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AMENDED AND RESTATED DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

AUBURN VILLAGE

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

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

Cross Reference: Declaration of Covenants, Conditions and Restrictions for Auburn Village recorded in Book 17277, Page 2384, Wake County Registry

Drawn by and upon recording, please return to:

Michael F. King, Esq.
K&L Gates LLP
P.O. Box 17047, Raleigh, North Carolina 27619-7047
Vault Box #123

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AUBURN VILLAGE

This Declaration is made as of the date of its recordation in the office of the Register of Deeds for Wake County, North Carolina, by **CALATLANTIC GROUP, INC., a** Delaware corporation ("Declarant") with reference to the following facts:

W I T N E S S E T H:

WHEREAS, Declarant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Auburn Village recorded in Book 17277, Page 2384, Wake County Registry (as amended from time to time, the "Original Declaration"); and

WHEREAS, pursuant to Section 18.10 of the Declaration, Declarant has the right to amend the Original Declaration and Declarant hereby desires to amend and restate the Original Declaration in its entirety as set forth herein below; and

WHEREAS, Declarant is the owner of certain real property commonly known as Auburn Village subdivision, which real property, together with such portions of the Additional Land (as hereinafter defined), if any, as Declarant may elect to add to such property by filing of a Map thereof and supplemental filing pursuant to Article 15 hereof, shall be hereinafter referred to as **AUBURN VILLAGE** located in Wake County, North Carolina and more particularly described in Article 2 below ("Property"); and

WHEREAS, Declarant intends to improve Auburn Village as a planned residential development by dividing such property into Lots appropriate for single family dwellings, both detached and attached, and Common Area for the common use and enjoyment of the Owners of the Lots; and

WHEREAS, Declarant owns or may hereafter own real property in Wake County, North Carolina located adjacent to the property hereinabove described (which, if applicable to this Declaration, is more particularly described on Exhibit B attached hereto and made a part hereof and referred to herein as the "Additional Land"). Declarant may, in its sole discretion and without obligation, and with the consent of the owner of the Additional Land, by one (1) or more supplemental filings pursuant to Article 15 hereof, make all or any portion of the Additional Land, if any, subject to this Declaration and a part of Auburn Village; and

WHEREAS, Declarant intends to develop Auburn Village under a common scheme and general plan for its improvement and maintenance; and

WHEREAS, for this purpose Declarant intends to (and with respect to the Additional Land, if any, reserves the right to), subject the Property as described in Article 2 below, and so much of the Additional Land, if any, as shall, from time to time, be annexed in accordance with the provisions of this Declaration, to the covenants, conditions, restrictions, easements, liens,

charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of Auburn Village and the future owners of Lots therein; and

WHEREAS, Declarant deems it desirable for the management and administration of the planned development and for the preservation of the values and amenities of the planned development to incorporate Auburn Village Homeowners Association, Inc. as a nonprofit corporation under the laws of the State of North Carolina for the purposes of administering the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws; and

WHEREAS, this Declaration creates a planned community under the North Carolina Planned Community Act (N. C. Gen. Stat. Chap. 47F).

NOW, THEREFORE, subject to the rights of Declarant established herein, Declarant hereby amends and restates the Original Declaration in its entirety and declares that the Property and every Lot and Common Area (as hereinafter defined) which is a part of the Property shall be held, occupied, improved, used, mortgaged, transferred, sold, leased, rented and conveyed subject to the following easements, liens, charges, assessments, equitable servitudes, restrictions, covenants and conditions, which are for the purpose of protecting the value, use, enjoyment and desirability of the Property, and which shall run with such real property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the use, benefit and enjoyment of each Owner (as hereinafter defined).

ARTICLE 1
DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

Act. "Act" means and refers to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes as same may be amended from time to time.

Additional Land. "Additional Land" means the real property described on Exhibit B, if any shall be attached hereto, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof and which, when so subjected, shall become a part of the Property.

Age Oualified Occupant. "Age Qualified Occupant" means any individual age fifty five (55) years or older who occupies a Lot. The terms "occupy", "occupies" or "occupancy" shall mean staying overnight in a particular Lot for at least ninety (90) days in any consecutive twelve (12) month period.

Annual Assessment. "Annual Assessments" or "annual assessments" shall refer to assessments levied on all Lots subject to assessment under Article 9 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Article 9.

Approved Builder. "Approved Builder" shall mean and refer to one (1) or more Persons in the business of building and selling homes to individuals and selected by Declarant to purchase Lots and construct homes for sale in the Property, so long as any such Approved Builder is in good standing with Declarant.

Architectural Control Committee. "Architectural Control Committee" or "ACC," sometimes referred to as "Architectural Review Committee" or "ARC," shall mean the committee of the Association created pursuant to Article 13 with authorization over new construction, modifications and alterations in the Property.

Articles. "Articles" means the Articles of Incorporation of the Association, including any amendments thereto.

Association. "Association" means Auburn Village Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Attached Lot. "Attached Lot" means any Lot within the Property intended for the development of a single family dwelling which shares one or more common, shared or party wall with an adjacent single family dwelling and is depicted on Map(s) of the Property recorded in the public registry of the County.

Attached Lot Owner. "Attached Lot Owner" means the Owner of an Attached Lot.

Board. "Board" means the Board of Directors of the Association.

Bylaws. "Bylaws" means the Bylaws of the Association, including any amendments thereto.

Common Area. "Common Area" or "Common Areas" means all real property owned by or held in trust for the benefit of the Association for the common use and enjoyment of its Members, or owned by Declarant and designated for the common use and enjoyment of the Association and its Members, and all improvements and facilities constructed thereon for such purposes, including, but not limited, to (without any obligation by implication of Declarant to construct or install same), any signage, irrigation and/or drainage or detention facilities, pond, dam, dock, pump station and related facilities, fountain, water feature, wells, pumps and related facilities, landscaping, retaining walls, bridges, lighting, swimming pool, wading pool, green or natural area, walking paths or trails, picnic area, putting green, club house, roadway, driveway, parking area, sports complex, ballfield, playground, tot lot, gazebo, private streets and curb and guttering related to same, streetlights, or other amenity, if any, constructed on portions of the Property designated "Common Open Space", "COS", "Common Area", "Open Space", "Private Open Space," "Recreation Area," "Amenity Area" or other similar designation on Map(s) of the Property recorded in the Office of the Register of Deeds for the County and any Town Code required shared facility or open space not conveyed to the Town. "Common Area" or "Common Areas" shall also include (i) all private streets and private utilities, if any, including any utility line serving more than one (1) lot located outside of public street rights-of-way and public utility easements, (ii) all retaining walls and fences constructed by Declarant that serve and support more than one (1) Lot and all improvements within any private retaining wall and/or fence

easement established on the Maps of the Property that serve and support more one (1) Lot, (iii) any public road, right-of-way or cul-de-sac in the Property which has been dedicated to the public on Map(s) of the Property recorded in the County but not accepted for public maintenance by the appropriate governmental entity, (iv) storm pipes and any median or planting area and related signage, irrigation facilities and lighting constructed by Declarant within rights-of-way within the Property, (v) any real or personal property which the Association now or hereafter owns, leases or holds possessory or use rights in for the benefit of the Owners and their permittees, (vi) such easement rights for right-of-way and appurtenant easements or licenses as Declarant may declare, acquire or reserve or as are granted to the Association for the benefit of the Owners and their permittees or for the use, care or maintenance of any portion of the Property, including, but not limited to, rights-of-way and appurtenant easements or licenses for landscaping, trees, plantings, irrigation, signage, monuments, lighting, water, sanitary sewer, storm sewer, stormwater drainage and/or retention, communications and/or other utility services; (vii) cluster mailboxes installed by Declarant on the Common Area or other portion of the Property and (ix) any areas designated as Designated Common Areas as described in Section 4.10. Declarant hereby grants to the Association an easement over any road, right-of-way or cul-de-sae within the Property which shall automatically terminate upon dedication to and acceptance for public maintenance by the appropriate governmental entity.

Common Expenses. "Common Expenses" shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association, but shall not include any expenses for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs for improvements constructed by Declarant unless approved by a majority of the Voting Power of the Association; provided, however, the repair, maintenance and replacement of such infrastructure or other original capital improvements shall be a Common Expense and lease payments on all leased street lights within the Property ("Street Lights") shall be a Common Expense. Common Expenses shall include (i) all sums lawfully assessed by the Association against its Members; (ii) the actual and estimated expenses incurred or anticipated to be incurred by the Association for administration, maintenance, repair, or replacement of the Common Area; (iii) the actual and estimated expenses incurred or anticipated to be incurred by the Association declared to be Common Expenses by the provisions of the Act, this Declaration, the Bylaws, or the Articles of Incorporation of the Association; (iv) premiums for hazard, liability, casualty and such other insurance as the Declaration or the Bylaws may require or authorize the Association to purchase or which the Association is required by law to purchase; (v) ad valorem taxes and assessment charges lawfully levied against the Common Area owned in fee simple by the Association; (vi) the actual and estimated expenses incurred or anticipated to be incurred by the Association as agreed by the Members to be Common Expenses of the Association; (vii) fees for utilities used in connection with the Common Area; (viii) fees for services of accountants, attorneys, engineers, managers and other professionals engaged by the Association; (ix) the costs and expenses associated with encroachments within the rights-of-way serving the Property in accordance with any encroachment agreement(s) by and among the Declarant, the Association and the Town; (x) unpaid assessments following a foreclosure; (xi) lease payments on all leased Street Lights; (xii) expenses incurred for trash removal providers engaged by the Association to serve the Property; (xiii) any costs or expenses under any Stormwater Facility Agreement; (ix) all expenses

classified as Common Expenses pursuant to the Act and (x) the costs and expenses associated with the maintenance, preservation, enhancement, repair and improvement of the exterior of the dwellings and Lot improvements on the Attached Lots and the landscaping maintenance for the Lots which the Association is required to maintain under Article 6, which shall be funded by the Attached Lot maintenance assessments as described in Article 9.

Completion of Sales. "Completion of Sales" means the earlier of(a) the conveyance of all Lots in the Property to purchasers other than a builder or a successor Declarant hereunder, or (b) at such time as Declarant records a Notice of Termination of Sales in the public records of the County.

County. "County" means Wake County in the State of North Carolina.

Declarant. "Declarant" means CalAtlantic Group, Inc., a Delaware corporation, and any successor or assign to whom Declarant assigns its interest as Declarant hereunder in whole or in part by instrument recorded in the official records of the County.

Declaration. "Declaration" means this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Auburn Village and all amendments or supplements hereto.

Detached Lot. "Detached Lot" means any Lot within the Property which is not an Attached Lot and is depicted on Map(s) of the Property recorded in the public registry of the County.

Detached Lot Owner. "Detached Lot Owner" means the Owner of a Detached Lot.

Exempt Property. "Exempt Property" is defined in Section 9.16.

Insurance Trustee. "Insurance Trustee" means a national banking association or title company licensed to do business in North Carolina as may be designated by the Association to hold and disburse funds as trustee for the Association and the Owners, as provided in this Declaration.

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

Lot. "Lot," and sometimes referred to as "Homesite," means any numbered lot or plot of land, together with any improvements thereon, which is shown upon any Map covering the Property, or a part thereof, which is not dedicated right-of-way or Common Area (provided, certain Common Area easements may encroach upon a Lot).

Map. "Map" means a recorded boundary, recombination or subdivision plat of all or a portion of the Property recorded in the Wake County Public Registry.

Member. "Member" means a member of the Association.

Mortgage. "Mortgage" means a mortgage or deed of trust which constitutes a first lien upon a Lot given to a bank, savings and loan association or other institutional lender for the purpose of securing indebtedness incurred to purchase or improve a Lot.

