payable in any one Fiscal Year in the aggregate exceeds one hundred (100%) percent of the Common Assessments (including reserves) allocated to such Lot for the previous Fiscal Year, then such Special Assessments shall require the vote or written consent of a majority of the Board and the vote of a majority of the voting interests of the Owners present in person or by proxy at a duly called meeting of the Association. It is the intent of this Section that any expenses costing less than the aforesaid amount be paid for by Common Assessments, with an appropriate adjustment to the budget of the Association and the Common Assessments assessed thereunder, if necessary. No action authorized in this Section 11.7 shall be taken without the prior written consent of Declarant as long as Declarant or any of its affiliates owns any property in the Community.
- 11.8 Attached Townhome Assessments. The Board of Directors shall assess the Attached Townhomes for the actual and estimated Attached Townhome Expenses incurred by the Association for the benefit of Attached Townhomes or Owners within a particular Collection, which may include a reasonable reserve for capital repairs and replacements, all as may be determined from time to time by the Board of Directors in accordance with the Declaration. Unless this Declaration, a Supplemental Declaration or any other recorded instrument shall provide otherwise, each Attached Townhome shall become obligated to pay the full amount of the Attached Townhome Assessment commencing on the day Declarant or a Participating Builder conveys the Unit to an Owner other than Declarant or a Participating Builder. Prior to the time an Attached Townhome is constructed on a Lot and conveyed to a Person other than Declarant or a Participating Builder, the Owner of the Lot shall be obligated to pay Attached Townhome Assessments equal to fifty (50%) percent of the amount of the Attached Townhome Assessment assessed against a Unit; provided, however, Declarant may exercise its rights to pay the Operating Deficit under Section 11.22 in lieu of paying the applicable Attached Townhome Assessments.

At the time that the budgets for Attached Townhome Expenses for each Collection are prepared by the Board as required by Section 11.5 above, the Board shall determine the amount of the Attached Townhome Assessments that are applicable to the Lots in such Collection for such Fiscal Year. In determining the amount of a Lot's Attached Townhome Assessments, the Board may also consider the estimated income from Attached Townhome Assessments on any

additional Lots designated for Attached Townhomes which are reasonably anticipated to be added to the Property by Declarant during the Fiscal Year to which the budget relates.

- 11.9 Special Assessments for Attached Townhome Expenses. In addition to the Attached Townhome Assessments, the Board of Directors may assess, from time to time, Special Assessments on the Attached Townhomes to defray, in whole or in part, (.1) unbudgeted expenses or expenses in excess of the amounts budgeted for Attached Townhome Expenses; or (.2) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement to the Attached Townhomes in connection with Attached Townhome Services. No action authorized in the preceding sentence shall be taken without the prior written consent of Declarant as long as Declarant or any of its affiliates owns any property in the Community. In the event of a casualty or loss and the insurance proceeds are insufficient to pay the Restoration Costs or in the event the damage or loss resulted from an uninsured loss, then the Association may assess a Special Assessment against the Owners of the damaged Attached Townhomes in the same proportion which the Restoration Costs attributable to their Attached Townhomes bears to all Restoration Costs of the damaged Attached Townhomes.
- 11.10 Individual Assessments. Each Owner shall be liable to the Association for all damage to any portion of the Common Areas, Association Property or other Lots resulting from misuse, negligence, failure to Maintain or otherwise caused by the Owner, its Permitted Users or the Tenants, contractors, subcontractors, licensees, invitees, employees, directors, officers, family members or guests of either. The Association shall have the right to levy an Individual Assessment therefor against such Owner or Owners. The Association may also levy an Individual Assessment against an Owner to reimburse the Association for costs incurred in any enforcement action or in bringing any Lot or Unit into compliance with the Governing Documents. To the extent permitted by law, such Individual Assessment shall be a lien against the Lot as provided in Article 11 hereof and shall be subject to the provisions of the Act relating to notice, filing of a claim of lien, collection and enforcement of delinquent Assessments.
- 11.11 Future Development Property. No Assessments shall be imposed against any portion of the Future Development Property unless and until such portion of the Future Development Property is declared to be a Lot in a Supplemental Declaration by Declarant and Owner of the Future Development Property, if other than Declarant.
- 11.12 Due Dates. The Common Assessments and Attached Townhome Assessments shall be payable in advance in quarterly installments, or if so determined by the Board of Directors in monthly, semi-annual or annual installments. The Board shall have the right to collect Attached Townhome Assessments at more frequent intervals than the Common Assessments are collected. The Assessment amount (and applicable installments) may be changed at any time by the Board from that originally stipulated or subsequently adopted. The original Common Assessments and Attached Townhome Assessments for any Fiscal Year shall be assessed for the Fiscal Year (but may be reconsidered and amended, if necessary, at any time), but the amount of any revised Assessments to be

assessed during any period shorter than a full Fiscal Year shall be in proportion to the number of months (or other appropriate installments) remaining in such Fiscal Year. The due date of any Special Assessments (whether relating to a Common Area or Attached Townhomes) shall be fixed in the Board resolution authorizing such Assessment.

- 11.13 Disapproval of Budgets. The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budgets for the Assessments, the Board shall provide to each Owner a copy of those budgets for the Assessment(s) applicable to the Owner's Lot together with a notice of an Owners' meeting to consider ratification of the budgets including a statement that the budgets may be ratified without a quorum. The Board shall set the date for such meeting not less than 10 days or more than 60 days after the mailing of the budgets and notice. Such meeting may, but need not be, combined with the annual meeting of the Owners. There shall be no requirement that a quorum of the Owners be present at the meeting in person or by proxy to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget for Common Expenses shall be deemed ratified unless at that meeting Owners having eighty (80%) percent or more of the total voting interests of the entire membership vote to reject such budget. The budget for Attached Townhome Expenses, as determined by the Board of Directors will be deemed approved unless Attached Townhome Owners having eighty (80%) percent or more of the total voting interests of the Attached Townhome Owners in a Collection vote at a duly called meeting of the applicable Attached Townhome Owners to reject the budget. Only the Owners of Attached Townhomes within a Collection will be eligible to vote on the budget for Attached Townhome Expenses for such Collection. Notwithstanding the foregoing, in the event the proposed budgets are disapproved or in the event the Board of Directors fails for any reason to determine the annual budgets and to set the Assessments, then and until such time as the budgets and Assessments have been determined as provided herein, the budgets and Assessments will be the default budgets and default Assessments calculated in accordance with Section 11.14 of this Declaration.

The provisions of this Section shall not apply to, nor shall they be a limitation upon, any change in the Assessment incident to a merger or consolidation as provided in G.S. 47F-2-121 of the Act.

- 11.14 Determination of Default Budget and Default Assessments. Upon the failure of the Board of Directors to adopt a budget, or upon the disapproval of any budget pursuant to Section 11.13, the default budgets and default Assessments will be increased to one hundred ten (110%) percent of the then current budgets and Assessments.
- 11.15 Certificate of Payment. The Association shall, within ten (10) business days after receipt of a written request from an Owner, Mortgagee or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the Assessments and other charges against a specified Lot have been paid. If such

certificate states that an Assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

#### 11.16 Monetary Defaults and Collection of Assessments.

11.16.1 Late Fees and Interest. If any Assessment is not paid within twenty (20) days after the due date, the Association shall have the right to charge the defaulting Owner a late fee of ten (10%) percent of the amount of the Assessment or Twenty (\$20.00) Dollars, whichever is greater, plus interest at the rate of 18% per year or the highest rate of interest allowed by the Act (whichever is lower) from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due twenty (20) days after written demand by the Association.

11.16.2 Acceleration of Assessments. If any Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand, the Association shall have the right to accelerate and require such defaulting Owner to pay to the Association the Assessments for the balance of the Fiscal Year, based upon the then existing amount and frequency of such Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the Assessments and for all other amounts payable to the Association.

11.16.3 Effect of Non-Payment; Lien Rights. No Owner shall be exempt from liability for any Assessment for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

All Assessments and other charges shall be established and collected as provided in the Declaration. All Assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorneys' fees, shall be charged on the Owner's Lot as provided in G.S. 47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of Superior Court of the County in the manner provided in G.S. 47F-3-116(g), shall be a continuing lien upon the Lot against which such Assessment is made until paid in full. The Association shall be obligated to comply with all conditions precedent set forth in the Act to filing a claim of lien for Assessments. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a First Mortgage or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a First Mortgage, such purchaser and its successors and assigns shall not be liable for the Assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each Assessment and other charges due hereunder, together with late charges, interest, the costs of collection

thereof, including attorneys' fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the Assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the Assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such Assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid. Upon payment in full of all sums secured by the lien, the Person making the payment is entitled to a satisfaction of the lien.

- 11.16.4 Collection and Foreclosure. The Association may bring an action in its name to foreclose its lien for Assessments in the manner a mortgage on real property is foreclosed pursuant to a power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. If the debt consists solely of fines imposed by the Association or of service, collection, consulting or administrative fees not authorized in the Declaration, then the Association may bring an action in its name to foreclose its lien for such Assessments by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes. The Association may also bring an action at law against the Owner(s) personally obligated to pay the Assessments due the Association to recover a money judgment for such unpaid Assessments without waiving any claim of lien. The Association shall have such other remedies for collection and enforcement of Assessments as may be permitted by applicable law. All remedies are intended to be and shall be cumulative. The Association may pursue one or more of such remedies at the same time or successively. The Owner shall be liable to the Association for all costs and expenses incurred by the Association in connection with the collection of the Assessments due the Association, and the filing, administration, enforcement, or foreclosure of the Association's lien, including reasonable attorneys' fees and costs and costs of the action, and all sums advanced and taxes paid and payments made on account of superior Mortgages, liens or encumbrances by the Association in order to preserve and protect the Association's lien. In the event a judgment is obtained, such judgment shall include all amounts provided above. The Association shall also be entitled to attorneys' fees and costs in connection with any alternative dispute resolution or appellate proceedings. The Board is authorized to settle and compromise the Association's lien if the Board deems a settlement or compromise to be in the best interest of the Association.
- 11.16.5 Rental and Receiver. The Association shall be entitled to the appointment of a receiver to collect the rent (.1) if the Unit is leased during the pendency of the foreclosure; or (.2) if an Owner, any family member or Permitted User remains in possession of a Unit after the

claim of lien against a Unit is foreclosed, and the court in its discretion requires the Owner to pay a reasonable rental for the Unit.

11.16.6 Suspension of Rights of Delinquent Owner. In addition to any other rights and remedies of the Association as set forth in this Article 11, in the event an Owner is delinquent in payment of Assessments or other monetary obligations to the Association for more than thirty days (30) days, the Association may suspend: (.1) the voting rights of such Owner in Association matters, (.2) the right of such Owner, its family members, Permitted Users, licensees or invitees to use the Common Areas, Association Property and/or common facilities, and (.3) any "non-essential services" which are provided to, by, or on behalf of the Association to such Owner, its family members, Permitted Users, licensees or invitees until such time the Owner pays in full all obligations due to the Association, including delinquent Assessments. Prior to suspension of the foregoing rights, the Association shall give the Owner written notice of the delinquency, an opportunity to be heard, to present evidence and written notice of the decision in accordance with Article 13. For the purposes of this Declaration, "non-essential services" shall be defined as those facilities, services or amenities that are not absolutely necessary or crucial to the health or safety of the Owner, or Common Areas that are not required for legal access to or drainage for the Unit. Examples of non-essential services include cable, internet, telecommunications and wireless local area network system ("Wi-Fi") services, recreational facilities, and other facilities, services or amenities provided to, by or on behalf of the Association within the Common Areas or the Association Property, Lot Landscaping, Attached Townhome Services (as to the Attached Townhomes) either now or in the future, or such other facilities, services or amenities provided to, by or on behalf of the Association within the Common Areas or the Association Property as are designated as "non-essential services" in writing by the Board of Directors from time to time in its reasonable discretion.

11.17 Collection of Assessments. The Association shall have the legal duty and responsibility to collect and enforce payment of the Assessments owed to the Association by the Owner. Failure to send or deliver bills or notices of Assessments shall not relieve Owners from their obligations hereunder. All Assessments owed by the Owner of a Lot, together with late fees, interest, penalties, fines, attorneys' fees and other sums provided for herein shall accrue to the benefit of the Association.

11.18 Priority of Liens. To the extent allowed by law, the Association's lien shall relate back to the recording of this Declaration in the Registry. Any unpaid Common Assessments or Special Assessments for Common Expenses which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be a Common Expense divided among, payable by and a lien against all Lots, including the Lot as to which the foreclosure (or deed in lieu of foreclosure) took place. Any unpaid Attached Townhome Assessment or Special Assessment for Attached Townhome Expenses which cannot be collected as a lien against any Attached Townhome by reason of the provisions of this Section

shall be deemed to be an Attached Townhome Expense divided among, payable by and a lien against all Attached Townhomes, including the Attached Townhome as to which the foreclosure (or deed in lieu of foreclosure) took place.

- 11.19 Association's Right to Collect Rents. To the extent not prohibited by law, if a Unit is occupied by a Tenant and the Owner is delinquent in paying any monetary obligation due to the Association, the Association may make a written demand that the Tenant pay to the Association the subsequent rental payments and continue to make such payments until all monetary obligations of the Unit Owner related to the Unit have been paid in full to the Association. The Tenant must pay the monetary obligations to the Association until the Association releases the Tenant or the Tenant discontinues tenancy in the Unit.

- 11.19.1 The Association must provide the Tenant a notice, by hand delivery or United States mail, in substantially the following form:

Pursuant to Section 11.19 of the Amended and Restated Declaration of Covenants, Restrictions and Easements for 5401 North, the Association demands that you pay your rent directly to the Association and continue doing so until the Association notifies you otherwise.