Mortgagee. "Mortgagee" means the holder of the beneficial interest in any Mortgage.

Notice and Opportunity for Hearing. "Notice and Opportunity for Hearing" means giving at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

Owner. "Owner" means the record owner, whether one (1) or more persons or entities, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any person or entity who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

Person. "Person" means an individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

Phase. "Phase" means the real estate shown on each Map of the Property, including the portion of Auburn Village described in Article 2 below, as recorded in the Wake County Public Registry.

Property. "Property" means the portion of Auburn Village described in Article 2 below and, when and if subjected to the terms and provisions of this Declaration by Declarant, with the consent of the owner of the Additional Land, acting in its sole discretion, all or any portion of the Additional Land, if any, and any other real property subjected to this Declaration by Supplemental Declaration recorded pursuant to Article 15 hereof.

Oualified Resident. "Qualified Resident" means any of the following Persons occupying a Lot:

(a) any Age-Qualified Occupant,
(b) any Person occupying a Lot with an Age Qualified Occupant; and
(c) any Person who occupied a Lot with an Age-Qualified Occupant and who continues, without interruption, to occupy the same Lot after termination of the Age-Qualified Occupant's occupancy thereof.

Registry. "Registry" shall mean and refer to the Office of the Register of Deeds of Wake County, North Carolina.

Rules and Regulations. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Declaration.

Special Assessment. "Special Assessment" or "special assessment" shall mean and refer to assessments levied in accordance with Article 9, Sections 9.06 and 9.07 of this Declaration.

Special Declarant Rights. "Special Declarant Rights" means, without limitation, the rights as defined in Section 47F-1-103(28) of the Act for the benefit of Declarant and its appointees which are hereby reserved in favor of Declarant, including, but not limited to the following: the right to complete, repair, maintain, replace and operate improvements indicated on Maps of the Property, including, without limitation, utility infrastructure, dwellings and Common Area improvements; the right to exercise any development right; the right to maintain sales offices, management offices, construction trailers, models and signs advertising the Property; the right to use easements through the Common Area and through any Lot or Lots for the purpose of making, improvements within the Property and repairing, maintaining, replacing and operating improvements within the Property, provided that following the exercise of such rights the Property will be restored, and the right to elect, appoint or remove any officer or Board member of the Association during the period of Declarant control described in Section 8.06.

Stormwater Facility. "Stormwater Facility" or "Stormwater Facilities" is defined as any one (1) or more of the following that serves or benefits any part or all of the Property or is required by Legal Requirements in connection with any part or all of the Property, whether located in the Property or outside of the Property: (i) "drainage easements" (also referred to herein as "stormwater easements" or "stormwater drainage easements") that are shown on plats of the Property recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Area or benefit or serve more than one (1) Lot; and (ii) all stormwater management facilities for the Property including ponds, man-made or natural areas and/or planted or landscaped areas into which stormwater drains, or in which stormwater is collected, or from which it is discharged, drains, pipes, conduits, inlets, swales, creeks, streams, channels, dams, ditches, filters, buffers, bio-retention areas, level spreaders, constructed wetlands, and other equipment, facilities and stormwater management measures used for inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging and/or managing stormwater. Except as otherwise provided herein, Stormwater Facilities are part of the Common Area, and maintenance of Stormwater Facilities is a Common Expense. References in the Declaration to stormwater management include all applicable Stormwater Facilities, Stormwater Facility Agreements and Stormwater Maintenance Manuals.

Stormwater Facility Agreements. "Stormwater Facility Agreements" (which term includes any other agreement under Legal Requirements, by whatever name denominated therein, relating to Stormwater Facilities) is defined as any agreement required by any Legal Requirement between the Town and the Declarant or between the Town and the Association, or among the Town, Declarant and Association, or between or among any combination of the Town and the Declarant, the Association and one (1) or more Owners, or between and among Declarant and any adjoining landowner, relating to maintenance of Stormwater Facilities.

Stormwater Maintenance Manual. "Stormwater Maintenance Manual" (which term includes any other instrument or document under Legal Requirements, by whatever name denominated therein, addressing the same or similar matters) is defined as the specific requirements for maintenance of Stormwater Facilities as required by the Town.

Supplemental Declaration. "Supplemental Declaration" means a supplemental declaration of covenants, conditions and restrictions which shall be recorded for the purposes of annexing additional property, including all or any portion of the Additional Land, if any, to the Property and causing such property to be subject to the scheme of covenants, conditions and restrictions contained in this Declaration, and any additional covenants, conditions and restrictions contained in the supplemental declaration of covenants, conditions and restrictions.

Town. "Town" means the Town of Garner in Wake County in the State of North Carolina.

Town Code. "Town Code" means the Code of Ordinances of the Town of Garner.

Voting Power. "Voting Power" means the total number of votes allocated to Members whose membership at the time the determination of Voting Power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Property.

ARTICLE 2
PROPERTY, SUBMISSION AND TERM

2.01. Property. The property subject to this Declaration and within the jurisdiction of the Association is located in Wake County, North Carolina, and is described more particularly on Exhibit A attached hereto and incorporated herein by reference. And when and if subjected to the terms and provisions of this Declaration by Declarant with the consent of the owner of the Additional Land, all or any portion of the Additional Land, if any, and any other real property subjected to this Declaration by Supplemental Declaration recorded pursuant to Article 15 hereof.

2.02. Submission. The Property shall be held, conveyed, hypothecated, encumbered, sold, transferred, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (a) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Property and (b) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Property, shall be binding on and inure to the benefit of each and every Person having or acquiring any right, title or interest in the Property, shall be binding upon and inure to the benefit of the successors in interest of such Persons, and shall inure to the benefit of the Association, its successors and assigns.

2.03. Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, as amended from time to time, whether or not the deed makes reference hereto.

2.04. Term. This Declaration shall remain in force until terminated by the affirmative vote of ninety percent (90%) of the Voting Power of the Association.

ARTICLE 3
COMPLIANCE WITH MANAGEMENT DOCUMENTS

3.01. Compliance with Declaration and Other Documents. Each Owner, resident, tenant or guest of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representatives, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

3.02. Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then the provisions of this Declaration shall prevail. In the event that anything shown on a Map for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail unless otherwise required by law. If a dispute arises among Owners in regard to the administration of the Property, then the provisions of this Declaration shall prevail.

ARTICLE 4
PROPERTY RIGHTS

4.01. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area depicted on the Maps of the Property to the Association in accordance with applicable Legal Requirements (to the extent such Common Areas can be conveyed in fee simple), free and clear of all encumbrances and liens, except those set forth in this Declaration and utility, greenway and storm drainage easements and other matters of public record in the Registry. In the event a conveyance of the Common Area in fee simple would result in an illegal subdivision, then such Common Area as shown on a Map shall be deemed dedicated to the Association for the benefit of the Association and for the common use and enjoyment of its Members. The Common Area shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant. Upon dedication by map or conveyance in fee, maintenance of the Common Area shall be the responsibility of the Association, including, but not limited to, the maintenance of any Stormwater Facilities that are part of the Common Area. The maintenance of the Stormwater Facilities, including the expansion of such facilities as required by the Town or otherwise, shall be performed to the standard required by the Town or other applicable governing body. Title to the Common Areas, including, without limitation, all private streets shall be for the perpetual benefit of the Members, and private or public ownership for any purpose other than for the benefit of the Members is prohibited.

4.02. Common Area Easements. Each Owner shall have a non exclusive perpetual right and easement of use and enjoyment in and to the Common Area and of access to

and from such Owner's Lot over any streets, parking areas and walkways comprising a portion of the Common Area (if any), which rights and easements shall be appurtenant to and shall pass with the title to such Owner's Lot and subject to the following rights and restrictions:

(a) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an Owner, to charge reasonable fees with respect to the use of Common Area facilities, if any, and to limit the use of said facilities to Owners who occupy a residence in the Property. Common Area facilities may include private streets and no fees, other than assessments, shall be charged for those facilities

(b) The right of the Association to suspend the right of an Owner or any Person to use any Common Area facilities (except drainage rights and rights of access to Lots) (i) for any period during which any fine against a Member or any assessment against such Owner's Lot remains unpaid; and (ii) after Notice and Opportunity for Hearing, for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations;

(c) The right of the Association, subject to the provisions of the Act (Section 47F-3-112), to encumber or convey all or any part of the Common Area.

(d) The right of the Association by action of the Board to grant easements, leases, licenses and concessions through or over the Common Areas.

(e) The right of the Association, subject to the provisions of the Act (Section 47F-3-112), to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes.

(f) The right of the Association by action of the Board to adopt Rules and Regulations governing use and enjoyment of the Common Area and the Property.

(g) The rights of the Association and of Declarant to the use of easements for ingress and egress over, in, to and throughout the Common Area.

(h) The rights of the Association and Declarant to establish public or private storm drainage easements, sanitary sewer easements, and any and all other easements over the Common Areas as shown on the Maps.

(i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate.

(j) The right of Declarant, its successors and assigns to make any improvements for any reason they deem proper upon the Common Areas, even after their conveyance to the Association. Declarant hereby reserves an easement over the Common Areas for the purpose of developing the remainder of the adjacent property owned by Declarant. Although not limiting the scope of this easement, this easement shall include

the right of access at all times for its employees, agent, subcontractors, invitees, etc., over the Common Areas and shall include the right to construct, maintain and dedicate any additional drainage easements, general utility easements and any additional sanitary sewer or water line easements across any of the Common Areas. This easement shall terminate upon the completion of the development of the adjacent property owned by Declarant or ten (10) years from the date hereof, whichever first occurs. Provided that following construction, the Common Areas shall be restored to their former condition as is practicable and in no event shall any security interest, including without limitation, mechanics and materialmen liens, encumber the Common Areas because of the work authorized herein.

(k) The right of the Association to enter any Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Lot shall permit the Association or its representatives to enter for such purpose at reasonable times and with reasonable advance notice (except with respect to grass and landscaping maintenance if any which shall be performed, without notice, at reasonable times as determined by the Association).

(l) The Association shall accept from Declarant any and all assignments of Declarant rights and obligations under any part or all of the Declaration, any Supplemental Declaration, Stormwater Facility Agreements, any easements, any encroachment agreement with a governmental authority, or any other agreement with or permit issued by a governmental authority, a utility provider, or any other Person, and any document required to be executed with respect to the Property by a governmental authority, including assumption of all Declarant or Association obligations which are contained in such documents and agreements or which are incident to such assignments, as they relate to any Common Area, architectural approvals or other functions or services performed or provided by the Association.

4.03. Delegation. Any Owner may delegate his or her rights of use and enjoyment of the Common Area and any facilities thereon to the members of his or her family or household residing on his or her Lot and to his or her guests and invitees while in possession of his or her Lot, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Subject to the provisions of Section 4.02(a) and Section 4.04 of this Declaration, a tenant of an Owner, while residing on such Owner's Lot, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his or her obligations hereunder, including, without limitation, the obligation to pay Annual Assessments and Special Assessments.

Upon request, each Owner or tenant shall notify the Secretary of the Association of the names of all Persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such Person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

4.04. Tenants.

(a) Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing, shall be for a minimum of 1 year and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations. **No Owner shall place "For Rent" or "For Lease" sij;n or other such similar sign on its Lot to advertise the Lot for rent.** In the event an Owner shall rent or lease his or her Lot, such Owner shall immediately give to the Association in writing:

(i) the name of the tenant and the Lot rented or leased;

(ii) the current address of such Owner;

(iii) a true and complete copy of the lease or rental agreement; and

(iv) a certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he or she may have thereunder as a tenant.

(b) Any Owner who rents or leases his or her Lot to a tenant shall not be entitled to use and enjoy any common facilities on the Common Area during the period the Lot is occupied by such tenant. In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

(c) Notwithstanding the foregoing, no Owner shall be permitted to lease or rent his or her Lot for hotel or transient purposes. As used herein, the term "hotel or transient purposes" shall mean a lease of the residence located on the Lot for a period of thirty (30) days or fewer.

4.05. Reciprocal Easements. There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater from gutters and downspouts, including, without limitation, the conveyance of stormwater through pipes, or the natural sheetflow of rainwater, the repair of fences and similar improvements, lawn maintenance and trash removal (including the transport of sanitary containers for pick up by the applicable disposal service); provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Lot. If any Common Area or Lot improvement

encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed by Declarant, or reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist. If any Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, an easement for the encroachment and for its maintenance shall exist so long as it remains. In addition, Declarant hereby reserves unto itself, its successors and assigns, and hereby grants to the Association and establishes a perpetual alienable easement and right on, over and through the reciprocal easements herein described for the purpose of providing services, at this time known or unknown, to the Lots or Common Area, including any areas of responsibility that are required by the terms of this Declaration to be completed by Declarant or Association.

4.06. Utility Easements. Any easements for installation, maintenance, use or repair of public utilities or drainage or detention facilities which are dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way shall be kept free of buildings, and within such easements no structure, fence, planting or other improvement shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public utilities or drainage or detention facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. Notwithstanding anything contained herein to the contrary, any such easement dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way shall be maintained by the Owner(s) of any affected Lot(s) to the extent so encumbered by said easement, including all storm drainage facilities located within any "P. S. D. E." (public storm drainage easement) or "PDE" or "Private Drainage Easement" shown on the Map, except as otherwise indicated by such Map or unless maintenance has been assumed by the Association or any public utility or governmental entity having jurisdiction thereover. All such easements described in this Section 4.06 at all times shall be accessible to Declarant until the Property is completed and at all times shall be accessible to all Persons installing, repairing, using or maintaining such utilities and drainage facilities.

All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to any Lot must be underground. Until the date that is one (1) year after the Completion of Sales, the Declarant reserves unto itself, its successors and assigns, a perpetual alienable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utility lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to the Property on, in, under and over the private streets or roads and over any Lot, and over such areas as are so identified on any Map of the Property or shown on any site plan or construction drawings for the Property on file with and approved by the Town. In addition, the Association may cut, in the above described easements, as well as any where else as required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along streets fronting property lines, Declarant reserves the right to install, maintain and repair pedestrian paths, Street Lights and/or street-side landscaping, which right shall automatically transfer to the Association

upon the Completion of Sales. Any easements first established on property not owned by the Declarant must be consented to by the Owner of such property and evidenced on the Map or in recorded instrument creating the easement.

The Declarant may, but shall not be required to, release any of the easements reserved herein as to any Lot for which it deems such easement is unnecessary for the efficient development and operation of the Property.

4.07. Tie In Easements. In connection with its development of the Property, Declarant intends to install public road and public utility infrastructure and private stormwater infrastructure to serve the Property on a Phase by Phase basis in accordance with the construction plans for such public and private infrastructure approved by the requisite governmental authorities ("approved plans"). At such time as Declarant has completed the installation of the public and private infrastructure for each such Phase, to the extent required by the approved plans, Declarant shall have extended certain of such public and private infrastructure to the edge of the property line between such Phase and the adjoining property and shall have created tie in stubs allowing the owner of the adjoining property to tie in and connect to the public and private infrastructure installed by Declarant. Such adjoining property owner(s) shall have the right to tie in to such stubs and use the public and private infrastructure installed by Declarant on the Property in accordance with the approved plans.

4.08. No Subdivision of Lots; No Time-Sharing. Other than that effected by Declarant in preparing and recording Maps, or in revising recorded Maps, there shall be no further subdivision or partition of any Lot nor shall any Owner other than Declarant, or any other Person acquiring any interest in a Lot seek any partition or subdivision thereof unless the Association consents to such subdivision or partition as evidenced on a Map. There shall be no time-sharing or other co-ownership which allows multiple Owners sequential possessory interests in a Lot.

4.09. Sale of Common Area. Except as otherwise provided in this Declaration and except as provided in the Act, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall, or may be, effected.

4.10. Designation of Common Areas. Declarant may designate certain real property, including portions of one (1) or more Lots, and any improvements situated thereon, including, without limitation, drainage facilities and retaining walls constructed by Declarant, as Common Area by describing such real property in a document recorded in the Wake County Registry ("Designated Common Areas"). The Association shall be responsible for maintaining the Designated Common Areas and all costs associated with the maintenance, repair and replacement of such improvements thereon shall be Common Expenses and shall be recovered by Annual Assessments or Special Assessments levied by the Association. Pursuant to the terms of Section 6.06 of the Declaration, the Association shall have the right of access over and upon the Lots as necessary in connection with any maintenance, repair or replacement of such Designated Common Areas as required hereunder. Declarant hereby designates all retaining walls constructed by Declarant that serve and support more than one (1) Lot as Common Area and the Association shall be responsible for maintaining such retaining walls and all costs associated with the maintenance, repair and replacement of such improvements thereon shall be

Common Expenses and shall be recovered by Annual Assessments or Special Assessments levied by the Association.

4.11. Declarant's Right to Change Development Plans. With the approval of the Town, Declarant shall have the right, without consent or approval of the Owners, to create Lots and dwelling units, add Common Area, change unit types and reallocate units within the Property, and release or withdraw real property from the development. In addition, Declarant shall have the right to change Common Area and Lots designations, the boundary lines of Common Area and Lots and the location of easements shown on any Map by recording a new Map showing such changes, which Map shall be executed by the Declarant and the Owner of the Common Area or Lot so modified. To the fullest extent permitted by North Carolina law, each Owner covenants by acceptance of the deed or instrument by which its Lot is conveyed not to protest, challenge or otherwise object to (i) changes in uses or density of the Property or Additional Land, or (ii) modifications to the boundary lines of the Common Area and Lots and/or the location of easements shown on any Maps, or (iii) changes in the site plan and other development documents filed with the Town in connection with the Property or Additional Land.

4.12. Rules and Regulations. The Association by Board Action shall have the right to adopt, publish and enforce Rules and Regulations governing the Property, the use and enjoyment of the Common Area, and any facilities thereon, and the personal conduct thereon of the Owners or other Persons, their guests, invitees, members of their families or households and tenants. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws. Rules and Regulations and any changes thereto shall be effective upon Board approval and shall be mailed or emailed to each Owner addressed to the Owner's address last appearing in the books of the Association, postage prepaid, within thirty (30) days of Board approval.

4.13. Enforcement. Unless otherwise limited by the terms and provisions of the Act, the Association shall be authorized to impose sanctions for violations of this Declaration, the Bylaws, or the Rules and Regulations. Sanctions may include reasonable monetary fines not to exceed $100.00 for each day more than five (5) days after decision that the violation occurs and suspension of the right to vote and to use any facilities within the Common Area after Notice and Opportunity for Hearing (excepting drainage rights and rights of access to Lots). In addition, the Association, through the Board, after Notice and Opportunity for Hearing, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations of this Declaration, the Bylaws or the Rules and Regulations or to abate nuisances.

4.13. Party Walls.

(a) General Rules of Law to Apple. Each wall which is built as part of the original construction of the homes upon the Lots and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the

provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of replacement, repair and maintenance of a party wall shall be shared equally by the Lot Owners of the homes which share the wall, in proportion to such use.

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

(d) Easement and Ri ht of Entrr for Repair Maintenance and Reconstruction. Every Lot Owner shall have an easement and right of entry upon the Lot of any other Lot Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Lot Owner shall restore the adjoining Lot or Lots and Common Area to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

(e) Weatherproofing. Notwithstanding any other provision of this Section, a Lot Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

(g) Certification by Adjoining Lot Owner that No Contribution is Due. If any Lot Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining property Lot Owner has a right of contribution as provided in this Section 4.13, request from the adjoining Lot Owner or Lot Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Lot Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining Lot Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

(h) Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Section, the same shall be settled in accordance with the terms of Article 21 herein.

ARTICLE 5
COMMON AREA EASEMENTS AND RIGHTS OF WAY; ENCUMBRANCES

5.01. Dedications. The Association by action of the Board shall have the power to grant easements in, on, over, through and across the Common Area for any public or quasi public improvements or facilities and their appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (a) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Lot, and (b) the prior written consent of Declarant shall be obtained so long as Declarant owns any Lot. Each Owner, by accepting a deed to a Lot, expressly grants to the Association an irrevocable power of attorney for the purpose of granting such easements in, on, over, through and across the Common Area. The President or other duly designated officer of the Association may execute, acknowledge and record in the official records of the County a certificate stating that the Board is the attorney in fact for the Owners for the purpose of such grant and that such power of attorney is properly exercisable in accordance with this Declaration. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. The power of attorney herein granted shall include authority to do such acts incidental to such grant and to incur such expenses as may be necessary or convenient in connection therewith. The Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any Owner, as his or her interest may appear, any and all instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02. Easements in Private Streets, Private Water Lines and Private Sewer Lines. In its development of the Property, the Declarant may construct certain private streets, private water lines and private sewer lines within the Property. The Owners of those Lots adjacent to such private streets, private water lines and private sewer lines shall have an easement but no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private streets and an easement to utilize such private water lines and private sewer lines. In no case shall the Town, County or the State of North Carolina be responsible for maintaining any private street, private water line or private sewer line. Such maintenance obligations shall be the responsibility of the Association and Owners acknowledge that private streets will not be constructed to minimum standards sufficient to allow their inclusion for public maintenance. If any private streets, private water lines or private sewer lines encroach upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed by Declarant, or reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist. Owners acknowledge that private utility easements may not be shown on Maps of the Property and agree that to the extent a private utility encroaches upon the Lots, such area is defined as Common Area hereunder and the Association shall have the right to place, construct, reconstruct, move, maintain and repair such private utilities. In no case shall the Town be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property and the Owners when such failure is due to lack of access to such areas within the Property due to inadequate design or construction, blocking of access routes, inadequate maintenance or any other factor within the control of the Declarant, Association or Owners.

5.03. Encumbrances. The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes upon the vote or written consent of eighty percent (80%) of the Voting Power of the Association, or such lesser percentage as may be required or permitted by the Act.

ARTICLE 6
COMMON AREA AND LOT MAINTENANCE

6.01. Common Area Maintenance bv Association. The Association shall repair and maintain the Common Area and any improvements, utilities and facilities located on the Common Area. The Association may, but shall not be obligated to, provide enhanced landscaping and maintenance to those areas and medians located within the rights-of-way for streets located within the Property. Any maintenance or enhancement called for herein shall be subject to the applicable governmental authorities' rules and regulations.

The Declarant is responsible for the construction of streets and roads within the Property and shall construct all streets providing primary access to the Lots in accordance with the Town's standards. Declarant shall dedicate the streets within the Property for public use and shall use commercially reasonable efforts to cause the streets within the Property to be accepted for maintenance by the Town, but each Owner acknowledges that the Town is not required to accept the maintenance obligations of such streets. In the event such streets are not accepted for public maintenance despite Declarant's commercially reasonable efforts, the Association shall be responsible for the maintenance of such streets. Following any irrevocable acceptance of the streets for maintenance as public rights of way by the applicable governmental entities, the Association shall maintain such streets to the extent such activities are not performed by the applicable governmental entities.

6.02. Attached Lot Maintenance by Association. The Association shall provide exterior maintenance upon each Attached Lot which is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building materials [with the exception of entry doors (including garage doors) and their appurtenant hardware and frames, windows and window frames, and all exterior glass including windows and patio doors and all decks or patios, all of which shall be maintained, repaired and replaced by the Attached Lot Owner], trees and landscaping (as hereinafter limited).