Payment due the Association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to ...(full address)..., payable to...(name)....

Your obligation to pay your rent to the Association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the Association with written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the Association would then begin with the next rental period.

- 11.19.2 The Association must mail written notice to the Owner of the Association's demand that the Tenant make payments to the Association.
- 11.19.3 The Association shall, upon request, provide the Tenant with written receipts for payments made.
- 11.19.4 The Owner/landlord hereby releases and waives any claim against the Tenant and Association related to the rent paid by the Tenant to the Association after the Association has made written demand on the Tenant as a result of the Owner's delinquency in paying any monetary obligation due the Association. Each Owner/landlord hereby indemnifies and agrees to hold harmless the Tenant, Association and its officers and directors from any and all claims, liabilities, losses, costs, injuries, and expenses (including attorneys' fees and costs at trial and appellate levels) arising out of or related to any claim related

to the rent paid by the Tenant to the Association after the Association has made written demand.

- 11.19.5 If the Tenant paid rent to the Owner/landlord for a given rental period before receiving the demand from the Association and provides written evidence to the Association of having paid the rent within fourteen (14) days after receiving the demand, the Tenant shall begin making rental payments to the Association for the following period and shall continue making rental payments to the Association to be credited against the monetary obligations of the Unit Owner until the Association releases the Tenant or the Tenant discontinues tenancy in the Unit.
- 11.20 Use of Common Areas. In addition to the rights of collection of Assessments stated in this Article, any Person acquiring title to or any interest in a Lot as to which the Assessments are delinquent, other than Persons acquiring title by foreclosure of a First Mortgage pursuant to a power of sale or judicial foreclosure or by or deed in lieu of foreclosure, shall not be entitled to use, occupy, or lease such Lot or enjoy the Common Areas until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid.
- 11.21 Common Areas and Certain Other Property. The following property shall be exempt from payment of Assessments: Common Areas, parks and similar open spaces, land owned by or dedicated to the City or County or any other governmental entity and any land owned by a publicly-regulated utility company as long as such land is used for or in connection with the provision of utilities (exclusive of business offices, retail outlets and the like). In the event of any ambiguity or doubt as to whether any particular open space or other land is subject to assessment, the determination of Declarant (or, if there is no Class B Voting Member, the Board of Directors of the Association) shall be final and conclusive (and not subject to later change unless the use of the property in question changes).
- 11.22 Declarant's Right to Fund Deficits; Credit for Overpayments. During the Declarant Control Period, Declarant shall have the right to pay all or a portion of the Assessments on its Lots at the applicable rates or to fund any Operating Deficit. In the event Declarant elects to fund the Operating Deficit, Declarant, at its option, may fund it by any one or more of the following means: (.1) payment to the Association; (.2) payment directly to a Person providing the services or materials to the Association, or (.3) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant). Declarant may change its election from time to time upon ninety (90) days prior written notice to the Association.

Declarant's election to fund Operating Deficits may be enforced against Declarant and collected by the Association in the same manner as enforcement and collection of Assessments applicable to other Owners.

At the end of the Declarant Control Period, in the event Declarant elected to fund the Operating Deficit and Declarant's payments to the Association exceed its obligation thereunder, Declarant, at its sole option, shall be entitled to receive from the Association either a refund of the amount of its overpayment or a credit toward payment of Assessments due and payable by Declarant thereafter for Lots owned by Declarant until the overpayment has been credited in full. Declarant may not charge or collect interest or any other charge or fee on any monies paid by Declarant for Operating Deficits.

- 11.23 Association Working Capital Fund. Declarant shall establish in the name of the Association a fund ("Association Working Capital Fund") for the purpose of having funds available for initial and non-recurring items, capital expenses, permit fees, licenses, utility deposits, advance premiums for insurance policies and coverages and other expenses for operation of the Association pursuant to this Declaration. Each Unit's Working Capital Contribution shall be collected at the time of closing or settlement of the sale of the Unit and transferred to the Association within ten (10) days thereafter. The Association shall have a lien against the Unit in the event the Working Capital Contribution for the Unit is not received by the Association within ten (10) days after closing or settlement of such Unit as provided in Article 11 and subject to the provisions of the Act relating to notice, filing of a claim of lien, collection and enforcement of delinquent amounts due the Association. A Unit's Working Capital Contribution shall not be considered as advance payment of Common Assessments and Attached Townhome Assessments (if applicable). Notwithstanding the foregoing, Declarant shall have the right to use the Association Working Capital Fund to pay for Common Expenses and Attached Townhome Expenses of the Association during the Declarant Control Period. In the event Declarant, a Participating Builder or purchasing Owner fails to satisfy its obligations under this Section 11.23, the defaulting party shall indemnify the Association for the amount of the Unit's Working Capital Contribution which such purchasing Owner failed to pay or which Declarant or Participating Builder failed to collect and transfer to the Association hereunder.

11.23.1 Initial Working Capital Contribution. Each time Declarant conveys a Unit to a purchaser other than a Participating Builder, Declarant shall collect from the purchaser of the Unit the following amount: (a) for a Single Family Home, \$500.00, or (b) for an Attached Townhome, \$600.00 (such amount being the "Working Capital Contribution"). Each time a Participating Builder conveys a Unit to a purchaser, the Participating Builder shall collect from the purchaser of the Unit the amount of the Unit's Working Capital Contribution.

11.23.2 Resale Working Capital Contribution. In addition, a Working Capital Contribution is due the Association on each subsequent sale, resale, transfer or conveyance of a Unit in the same amount specified in Section 11.23.1. Except for a transfer of a Unit pursuant to a foreclosure of a First Mortgage or a deed in lieu of foreclosure), each time a Unit is sold, resold, transferred or conveyed to a purchaser whether by deed, certificate of title, trustee's deed or operation of law, the Owner who acquires the Unit shall be obligated to remit to the Association the amount of the Unit's Working Capital Contribution.

The Association shall have the right to increase, but not decrease, the Resale Working Capital Contribution in connection with the Association's preparation of the Association's annual budget.

11.23.3 Declarant Exempted from Capital Contributions. Notwithstanding anything to the contrary in this Declaration, Declarant shall have no obligation to pay any Initial Working Capital Contribution or Resale Working Capital Contribution upon the sale, resale, transfer or conveyance of any Lot or Unit.

11.24 Declarant Subsidy. Declarant may, but shall not be obligated to, reduce the Assessments by payment of a subsidy, which may be in the form of a contribution, a loan, in-kind services or an advance against future Assessments due from Declarant, in Declarant's sole and absolute discretion. Payment of such subsidy in any Fiscal Year shall not obligate Declarant to continue the subsidy in future Fiscal Years unless expressly provided in a written agreement with the Association.

11.25 Association Funds. Amounts collected by the Association shall be held by the Association in accounts clearly identified as the Association's and may be invested in interest bearing accounts or in certificates of deposit or other like instruments or accounts available at banks and financial institutions, the deposits of which are insured by an agency of the United States.

## 12. CERTAIN RESTRICTIONS, RULES AND REGULATIONS

12.1 Applicability. The provisions of this Article 12 shall apply to all of the Lots and Common Areas and the use thereof but shall not apply to Declarant or its designees. Nor shall this Article 12 apply to any Participating Builder who purchase Lots or portions of the Property from Declarant and is expressly exempted by Declarant from all or some of the provisions of this Article.

12.2 Land Use and Building Type. Each Lot and Unit constructed thereon shall be used solely for residential purposes, except for such ancillary or other commercial uses permitted by applicable zoning codes and other laws and ordinances. However, without limiting the generality of Section 12.1, Declarant, its affiliates, Declarant's Permittees and Participating Builders may use Lots and Units for model homes, sales displays, parking lots, sales offices, rental and resale offices, management offices and other offices, or any one or any combination of such uses. No changes may be made in Units erected or approved by Declarant (except if such changes are made by Declarant) without the consent of Declarant and the ARB as provided herein.

12.3 Easements. Easements for installation and Maintenance of utilities are reserved as shown on the recorded Subdivision Plats covering the Property and as provided herein. The area of each Lot covered by an easement and all Improvements in the area shall be Maintained continuously by the Owner of the Lot, except as provided herein to the contrary and except for installations for which a public authority or utility company is responsible. The appropriate utility companies, telecommunications providers, the Association, and Declarant and its affiliates, and their respective successors and assigns, shall have a perpetual

easement for the Maintenance of water, sewers, storm sewers, electric, gas, telecommunications and cable television lines, cables and conduits, under and through the utility easements as shown on a Subdivision Plat or otherwise recorded in the Registry.

- 12.4 Nuisances. No noxious, offensive or unlawful activity shall be carried on upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Owners.
- 12.5 Temporary Structures. No structure of a temporary character, trailer, mobile home or recreational vehicle shall be permitted on any Lots at any time or used at any time as a residence, either temporarily or permanently, except by Declarant, its affiliates, Declarant's Permittees or Participating Builders during construction.
- 12.6 Signs. No sign, poster, display or billboard of any kind shall be displayed to the public view on any Lot, entryways or outside walls of any Unit, any fences on the Property, any Common Areas, dedicated areas, or any vehicles within the Property, except for the following signs: (.1) any signs regardless of size used by Declarant and their respective affiliates or as authorized by Declarant or ARB (in locations and in accordance with applicable design standards); (.2) one sign per Lot not to exceed 144 square inches indicating that the Unit is monitored by an alarm or monitoring service; or (.3) not more than two (2) "political signs" per Lot as defined in G.S. 47F-3-122, the maximum dimensions of any such sign shall not exceed 24 inches by 24 inches. Political signs may not be displayed on a Lot earlier than 45 days before the applicable election and must be removed not later than 7 days after the election day. No sign of any kind which shall be visible outside the Unit shall be permitted inside a Unit or on a Lot, except as authorized by Declarant or ARB (in locations and in accordance with applicable design standards). So long as Declarant (or any of its affiliates) owns any portion of the Community, Declarant may authorize Declarant, its affiliates, Declarant's Permittees or Participating Builders to place signs on the Property in connection with construction, sales, leasing, resales and other marketing activities.
- 12.7 Pets, Livestock and Poultry. Not more than three (3) household pets may be kept in any Unit (regardless of the number of joint Owners or Permitted Users). Any pets permitted under this Section 12.7 shall only be allowed to remain in the Unit if such pet is (.1) permitted to be so kept by applicable laws and regulations, (.2) not left unattended on patios or terraces, (.3) not kept or maintained for commercial purposes or breeding, and (.4) generally, not a nuisance to Owners or Permitted Users of other Units or Lots. No reptiles, wildlife, livestock or poultry of any kind shall be kept on any Lot or any Common Areas. Any exception to the pet restrictions set forth in this Declaration must be approved by the Board, shall apply only to the specific pet and the justification for the exception and the Owner to which it applies must be set forth in writing and become a part of the official records of the Association.

All pets must be kept on a leash of a length that affords reasonable control over the pet at all times when outside the Unit. No household pets shall be permitted to leave excretions on any Common Areas, except areas designated by the Association, and Owners shall be responsible to clean up any such improper

excretions. For purposes hereof, "household pets" means dogs, cats and other animals expressly permitted by the Association, if any. Nothing contained herein shall prohibit the keeping of fish or domestic (household type) birds, as long as the latter are kept indoors and do not become a source of annoyance to neighbors. By acceptance of a deed, any Owner who keeps or maintains (or whose Permitted User keeps or maintains) a pet within the Property agrees to indemnify and hold harmless Declarant and all other Owners from and against any loss, claim or liability of any kind or character whatsoever arising by reason of keeping or maintaining such pet within the Property. Pets shall also be subject to all applicable rules.

## 12.8 Commercial Trucks, Trailers, Campers and Boats.

12.8.1 Within Lots. No campers, mobile homes, motorhomes, boats, house trailers, boat trailers, or trailers of every other description shall be permitted to be parked or to be stored at any place on any Lot, except (.1) during the periods of approved construction on a Lot or (.2) when stored out of view in an enclosed garage on such Lot. Small pick-up trucks (one ton or less), sports utility vehicles and/or vans of the type commonly used as private passenger vehicles may be parked or stored in approved parking areas on such Lot, so long as no commercial equipment and no sign, lettering, graphics or logo referring to any commercial undertaking or enterprise is exposed to view. Commercial vehicles shall not be permitted to be parked or stored on a Lot unless that the commercial vehicle is stored out of view in an enclosed garage on such Lot. The term "commercial vehicle" shall include all automobiles, trucks, vans, sports utility vehicles or other vehicles designated by the Board, including station wagons, which bear a sign, lettering, graphics or logo or shall have printed thereon some reference to any commercial undertaking or enterprise. These restriction on parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services or to law enforcement vehicles of an Owners or Permitted User of a Unit. No vehicle which is unlicensed or inoperable may be kept or stored on the Property except out of view in an enclosed garage on a Lot. No repair work to any type of motor vehicle, boat or trailer shall be conducted on any Lot other than minor repairs, cleaning or waxing which is completed in less than 24 hours.