6.03. Lot Maintenance by Association. The Association shall provide landscaping maintenance upon each Lot which is subject to assessment hereunder, which landscaping maintenance shall include the mowing and trimming of grass (including the grass in the rear yard of each Lot); provided, however, it shall be the responsibility of each Lot Owner to water the grass, plants, trees and landscaping on or immediately adjacent to its Lot in areas that are not otherwise irrigated. Such landscaping maintenance shall be provided as a part of the grounds contract for the Property by a lawn company selected by the Board. Other than blowing associated with landscaping maintenance, exterior maintenance required by the Association hereunder shall not include the cleaning of patios, decks, walkways, stoops or driveways on the Lots, all of which shall be the responsibility of the Lot Owners. The determination of the need, quality, extent and cost of such maintenance and repairs shall be made by the Board of the

Association, which determination shall be reasonable and made upon consistent and non-arbitrary principles adopted by the Board. In the event an Owner elects to install any landscaping improvements on its Lot, the maintenance of such landscaping improvements shall be the sole responsibility of such Owner.

6.04. Maintenance by Lot Owners. Except as provided in Section 6.02 and Section 6.03 above, all repair, maintenance and replacement of the improvements and utilities located upon an Owner's Lot including the driveway and the walkway from the driveway to the front porch on each Lot and the sidewalk located within the right of way adjoining or adjacent to such Owner's Lot shall be the responsibility of the Owner thereof, including all replacement and repair necessitated by fire or other casualty against which the Owner is required to maintain insurance under the provisions of Article 10 hereof. The Owner of each Lot shall also be responsible for all repair, replacement and clean out of sewer lines and facilities located upon such Owner's Lot from the clean-out to (and including the lines and facilities servicing) the unit. Without limiting the generality of the foregoing, and subject to the terms of this Declaration, an Owner shall be responsible for replacement and reconstruction of improvements on his or her Lot required because of damage or destruction by fire or other casualty. Each Owner shall maintain, repair and replace, at his or her expense, the foundation drain for the Lot, the foundation and structure of the dwelling on the Lot, driveways, walkways and sidewalks located on the Lot, patios, porches, stoops, doors and door frames, windows and window frames, all exterior light fixtures attached to the Owner's unit and all interior portions of the improvements which shall need repair, including bathroom and kitchen fixtures, light fixtures or other electrical or plumbing equipment, utility pipes, lines and fittings serving the Lot. Further, each Owner shall repair, maintain, and replace, at his or her expense, the heating and air conditioning systems servicing said Owner's unit. Each Owner shall be responsible for interior pest control, and it shall **be the responsibility of each Owner to water the grass, plants, trees and landscaping on or immediately adjacent to its Lot in areas that are not otherwise irrigated.** In the event an Owner elects to install any landscaping improvements on its Lot, the maintenance of such landscaping improvements shall be the sole responsibility of such Owner.

No building or other structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of such drainage facilities and appurtenances and no Owner shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area as established in connection with the approval of the Map(s) of the Property by the Town, except to the extent such alteration in drainage pattern is approved in writing by the Association and all public authorities having jurisdiction. All such drainage facilities and appurtenances shall at all times be accessible to Declarant until the Property is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities. If for any reason any such instrument is not accepted for recording, Declarant may deliver such instrument to the Association, and the Association shall maintain the same as part of its permanent records. In either event, each Lot Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in such instrument.

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

6.06. Right to Enter. After reasonable notice to the occupant (except in the case of an emergency in which no notice shall be required), the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or to inspect a Lot for violations of this Declaration or for the enforcement of this Declaration, and each Owner shall accept title to his or her Lot subject to such right of access of the Association or its agents.

6.07. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, animal control, garbage collection, and the delivery of mail.

6.08. Sign and Landscape Easement. Declarant, for itself, its successors and assigns, including but not limited to the Association, hereby reserves easements over any portion of any Lot designated as "Landscape Easement," "Sign Easement," "Landscape and Sign Easement", "Buffer Easement" or other similar designation on Map(s) of the Property recorded in the public records of the County, for installation, construction, operation and maintenance of landscaping, berms, retaining walls, drainage facilities, private utilities, lighting and sprinkler systems, if any, monuments, fencing, signage and other improvements as installed by Declarant on such areas. No fences, structures, driveways, plantings, swings or any other objects, temporary or permanent, shall be permitted in such easements other than those initially installed by Declarant, or its designated successor, without Declarant's prior written approval or, after all Lots are occupied by Owners, the Association's prior written approval. The Association shall at all times have the right of access for its employees, agents and subcontractors over the above-described easement areas for the purpose of constructing, improving, repairing, replacing, landscaping, planting, mowing and otherwise maintaining the area and amenities within such easements. The Owners of any Lot containing any portion of these easements shall maintain the area not maintained or landscaped by the Declarant or the Association. The reservation of this easement imposes no obligation on Declarant, its successors and assigns, or the Association, to continue to maintain the planting, retaining walls, landscaping or other improvements located within the described easements.

6.09. Professional Management. In the event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the Common Area, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract for cause or without cause upon thirty (30) days' written notice without payment of a termination fee.

ARTICLE 7
USE RESTRICTIONS

In addition to the architectural control restrictions set forth in Article 13 below and in addition to the use restrictions in the Rules and Regulations as promulgated by the Association from time to time, the following use restrictions apply to the Property:

7.01. Residential Use. Except as otherwise provided in this Declaration, Lots shall be used for residential purposes and for no other purpose. The Association shall not interfere with any Owner's freedom to determine the composition of his/her household, except that it may enforce reasonable occupancy limits. Except with respect to construction trailers or model homes which may be used or occupied by Declarant, the Lots shall not be leased or rented for hotel or transient purposes and no Owner shall use or cause or permit to be used his or her Lot for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose. The foregoing notwithstanding, it shall be expressly permissible for Owners to conduct certain business or commercial activities within their residence which do not conflict with local zoning ordinance restrictions and regulations. No such activity shall be conducted which shall unduly burden traffic flows within the Property or cause the parking of non-resident vehicles upon the street for unreasonable or excessive periods of time. All materials and equipment related to such commercial activity shall be stored within the residence. It shall be within the discretion of the Board to determine, on a case-by-case basis, which commercial and business related activities will be compatible with the residential nature of the subdivision.

7.02. Unlawful Activity. No unlawful activity shall be conducted on any Lot or in any other part of the Property. Nothing shall be done within the Property that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Property, or that unreasonably interferes with the quiet enjoyment of occupants of Lots. Each Owner shall be considerate of the other Lot Owners within the Property and shall abide by the applicable governmental authority's noise ordinance. No doorways, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows within the Property is prohibited. No weapons, including, but not limited to, open or concealed carry firearms, shall be permitted on any portion of the Common Area. Outdoor fires shall only be permitted within firepits or outdoor fireplaces constructed by Declarant or approved by the ACC. Nothing herein shall be construed to prohibit the use of cooking grills.

7.03. Property Owners Parking Rights. **No vehicles of any type shall be parked on the street rights of way within the Property, except as may be permitted by the Rules and Regulations.** To enhance the streetscape in the Property, it shall be required that each Owner park its vehicles in the garage on the Lot whenever possible. All garages shall be used primarily for the storage of vehicles. No vehicles of any type shall be parked or stored on any part of a Lot other than in the garage or driveway of such Lot. No vehicles of any type shall be parked on the sidewalk or grass on any Lot. Unless otherwise permitted by the Rules and Regulations no boat, trailer, commercial vehicle, recreational vehicle, camper, or camper truck shall be parked, stored or left (a) on any part of the Common Area, (b) on any part of a Lot, or

(c) otherwise within the Property. As used herein, the term "commercial vehicle" shall mean any vehicle having advertising of the Owner's business or an employer's business shown thereon and/or equipment, tools, or tool racks attached or affixed to the vehicle. The term "commercial vehicle" shall exclude government-issued vehicles or automobiles of a type commonly used for family transportation notwithstanding that they may have commercial lettering or logos on their exteriors. The Board shall have the authority in its sole discretion to make final determinations as to whether a vehicle is a commercial vehicle on a case by case basis. This restriction shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant or an Approved Builder (provided that such Approved Builder obtains the prior written approval of Declarant) and their agents and contractors in the conduct of their business prior to the Completion of Sales. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Property, except in the case of emergency and except as may be permitted by the Rules and Regulations. No vehicle of any type which is abandoned or inoperative shall be stored or kept on any part of the Common Area or on any Lot, and no automobiles or other mechanical equipment may be dismantled or parts thereof stored on any said Lot. Wrecked or damaged vehicles shall only be stored in the garage on a Lot.

An Owner, his household, tenants or guests shall not park any vehicle in any undesignated portion of the Common Area, on the street rights of way (except as permitted in designated spaces) within the Property. Parking in any Common Area facility parking lot shall be limited to the hours of operation of such facility. Owners shall be subject to sanctions if the parking regulations are violated. Sanctions may include reasonable monetary fines not to exceed $100.00 for each day more than five (5) days after decision that the violation occurs per day and suspension of the right to vote and to use any facilities within the Common Area after Notice and Opportunity for Hearing (except drainage rights and rights of access to Lots). In addition, the Association, through the Board, after notice to the Owner, shall have the right to exercise self-help to cure violations, including the towing of vehicles at the Owner's expense. The Association shall have the right to require the Owners to register the license plate number of any vehicle of the Owner or any member of its household with the Association.

7.04. Signs and Curtains. No Owner shall place on or about any window any metallic foil or other coating, substance or material which similarly acts as a reflector of light nor shall an Owner place newspapers, bed sheets, towels or any other material not intended as a window covering in any window. Except as otherwise required by the Town, no sign of any kind shall be displayed to the public view on any Lot other than (A) one (1) sign of not more than nine (9) square feet advertising a Lot for sale and (B) no more than three (3) signs of not more than four (4) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, *provided that* such political signs shall not be placed on a Lot earlier than forty-five (45) days before such election and shall be removed within seven (7) days after such election. Signs advertising a Lot for rent or for lease are prohibited. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the ACC. Notwithstanding the foregoing, Declarant or its agents shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Lots.

7.05. Antennas. As provided in Article 13, except for such as are covered by, and installed in strict compliance with, the requirements of the Telecommunications Act of 1996,

as amended, no Owner shall construct, install, erect or maintain any outside television or radio pole or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner or permitted by an Owner to remain on his or her Lot, without the express written approval of the ACC.

7.06. Laundry. No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot and no clothes hanging devices such as lines, reels, poles, frames, etc. shall be stored or kept outdoors on any Lot.

7.07. Fences and Shrubbery. Except as may be constructed by Declarant, no fence or wall shall be erected upon any Lot unless plans therefor have been approved, in advance, by the ACC pursuant to the provisions of Article 13. Chain link fencing is expressly prohibited. No hedge, shrubbery, or other planting, nor other plant screening shall be installed on any Lot except with the prior written permission of the ACC. No fence shall be constructed within any public or private easement area unless approved by the ACC.

7.08. Pets.

(a) No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. Each Owner is specifically prohibited from keeping or possessing chickens, roosters, poultry, pigs, goats, bees, rabbits, sheep, horses or any other livestock animal on any Lot. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed a total of three (3) in number except for newborn offspring of such household pets which are under six (6) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, including, but not limited to a complaint that an Owner's animal is being neglected, improperly treated, or not properly restrained upon such Owner's Lot, or if upon Common Area, not properly leashed, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and may require the complainant to present evidence of unreasonable annoyance, inconvenience or nuisance at the hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Property. Any time that an animal is outside it must be on a leash and accompanied by the Owner, or some other person. Animals shall not be left unattended outside even when chained or contained inside a fence, except as may otherwise be approved in writing by the ACC. At no time shall animals be allowed to be chained or tied in the Common Area. Each Owner shall also be responsible for cleaning up the feces of its animals both on its Lot and on the Property.