12.8.2 Common Areas. Restrictions on commercial vehicles, campers, mobile homes, motorhomes, boats, house trailers, boat trailers, or trailers (particularly as to the parking or storage thereof) shall be imposed and enforced by the Association; provided, however, that no commercial vehicles, campers, mobile homes, motorhomes, boats, house trailers, boat trailers, or trailers shall be parked or stored within the Common Areas if the Association prohibits such parking or storage by regulation or otherwise.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules

and regulations now or hereafter adopted by the Board may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of two (2) or more hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. An affidavit of the Person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

- 12.9 Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority, trash collection company or the Association (which may, but shall not be required to, provide solid waste removal services) for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All solid waste containers shall comply with the standards adopted by the Association (or the ARB) for such containers (the later to control over the former in the event of conflict).
- 12.10 Alleys. All alleys shall be used for ingress and egress only to the garages which they serve and for the furnishing of services by the Association, its agents, vendors or contractors to the Units and Common Areas. The alleys shall at all times be free from obstructions. No parking, stopping, recreational activities, dumping or storage shall be permitted in any alley. The speed limit for all vehicles using the alleys shall be twelve (12) miles per hour.
- 12.11 Sight Triangles. The Subdivision Plat identifies certain Lots and Common Areas as being subject to "site triangles" ("Sight Triangles"). As to any Lot or Common Area subject to a Sight Triangle, no sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two (2') feet and eight (8') feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists shall be placed within any area designated on a Subdivision Plat as a Sight Triangle or other similar designation. An easement is reserved over all Sight Triangles for the benefit of Declarant, Association, City and their respective agents and contractors for the purpose of removing any such obstruction. A person entering onto a Lot or Common Area pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or Owner of the Lot with respect to the obstruction removed from the Sight Triangle. It shall be the responsibility of the Association as to Common Areas or Owner as to his or her Lot, as soon as reasonably practicable following removal of any obstruction from the Sight Triangle, to restore the portion of the Property previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.
- 12.12 Seasonal or Holiday Decorations. Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be removed from each Unit within a reasonable period of time after such holiday passes. Declarant

during the Declarant Control Period and thereafter the Board has the sole discretion to determine what is a reasonable period of time for seasonal or holiday decorations to exist after the holiday passes and its determination shall be final. The Board shall have the right to require an Owner or Permitted User to remove seasonal or holiday decorations which create a nuisance in the reasonable judgment of the Board.

- 12.13 Exterior Antennas, etc. No exterior antenna satellite dishes or similar equipment shall be installed on any Lot, Common Area or Improvement thereon, unless such antennae, satellite dishes and similar equipment are approved by the ARB and conform to the conditions and requirements imposed by the ARB. No radio or shortwave operations of any kind shall be permitted to operate on any Common Areas or any Unit. Declarant may erect an antenna or a master antenna or a cable television antenna for the use of all the Owners, and Declarant grants and hereby reserves easements for such purposes as more particularly set forth in Article 15. Notwithstanding the foregoing, to facilitate compliance with The Telecommunications Act of 1996, the following provisions apply to installation of DBS, MDS, ITFS, and LMDC dishes less than one (1) meter in diameter, and TVBS antennas:

12.13.1 No payment of any fee shall be required as a condition of installation.

12.13.2 Any installation must be placed on the Lot in a location which is not visible from any street, unless such placement would: (a) unreasonably delay or prevent installation, Maintenance or use; or (b) unreasonably increase the cost of installation, Maintenance or use; (c) preclude reception of an acceptable quality signal.

12.13.3 The Owner must take reasonable measures to screen the installation. "Reasonable" means an installation which is consistent with the overall landscape standards of the Community, but does not (a) unreasonably delay or prevent installation, Maintenance or use, (b) unreasonably increase the cost of installation, Maintenance of use; or (c) preclude reception of an acceptable quality signal.

- 12.14 Trees, Shrubs and Artificial Vegetation. No tree or shrub, the trunk of which exceeds two (2) inches in diameter, may be cut down, destroyed or removed from any Lot without the prior approval of the ARB. No artificial grass, plants or other artificial vegetation or sculptural landscape decor shall be placed or maintained upon the exterior portion of any Lot without the prior approval of the ARB.

- 12.15 Games and Play Structures. No play or game structures including basketball hoops or tennis courts shall be located on any Lot unless approved in advance by the ARB. Additionally, no platform, doghouse, playhouse, storage shed or auxiliary structure of any kind or nature shall be constructed on any part of a Lot unless approved in advance by the ARB.

- 12.16 Fences and Walls. The composition, location, color and height of any fence or wall to be constructed on any Lot is subject to the approval of the ARB. No chain link fences shall be permitted on any Lot or portion thereof, unless installed by

Declarant, its affiliates, Declarant's Permittees or Participating Builders during construction periods or as otherwise approved by Declarant or the ARB. The finished side of all fences shall face out. No fence shall impede stormwater flow across any Lot or Common Area. Every fence on any Lot shall comply with the following guidelines, subject to the ARB's approval:

- 12.16.1 Decorative Fences. Decorative fences shall be between forty-two (42) inches to forty-eight (48) inches in height and shall be composed of painted wood, a composite material, or black metal. The painted wood shall either be white or match the trim of the Single Family Home.
- 12.16.2 Privacy Fences. Privacy fences must be seventy-two (72) inches in height and shall be composed of painted wood or a composite material. The painted wood shall either be white or match the trim of the Single Family Home.
- 12.16.3 Landscaping. Fifty percent (50%) of any fencing facing any public street shall be screened to a height of two (2) feet with evergreen shrubs. The shrubs shall not be placed more than twenty-five (25) feet apart.
- 12.16.4 Location Height Restrictions. Fences located between the front ten (10) feet of a Single Family Home and any street shall be a maximum of forty-two (42) inches in height. Fences located in front of a Single Family Home must return to the Single Family Home four (4) feet beyond the front of the Single Family Home. Fences located between the rear of the Single Family Home and the front ten (10) feet of the Single Family Home shall be a maximum of seventy-two (72) inches in height. Fences located between the rear of the Single Family Home and any street or alley shall be a maximum of forty-eight (48) inches in height. If the rear of a Single Family Home is not located on a street or alley, fences may be a maximum of seventy-two (72) inches in height between the rear of the home and any required setback. Notwithstanding anything to the contrary herein, any corner Lot fence shall be a maximum of forty-eight (48) inches in height in the side yard between the Single Family Home and any street.
- 12.16.5 Fence Setback Requirements. The following are the minimum setbacks required for any fence located on any Lot: (i) forty-eight (48) inches between any side yard fence and street; (ii) eight (8) feet from any Single Family Home; (iii) twenty-four (24) inches from any public sidewalk; (iv) forty-eight (48) inches from any rear lane or alley; (v) three (3) feet from any side lot line.
- 12.16.6 Gates. Gates will be approved on a case by case basis.
- 12.17 Utility Connections. Permanent building connections for all utilities installed after the date hereof, including water, electricity, gas, telecommunications and television, shall be run underground from the proper connecting points to the structure in such a manner to be acceptable to the County and applicable utility.

The foregoing shall not apply, however, to transmission lines, transformers and other equipment installed by public utility companies.

- 12.18 Off-Street Motor Vehicles. No motorized vehicle may be operated off of paved roadways and drives except as specifically approved in writing by Declarant or Association for the purpose of Maintenance or similar purposes and except as operated by the Association, Declarant or their respective contractors, subcontractors or designees.
- 12.19 Additional Use Restrictions. The Board of Directors of the Association may adopt such additional use restrictions, rules or regulations, applicable to all or any portion of the Property. The Association may waive or modify application of those use restrictions which it has authority to enforce with respect to any Lot(s) or Unit(s) as the Board deems appropriate.
- 12.20 Exemption for Declarant. To enable the development of the Property as a fully occupied residential community, neither the Association, nor any Owner shall do anything to interfere with the activities of Declarant. For so long as Declarant owns any property within the Community, nothing in the Governing Documents shall be understood or construed to :
  - 12.20.1 Prevent Declarant, its successors or assigns, or its contractors or subcontractors, from doing on any property owned or controlled by Declarant, or its successors or assigns whatever they determine to be necessary or advisable in connection with the completion of the development of the Property, including the alteration of its construction plans and designs as Declarant deems advisable in the course of development. (All models or sketches showing plans for future development of the Property may be modified by Declarant at any time and from time to time, without notice);
  - 12.20.2 Prevent Declarant, its successors or assigns, or their respective contractors, subcontractors or representatives, from erecting, constructing and Maintaining on any property owned or controlled by Declarant, or its successors or assigns, such structures as may be reasonably necessary for completing said development and establishing the Property as a community and disposing of the same by sale, lease or otherwise;
  - 12.20.3 Prevent Declarant, its successors or assigns, or its contractors or subcontractors, from conducting on any property owned or controlled by Declarant, or its successors or assigns, the business of developing, subdividing, grading and constructing Improvements in the Property, or of disposing of Lots and/or Units by sale, lease or otherwise;
  - 12.20.4 Prevent Declarant, its successors or assigns, from determining in their sole discretion the nature of any type of Improvements to be initially constructed as part of the Property;

- 12.20.5 Prevent Declarant, its successors or assigns or its or their contractors or subcontractors, from Maintaining such sign or signs on any property owned or controlled by Declarant, or its successors or assigns as may be necessary in connection with the operation of any of the Property owned or controlled by Declarant, or its successors or assigns, and the sale, resale, lease or other marketing of Lots and/or Units;
- 12.20.6 Prevent Declarant, or its successors or assigns from filing Supplemental Declarations which modify or amend the Declaration, or which add or withdraw additional property as otherwise provided in the Declaration; or
- 12.20.7 Prevent Declarant from modifying, changing, re-configuring, removing or otherwise altering any Improvements located on the Common Areas.

In general, Declarant shall be exempt from all restrictions set forth in the Declaration to the extent such restrictions interfere in any matter with Declarant's plans for construction, development, use, sale, leasing, resale or other disposition of the Property.

### 13. COMPLIANCE AND ENFORCEMENT

- 13.1 Compliance by Owners. Every Owner, and its Permitted User, Tenant, Guest, invitee, officer, employee, contractor, subcontractor and agent shall comply with the Governing Documents. No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from its liabilities as an Owner under this Declaration and other Governing Documents.
- 13.2 Enforcement. Failure to comply with any of the Governing Documents shall be grounds for immediate action which may include an action to recover sums for damages, injunctive relief or any combination thereof.
- 13.3 Individual Assessments; Suspension of Rights. In addition to all other remedies and to the maximum extent lawful, the Board of Directors of the Association shall have the right to (.1) impose Individual Assessments for fines on an Owner for failure of an Owner or any of the other parties described in Section 13.1 to comply with the Declaration or with any rule or regulation, or (.2) suspend the rights of an Owner whose Assessments are more than 30 days delinquent; provided that no suspension of rights shall occur or Individual Assessments for fines shall be imposed without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by G.S. 47F-3-107.1 of the Act.
  - 13.3.1 Payment of Individual Assessments. Individual Assessments shall be paid not later than fifteen (15) days after notice of the imposition or assessment of the fines.
  - 13.3.2 Collection of Individual Assessments. As to Owners, to the extent no prohibited by law, Individual Assessments shall be treated as a lien for

Assessments subject to requirements of the Act for perfecting a lien and the provisions of Article 9 for the collection of Assessments.

13.3.3 Application of Individual Assessments. All monies received from Individual Assessments shall be allocated as determined by the Association.

13.3.4 Non-exclusive Remedy. The imposition of an Individual Assessment or suspension of rights shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any Individual Assessment paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

#### 14. **DEVELOPMENT REVIEW; GENERAL POWERS**

The following provisions of this Article 14 are subject to those of Article 15 hereof.

14.1 Members of ARB. The Architectural Review Board of the Association, which is sometimes referred to in the Declaration as the "ARB", shall initially consist of three (3) members. Declarant shall be entitled to appoint all members of the ARB for so long as Declarant (or any of its affiliates) owns any portion of the Community. After Declarant no longer owns any portion of the Community, the Board of Directors shall have the right to change the number of, appoint and remove all members of the ARB. Each new member of the ARB shall be appointed by the Board of Directors and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein.

The members of the ARB shall not be compensated for their services as such, although they may be reimbursed for their reasonable out of pocket expenses incurred in connection with the performance of their duties under the Declaration. Such expenses shall be a Common Expense of the Association. The ARB may, with the approval of the Board of Directors as to amounts, require the payment of a nonrefundable filing fee as a condition to the consideration of any matter presented to it, such fees to be applied to expenses of the ARB (including overhead, development, review, enforcement and other Association expenses reasonably allocable to the ARB) and fees for professional services and consultants. In addition, the Board of Directors may require, at its sole discretion, that a structural engineer, architect, or other professional review proposed construction, with such review to be at the Owner's sole expense.

In addition to the power and duties set forth herein, the ARB shall have the right and duty to enforce such design and development review, architectural control, Maintenance and other requirements and restrictions imposed on any portion of the Property by Declarant as Declarant may, in its sole discretion, elect to have it enforce (subject at all times to Declarant's right to modify or revoke such right and duty). Such election may be made by Declarant by means of deed restrictions, contract or by way of an exclusive or non-exclusive assignment of Declarant's rights to enforce same. Further, Declarant may provide for specific

criteria and procedures to be used by the ARB in such regard (subject to later modification). Absent such provision the ARB shall proceed in the manner set forth in this Article.

- 14.2 Review of Proposed Construction. Subject to Section 14.8 below, no Unit, fence, wall or other structure or Improvement (including landscaping, basketball hoops, birdhouses, other pet houses, asphaltting or other improvements or changes thereto of any kind) shall be commenced, altered, removed, painted, erected or Maintained on any Lot or Common Area, nor shall any addition, removal, change or alteration (including paint or exterior finishing) visible from the exterior of any Unit be made, nor shall any awning, canopy or shutter be attached to or placed upon outside walls or roofs of Units or other Improvements, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to, and approved in writing by the ARB. The ARB shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alteration, removal or addition contemplated thereby in the location(s) indicated will not be detrimental to the appearance of the Community as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The ARB may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARB may also issue rules or guidelines setting forth procedures for the submission of plans for approval. The ARB may require such detail in plans and specifications submitted for its review as it deems proper, including floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARB of any required plans and specifications, the ARB may postpone review of any plans submitted for approval. Upon such receipt, the ARB shall have thirty (30) days in which to accept, accept with conditions or reject any proposed plans. If the ARB does not reject the plans and specification within such period, they shall be deemed approved.