(b) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including (if not already mandated by applicable laws of the Town) rules requiring that all animals be kept on a leash when in the Common Area and/or that animals be restricted to designated areas within the Common Area. The Board may adopt a rule prohibiting certain pets,

which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing in the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Section 7.08(a).'

7.09. Trash and Vegetation. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in a garage or, if there is no garage, in an appropriate area screened and concealed from view (except for the periods immediately preceding and subsequent to pick up by the applicable disposal service). No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Lot or any portion of the Property which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the occupants of any property in such vicinity, except as is temporary and incidental to the bona fide improvement of any portion of the Property. Job site debris shall be removed from all Lots at least weekly. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Property shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants which die shall be promptly removed. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority. Should any Owner fail or refuse to maintain its Lot as required above, the Association shall be entitled to provide written notice to such Owner of the deficiencies in maintenance, as determined by the Association. If such deficiencies in maintenance are not corrected within thirty (30) days after receipt of such written notice by such Owner, the Association may, at the expense of the Owner, enter the Lot and perform such maintenance. The cost of such maintenance may be levied against the Owner of such Lot as a Special Assessment pursuant to Section 9.07.

7.10. Nuisance. No noxious or offensive activity or excessive noise shall be carried on in or upon any part of the Property nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Property or unreasonably interfere with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his or her Lot which would result in the cancellation of insurance on said Lot or any other residence or any part of the Common Area or which would be in violation of any law.

7.11. Outbuildings, Gazebos, Trampolines and Freestanding Flagpoles, and Above-Ground Pools. Except as may be permitted by the ACC, no Owner shall construct, install, erect, or maintain upon any Lot any outbuilding, storage shed (unless erected by Declarant), gazebo, trampoline, awning or freestanding flagpole (provided, flags may be displayed using a bracket or other approved device mounted to a dwelling so long as the size of the flag displayed does not exceed a standard size as same may be determined by the ACC). In no event shall any outbuilding, storage shed, gazebo, trampoline or play equipment be constructed on any Lot in the front or side yards, as determined by the building lines applicable to the Lot. No above-ground pools (except for wading pools no deeper than 2 feet tall and no wider than 10 feet in diameter, which shall be regulated by the ACC) shall be allowed or approved by the ACC on any Lot. Wading pools shall only be allowed during appropriate weather and must be emptied and stored when not in use. Yard art shall only be allowed by the mailbox, on the front porch of a residence or in the rear yard.

7.12. Temporary Structures. No temporary structures shall be placed upon any portion of the Property at any time; provided, however, this restriction shall not prohibit construction trailers or shelters or sheds used by Declarant or any builder or its contractors during the development of the Property or the construction of improvements or additions to any Lot. Tents (except as used temporarily for recreation), recreational vehicles and trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of the Property.

7.13. ACC Approval of Plans and Other Prohibitions.

(a) The construction of improvements on Lots shall be completed pursuant to the Plans in accordance with Article 13. In addition, Lots shall comply with all applicable building, plumbing, electrical and other codes.

(b) All interior window treatments must be in keeping with the overall scheme and aesthetic of the Property. Any window treatments deemed not to be in keeping with the overall scheme and aesthetic of the Property shall be removed by the Owner in the discretion and at the direction of the ACC. Sheets, towels or any other material not intended as a window covering may not be used as a window treatment.

(c) No vents, pipes or other appendages may extend from the front of any dwelling on a Lot, unless screened from public view by screening material or shrubbery approved by the ACC.

(d) Any exterior air-conditioning or heating equipment added after the completion of construction must be approved by the ACC and be screened from public view by screening material or shrubbery approved by the ACC.

(e) Downspouts and gutters shall be constructed so as not to promote the erosion of the soil on any Lot.

(f) Exterior lighting shall be shielded and must be directed so as not to shine directly on another Lot.

(g) No yard art (including, without limitation, any windmills, figurines, or sculptures) may be installed on a Lot unless approved by the ACC.

(h) No hanging plants may be installed on a Lot unless approved by the ACC.

(i) No furniture intended for indoor use (including, without limitation, couches, sofas, tables, shelving units and chairs), grills or plastic furniture may be located or stored on any front porch unless approved by the ACC.

7.14. Trees and Foliage. Trees measuring four (4) inches or more in diameter at a point two (2) feet above ground level and any flowering trees or shrubs above four (4) feet in height may not be removed from the Property without the prior written approval of the ACC, unless such landscaping material is in the path of driveways and walkways located or to be

located on any Lot. Excepted herefrom shall be damaged or diseased trees that threaten persons or property, which damaged or diseased trees shall be removed by the Owner.

7.15. Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms (including pellet guns and BB guns) and/or bows and arrows within the Property is prohibited.

7.16. Motorized Vehicles. All motorized vehicles operating within the Property must be properly muffled so as to eliminate noise which might be offensive to others. All motorized vehicles and motorized bicycles are prohibited from being used or operated anywhere other than on the streets, roads, parking lots and driveways within the Property.

7.17. Cluster Mailboxes. Declarant shall install one (1) or more cluster mailboxes with a mailbox assigned to each Lot. The Association shall be responsible for the maintenance and repair of the cluster mailboxes and the costs of such maintenance and repair shall be a Common Expense. Declarant reserves the right to install such cluster mailboxes on one (1) or more of the Lots or other portion of the Property and hereby reserves a Common Area easement across any such Lots upon which such cluster mailboxes are installed for the repair and maintenance of the cluster mailboxes as required hereunder. If any cluster mailboxes are installed upon a Lot, a Common Area easement for such improvements and for the repair and maintenance for such improvements shall exist.

7.18. Underground Storage Tanks. No underground storage tanks for natural gas, propane, chemicals, gasoline, petroleum products or any other toxic product will be allowed anywhere in the Property.

7.19. Declarant's Rights. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, its agents, employees and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots in the Property. The rights of Declarant, its agents, employees and contractors shall include, without limitation:

(a) The right and easement of ingress in, over and upon the Common Area and any Lot for the purpose of performing on any part or parts of the Property acts deemed necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots;

(b) The right to erect, construct, maintain, demolish or remove structures and other improvements on any Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots; and

(c) The right to use Lots and improvements owned by Declarant as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Property.

The rights reserved under this Section shall terminate one (1) year after the Completion of Sales. Amendment of this Section shall require the vote or written consent of seventy-five percent (75%) of the Voting Power of the Association. Further, no amendment of this Section can be made without the written approval of Declarant.

7.20. ' Right to Enter. Any governmental agency, including, but not limited to the Town or County, their agents and employees, shall have the right of immediate access to any Lot and to the Common Area at all times if necessary for the preservation of public health, safety and welfare.

7.21. Tree Conservation. The Association hereby reserves a conservation easement for the planting of trees and for the protection, preservation, and maintenance of the trees situated within any tree conservation areas shown on any recorded Map of the Property. No tree disturbing activity shall be permitted in tree conservation areas in violation of the Town Code. Any tree disturbing activity undertaken in tree conservation areas or in undisturbed open space areas (and similarly designated areas for tree preservation subject to tree coverage requirements) shown on recorded Maps of the Property without a permit from the Town or otherwise in violation of the Town Code is a violation of the Town Code and may result in significant financial consequences to the Owner and/or to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of both the Town and of the Association, enter tree conservation areas to perform active tree protection measures (as defined in the Town Code), to plant trees, to remove dead or diseased trees, or to plant replacement trees, provided, however, unless otherwise required by other provisions of this Declaration, the consent of the Association shall not be required if the tree conservation area in which the Owner desires to perform active tree protection measures or plant trees, remove dead or diseased trees and to plant replacement trees is located on that Owner's Lot.

ARTICLE 8
MEMBERSHIP AND VOTING RIGHTS

8.01. Governing Body. The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Property, as provided by this Declaration and the Bylaws.

8.02. Membership. Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon termination of ownership, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Lot.

8.03. Voting. The Association shall have three (3) classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of Declarant and the Approved Builders; provided, however, that Declarant shall become a Class A Member when its Class B membership ceases as provided hereinafter and Class C

Members shall become Class A Members upon termination of the Class B membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an ownership interest in any Lot, all such persons shall be Members, but no more than one (1) vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the note of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

Class B. Class B Member shall be Declarant which shall be entitled to ten (10) votes for each Lot owned and each Lot planned for development as shown on any preliminary subdivision plans approved by the requisite governmental authorities; provided that Declarant's Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) the Completion of Sales; or (b) ten (10) years after the first Lot is conveyed to an Owner for use as a residence.

Class C. Class C Members shall be all Approved Builders. Each Approved Builder shall be entitled to three (3) votes for each Lot that it owns, so long as the Class B membership continues to exist. Upon termination of the Class B membership, Class C membership shall be converted to Class A membership for voting purposes (but, despite such conversion, Lots owned by an Approved Builder shall continue to be treated as Class C Lots for assessment purposes so long as such Approved Builder owns any Lots). Lots owned by a Class C Member shall be Class C Lots.

8.04. Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not vest until the Annual Assessment against that interest has been levied by the Association as provided in Article 9; provided, however, that voting rights shall be immediately vested with respect to the approval of any amendments to this Declaration.

8.05. Declarant's Voting Rights. Declarant shall have the right to cast votes attributable to Lots owned by Declarant on all matters submitted to a vote of the Members.

8.06. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles, or in the Bylaws, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to transpire outlined in Section 8.03 above concerning the termination of the Class B Member status of Declarant or the surrender by Declarant of the authority to appoint and remove directors and officers by an express document relinquishing such rights executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if it then owns one (1) or more Lots; and a special meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the

Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation, which contracts and agreements, to the extent they are not bona fide or are unconscionable, may be terminated by the new Board of Directors upon not less than ninety (90) days notice to the other party in accordance with Section 47F-3-105 of the Act. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

ARTICLE 9
COVENANTS FOR ASSESSMENTS

9.01. Covenant to Pay Assessments; Lien. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay, to the Association such Annual Assessments, Attached Lot maintenance assessments (as applicable to Attached Lots) or charges and such Special Assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. The amount of any such Annual Assessment, Attached Lot maintenance assessment or Special Assessment, plus any other charges thereon, such as interest, late charges and costs (including attorneys' fees), as such may be provided in this Declaration or the Act, shall be and become a lien upon the Lot assessed as provided in Section 47F-3-116 of the Act when such annual or special assessment remains unpaid for a period of thirty (30) days or longer and the Association causes to be recorded in the Office of the Clerk of Superior Court in the County a claim of lien, which claim shall state:

(a) The amount of such assessment and such other charges thereon as may be authorized by this Declaration and the Act;

(b) A description of the Lot against which the same has been assessed; and

(c) The name of the record owner of the Lot assessed.

Upon payment of such assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a cancellation of claim of lien stating the satisfaction and the release of the lien thereof. The lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien except for (i) tax liens for real Property taxes on the Lot, (ii) assessments on any Lot in favor of any municipal or other governmental body and (iii) the lien of any Mortgage or the lien of any other encumbrance recorded before the docketing of the claim of lien in the County's Office of the Clerk of Superior Court. The lien may be enforced by foreclosure in accordance with North Carolina law, or in any other manner permitted under the Act or by law. The Association shall have power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same. Before filing a claim of lien against any Lot, the Association shall make reasonable and diligent efforts to ensure that its records contain the Owner's current mailing address and make a written demand to the defaulting Owner for payment of the delinquent Assessments together with late charges, interest, reasonable collection

costs and reasonable attorneys' fees, if any. The Owner shall be notified in writing of the Association's intent to seek payment of attorneys' fees and court costs in accordance with Section 47F-3-116(e)(1) of the Act. In accordance with Section 47F-3-116(h) of the Act, the Owner shall be responsible for the payment of all costs and fees incurred by the Association, including, without limitation, service, collection, consulting or administration fees charged by the Association's management company, in connection with the Association's collection of unpaid assessments.

The claim of lien shall be subordinate to the lien of any first mortgage or the lien of any other encumbrance recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court. The sale or transfer of any Lot shall not affect the lien except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure of a first mortgage or any bona fide, good faith proceeding in lieu thereof shall extinguish the lien as to payments which became due prior to the sale or transfer. Such unpaid Assessments shall be deemed Common Expenses collectible from all Owners, including the purchaser at foreclosure. In addition, no sale or transfer shall relieve the Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

9.02. Personal Obligation. Each Annual Assessment, Attached Lot maintenance assessment or Special Assessment, together with any late charges, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of each person or entity, other than any Mortgagee, who held an ownership interest in the Lot at the time such assessment was levied. If more than one (1) Person held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment respecting such Lot shall be both joint and several. No Owner may exempt himself or herself from payment of assessments, or installments, by waiver of the use or non use of common facilities within the area or of any other portion of the Common Area or by abandonment or leasing of his or her Lot.

9.03. Use of Assessments. Annual Assessments or Special Assessments paid by Declarant and other Owners shall be used to pay the Common Expenses of the Association. Attached Lot maintenance assessments shall be used only for the maintenance of the Attached Lots. The foregoing is intended as an authorization of the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

9.04. Reserve Funds. The Board shall establish and maintain reserves in accordance with standard accounting practices and procedures for Common Area replacements and maintenance and the initial budget of the Association. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in the discretion of the Board unless a different level of reserves is approved by the vote or written consent of a majority of the Voting Power of the Association. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without the vote or written consent of a majority of the Voting Power of the Association, except that if the Board determines that funds held in reserve for a particular purpose exceed an amount reasonably required as a prudent reserve for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund established by the initial budget of the Association and expended for the purpose for which such other reserve fund has been established.

9.05. Annual Assessments (including Attached Lot Maintenance Assessments).

(a) The Annual Assessment for each Lot owned by a Class A Member for the first assessment year shall be a maximum of:

(i) $2,760.00 for each Detached Lot; provided, however, that if the first assessment year shall have fewer than twelve (12) months, the foregoing amount shall be proportionately reduced.

(ii) $4,560.00 for each Attached Lot (Annual Assessment in the amount of $2,760.00 plus Attached Lot maintenance assessment in the amount of $1,800.00); provided, however, that if the first assessment year shall have fewer than twelve (12) months, the foregoing amount shall be proportionately reduced.

(b) The Annual Assessment for each Lot owned by a Class B Member shall be zero; provided, however, Declarant shall be obligated to fund any budget deficit pursuant to Section 9.12. The Annual Assessment for each Lot owned by a Class C Member shall be equal to twenty-five percent (25%) of the amount assessed to Class A Members.

(c) The Board shall adopt a proposed budget and fix the amount of the Annual Assessment as to each Lot for each subsequent calendar year at least thirty (30) days prior to January 1 of such calendar year. The Association shall send written notice of the amount of the Annual Assessment and the Attached Lot maintenance assessment and a summary of the proposed budget, as well as the amount of the payment due, to each Owner within thirty (30) days after the adoption by the Board of such budget. To the extent required by Section 47F-3-103(c) of the Act or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by Section 47F-3-103(c) of the Act or other applicable law, the Board shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be ratified on at any such meeting is within the maximum increase limits set forth in subsection (b) below, the budget shall be deemed ratified unless at such meeting Members exercising all of the Voting Power in the Association reject the budget. If the proposed budget to be voted on at any such meeting exceeds the maximum increase limits set forth in subsection (b) below, the budget is ratified unless at such meeting Members exercising a majority of the Voting Power in the Association reject the budget. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments.

(d) From and after the first year of Annual Assessments, the Board, by a vote in accordance with the Bylaws, without a vote of the Members (unless required under Section 47F-3-103(c) of the Act or other applicable law, in which case the procedures set forth in subsection [a] above shall apply), may increase the Annual

Assessment and the Attached Lot maintenance assessment each year by a maximum amount equal to the previous year's amount times twenty percent (20%).

(e) From and after the first year of Annual Assessments, the maximum Annual Assessment and the Attached Lot maintenance assessment may be increased above the maximum amount set forth above by a vote of a majority of the Voting Power, plus the written consent of Declarant (so long as Declarant owns any part of the Property).

(f) The Board may fix the Annual Assessment and the Attached Lot maintenance assessment at an amount not in excess of the maximum set forth above (the "Maximum Annual Assessment"), subject to the procedures set forth in subsection (a) above if applicable. If the Board shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"), subject to the procedures set forth in subsection (a) above, if applicable. In no event shall the sum of the Annual Assessments and Supplemental Annual Assessments (and, with respect to the Attached Lots, the sum of the Annual Assessments, Attached Lot maintenance assessment and Supplemental Annual Assessment) for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth herein.

9.06. Special Assessments. In addition to the Annual Assessment and Attached Lot maintenance assessment authorized herein, the Board may levy, in any assessment year, special assessments as follows:

(a) In addition to the Annual Assessments authorized herein, the Board may levy, in any assessment year, a special assessment against all Owners applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property on or comprising a part of the Common Area; including, without limitation, any stormwater detention or retention facility located on the Common Area; provided, however, in any fiscal year Special Assessments which exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association.

(b) In addition to the Annual Assessments and Attached Lot maintenance assessments authorized herein, the Board may levy, in any assessment year, special assessments against all Attached Lot Owners applicable to that year only for the purpose of defraying in whole or in part the cost of (i) any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property in connection with the maintenance of Attached Lots and any private roadways servicing same and (ii) premiums for the insurance policy or policies required under Section 10.03(d) below; provided, however, special assessments which exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may not be levied

without the vote or written consent of a majority of Members who are Attached Lot Owners.

(c) Notwithstanding the foregoing, Declarant shall be exempt from paying Special Assessments.

9.07. Assessment as Remedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy a Special Assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner, his or her Lot or his or her residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations or any Legal Requirement.

9.08. Allocation of Assessments. All Annual Assessments and Special Assessments shall be levied equally against all Owners, except:

(a) Annual Assessments levied on Lots owned by a Class A Member shall be a maximum of $2,760.00 per annum for each Detached Lot and $4,560.00 per annum for each Attached Lot for the first assessment year as adjusted for subsequent years in accordance with Section 9.05; Annual Assessments levied on Lots owned by a Class B Member shall be zero; provided, however, Declarant shall be obligated to fund any budget deficit pursuant to Section 9.12; and Annual Assessments levied on Lots owned by a Class C Member shall be equal to twenty five percent (25%) of the amount assessed to Class A Members; and

(b) Declarant shall be exempt from paying Annual Assessments.

9.09. Commencement of Assessments; Time of Payment. The Annual Assessments and Attached Lot maintenance assessments provided for herein shall commence as to all Lots in Auburn Village on the first day of the month next following the conveyance of the first Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence. The first assessment year shall commence on the date that the Annual Assessments and Attached Lot maintenance assessments commence and end on December 31st of the same calendar year. The Annual Assessments and Attached Lot maintenance assessments for the first assessment year shall be prorated from the amounts fixed by the Board for a full twelve month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. Assessments of Lots within each Phase of the Property which is annexed in accordance with the provisions of Article 15 below shall commence on the first day of the month next following the conveyance of the first Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in annual, semiannual, quarterly or monthly installments. Unless the Board otherwise provides, the Annual Assessment shall be due and payable in four

(4) quarterly installments. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

9.10. Revised Assessments. Subject to the provisions of Section 9.05, if at any time during the course of any year the Board shall deem the amount of the Annual Assessments or Attached Lot maintenance assessments to be inadequate or over adequate by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting, to revise the Annual Assessments or Attached Lot maintenance assessments for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the month next following the date of adoption, and additional amounts payable shall be due (or refunds of overages shall be made by the Association) at such time as determined by the Board.

9.11. Delinquent Assessments; Fines. Any assessment not paid within thirty (30) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided in Section 4.13 may be imposed in an amount not to exceed the greater of (i) ten percent (10%) of the amount of the unpaid Assessment, or (ii) twenty dollars ($20.00) per month. The Association may bring a legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after Notice and Opportunity for Hearing, the Association may suspend a delinquent Owner's membership rights in the Association (except drainage rights and rights of access to Lots) while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorneys' fees.

9.12. Declarant's Obligation to Fund Budget Deficits. Declarant shall satisfy all obligations for Annual Assessments on Lots which it owns by funding the budget deficit during the period of Declarant control described in Section 8.06. The budget deficit is the difference between the amount of Annual Assessments levied on Class A Member and Class C Member owned Lots, plus any other income received during the calendar year, and the amount of the Association's actual expenditures during the calendar year, including reserve contributions. Upon the expiration of the period of Declarant control, Annual Assessments on Lots owned by Declarant shall be zero and, in the event a deficit results, the Association, and not Declarant, shall be responsible for such deficit and its funding.

Declarant may fund the deficit in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. Said "in kind" contracts or arrangements may be terminated upon ninety (90) days notice by the Association at any time after the termination of the Declarant control period as described in Section 8.06.

Declarant's obligation to fund the budget deficit during the period of Declarant control, together with interest thereon and costs of collections, including, but not limited to, reasonable attorneys' fees, are hereby declared to be a charge and continuing lien upon each Lot owned by Declarant. Said lien shall be effective only if its obligation remains unpaid for a period of thirty (30) days or longer and from and after the time of the recordation in the official

records of the County of a notice of assessment in accordance with Section 9.1. Upon full payment of all sums secured by any such lien, Declarant shall be entitled to a satisfaction of the notice of assessment in recordable form in accordance with Section 9.1.

9.13. Operating Expense Contribution. Notwithstanding any provision contained herein or in any other document or instrument to the contrary, every Owner (other than a successor Declarant) who purchases a Lot from Declarant shall pay to the Association at the time of the closing of such purchase a non-refundable operating expense contribution fee (and sometimes referred to as a "Capital Contribution") in the amount of $500.00 for each Detached Lot and $1,000.00 for each Attached Lot, which amounts may be paid to the Association as a contribution towards operating expenses and/or the maintenance, repair, construction and replacement of capital assets and improvements to the Common Area and the Property. It is expressly provided herein that such operating contributions shall not be held in reserve for the benefit of the Owner paying such amount at closing, shall not be required to be held in an interest bearing account, and may be commingled by the Association with its other funds, and shall not reduce an Owner's obligation to pay Annual Assessments, Attached Lot maintenance assessments or Special Assessments. The Board may adjust the amount of the operating contribution fees from time to time.

9.14. Reserves for Stormwater Repair and Reconstruction. The budget of the Association shall at all times contain a line item for routine maintenance of any stormwater detention or retention facility located on the Common Area and a separate line for the repair and reconstruction of such Stormwater Facilities.

9.15. Certification of Assessments. The Association, upon written request, shall furnish to an Owner of a Lot or the Lot Owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against such Lot. The statement shall be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board, and every Owner of a Lot. The Association may charge a reasonable fee for providing such statement.

9.16. Exempt Property. "Exempt Property" is defined as all portions of the Property included within any of the following categories:

(a) Common Area;

(b) Portions of the Property owned by, or dedicated, conveyed, or granted to and accepted by, the Town or a utility for a public purpose or in connection with the provision of utility services, including property within the right-of-way of publicly-dedicated streets and roads; and

(c) A portion of the Property that is used for public education and instruction and owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina or any other governmental entity or agency.