All changes and alterations shall also be subject to all applicable permit requirements, to all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees.

- 14.3 Meetings of the ARB. The ARB shall meet from time to time as necessary to perform its duties hereunder. The ARB may from time to time, by resolution unanimously adopted in writing, designate a ARB representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARB, except the granting of variances or exemptions from the requirements of this Article 14. In the absence of such designation, the vote of any two (2) members of the ARB shall constitute an act of the ARB.
- 14.4 No Waiver of Future Approvals. The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval.

14.5 Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

14.5.1 Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice of completion to the ARB.

14.5.2 Within sixty (60) days thereafter, the ARB or its duly authorized representative may inspect such Improvement. If the ARB finds that such work was not effected in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such sixty (60) day period, specifying the particulars of noncompliance, and shall require the Owner to remedy them.

14.5.3 If the Owner fails to correct such noncompliance within thirty (30) days from the date of notice, the ARB shall notify the Board in writing of such failure. The Board shall then determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall correct or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying Improvement or correct the noncompliance. The Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith, plus an administrative charge to be determined by the Association (to cover the Association's administrative expenses in connection with the foregoing and to discourage the Owner from failing to comply). If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy Individual Assessments against the Owner and his Lot for reimbursement.

14.5.4 If for any reason the ARB fails to notify the Owner of any noncompliance within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to have been made in accordance with the approved plans.

14.6 Non-Liability of ARB Members. Neither the ARB nor any member thereof, nor its duly authorized representative, shall be liable to the Association or to any Owner or any other Person for any claim, loss, damage or injury arising out of or in any way connected with the performance or non-performance of the ARB's duties hereunder. The ARB shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition solely on the basis of aesthetic considerations and benefit or detriment which would result to the immediate vicinity and to the Community. The ARB shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and may consider exemptions pursuant to the procedures set forth herein for demonstrated hardship as to any such designee.

- 14.7 Restrictions on Contractors, Workers. The Board of Directors of the Association shall have the right to adopt restrictions and conditions relating the terms on which construction, Maintenance and Restoration of a Unit can be performed, including the review and approval of plans, design, structural integrity, aesthetic appeal, construction details, lien protection, Association oversight, contractor's access, deliveries, and storage of materials and hours of construction and other matters relating to such work. The Association shall have the right to approve the contractor performing the work, to require that the work be performed only during certain specified hours or only on certain days so as to minimize the disruption and inconvenience to the other Owners, and to require that the contractor fulfill such bonding and insurance requirements as the Board may reasonably require. Any contractor, worker or other Person who does not comply with the Association's regulations and requirements regarding construction in and about a Unit shall be denied access to the Property and shall not be permitted to perform further work at the Property. The Owner shall further be responsible for any claim, loss, damage or injury to the Common Areas or other Lots or Units by any contractor, worker or other Person performing work in a Unit and such claim, loss, damage or injury shall be the subject of Individual Assessments against the Unit Owner by the Association.
- 14.8 Exemptions. Declarant, its affiliates and designees shall be exempt from the provisions hereof with respect to Improvements, alterations and additions and removals desired to be effected by any of them and shall not be obligated to submit plans and specifications to or obtain Association or ARB approval for any construction or changes which any of them may elect to make at any time. It is specifically contemplated that Declarant may, from time to time, exempt Participating Builders or Owners from all or some of the provisions of this Article and all or some of the procedures set forth herein and, without limiting the generality of Section 1.66 hereof, may alter the procedures set forth herein as to any such exempted party.

Notwithstanding any provision elsewhere in the Declaration to the contrary, the matters set forth in this Section and in any Supplemental Declaration relating to this Section executed by Declarant in connection with the sale of any Lot cannot be amended or modified without the written consent of the Owner of the particular Lot in question.

## 15. **ADDITIONAL SPECIAL DECLARANT RIGHTS**

- 15.1 General. Notwithstanding any other provision in the Declaration to the contrary, Declarant and each affiliate of Declarant shall have, in addition to the other special Declarant rights set forth in the Act or the Governing Documents, the rights described below in Subsections 15.1.1 through 15.1.8 so long as Declarant owns any portion of the Community:
- 15.1.1 Effectuation of General Plan of Development. The right to modify the Site Plan and Subdivision Plat, execute all documents and take all actions affecting any portion of the Property owned or controlled by it which, in its sole discretion, are desirable or necessary to effectuate or facilitate the development of the Community.

- 15.1.2 Platting. The right to plat, re-plat, subdivide and re-subdivide any portion or portions of the Property owned or controlled by it.
- 15.1.3 Development Planning. The right to determine, in its sole discretion, the type of Improvements, if any, to be constructed on any portion of the Property owned or controlled by it and the Common Areas and the right to revise its plans concerning such Improvements.
- 15.1.4 Construction. The right to construct and Maintain, on any portion of the Property owned or controlled by it or the Common Areas, any Improvements it considers desirable; and the right to construct and Maintain sales, marketing, leasing, management or other general business offices, temporary construction offices, and storage facilities. The rights shall include a right of ingress and egress by any and all types of vehicles and equipment to, through, over and about the Common Areas during whatever period of time Declarant, Declarant's Permittees or a Participating Builder is engaged in any construction or improvement work on or within the Community as well as an easement for the parking and storage of materials, vehicles, tools, equipment and the like which are being utilized in such work.
- 15.1.5 Marketing. The right to sell, lease, resell, market, promote, operate, and manage existing and planned Units (and portions thereof), which right shall include the right to construct and Maintain marketing, sales and leasing offices and models and to be open for business seven (7) days per week on any portion of the Property owned or controlled by it and the Common Areas, to solicit and receive the visits of unlimited numbers of prospective purchasers and Tenants (all of whom shall have the right while visiting to use parking spaces on the Common Areas), and to place signs, lighting, flags, banners and other promotional devices on any portion or portions of the Property owned or controlled by it or the Common Areas without regard to the size or aesthetic appeal of such signs or devices.
- 15.1.6 Alteration of Common Areas. The right, without the vote or consent of the Association or Owners, to expand, alter or add to all or any part of the Common Areas or any Improvements thereon.
- 15.1.7 Assignment. Without limiting the generality of Section 1.66 hereof, the right to assign the foregoing rights, in whole or in part, to any one or more Declarants or Declarant's assignees by a written assignment recorded in the Registry.
- 15.1.8 Use of Common Areas. Anything to the contrary in the Declaration notwithstanding, as long as Declarant or any of its affiliates owns any property in the Community, Declarant and Declarant's Permittees shall have the right to non-exclusive use of the Common Areas, without charge, for sales, leasing, promotions, special events, signage, display, access, ingress, egress, construction and exhibit purposes during the period of construction, development, sale or lease of any land, Lots or Units owned by Declarant and its affiliates

within the Community. Further, Declarant shall have the right to permit Persons other than Owners, their Permitted Users to use certain portions of the Common Areas under such terms as Declarant, its successors and assigns, may from time to time desire without interference from the Association. Without limiting the generality of the foregoing, Declarant may grant employees of Declarant and their families the right to use all Common Areas.

15.2 Easement. There is hereby created and reserved a blanket easement for Declarant and each affiliate of Declarant to enable each of them and (to the extent authorized in writing by Declarant) Declarant's Permittees or Participating Builders to exercise the rights set forth in the Governing Documents free of any interference by the Association or any Owner.

15.3 Injunctive Relief for Interference. Declarant and each affiliate or assignee of Declarant shall be entitled to injunctive relief for any actual or threatened interference with its or their rights under this Article, in addition to whatever remedies at law it or they might be entitled to.

16. **LEASING AND OCCUPANCY OF UNITS**. No Owner other than Declarant may occupy or lease a Unit except by complying with the following provisions:

16.1 Residential Use Only. Use and occupancy of the Units is restricted to residential uses only. These use restrictions shall not be construed in such a manner as to prohibit an Owner or Permitted User from maintaining his personal professional library, keeping his personal business or professional records or accounts or handling his personal, business or professional telephone calls, electronic transmissions or correspondence in and from his Unit to the extent permitted by applicable law; provided such activities do not interfere with the quiet enjoyment of other Units. Notwithstanding the foregoing, Declarant, its successors and assigns, shall be permitted to use Units which Declarant owns or leases as model apartments, as sales, leasing, construction, management or other offices.

16.2 Leased Units. An Owner may lease his Unit; provided, however, that any lease must be for not less than six (6) months. Only entire Units may be leased. No subleases or assignments of leases of a Unit are allowed. All leases shall be in writing and shall contain the following provisions:

16.2.1 Each Tenant shall comply, and all leases shall require the Tenant to comply, with the covenants, terms, conditions and restrictions of the Governing Documents. A violation of any of the terms of any of the Governing Documents shall constitute a material breach of the lease and shall constitute grounds for damages, termination of the lease and eviction by the Association.

16.2.2 Pursuant to Section 11.19 of this Declaration, the Association has the right to collect all rental payments due to the Owner and apply them against unpaid Assessments if, and to the extent that, the Owner is in default in the payment of Assessments.

16.2.3 The Board of Directors shall have the power and authority to terminate the lease and/or bring proceedings to evict the Tenant in the name of the Owner if either the Tenant defaults under the lease or the Association forecloses a lien for unpaid Assessments on the Unit.

16.2.4 This Declaration and other Governing Documents then in effect must be given to the Tenant by or on behalf of the Owner at or before the commencement of the lease term; provided, however, that such Tenant's obligations under this Section 16.2 shall not be affected by the failure to receive the Governing Documents. All tenancies are hereby made subordinate to any lien filed by the Association, whether prior or subsequent to such lease.

If an Owner fails to include any of the foregoing provisions in any lease, the provisions shall be deemed to be included and part of the lease.

Prior to the time a Tenant takes possession of the Unit, the Owner shall furnish the Association with a copy of the lease for the Unit. Each Owner or Tenant of a leased Unit shall be obligated to deliver a copy of the lease to the Association within seven (7) days after request by the Association.

16.3 Owner Responsible for Conduct of Permitted Users. The Owner of a Unit is responsible for all conduct of each Permitted User of the Unit, including any claim for injury, loss or damage to Persons or property caused by the acts or omissions of the Owner's Permitted User(s). Each Owner shall be jointly and severally liable with the Permitted User to the Association for any amount which is required by the Association to repair any injury, loss or damage to the Common Area resulting from acts or omissions of the Permitted User and to pay any claim for injury, loss or damage to property caused by the negligence of the Permitted User, and the Association may levy an Individual Assessment against the Unit therefor.

16.4 Use of Common Areas. When a Unit is leased, the Permitted User shall have all use rights in Common Areas and Association Property otherwise readily available for use generally by Owners, and the Owner of the leased Unit shall not have such rights, except as a Guest of another Owner or the Tenant. Nothing herein shall interfere with the access and eviction rights of the Owner as a landlord pursuant to North Carolina law. The Association shall have the right to adopt rules to prohibit dual usage by an Owner and a Permitted User of Common Areas.

16.5 Declarant's Use. Declarant, its successors and assigns, shall be permitted to use Units which Declarant owns, leases or manages for any activities relating to marketing, selling, purchasing, reselling, leasing or promoting those Units as well as for models, sales, resales, leasing, and management offices, overnight accommodations by its designees or any other lawful purpose.

## 17. **ADDITIONAL RIGHTS OF ELIGIBLE MORTGAGEES.**

17.1 Books and Records. Any Eligible Mortgagee shall have the right, during normal business hours, to examine copies of the Governing Documents, and the books

and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding Fiscal Year.

17.2 Notice to Eligible Mortgagees. Eligible Mortgagees shall be entitled to timely written notice of:

- 17.2.1 A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- 17.2.2 Association's meetings and attend such meetings;
- 17.2.3 Any alleged default by any Owner whose Lot is subject to a First Mortgage it holds or has insured or guaranteed, if the default is not cured within sixty (60) days after notice of the default to the Owner;
- 17.2.4 Any condemnation or casualty loss which affects a major portion of the Common Areas;
- 17.2.5 A copy of, within reasonable time after it requests it, financial statement of the Association for the immediately preceding Fiscal Year;
- 17.2.6 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 17.2.7 Any proposed action by the Association which would require hereunder the consent or approval of a specified percentage of Eligible Mortgagees.

17.3 Approval of Eligible Mortgagees. After the expiration of the Declarant Control Period, unless at least a majority of the Eligible Mortgagees based on the original principal amount of their First Mortgages encumbering Units have given their prior written approval, the Association shall not:

- 17.3.1 By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer Common Areas or any other real property which is owned, directly or indirectly, by the Association. The granting of easements or relocation of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this subsection.
- 17.3.2 Change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Unit;
- 17.3.3 Fail to maintain property insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred (100%) percent of the full insurable replacement value;

- 17.3.4 Use the proceeds of any property insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged Improvements; or
- 17.3.5 Use the proceeds of any property insurance policy covering losses to any part of any Attached Townhomes in accordance with the terms and provisions of Article 9 of this Declaration for other than the repair, replacement or reconstruction of the damaged Improvements, if so applicable.
- 17.4 Payment of Taxes and Insurance Premiums. Eligible Mortgagees, jointly or singularly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay delinquent premiums on property insurance policies or secure new property insurance coverage upon the lapse of a policy covering the Common Areas or Association Property. The Eligible Mortgagees making such payments shall be owed immediate reimbursement therefor by the Association.
- 18. **AMENDMENTS.** The Declaration, Articles and Bylaws shall be amended as follows:
  - 18.1 By Declarant. During the Declarant Control Period, this Declaration, the Articles and Bylaws may be amended, changed or added to at any time and from time to time by an instrument executed by Declarant and recorded in the Registry without the requirement of the consent of the Association or any of the Owners or their mortgagees; provided, however, the Association shall, forthwith upon request of Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time, request.
  - 18.2 By the Association. After the Declarant Control Period, this Declaration, the Articles and Bylaws may be amended, changed or added to at any time and from time to time by the affirmative vote or written consent of the Class A Members (through their respective Voting Members) having not less than sixty-seven (67%) percent of the voting interests of Class A Members and, to the extent not prohibited by law, the affirmative vote or written approval of Declarant so long as Declarant is a Member.
  - 18.3 Scrivener's Errors. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone so long as Declarant owns any portion of the Community, and thereafter by the Board without the need for approval of the Owners.
  - 18.4 Limitations on Amendments Affecting Declarant Rights. No amendment shall be permitted which changes the rights, privileges and obligations of Declarant, a Participating Builder or any affiliate of Declarant respectively without the prior written consent of whichever of them is affected. Nothing contained herein shall affect the right of Declarant to make whatever amendments or Supplemental Declarations are otherwise expressly permitted hereby without the consent or approval of any Owner or Mortgagee.

- 18.5 Amendments Required by Secondary Mortgage Market. Notwithstanding anything herein to the contrary, Declarant shall have an absolute right to make any amendments to the Declaration (without any other party's consent or joinder including the Association or any Owners) that are requested or required by or necessitated by a change in the guidelines of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), U.S. Department of Housing and Urban Development ("HUD") and U.S. Department of Veterans Affairs ("VA"), the Government National Mortgage Association, or any other governmental, quasi-governmental or government-chartered entity which owns or expects to own one or more Mortgages on Lots or portions of the Property within the Community or to insure or guarantee the payment of one or more such Mortgages or that are requested or required by any institutional First Mortgagee to enhance the salability of its Mortgages on Lots or portions of the Property to one or more of the foregoing.
- 18.6 Mortgagee's Consent. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees or make any materially adverse change in the sections hereof entitled "Insurance for Common Areas and Attached Townhomes" or "Restoration of Attached Townhomes after Fire or Other Casualty" unless a majority of the Eligible Mortgagees whose Mortgages encumber Attached Townhomes (based on the original principal amount of the Mortgages held by the Eligible Mortgagees) shall join in the amendment. Except as specifically provided herein, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of any amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld or delayed. Whenever the consent or approval of an Eligible Mortgagee or other mortgagee is required by the Governing Documents, or any applicable statute or law to any action of the Association or to any other matter relating to the Condominium, the Association, the Board, or by the Governing Documents, the Association shall request such consent or approval of such Eligible Mortgagee or other mortgagee by written request sent by certified mail, return receipt requested. Any Eligible Mortgagee or other mortgagee receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested in writing within sixty (60) days after the Eligible Mortgagee or other mortgagee receives such request. The response of the Eligible Mortgagee or other mortgagee must be sent by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association) and the response must be received by the Association. If such response is not timely received by the Association, the Eligible Mortgagee or other mortgagee shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by a majority of the Directors, the President or Secretary of the Association, which affidavit, where necessary, may be recorded in the Register's Office for the County. Such affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained.
- 18.7 Effective Date. Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment.

18.8 Challenge. No action to challenge the validity of an amendment adopted pursuant to this Article may be brought more than one (1) year after the amendment is recorded.

19. **EFFECT AND DURATION OF COVENANTS.** This Declaration shall run with, bind, benefit and burden all of the Property, and shall run with, bind, and be enforceable by and against Declarant, the Association, every Owner, and the respective legal representatives, heirs, successors and assigns of each, for a term of thirty (30) years from the date this Declaration is recorded. After that time they shall be automatically extended for successive periods of ten (10) years each unless an instrument has been recorded in which eighty (80%) percent of the then Owners and majority of the Eligible Mortgagees (based on the original principal amount of the Mortgages held by the Eligible Mortgagees) agree by signing it to revoke this Declaration in whole or in part.

20. **GENERAL PROVISIONS**

20.1 Exculpation. No personal liability is assumed by nor shall at any time be asserted or enforceable against Declarant on account of any representation, covenant, undertaking or agreement of Declarant contained in the Declaration either expressed or implied. All such personal liability, if any, is expressly waived and released by the Association, the Owners and by all Persons claiming by, through or under the Owners.

20.2 Notice. Any notice required to be sent to any Member or Owner under the provisions of the Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to 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. It shall be the duty of each Owner to keep the Association advised of his name and addresses and any changes therein.

20.3 Severability. Invalidation of any part, clause or word of the Governing Documents, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

20.4 Performance of Association's Duties by Declarant. Declarant shall have the right from time to time at its sole discretion, to perform at Declarant's expense the duties and obligations required hereunder to be performed by the Association. In connection therewith Declarant shall have the right to reduce the budget of the Association and the Assessments payable by the Owners; provided, however, that any such performance on the part of Declarant may be discontinued by Declarant at any time, and any such performance shall not be deemed to constitute a continuing obligation on the part of Declarant.

20.5 Conflict. The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, any Supplemental Declaration or any other Governing Documents. In the event of a conflict between any of the Governing Documents, the following order of precedence shall apply:

First, this Declaration (except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the Articles shall control)

Second, Articles of Incorporation of the Association

Third, Bylaws of the Association

Fourth, rules and regulations of the Association.

- 20.6 Effective Date. The Declaration shall become effective upon its recordation in the Registry.
- 20.7 Standards for Consent, Approval, Completion, Other Action and Interpretation. Whenever the Governing Documents shall require the consent, approval or other action by Declarant or its affiliates, Association or Architectural Review Board, such consent, approval or action may be withheld in the sole and reasonable discretion of the party requested to give such consent or approval or take such action. All matters required to be completed or substantially completed by Declarant or its affiliates, Association or ARB shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of Declarant, Association or ARB, as appropriate. As to matters relating to the Common Areas or the Association, the Governing Documents shall be interpreted by the Board of Directors and an opinion of counsel of the Association rendered in good faith that a particular interpretation is not unreasonable shall establish the validity of such interpretation.
- 20.8 Easements. If any easement provided for in the Declaration fails because at the time of creation there may be no grantee having the capacity to take and hold such easement, then any such grant of easement shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original parties to whom the easements were originally to have the benefit of such easement. The Owners hereby designate Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein.
- 20.9 CPI. Whenever a specific dollar amount is recited in Governing Documents, unless limited by law or by the specific text hereof or unless held to be unconscionable, such amounts shall be increased from time to time by application of a nationally recognized consumer price index using the date of recordation of this Declaration as the base year. The index used shall be that published by the United States Department of Labor, Bureau of Labor Statistics, designated as "Consumer Price Index, all urban consumers, United States, 1982-84 = 100, all items". If the Bureau of Labor Statistics shall change the method for determining the consumer price index or in the event the Bureau of Labor Statistics shall cease to publish said statistical information and it is not available from any other source, public or private, then the Board shall choose a reasonable alternative to compute such increases.
- 20.10 Attorneys' Fees; Enforcement Costs. Unless limited by the Act, in the event that any legal action or other proceeding is brought for the enforcement of the

Governing Documents, including because of any Assessments, fines, or any alleged dispute, breach, default or misrepresentation in connection with any provisions of the Governing Documents, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

20.11 CONSTRUCTION AND OTHER ACTIVITIES. ALL OWNERS AND PERMITTED USERS OF THE PROPERTY ARE HEREBY PLACED ON NOTICE THAT DECLARANT OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE COMMUNITY. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH SUCH OWNER AND PERMITTED USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (.1) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (.2) NOT TO ENTER UPON, OR 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 COMMUNITY WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (.3) DECLARANT AND THE OTHER AFORESAID PARTIES WILL 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, (.4) ANY PURCHASE OR USE OF ANY PORTION OF THE COMMUNITY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING, AND (.5) THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY, LEASE OR ALLOW THE USE OF THE APPLICABLE PORTION OF THE COMMUNITY.

20.12 COVENANTS RUNNING WITH THE LAND. IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY (AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) THAT THE COVENANTS IN THE GOVERNING DOCUMENTS SHALL RUN WITH THE LAND AND WITH TITLE TO THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF ARTICLE 19 HEREOF, IF ANY PROVISION OR APPLICATION OF THE COVENANTS IN THE GOVERNING DOCUMENTS WOULD PREVENT THE COVENANTS FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISION OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER WHICH WILL ALLOW THE COVENANTS IN THE GOVERNING DOCUMENTS TO SO RUN WITH THE LAND; BUT IF SUCH

PROVISION OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THE OTHER COVENANTS IN THE GOVERNING DOCUMENTS RUN WITH THE LAND) BE ACHIEVED.

- 20.13 Notices and Disclaimers as to Water Bodies. NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE COMMUNITY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY OR CONTRACTED FOR WITH AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN THE COMMUNITY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.
- 20.14 Principles of Interpretation and Definitions. In this Declaration, unless the context requires otherwise: (.1) the singular includes the plural, and the plural includes the singular; (.2) the pronouns "it", "its", "he", "his", "she", "her", "they" and "their" include the masculine and feminine; (.3) references to contracts and agreements shall be deemed to include all amendments thereto; (.4) references to an "Article", "Section", "section", or "paragraph" shall mean an article or section of this Declaration; (.5) headings and titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Declaration; (.6) the word "shall" is mandatory; and (.7) all exhibits, attachments, or documents attached or referred to in this Declaration are incorporated by reference as if fully set forth herein.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Declarant has executed and delivered this Declaration as of the date first above written.

EV-5401 NORTH, L.L.C.,  
a Louisiana limited liability company

By: [Signature] (SEAL)

Name: D Todd Waguespack

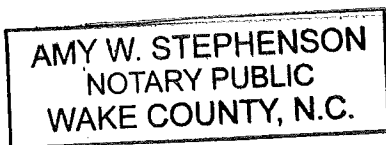
Title: member

STATE OF North Carolina

COUNTY OF Wake

I, Amy W. Stephenson, a Notary Public of County and State aforesaid, do hereby certify that D Todd Waguespack, as Member of EV-5401 NORTH, L.L.C., a Louisiana limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Date: 8-3-16



(Official Stamp or Seal)

Amy W. Stephenson  
Official Signature of Notary

Amy W. Stephenson, Notary Public  
Notary Public's printed or typed name

My Commission expires: 10-1-2018

IN WITNESS WHEREOF, each Owner of a Lot has caused this Declaration to be executed under seal in its name by its duly authorized representative as of the date first above written.

MEDALLION CONSTRUCTION, INC.,  
a North Carolina corporation

By: [Signature] (SEAL)

Name: Barney Baxter

Title: President

STATE OF NC

COUNTY OF Wake

I, Gina Stines, a Notary Public of Granville County and State aforesaid, do hereby certify that Barney Carl Baxter, as President of MEDALLION CONSTRUCTION, INC., a North Carolina corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Date: 7/18/16

[Signature]  
Official Signature of Notary

Gina Stines, Notary Public  
Notary Public's printed or typed name

My Commission expires: 8/9/2020

(Official Stamp or Seal)



5401 NORTH TOWNHOMES LLC,  
a Delaware limited liability company

By: [Signature] (SEAL)

Name: M. MASHBURN

Title: PEES.

STATE OF New York

COUNTY OF New York

I, CHOON LAN LEE, a Notary Public of County and State aforesaid, do hereby certify that Mark Mashburn, as President of 5401 NORTH TOWNHOMES LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Date: 07/20/2016

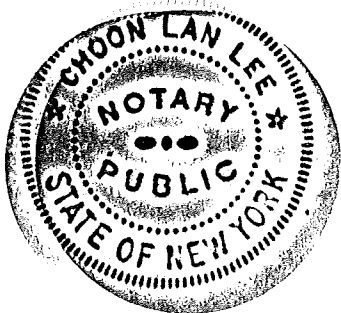
[Signature]

Official Signature of Notary

\_\_\_\_\_, Notary Public  
Notary Public's printed or typed name

My Commission expires: \_\_\_\_\_

(Official Stamp or Seal)



CHOON LAN LEE  
Notary Public, State of New York  
No. 01LE6133252  
Qualified in Queens County  
Commission Expires September 12, 2017

LEVEL CAROLINA HOMES, LLC,  
a North Carolina limited liability company

By: RJS (SEAL)  
Name: Ric J. Rojas  
Title: PRESIDENT

STATE OF NORTH CAROLINA  
COUNTY OF Wake

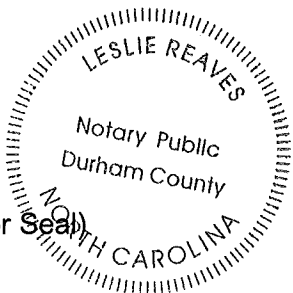
I, Leslie Reaves, a Notary Public of County and State aforesaid, do hereby certify that Ric J. Rojas, as PRESIDENT of LEVEL CAROLINA HOMES, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Date: July 6, 2016

Leslie Reaves  
Official Signature of Notary

LESLIE REAVES, Notary Public  
Notary Public's printed or typed name

My Commission expires: October 5, 2018



(Official Stamp or Seal)

RYANS INVESTMENTS, LLC,  
a North Carolina limited liability company

By: [Signature] (SEAL)

Name: RAJINDER SINGH

Title: Member

STATE OF NC

COUNTY OF WAKE

I, SHIV SHANKAR NUNNA, a Notary Public of County and State aforesaid, do hereby certify that RAJINDER SINGH, as MEMBER of RYANS INVESTMENTS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

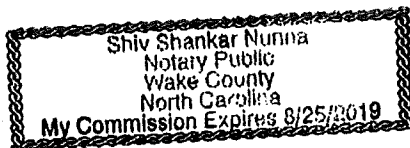
Date: 7/28/2016

[Signature]  
Official Signature of Notary

SHIV SHANKAR NUNNA, Notary Public  
Notary Public's printed or typed name

My Commission expires: 8/25/2019

(Official Stamp or Seal)