Except as otherwise provided in this paragraph, Exempt Property shall not be subject to the assessments under the Declaration. Provided, however: (i) Exempt Property under the

foregoing subsection (b) on which a dwelling unit is located is subject to the assessments under the Declaration; (ii) Exempt Property under the foregoing subsection (c) on which a dwelling unit is located is subject to the assessments under the Declaration; or (iii) unless a portion of the Property otherwise qualifies as Exempt Property, a Lot on which an easement dedicated, granted, or conveyed to the Town or a utility is located, is not exempt from assessments. The Owner of any Exempt Property that is not subject to assessments shall have no membership or voting rights in the Association associated with the ownership of such Exempt Property.

Unless and until such time, if any, as it loses its exempt status, all Exempt Property owned by, or subject to an easement to, the Town or a utility provider, including all Exempt Property within publicly-dedicated street rights-of-way, and all Exempt Property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina and used for public education and instruction are exempt from all of the provisions of the Declaration, except for any easements over such Exempt Property reserved in the Declaration by or for the Declarant, the Association, the Town or any other Person, and except for all rights and benefits accruing to such Exempt Property under the Declaration and zoning conditions of the Property, including, without limitation, the rights and benefits to use the open space and tree conservation areas within the Property.

Exempt Property that loses its status as exempt (e.g., property within a publicly-dedicated street right-of-way that has been closed as a public street or property formerly owned by the Town or a tax-exempt charitable or nonprofit organization for public education and instruction which has been conveyed to a Person whose status does not qualify for the exemption) shall be classified either as a Lot or Common Area as determined in the reasonable discretion of the Declarant, during the period of Declarant control, and thereafter by the Board, and shall be subject to all of the terms and provisions of the Declaration in the same manner and to the same extent as other Lots and Common Area.

9.17. Surplus Funds The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE 10
INSURANCE

10.01. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds, requires certain provisions for property and liability insurance and governs repairs made with insurance proceeds. In the event the insurance requirements of this Article 10 conflict with, or fail to incorporate, the provisions of Sections 47F-3-113 of the Act, the provisions of the Act shall apply and govern. The establishment of an amount of insurance greater than required by the Act is not a conflict.

10.02. By Owners. Each Owner shall procure and maintain fire and extended coverage insurance as follows:

(a) Coverage. Each Lot and improvements upon a Lot shall be insured in an amount equal to one hundred percent (100%) insurable replacement value. Such coverage shall provide protection against:

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

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing form waiver of subrogation.

(b) Liability. Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand and No/100 Dollars ($300,000.00) per occurrence.

All such policies shall name the Declarant and the Association as additional insureds as their interests appear and copies of said policies and renewals thereof shall be furnished to the Declarant and the Association. Upon failure by any Owner to promptly obtain the required coverage, naming the Declarant and the Association as additional insureds, or to pay the premiums due on such policy, the Association may, but is not required to, obtain the required coverage, naming the Declarant and the Association as additional insureds, and add the cost of the premium and all other costs of obtaining such coverage to the annual assessment against the subject Lot. Such cost shall be due and payable on or before the first day of the calendar month following payment of same by the Association.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

10.03. By Association. The Association shall procure and maintain insurance coverage as follows:

(a) Common Areas. All insurance policies upon the Common Area shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of Owners.

(b) Coverage. All buildings and improvements upon the Common Area and all personal property of the Association included in the Common Areas or otherwise owned by the Association shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

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

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing form waiver of subrogation.

(c) Liability. Public liability insurance (including contractual liability coverage) shall be secured by the Association with limits of liability of no less than One Million and No/100 Dollars ($1,000,000.00) per occurrence and Two Million and No/100 Dollars ($2,000,000.00) aggregate for bodily injury and property damage, including loss of use, and shall include an endorsement to cover liability of the Owners as a group to a single Owner. If necessary, Workers' Compensation and Employer's Liability insurance shall be secured by the Association so as to comply with the laws and regulations of the State of North Carolina. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary, including, but not limited to, directors and officers errors and omissions insurance coverage. The Association shall cause Declarant to be named as additional insureds on the above-referenced insurance policies.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense and shall be included as part of the Annual Assessment described in Article 9 above.

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Insurance Trustee under this Declaration. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Areas are to be held for the Association.

(ii) If applicable due to insured casualty occurring on the Common Area, proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

(iii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owners shall be held in trust for the mortgagee and the Owners as their interests may appear.

(f) Subrogation. Each insurer shall waive its right to subrogation under any policy maintained pursuant to this Section 10.03 against any Owner or member of Owner's household.

(g) Act or Omission of Owner. No act or omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under any of the policies maintained pursuant to this Section 10.03.

(h) Other Insurance. If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary insurance.

(i) Issuance of Certificates; Cancellation. Any insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or Mortgagee. Any insurer issuing an insurance policy under this Section 10.03 may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non renewal has been mailed to the Association, each Owner and each Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

10.04. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:

(a) Expense of the Trust. All expenses of the Insurance Trustee shall be first paid or provisions made therefore.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Common Area and, if applicable due to insured casualty occurring on the Common Area, proceeds on account of damage to Lots shall be paid to defray the cost of repair to the Lots. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners as provided in Section 10.03(e)(ii).

10.05. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

10.06. Obligation to Rebuild. Any portion of the Property for which insurance is required under Section 10.02 shall be promptly and diligently repaired, replaced, and restored by the Owner thereof, unless (i) this Declaration is terminated, or (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance.

Any portion of the Property for which insurance is required under Section 10.03 of this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) this Declaration is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) the Owners decide not to rebuild by an

eighty percent (80%) vote of the Voting Power of the Association (excepting private streets which are required to be repaired under applicable provisions of the Town Code). The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense, and the cost thereof may be recovered by one (1) or more Special Assessments levied by the Board equally against all Owners. If any portion of the Common Area is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition compatible with the remainder of the Property and (ii) the remainder of the proceeds shall be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Common Area liabilities of all the Lots.

ARTICLE 11
DAMAGES AND DESTRUCTION

11.01. Damage to Lots. Restoration and repair of damage to any Lot (including, in accordance with the definition of "Lot," the improvements thereon) shall be made by and at the expense of the Owner thereof.

11.02. Damage to Common Area. Restoration and repair of damage to any Common Area shall be made at the expense of the Association unless, under the provisions of Section 47F-3-113(g), the repair or restoration is not required to be effected, provided that the improvement is not otherwise required by the Town. If the work is to be accomplished, the Association shall promptly contract for the repair, restoration or reconstruction and, if necessary, collect from the Insurance Trustee any proceeds of insurance as received in accordance with Section 10.03. The difference, if any, between the insurance proceeds payable by reason of such repairs and the cost thereof may be recovered by one (1) or more Special Assessments levied by the Board equally against all Owners.

Funds collected and held by the Insurance Trustee shall be disbursed by the Insurance Trustee for the purpose of repair, restoration or reconstruction in accordance with the terms and conditions of repair or reconstruction contract(s) between the Association and Persons engaged to perform the work. Funds from any Special Assessment shall be delivered to and held in trust by the Insurance Trustee and shall be held and disbursed for repair, restoration and reconstruction in the same manner as insurance proceeds. The Insurance Trustee may invest and reinvest funds held by it in a manner consistent with its duties as trustee. The Insurance Trustee shall be entitled to a reasonable fee for its services.

ARTICLE 12
EMINENT DOMAIN

12.01. Eminent Domain. Notwithstanding any provision contained herein to the contrary, in the event of a taking of all or any portion of a Lot or all any portion of the Common Area by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act. If all or any portion of the Common Area is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees and the Association as provided in the Act.

12.02. Repair, Restoration, Reconstruction. If only a portion of a Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a Special Assessment levied against all Owners as provided herein.

ARTICLE 13
ARCHITECTURAL CONTROL

13.01. Architectural Control. No building, swimming pool, spa, statuary, flag pole, mailbox, basketball goal or other sports equipment (permanent or portable), play equipment, fence, wall, gazebo, or any other structure or improvement shall be placed, erected, commenced, constructed, demolished, rebuilt or altered upon any Lot or attached or affixed to any improvement upon any Lot or upon the Common Area nor shall any exterior addition to or change or alteration of a residence building be made, including, but not limited to, additions or alterations to any deck, fence, wall, driveway, or patio, planting or clearing and cutting of trees, color or painting of the exterior (other than maintenance to and touch-up painting to preserve the original exterior paint) or change of the type of exterior finish, the installation of aerials, satellite dishes, flags or awnings or the addition of any exterior attachment (such as a storm door) until an application, including plans and specifications showing the nature, kind, shape, height, materials, finishes, colors and location of the same (including floor plans and elevations) (the "Plans"), shall have been submitted to and approved in writing by the ACC; provided, however, that no such approval shall be required for alterations solely to the interior of any residential structure. The Board may require a reasonable fee to accompany each application for approval. **The ACC shall have the absolute and exclusive right to approve or disapprove Plans in its sole discretion and** may **approve or disapprove Plans based on** purely **aesthetic reasons,** which **in the sole discretion of the ACC shall be deemed sufficient. Absent an approval from the ACC the proposed alteration or improvement may not be commenced.** THE RESTRICTIONS HEREIN CONTAINED SHALL HAVE NO APPLICATION TO THE DEVELOPMENT, IMPROVEMENT, MAINTENANCE AND REPAIR OF THE PROPERTY BY DECLARANT OR THE ASSOCIATION, AND NEITHER THE BOARD NOR THE ACC SHALL HAVE ANY POWER OR AUTHORITY TO REVIEW OR REQUIRE MODIFICATIONS TO THE PLANS FOR CONSTRUCTION OR INSTALLATION OF IMPROVEMENTS BY DECLARANT.

The installation of antennae and of satellite dishes or disks shall be permitted on a Lot if accomplished in strict compliance with the limitations and conditions imposed by the Telecommunications Act of 1996, as amended from time to time, but no antenna or disk which is in any dimension larger than prescribed by the Telecommunications Act of 1996 or which is not installed in accordance with the advance notice requirements and location guidelines of the Telecommunications Act of 1996 may be installed or maintained on any Lot except with the prior written approval of the ACC.

The installation of solar panels or other "green energy" improvements ("Green Energy Improvements") to the roof or exterior of a dwelling located on a Lot shall be permitted in

accordance with N.C.G.S. Section 22B-20 after approval by the ACC. Upon any such approval for the installation of Green Energy Improvements, the Owner of such Lot, its successors and assigns, shall thereafter be responsible for the installation, maintenance and repair of the Green Energy Improvements and any and all damage caused to the dwelling on the Lot or to adjacent dwellings, if applicable, during the installation, maintenance or repair of such Green Energy Improvements, and, as a condition to such approval, Declarant and/or the ACC may require the Owner of the subject Lot to enter into a license or other agreement relative to same. The Association shall not be responsible for the installation, maintenance or repair of Green Energy Improvements installed by an Owner.

13.02. Architectural Control Committee.

(a) Membership; Right of Declarant to Act as ACC with Respect to Initial Construction.

(i) The Architectural Control Committee ("ACC") shall be composed of three (3) persons (who need not be Members of the Association) appointed by the Board. A majority of the ACC may designate a representative to act for it. In the event of death, resignation, or removal by the Board of any member of the ACC, the Board shall have full authority to designate a successor. Unless otherwise approved by the Association, neither the members of the ACC nor its designated representative shall be entitled to any compensation for services performed pursuant to this Section. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the ACC and a list of the names and addresses of any designated representatives of the ACC, and such a list shall be available in the principal office of the Association to any Owner upon request.