By: Clay Hines (SEAL)  
Clay Hines

STATE OF NC

COUNTY OF Wake

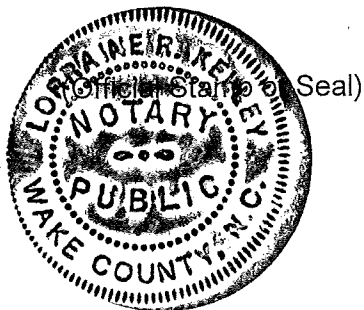
I, Lorraine R. Kelley a Notary Public of County and State aforesaid, do hereby certify that Clay Hines personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Date: 7-16-16

Lorraine R. Kelley  
Official Signature of Notary

Lorraine R. Kelley, Notary Public  
Notary Public's printed or typed name

My Commission expires: Aug 4, 2019



By: [Signature] (SEAL)  
Morgan Jones

STATE OF NC

COUNTY OF Wake

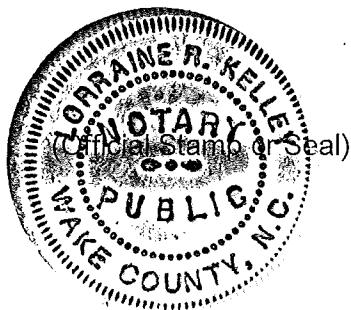
I, Lorraine R. Kelley a Notary Public of County and State aforesaid, do hereby certify that ~~Morgan~~ personally appeared before me this day and acknowledged the due execution of the foregoing instrument. \*Morgan Jones\*

Date: 7-27-16

Lorraine R. Kelley  
Official Signature of Notary

Lorraine R. Kelley, Notary Public  
Notary Public's printed or typed name

My Commission expires: Aug. 4, 2019



By: Molly Halbert (SEAL)  
Molly Halbert

STATE OF NC

COUNTY OF Wake

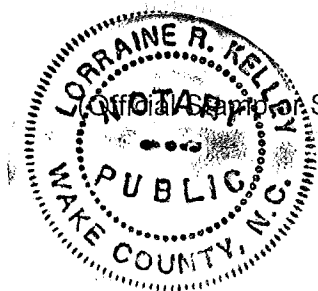
I, Lorraine R. Kelley, a Notary Public of County and State aforesaid, do hereby certify that \*Molly\* personally appeared before me this day and acknowledged the due execution of the foregoing instrument. \*Molly Halbert\*

Date: 7-27-16

Lorraine R. Kelley  
Official Signature of Notary

Lorraine R. Kelley, Notary Public  
Notary Public's printed or typed name

My Commission expires: Aug 4, 2019



## EXHIBIT "A"

## Property Subject to this Declaration

## Lots:

ALL of those certain parcels of land lying in Wake County, North Carolina, more particularly described as Lots 3001 through 3080 of that certain plat entitled "5401 North Lots 15-17 Phases 4 & 12 Subdivision, Recombination & Easement Plat," dated January 7, 2015, and recorded on July 9, 2015, in Book of Maps 2015, Pages 1055 through 1060, Wake County Register of Deeds, and all of those certain parcels of land lying in Wake County, North Carolina, more particularly described as Lots 3082 through 3137 of that certain plat entitled "5401 North Lots 15-17 Phase 11 Subdivision & Easement Plat," dated August 18, 2015, and recorded on January 12, 2016, in Book of Maps 2016, Pages 54 through 57, Wake County Register of Deeds.

AND

## Common Areas:

ALL of those certain parcels of land lying in Wake County, North Carolina, more particularly described as Lots 5003, 5004, 5005, 5006, 5007, and 5024 and all those areas described as private access easements, private drainage easements, private storm drainage access and maintenance easements (including those areas identified as "20' Private Access Easement," "Sight Distance Triangle," "20' Private Drainage Easement," "Open Space," "Variable Width Private Drainage Easement," "Var. Width Private Storm Drainage Access & Maintenance Esmt.," and "Mail Kiosk Easement"), all as shown on that certain plat entitled "5401 North Lots 15-17 Phases 4 & 12 Subdivision, Recombination & Easement Plat," dated January 7, 2015, and recorded on July 9, 2015, in Book of Maps 2015, Pages 1055 through 1060, Wake County Register of Deeds, and on that certain plat entitled "5401 North Lots 15-17 Phase 11 Subdivision & Easement Plat," dated August 18, 2015, and recorded on January 12, 2016, in Book of Maps 2016, Pages 54 through 57, Wake County Register of Deeds.

AND

Beginning at an iron pipe on the eastern right of way of Perry Creek Road, point also being the northwest property corner of Open Space Lot, as shown in Book of Maps 2014, Page 779, being the Point of Beginning, thence leaving said right of way North 70°31'15" East a distance of 386.49 feet to an iron pipe; thence North 42°59'19" East a distance of 67.48 feet to an iron pipe; thence North 65°51'11" East a distance of 149.65 feet to an iron pipe; thence South 88°38'17" East a distance of 53.68 feet to an iron pipe; thence North 60°52'30" East a distance of 89.38 feet to an iron pipe; thence North 83°09'18" East a distance of 93.94 feet to an iron pipe; thence North 35°36'04" East a distance of 60.48 feet to an iron pipe; thence North 61°19'17" East a distance of 81.13 feet to an iron pipe; thence South 70°06'22" East a distance of 30.96 feet to an iron pipe; thence South 10°30'29" East a distance of 120.06 feet to an iron pipe; thence North 69°28'27" East a distance of 158.47 feet to an iron pipe; thence South 86°26'46" East a distance of 180.17 feet to a point; thence South 89°58'02" East a distance of 242.13 feet to a point; thence South 00°00'23" West a distance of 1,006.39 feet to a point; thence South 38°37'52" East a distance of 513.14 feet to a point; thence North 52°22'08" East a distance of

230.02 feet to a point; thence South 51°16'58" East a distance of 223.77 feet to a point; thence North 79°23'45" East a distance of 27.46 feet to a point; thence South 66°40'28" East a distance of 182.46 feet to a point; thence South 16°03'12" East a distance of 380.47 feet to a point; thence South 72°26'51" East a distance of 298.30 feet to a point; thence South 26°46'56" West a distance of 72.06 feet to a point; thence South 17°40'35" West a distance of 43.61 feet to a point; thence South 16°34'12" West a distance of 30.19 feet to a point; thence South 18°20'31" West a distance of 82.09 feet to a point; thence South 23°06'42" West a distance of 54.92 feet to a point; thence South 12°28'00" West a distance of 38.41 feet to a point; thence South 07°55'18" West a distance of 39.25 feet to a point; thence South 09°57'57" West a distance of 47.68 feet to a point; thence South 37°37'10" West a distance of 13.39 feet to a point; thence South 02°06'01" West a distance of 50.73 feet to a point; thence South 17°12'53" West a distance of 33.48 feet to a point; thence South 09°06'02" West a distance of 98.99 feet to a point; thence South 14°55'50" West a distance of 64.68 feet to a point; thence South 03°00'07" West a distance of 61.77 feet to a point; thence South 26°47'22" West a distance of 37.35 feet to a point; thence South 03°57'25" West a distance of 64.50 feet to a point; thence South 06°32'57" West a distance of 67.94 feet to a point; thence South 07°22'58" East a distance of 57.96 feet to a point; thence South 03°44'59" East a distance of 52.70 feet to a point; thence South 07°30'19" East a distance of 52.98 feet to a point; thence South 01°29'27" West a distance of 43.84 feet to a point; thence South 03°47'34" West a distance of 18.76 feet to a point; thence South 12°29'03" West a distance of 49.90 feet to a point; thence South 14°28'18" West a distance of 57.84 feet to a point; thence South 11°42'23" West a distance of 49.95 feet to a point; thence South 09°50'23" West a distance of 55.66 feet to a point; thence South 12°09'54" West a distance of 52.83 feet to a point; thence South 33°47'24" West a distance of 51.21 feet to a point; thence South 31°37'06" West a distance of 42.11 feet to a point on the northern right of way of US Highway 540; thence with said right of way North 77°39'35" West a distance of 3,008.30 feet to a point; thence North 71°39'18" West a distance of 195.13 feet to a point; thence North 74°58'38" West a distance of 404.83 feet to a point; thence North 67°03'25" West a distance of 241.29 feet to a point; thence North 61°58'59" West a distance of 241.23 feet to a point; thence North 56°52'58" West a distance of 241.36 feet to a point; thence North 51°54'29" West a distance of 241.35 feet to a point; thence North 41°35'43" West a distance of 70.95 feet to a point; thence leaving said right of way with a curve to the right with a radius of 1,835.50 feet, with an arc length of 549.62 feet, with a chord bearing of North 62°14'55" East, with a chord length of 547.56 feet to a point; thence North 63°32'55" East a distance of 59.61 feet to a point; thence with a curve to the right with a radius of 1,844.00 feet, with an arc length of 249.19 feet, with a chord bearing of North 76°32'08" East, with a chord length of 249.00 feet to a point; thence North 80°24'25" East a distance of 254.54 feet to a point; thence South 08°34'45" East a distance of 8.38 feet to an iron pipe on the northern right of way of Beckom Drive; thence with said right of way South 09°35'35" East a distance of 72.00 feet to an iron pipe; thence North 80°24'25" East a distance of 376.12 feet to an iron pipe; thence South 54°36'36" East a distance of 5.66 feet to an iron pipe; thence North 86°50'07" East a distance of 71.45 feet to an iron pipe; thence North 35°23'24" East a distance of 5.66 feet to an iron pipe; thence North 80°24'25" East a distance of 26.94 feet to an iron pipe; thence with a curve to the left with a radius of 1,144.00 feet, with an arc length of 219.33 feet, with a chord bearing of North 74°54'53" East, with a chord length of 218.99 feet to an iron pipe; thence South 70°49'20" East a distance of 5.12 feet to an iron pipe; thence South 31°04'01" East a distance of 35.60 feet to an iron pipe; thence North 58°55'59" East a distance of 59.00 feet to an iron pipe; thence North 31°04'01" West a distance of 25.24 feet to an iron pipe; thence North 17°29'08" East a distance of 6.00 feet to an iron pipe; thence with a curve to the left with a radius of 1,144.00 feet, with an arc length of 298.67 feet, with a chord bearing of North 58°33'32" East, with a chord length of 297.82 feet to an iron pipe; thence South 85°48'43" East a distance of 5.47 feet to an iron pipe; thence South 42°42'12" East a distance of 29.02 feet to an iron pipe; thence

North 47°17'48" East a distance of 54.00 feet to an iron pipe; thence North 42°42'12" West a distance of 25.58 feet to an iron pipe; thence North 03°50'49" East a distance of 5.81 feet to an iron pipe; thence North 50°23'51" East a distance of 338.64 feet to an iron pipe; thence South 42°40'40" East a distance of 28.07 feet to an iron pipe; thence North 47°19'20" East a distance of 114.00 feet to an iron pipe at the intersection of Beckom Drive and Perry Creek Road; thence with said right of way of Perry Creek Road North 42°40'40" West a distance of 300.27 feet to an iron pipe; thence with a curve to the right with a radius of 1,443.00 feet, with an arc length of 475.83 feet, with a chord bearing of North 33°13'52" West, with a chord length of 473.68 feet to an iron pipe; thence South 73°58'30" West a distance of 7.06 feet to an iron pipe; thence with a curve to the right with a radius of 1,353.58 feet, with an arc length of 184.29 feet, with a chord bearing of North 19°58'35" West, with a chord length of 184.15 feet to the Point of Beginning, containing 177.49 acres.

AND

Beginning at an iron pipe on the western right of way of Archwood Avenue, point also being the southeast property corner of Lot 19 5401 North, as shown in Book of Maps 2014, Page 778, being the Point of Beginning; thence leaving said right of way with a curve to the left with a radius of 278.50 feet, with an arc length of 27.84 feet, with a chord bearing of North 85°45'47" West, with a chord length of 27.83 feet to a point; thence North 88°37'38" West a distance of 249.09 feet to a point; thence North 88°32'12" West a distance of 249.87 feet to a point; thence North 00°03'39" East a distance of 842.38 feet to a point; thence North 90°00'00" East a distance of 559.88 feet to a point on the western right of way of Archwood Avenue; thence with said right of way South 00°00'00" East a distance of 288.62 feet to an iron pipe; thence South 50°55'43" West a distance of 5.04 feet to an iron pipe; thence North 78°08'35" West a distance of 25.85 feet to an iron pipe; thence South 11°51'25" West a distance of 61.00 feet to an iron pipe; thence South 78°08'35" East a distance of 38.66 feet to an iron pipe; thence South 39°04'17" East a distance of 6.21 feet to an iron pipe; thence South 00°00'00" East a distance of 180.56 feet to an iron pipe; thence South 06°09'11" West a distance of 319.12 feet to the Point of Beginning, containing 10.75 acres.

EXHIBIT "B"

Articles of Incorporation for 5401 North Homeowners Association, Inc.

(SEE ATTACHED)



# NORTH CAROLINA

## Department of the Secretary of State

---

To all whom these presents shall come, Greetings:

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

### ARTICLES OF INCORPORATION

OF

**5401 NORTH RESIDENTIAL OWNERS ASSOCIATION, INC.**

the original of which was filed in this office on the 8th day of June, 2015.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 8th day of June, 2015.

*Elaine F. Marshall*

Secretary of State

Certification# C201515900168-1 Reference# C201515900168-1 Page: 1 of 5  
Verify this certificate online at [www.secretary.state.nc.us/verification](http://www.secretary.state.nc.us/verification)

SOSID: 1450546  
 Date Filed: 6/8/2015 12:56:00 PM  
 Elaine F. Marshall  
 North Carolina Secretary of State

C2015 159 00168

## ARTICLES OF INCORPORATION

### OF

### 5401 NORTH RESIDENTIAL OWNERS ASSOCIATION, INC.

The undersigned natural person of the age of eighteen (18) years or more, does hereby execute these Articles of Incorporation pursuant to the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Nonprofit Corporation Act", and the several amendments thereto, and does hereby make, sign, and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit corporation; and to that end does hereby set forth:

#### ARTICLE I

##### NAME

The name of the corporation is "5401 NORTH RESIDENTIAL OWNERS ASSOCIATION, INC.", hereinafter called the "Residential Association".

#### ARTICLE II

##### PRINCIPAL AND REGISTERED OFFICE

The principal and registered office of the Residential Association is located at 7780 Brier Creek Parkway, Suite 420, Raleigh, Wake County, North Carolina 27617.

#### ARTICLE III

##### REGISTERED AGENT

Thurm Bowen, whose address is 7780 Brier Creek Parkway, Suite 420, Raleigh, Wake County, North Carolina 27617, is hereby appointed the initial registered agent of this Residential Association.

#### ARTICLE IV

##### PURPOSE AND POWERS OF THE RESIDENTIAL ASSOCIATION

This association is formed to provide for the maintenance, preservation and architectural control of the property (the "Residential Property") described in that certain Declaration for 5401 North Residential recorded or to be recorded in the Wake County, North Carolina Registry (the "Residential Declaration"), as may be further amended from time to time, and any other declarations which become applicable to the Residential Property.

The Residential Association may adopt bylaws (the "Residential Bylaws") as authorized under the North Carolina Nonprofit Corporation Act. The Residential Association shall have all of the powers and privileges granted under the North Carolina Planned Community Act, the North Carolina Nonprofit Corporation Act, the Residential Bylaws and the Residential Declaration.

Unless otherwise defined in these Articles, all capitalized terms shall have the same meaning as set forth in the Residential Declaration. Unless otherwise specified, terms defined in the North Carolina Nonprofit Corporation Act shall have the same meaning in these Articles.

#### ARTICLE VI MEMBERSHIP

The Residential Association shall be a membership corporation without certificates or shares of stock. Prior to the recording of the Declaration in the Office of the Register of Deeds, Wake County, North Carolina, EV-5401 North, L.L.C. shall be the sole member of the Residential Association. Following the recording of the Declaration, membership and voting rights shall be as specified in the Declaration.

#### ARTICLE VII BOARD OF DIRECTORS

The affairs of the Residential Association shall be managed by a Residential Board of Directors ("Residential Board") in such number and who shall be qualified as set forth in the Residential Declaration and the Residential Bylaws and shall be elected as set forth in the Residential Bylaws.

#### ARTICLE VIII DISSOLUTION

The Residential Association may be dissolved with the affirmative vote of at least eighty percent (80%) of votes of the Residential Association. Upon dissolution of the Residential Association the assets of the Residential Association shall be distributed as directed in the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act .

#### ARTICLE IX DURATION

The corporation shall exist in perpetuity.

#### ARTICLE IX AMENDMENTS

An amendment to these Articles may be made by the affirmative vote, of at least sixty-seven percent (67%) of the Residential Board.

ARTICLE X  
NOT-FOR-PROFIT ORGANIZATION

The Residential Association is a not-for-profit organization. No part of the net earnings of the Residential Association shall inure to the benefit of, or be distributable to, the persons on the Residential Board, any officers of the Residential Association, or any other individuals, except that the Residential Association shall be authorized and empowered to pay reasonable compensation for services rendered and expenses incurred and to make payment and distribution in furtherance of the purposes as set forth in these Articles, the Residential Bylaws and the Residential Declaration.

ARTICLE XI  
INDEMNIFICATION

The members of the Residential Board shall not be liable to the Owners for any mistake of judgment, negligence or otherwise except for their own individual willful misconduct or bad faith. The Residential Association shall indemnify and hold harmless each of the members of the Residential Board against all contractual liability to others arising out of contracts made by the Residential Board on behalf of the Residential Association unless any such contracts shall have been made in bad faith or contrary to the provisions of the Residential Declaration or these Residential Bylaws. It is intended that the members of the Residential Board shall have no personal liability with respect to any contract made by them on behalf of the Residential Association, except to the extent of their liability as Owners. It is also intended that the liability of any Owner arising out of any contracts made by the Residential Board or out of the aforesaid indemnity in favor of the members of the Residential Board shall be limited to such proportions of the total liability thereunder as his voting interest in the Common Elements bears to the interest of all of the Owners. Every agreement made by the Residential Board on behalf of the Residential Association shall provide that the members of the Residential Board, are acting only as agents for the Residential Association, and shall have no personal liability thereunder (except as Owners), and that each Owners' liability thereunder shall be limited to such proportion to the total liability thereunder as its voting interest in the Residential Association bears to the voting interest of all Owners.

ARTICLE XII  
INCORPORATOR

Name

Address

Alison R. Cayton

3605 Glenwood Avenue, Suite 500  
Raleigh, North Carolina 27619

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of North Carolina, the undersigned, constituting the incorporator of this Residential Association, has executed these Articles of Incorporation this 8 day of June, 2015.

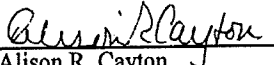
  
Alison R. Cayton *Incorporator*

EXHIBIT "C"

Bylaws for 5401 North Homeowners' Association, Inc.

(SEE ATTACHED)

**BYLAWS  
OF  
5401 NORTH RESIDENTIAL OWNERS ASSOCIATION, INC.**

**ARTICLE I  
NAME, MEMBERSHIP, APPLICABILITY, AND DEFINITIONS**

1.1. Name. The name of the Association shall be 5401 North Residential Owners Association, Inc. ("Residential Association").

1.2. Membership. The Residential Association shall have two classes of membership, as is more fully set forth in that Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for 5401 North Residential, recorded or to be recorded in the Office of the Register of Deeds of Wake County, North Carolina, as amended from time to time ("Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein. Unless otherwise herein defined, or the context otherwise requires, all capitalized terms will have the meaning set forth in the Declaration.

1.3. Definitions. The words used in these Residential Bylaws shall have the same meaning as set forth in the Declaration and as set forth in the North Carolina Planned Community Act (codified in Chapter 47F of the North Carolina General Statutes) and the North Carolina Non-Profit Corporation Act (codified in Chapter 55A of the North Carolina General Statutes (together the "Act")), unless the context shall prohibit.

**ARTICLE II  
RESIDENTIAL ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES**

2.1. Place of Meetings. Meetings of the Residential Association shall be held at the Residential Association's principal office or at such other suitable place convenient to the members as may be designated by the Residential Board, either on the Property or as convenient thereto as possible and practical.

2.2. First Meeting and Annual Meetings. An annual or special meeting shall be held within one year from the date the Declaration is recorded. Dates and times of annual meetings shall be set by the Residential Board.

2.3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Residential Association if so directed by resolution of the Residential Board or upon a petition signed by the members entitled to cast at least 10% of the votes of the Residential Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

2.4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Lot (as shown in the records of the Residential Association) a notice of each annual or special meeting of the Residential Association stating the time and place

where it is to be held, the agenda for such meeting, and in the notice of a special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than 10 nor more than 60 days before a meeting.

2.5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.6. Adjournment of Meetings. If any meetings of the Residential Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.7. Voting. The voting rights of the members shall be as set forth in the Residential Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated herein.

2.8. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of such member's Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of 11 months from the date of the proxy.

2.9. Quorum. Unless otherwise expressly provided, the presence, in person or by proxy, of 10% of the total eligible Residential Association vote shall constitute a quorum at all meetings of the Residential Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.10. Action Without a Formal Meeting. Any action to be taken at a meeting of the members, or which may be taken at a meeting of the members, may be taken without a meeting if one or more written consents setting forth the action so taken shall be signed by members entitled to cast at least 80% of the votes of the Residential Association; provided, however, that prior to the Conversion Date, such action is also consented to by Declarant. Action taken without a meeting shall be effective on the date that the last consent is executed, and consented to by Declarant, if required, unless a later effective date is specified therein. Each signed consent shall be delivered to the Residential Association and shall be included in the minutes of meetings of members filed in the Residential Association's permanent records.

2.11. Action by Written Ballot. As an alternative to the provisions of Section 2.10. above, any action to be taken at any annual, regular, or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Residential Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Residential Association in order to be counted. A timely written ballot received by the Residential Association may not be revoked without the consent of the Residential Board. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the Residential Association's permanent records.

2.12. Members List. The record date for determining members entitled to notice shall be the close of business of the day preceding the date notices are given. The record date for determining members entitled to vote at a meeting shall be the close of business of the business day preceding the date of the meeting. The Residential Association shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. Additionally, the Residential Association shall prepare on a current basis through the time of the membership meeting a list of members who are entitled to vote but not entitled to notice. This list shall be made available for any member for the purpose of communication concerning the meeting and shall make the list available at the meeting and any member, member's agent, or member's attorney is entitled to inspect the list at any time during the meeting.

### **ARTICLE III**

#### **RESIDENTIAL BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS**

##### **A. Composition and Selection.**

3.1. Governing Body; Composition. The affairs of the Residential Association shall be governed by a Residential Board of Directors.

3.2. Directors Appointed by Declarant. Prior to the Conversion Date, Declarant shall have the right to appoint or remove all members of the Residential Board.

3.3. Number of Directors. The initial Residential Board shall consist of three members. After Declarant's right to appoint directors terminates, the Residential Board shall consist of at least three directors, but may expand the number of directors to five members, which shall be filled by a vote of the members in accordance with Section 3.5.(b).

3.4. Nomination of Directors. Candidates may be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Residential Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.5. Election and Term of Office. Owner-elected directors shall be elected and hold office as follows:

(a) Following the Conversion Date, the Residential Association shall call a special meeting to be held at which Owners shall elect three directors.

(b) Thereafter, directors shall be elected at the Residential Association's annual meeting. All eligible members of the Residential Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected.

At the special meeting in which the Owners initially elect directors, two directors shall be elected to two-year terms and one director shall be elected to a one-year term. At the expiration of the initial term of office of each respective Owner-elected director, a successor shall be elected to serve for a term of two years. The directors shall hold office until their respective successors shall have been elected by the Residential Association.

3.6. Removal of Directors. At any regular or special meeting of the Residential Association duly called, any one or more of the directors may be removed, with or without cause, by a vote of a majority of the members and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three consecutive unexcused absences from Residential Board meetings or who is delinquent in the payment of an assessment for more than 30 days may be removed by a majority vote of the remaining directors at a meeting. This Section and the provisions of Section 3.7. below shall not apply to directors appointed by Declarant. Only Declarant can remove a director appointed by Declarant or fill any vacancy caused by the removal, resignation, or death of any director appointed by Declarant prior to the Conversion Date.

3.7. Vacancies. Vacancies in the Residential Board caused by any reason, excluding the removal of a director by vote of the Residential Association, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Residential Board. Each person so selected shall serve the unexpired portion of the term.

## **B. Meetings.**

3.8. Organization Meetings. The first Residential Board meeting following each annual meeting of the membership shall be held at such time and place as shall be fixed by the Residential Board.

3.9. Regular Meetings. Regular Residential Board meetings may be held at such time and place as shall be determined from time to time by a majority of the directors. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10. Special Meetings. Special meetings of the Residential Board shall be held when requested by the President, Vice President, or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; (d) electronic message, fiber optic, or telecommunication to the director; or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address, telephone number, or other place of delivery as shown on the Residential Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least four days before the time set for the meeting. Notices given by personal delivery, telephone, or telecommunication shall be given at least 48 hours before the time set for the meeting.

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

3.12. Quorum of Residential Board of Directors. At all meetings of the Residential Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Residential Board.

3.13. Compensation. No director shall receive any compensation from the Residential Association for acting as such.

3.14. Open Meetings. All meetings of the Residential Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Residential Board.

3.15. Executive Session. The Residential Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Residential Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.16. Action Without a Formal Meeting. Unless prohibited by North Carolina law, any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Residential Association for inclusion in the minutes for filing in the corporate records.

3.17. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Residential Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Residential Board.

**C. Powers and Duties.**

3.18. Powers. The Residential Board shall be responsible for the affairs of the Residential Association and shall have all of the powers and duties necessary for the administration of the Residential Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Residential Articles, or these Residential Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Residential Bylaws, the Declaration, or by any resolution of the Residential Association that may hereafter be adopted, the Residential Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;
- (b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Residential Association;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Residential Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Residential Association;
- (f) making and amending use restrictions and rules and regulations;
- (g) opening of bank accounts on behalf of the Residential Association and designating the signatories required;
- (h) enforcing by legal means the provisions of the Declaration, these Residential Bylaws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Residential Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) paying the cost of all services rendered to the Residential Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Residential Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and

(l) contracting with any Person for the performance of various duties and functions.

3.19. Management Agent. The Residential Board may employ for the Residential Association a professional management agent or agents at a compensation established by the Residential Board to perform such duties and services as the Residential Board shall authorize. Declarant or an affiliate of Declarant may be employed as managing agent or Manager. The term of any management agreement shall not exceed one year and shall be subject to termination by either party, without cause and without penalty, upon not more than 90 days' written notice.

3.20. Fining or Suspension Procedure. The Residential Board shall not impose a fine (a late charge shall not constitute a fine) or suspend a member's right to use any part of the Common Property unless and until the following procedure is followed:

(a) Notice. Written notice shall be served upon the violator by first-class or certified mail sent to the last address of the member shown on the Residential Association's records, specifying:

(i) the nature of the violation, the fine or suspension to be imposed and the date, not less than 15 days from the date of the notice, that the fine or suspension will take effect;

(ii) that the violator may, within ten days from the date of the notice, request a hearing regarding the fine or suspension imposed;

(iii) the name, address, and telephone numbers of a person to contact to challenge the fine or suspension;

(iv) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and

(v) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten days of the date of the notice.

(b) Hearing. Any requested hearing may, in the sole discretion of the Residential Board, be held before the Residential Board in executive session. At the hearing, the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

(c) Enforcement. In any action or proceeding to enforce the Declaration, these Residential Bylaws, the rules and regulations of the Residential Association, or

decision of the Residential Board, the Residential Association shall be entitled to recover all expenses from the violator, including all attorney's fees, thus incurred.

#### **ARTICLE IV OFFICERS**

4.1. Officers. The officers of the Residential Association shall be a President, Secretary, and Treasurer. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Residential Board. The Residential Board may appoint such other officers, including one or more Vice Presidents, Assistant Secretaries, or Assistant Treasurers, as it shall deem desirable.

4.2. Election, Term of Office, and Vacancies. The officers of the Residential Association shall be elected periodically by the Residential Board. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Residential Board for the unexpired portion of the term.

4.3. Removal. Any officer may be removed by the Residential Board whenever, in its judgment, the best interests of the Residential Association will be served thereby.

4.4. President. The President shall be the chief executive officer of the Residential Association and shall preside at all meetings of the Residential Association and of the Residential Board. The President shall have all the general powers and duties that are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Code.

4.5. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

4.6. Secretary. The Secretary shall keep the minutes of all meetings of the Residential Association and of the Residential Board, shall prepare, execute, certify, and record any amendments to the Declaration on behalf of the Residential Association, and shall have charge of such books and papers as the Residential Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with North Carolina law.

4.7. Treasurer. The Treasurer shall have the responsibility for the Residential Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Residential Association or the managing agent in such depositories as may from time to time be designated by the Residential Board.

4.8. Resignation. Any officer may resign at any time by giving written notice to the Residential Board. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## ARTICLE V COMMITTEES

Committees to perform such tasks and to serve for such periods as may be designated by the Residential Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Residential Board designating the committee or with rules adopted by the Residential Board.

## ARTICLE VI MISCELLANEOUS

6.1. Fiscal Year. The fiscal year of the Residential Association shall be the calendar year unless otherwise determined by resolution of the Residential Board.

6.2. Parliamentary Rules. *Robert's Rules of Order* (current edition) shall govern the conduct of all Residential Association proceedings, when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, these Residential Bylaws, or a ruling made by the person presiding over the proceeding.

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

6.4. Amendment. These Residential Bylaws may be amended by the Residential Board if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation, or judicial determination. Otherwise, they may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the votes of the Residential Association cast at a meeting of the members duly called for such purpose or with the written consent of the members entitled to cast at least sixty-seven percent (67%) of the votes of the Residential Association; provided, however, prior to the Conversion Date, any such amendment must also be approved by Declarant.

EXHIBIT "D"

Collection Designation for Each Unit Type Subject to Declaration

Collection I: Attached Townhomes with two car garage

Collection II: Attached Townhomes with one-car garage and one space parking pad

Collection III: Detached Single Family Home with two-car garage

EXHIBIT "E"

Description of Community

The community depicted on Sheet C-3 entitled "5401 North Lot 20 (Phases 13-23) Construction Drawings & Final Site Review," dated August 20, 2015, prepared by The John R. McAdams Company, Inc. under Filename CRC14010-MP1.

## EXHIBIT "F"

## Description of Common Areas

ALL of those certain parcels of land lying in Wake County, North Carolina, more particularly described as Lots 5003, 5004, 5005, 5006, 5007, and 5024 and all those areas described as private access easements, private drainage easements, private storm drainage access and maintenance easements (including those areas identified as "20' Private Access Easement," "Sight Distance Triangle," "20' Private Drainage Easement," "Open Space," "Variable Width Private Drainage Easement," "Var. Width Private Storm Drainage Access & Maintenance Esmt.," and "Mail Kiosk Easement"), all as shown on that certain plat entitled "5401 North Lots 15-17 Phases 4 & 12 Subdivision, Recombination & Easement Plat," dated January 7, 2015, and recorded on July 9, 2015, in Book of Maps 2015, Pages 1055 through 1060, Wake County Register of Deeds, and on that certain plat entitled "5401 North Lots 15-17 Phase 11 Subdivision & Easement Plat," dated August 18, 2015, and recorded on January 12, 2016, in Book of Maps 2016, Pages 54 through 57, Wake County Register of Deeds.

## EXHIBIT "G"

## Description of Lots

ALL of those certain parcels of land lying in Wake County, North Carolina, more particularly described as Lots 3001 through 3080 of that certain plat entitled "5401 North Lots 15-17 Phases 4 & 12 Subdivision, Recombination & Easement Plat," dated January 7, 2015, and recorded on July 9, 2015, in Book of Maps 2015, Pages 1055 through 1060, Wake County Register of Deeds, and all of those certain parcels of land lying in Wake County, North Carolina, more particularly described as Lots 3082 through 3137 of that certain plat entitled "5401 North Lots 15-17 Phase 11 Subdivision & Easement Plat," dated August 18, 2015, and recorded on January 12, 2016, in Book of Maps 2016, Pages 54 through 57, Wake County Register of Deeds.

## EXHIBIT "H"

## Description of Future Development Property

Beginning at an iron pipe on the eastern right of way of Perry Creek Road, point also being the northwest property corner of Open Space Lot, as shown in Book of Maps 2014, Page 779, being the Point of Beginning, thence leaving said right of way North 70°31'15" East a distance of 386.49 feet to an iron pipe; thence North 42°59'19" East a distance of 67.48 feet to an iron pipe; thence North 65°51'11" East a distance of 149.65 feet to an iron pipe; thence South 88°38'17" East a distance of 53.68 feet to an iron pipe; thence North 60°52'30" East a distance of 89.38 feet to an iron pipe; thence North 83°09'18" East a distance of 93.94 feet to an iron pipe; thence North 35°36'04" East a distance of 60.48 feet to an iron pipe; thence North 61°19'17" East a distance of 81.13 feet to an iron pipe; thence South 70°06'22" East a distance of 30.96 feet to an iron pipe; thence South 10°30'29" East a distance of 120.06 feet to an iron pipe; thence North 69°28'27" East a distance of 158.47 feet to an iron pipe; thence South 86°26'46" East a distance of 180.17 feet to a point; thence South 89°58'02" East a distance of 242.13 feet to a point; thence South 00°00'23" West a distance of 1,006.39 feet to a point; thence South 38°37'52" East a distance of 513.14 feet to a point; thence North 52°22'08" East a distance of 230.02 feet to a point; thence South 51°16'58" East a distance of 223.77 feet to a point; thence North 79°23'45" East a distance of 27.46 feet to a point; thence South 66°40'28" East a distance of 182.46 feet to a point; thence South 16°03'12" East a distance of 380.47 feet to a point; thence South 72°26'51" East a distance of 298.30 feet to a point, thence South 26°46'56" West a distance of 72.06 feet to a point; thence South 17°40'35" West a distance of 43.61 feet to a point; thence South 16°34'12" West a distance of 30.19 feet to a point; thence South 18°20'31" West a distance of 82.09 feet to a point; thence South 23°06'42" West a distance of 54.92 feet to a point; thence South 12°28'00" West a distance of 38.41 feet to a point; thence South 07°55'18" West a distance of 39.25 feet to a point; thence South 09°57'57" West a distance of 47.68 feet to a point; thence South 37°37'10" West a distance of 13.39 feet to a point; thence South 02°06'01" West a distance of 50.73 feet to a point; thence South 17°12'53" West a distance of 33.48 feet to a point; thence South 09°06'02" West a distance of 98.99 feet to a point; thence South 14°55'50" West a distance of 64.68 feet to a point; thence South 03°00'07" West a distance of 61.77 feet to a point; thence South 26°47'22" West a distance of 37.35 feet to a point; thence South 03°57'25" West a distance of 64.50 feet to a point; thence South 06°32'57" West a distance of 67.94 feet to a point; thence South 07°22'58" East a distance of 57.96 feet to a point; thence South 03°44'59" East a distance of 52.70 feet to a point; thence South 07°30'19" East a distance of 52.98 feet to a point; thence South 01°29'27" West a distance of 43.84 feet to a point; thence South 03°47'34" West a distance of 18.76 feet to a point; thence South 12°29'03" West a distance of 49.90 feet to a point; thence South 14°28'18" West a distance of 57.84 feet to a point; thence South 11°42'23" West a distance of 49.95 feet to a point; thence South 09°50'23" West a distance of 55.66 feet to a point; thence South 12°09'54" West a distance of 52.83 feet to a point; thence South 33°47'24" West a distance of 51.21 feet to a point; thence South 31°37'06" West a distance of 42.11 feet to a point on the northern right of way of US Highway 540; thence with said right of way North 77°39'35" West a distance of 3,008.30 feet to a point; thence North 71°39'18" West a distance of 195.13 feet to a point; thence North 74°58'38" West a distance of 404.83 feet to a point; thence North 67°03'25" West a distance of 241.29 feet to a point; thence North 61°58'59" West a distance of 241.23 feet to a point; thence North 56°52'58" West a distance of 241.36 feet to a point; thence North 51°54'29" West a distance of 241.35 feet to a point; thence North 41°35'43" West a distance of 70.95 feet to

a point; thence leaving said right of way with a curve to the right with a radius of 1,835.50 feet, with an arc length of 549.62 feet, with a chord bearing of North 62°14'55" East, with a chord length of 547.56 feet to a point; thence North 63°32'55" East a distance of 59.61 feet to a point; thence with a curve to the right with a radius of 1,844.00 feet, with an arc length of 249.19 feet, with a chord bearing of North 76°32'08" East, with a chord length of 249.00 feet to a point; thence North 80°24'25" East a distance of 254.54 feet to a point; thence South 08°34'45" East a distance of 8.38 feet to an iron pipe on the northern right of way of Beckom Drive; thence with said right of way South 09°35'35" East a distance of 72.00 feet to an iron pipe; thence North 80°24'25" East a distance of 376.12 feet to an iron pipe; thence South 54°36'36" East a distance of 5.66 feet to an iron pipe; thence North 86°50'07" East a distance of 71.45 feet to an iron pipe; thence North 35°23'24" East a distance of 5.66 feet to an iron pipe; thence North 80°24'25" East a distance of 26.94 feet to an iron pipe; thence with a curve to the left with a radius of 1,144.00 feet, with an arc length of 219.33 feet, with a chord bearing of North 74°54'53" East, with a chord length of 218.99 feet to an iron pipe; thence South 70°49'20" East a distance of 5.12 feet to an iron pipe; thence South 31°04'01" East a distance of 35.60 feet to an iron pipe; thence North 58°55'59" East a distance of 59.00 feet to an iron pipe; thence North 31°04'01" West a distance of 25.24 feet to an iron pipe; thence North 17°29'08" East a distance of 6.00 feet to an iron pipe; thence with a curve to the left with a radius of 1,144.00 feet, with an arc length of 298.67 feet, with a chord bearing of North 58°33'32" East, with a chord length of 297.82 feet to an iron pipe; thence South 85°48'43" East a distance of 5.47 feet to an iron pipe; thence South 42°42'12" East a distance of 29.02 feet to an iron pipe; thence North 47°17'48" East a distance of 54.00 feet to an iron pipe; thence North 42°42'12" West a distance of 25.58 feet to an iron pipe; thence North 03°50'49" East a distance of 5.81 feet to an iron pipe; thence North 50°23'51" East a distance of 338.64 feet to an iron pipe; thence South 42°40'40" East a distance of 28.07 feet to an iron pipe; thence North 47°19'20" East a distance of 114.00 feet to an iron pipe at the intersection of Beckom Drive and Perry Creek Road; thence with said right of way of Perry Creek Road North 42°40'40" West a distance of 300.27 feet to an iron pipe; thence with a curve to the right with a radius of 1,443.00 feet, with an arc length of 475.83 feet, with a chord bearing of North 33°13'52" West, with a chord length of 473.68 feet to an iron pipe; thence South 73°58'30" West a distance of 7.06 feet to an iron pipe; thence with a curve to the right with a radius of 1,353.58 feet, with an arc length of 184.29 feet, with a chord bearing of North 19°58'35" West, with a chord length of 184.15 feet to the Point of Beginning, containing 177.49 acres.

AND

Beginning at an iron pipe on the western right of way of Archwood Avenue, point also being the southeast property corner of Lot 19 5401 North, as shown in Book of Maps 2014, Page 778, being the Point of Beginning; thence leaving said right of way with a curve to the left with a radius of 278.50 feet, with an arc length of 27.84 feet, with a chord bearing of North 85°45'47" West, with a chord length of 27.83 feet to a point; thence North 88°37'38" West a distance of 249.09 feet to a point; thence North 88°32'12" West a distance of 249.87 feet to a point; thence North 00°03'39" East a distance of 842.38 feet to a point; thence North 90°00'00" East a distance of 559.88 feet to a point on the western right of way of Archwood Avenue; thence with said right of way South 00°00'00" East a distance of 288.62 feet to an iron pipe; thence South 50°55'43" West a distance of 5.04 feet to an iron pipe; thence North 78°08'35" West a distance of 25.85 feet to an iron pipe; thence South 11°51'25" West a distance of 61.00 feet to an iron pipe; thence South 78°08'35" East a distance of 38.66 feet to an iron pipe; thence South 39°04'17" East a distance of 6.21 feet to an iron pipe; thence South 00°00'00" East a distance of

180.56 feet to an iron pipe; thence South  $06^{\circ}09'11''$  West a distance of 319.12 feet to the Point of Beginning, containing 10.75 acres.