(ii) Notwithstanding the foregoing, as to the initial construction of improvements on any Lot (the "Initial Construction of Improvements"), the Declarant shall serve as the ACC responsible for the review, approval, and monitoring of construction of improvements. Any requests for modifications or alterations of improvements in fact constructed on a Lot or for the construction of additional improvements on a Lot shall be the responsibility of the ACC, which need not be the Declarant if it so directs, but, if not the Declarant, Declarant shall have the right to approve or disapprove any decisions made by the ACC upon fifteen (15) days written notice to the ACC and the applicable Owner following the forty-five (45) day period for the ACC's decision. The rights of the Declarant pursuant to this section shall cease upon the Completion of Sales. Prior to the Completion of Sales, the Declarant may at any time relinquish, either temporarily or

permanently, its rights to review, approve and monitor the Initial Construction of Improvements.

(b) Procedure. At least sixty (60) days prior to the commencement of any construction on a Lot, the Plans for such Lot shall be submitted to the ACC. Approval shall be subject to such regulations and architectural standards as may from time to time be promulgated by the ACC. Within forty-ftve (45) days afier receipt of the Plans and any other requested information, the ACC shall notify the Owner of the Lot in writing as to whether the Plans have been approved. Unless a response is given by the ACC within forty-five (45) days from receipt of all required information, the Plans shall be deemed disapproved. The response of the ACC may be an approval, a denial, an approval with conditions or a request for additional information. A request *for* additional information shall be deemed a determination that the information submitted was inadequate, and the forty-five (45) day time period for further ACC response shall only commence upon receipt of the requested additional information. No construction shall be commenced until either the forty-five (45) day time period for Declarant's approval has passed or Owner has received Declarant's approval if the ACC is not the Declarant and Declarant still has the rights as outlined in 13.02(a)(ii) above. If an approval with conditions is granted and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot, and the conditions imposed shall become a part of the approved Plans. No improvements shall be constructed except in strict conformity with the approved Plans. The ACC, or an agent of the ACC, shall have the right to monitor construction of improvements and investigate compliance with the approved Plans and is hereby granted the right to enter upon any Lot in order to do so.

Any Owner who submits Plans to the ACC and disagrees with the finding of the ACC may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following its receipt of notice of denial. The Board shall review the Plans and hold a meeting to hear the case with the Owner and the ACC or its representative. At such meeting the ACC or its representative shall present to the Board specific reasons why the Plans were denied, and the Owner or his agent may present information challenging the findings of the ACC. The decision of the ACC shall only be overridden by a majority vote of the Board. Notwithstanding the foregoing, an Owner shall have no right to appeal decisions by the Declarant acting as the ACC with respect to the Initial Construction of Improvements or to approvals by the ACC which are disapproved by the Declarant pursuant to Section 13.02(a)(ii).

The Association may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and related documents are submitted to the ACC. The ACC shall have the right, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the ACC in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot and shall be in addition to any fees due for processing any requests for approval.

All notices required to be given under this Section 13.02(b) shall be given in writing and delivered by hand, mailed with prepaid postage or deposited with an overnight carrier (e.g. Federal Express, UPS, etc.). If the ACC denies an application, the ACC shall specify the particular grounds upon which denial of such application is based. If the ACC approves the application, one (1) set of Plans, marked approved (or approved with specified conditions), shall be retained by the ACC, and the remaining two (2) sets of Plans shall be returned to the applicant.

13.03. Landscape Plan; Landscaping. As part of the Plans package submitted by an Owner to the ACC for approval of the Initial Construction of Improvements or any improvements thereafier, there shall be included a comprehensive landscape plan (the "Landscape Plan"). Shown thereon, in addition to the scheme for decorative plantings, shall be all of the planned site improvements and modifications, including, but not limited to, major topographic changes and plans for revegetation and restabilization thereof, the specifications for all terraces, walkways, driveways, paths, fences, bulkheading, walls, pools, outdoor lighting and for other fixtures and structures to be constructed as part of the Landscape Plan. **Owners are encouraged to include landscaping designs and plantings in their Landscape Plans that require no irrigation or water usage.**

The Landscape Plan shall unite the Lot as well as all other structural aspects of the landscape with its setting and shall provide for the introduction of plant materials of reasonable size and quantity to create (when first installed) a mature landscape scene.

Each Lot shall be maintained consistently with the Landscape Plan approved for it by the ACC. All material changes to the Landscape Plan or the landscaping installed on a Lot shall be first approved by the ACC. The ACC shall have the authority to create additional landscaping guidelines applicable to the Property.

13.04. Maintenance of Construction Activities. During the construction of any improvement to a Lot, the Lot, roads, landscaping and Common Areas or Limited Common Areas adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Any damage to the street, curb, sidewalk or to any part of any Common Areas, Limited Common Areas or utility system caused by an Owner or an Owner's builder shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

In the event the Owner or his agent, employee or contractor shall fail to maintain the Lot and adjoining areas, as specified herein, or damage occurs and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightly conditions, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot and adjoining area. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Association and will become a continuing lien on the Lot until paid.

13.05. Timely Completion. When construction of any Lot, structure, improvement, or addition thereto has begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that Lots under construction in the Property be "dried-in" with exterior finishes installed (roofing, windows and finish siding and trim in place) within one hundred twenty (120) days of the commencement of construction and that all phases of work, including execution of the Landscape Plan, be complete within six (6) months of the date of ACC approval. In the event that completion is delayed beyond one (1) year from the date of ACC approval and provided the Owner is notified within thirty (30) days of the expiration of the one (1) year construction period, the ACC may, upon unanimous vote of the committee, rescind the original approval and require that the Owner resubmit Plans for approval.

13.06. Reconstruction of Residences. In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original plans; provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the ACC to reconstruct or repair his or her residence in accordance with revisions in the Plans. The ACC shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Property in a manner generally consistent with the plan and development thereof.

13.07. Limitation of Liability. Review and approval of any application pursuant to this Article 13 is made on the basis of aesthetic considerations only and the ACC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

13.08. Enforcement. Any construction, alteration, or other work done in violation of this Article 13 shall be deemed to be nonconforming. Upon written request from the Board, the ACC or the Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the nonconforming Lot and collected as a special assessment pursuant to Section 9.07 hereof.

Any contractor, subcontractor, agent, employee, or other permittee of an Owner who fails to comply with the terms and provisions of this Article may be excluded by the Board from the Property. In such event, neither the Association, its officers, or directors shall be held liable to any person for exercising the rights granted by this Section 13.08.

In addition to the foregoing, the Board shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article 13 and the decisions of the ACC.

ARTICLE 14
MORTGAGEE PROTECTION

14.01. Interpretation. In the event any provision of this Article 14 is inconsistent with or contrary to any other provision of this Declaration, the provisions of this Article 14 shall control.

14.02. Notices. Any Mortgagee of any Lot, by written notice to the Association setting forth the Lot encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of (a) any default which is outstanding for sixty (60) days or longer by the Owner of such Lot in the performance of his or her obligations under or in compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, (b) any substantial damage to or destruction of the Common Area, including the improvements located thereon, or, if known to the Association, any substantial damage to or destruction of a Lot, including the improvements located thereon, and (c) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or of any Lot or portion thereof.

14.03. Mortgagee's Right to Information. Upon written request to the Association, a Mortgagee is entitled to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Property; and (c) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

14.04. Damage and Destruction Rights. In the event of substantial damage to or destruction of any Lot or improvements to a Lot or any part of the Common Area no provision of any document establishing the Property shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

14.05. Condemnation Rights. If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, no provision of any document establishing the Property shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of the proceeds of any award or settlement.

14.06. Right of First Refusal. Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee acquiring such Lot pursuant to exercise of remedies provided for in the

Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

14.07. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against the Lot which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Lot; and provided further, that except as otherwise provided in this Section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

14.08. Payments by Mortgagees. Any Mortgagee, after at least ten (10) days' prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

14.09. Consent of Mortgagee. With respect to any provision in this Declaration requiring the consent or written approval of a Mortgagee, any Mortgagee who does not respond within thirty (30) days' request by the Association for such consent or written approval shall be deemed to have approved such request.

ARTICLE 15
ANNEXATION

15.01. Right to Annex. Declarant shall have the right to annex to Auburn Village subdivision, thereby bringing within the scheme of this Declaration and subject to the jurisdiction of the Association, part or all of the Additional Land, if any, with the consent of the owner of the Additional Land. Annexation of any real property other than Declarant's annexation of the Additional Land shall require the vote or written consent of not less than sixty

seven percent (67%) of the Voting Power of the Association. Annexation of additional property may be accomplished in Phases. Annexation of additional property may be accomplished in Phases.

15.02. Procedure for Annexation. Any annexation shall be made by recordation of a Supplemental Declaration covering the real property to be annexed. The Supplemental Declaration shall describe the real property to be annexed and state that annexation is being made pursuant to this Declaration for the purpose of extending the jurisdiction of the Association to cover the property described therein. The Supplemental Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Phase being annexed and as are not inconsistent with the general scheme of this Declaration. Annexation shall be effective upon recordation of the Supplemental Declaration and thereupon the real property described therein shall be subject to all of the provisions of this Declaration, to the extent made applicable by the Supplemental Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration, the Articles, Bylaws and Rules and Regulations.

15.03. Annexed Property. Each Owner of a Lot in an annexed Phase automatically shall be a Member of the Association and such Owners and annexed real property shall be subject to assessment by the Association for the benefit of the Property or any part thereof. Assessments of Lots in an annexed Phase shall commence upon the last to occur of: (a) commencement of Annual Assessments for the Property, and (b) the first day of the month next following the first conveyance of a Lot in such Phase to a purchaser, as provided in Section 9.09. The Association shall have the duties, responsibilities and powers set forth in this Declaration, the Articles and Bylaws with respect to annexed real property. Except as may otherwise be expressly provided in this Declaration or any Supplemental Declaration, the Property shall be managed and governed by the Association as an entirety. Assessments collected from Owners in the Property may be expended by the Association anywhere in the Property without regard to the particular Phase, area or subdivision from which such assessments came. All Owners shall have ingress and egress to and from all the Common Area throughout the Property and any Phase thereof and shall have use and enjoyment of any Common Area facilities and other amenities contained within the Common Area throughout the Property, provided that any such use shall be subject to the provisions of this Declaration, any Supplemental Declaration, the Bylaws and the Rules and Regulations.

15.04. Annexed Common Area. All Common Areas and Limited Common Areas within lands annexed to the Property shall be conveyed to the Association in accordance with Section 4.01.

ARTICLE 16
INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify any and all persons who may serve or whom have served at any time as directors or officers of the Association against any and all expenses, including amounts paid upon judgments, counsel fees and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they, or any of them,

are made parties, or a party, which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or an officer of the Association, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in any action, suit, or proceeding guilty of willful and intentional negligence or misconduct in the performance of his or her duties to the Association. Provided, however, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

The provisions hereof shall be in addition to and not exclusive of any and all other rights to which any director or officer may otherwise be entitled under any law, Bylaw, agreement, vote of Association Members or otherwise. In the event of death of any officer or director, the provisions hereof shall extend to such person's legal heirs, representatives, successors and assigns. The foregoing rights shall be available whether or not such person or persons were in fact directors or officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit or action is based on matters which antedate the adoption of this Declaration.

ARTICLE 17
EXCULPATION

It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly, against Declarant or any of its officers, members, managers, employees, agents, attorneys, heirs, executors, legal representatives, successors or assigns (collectively, the "Declarant Related Parties") for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such proceeding shall not be entitled to take any action to procure any money judgment against any of the Declarant Related Parties.

ARTICLE 18
MISCELLANEOUS PROVISIONS

18.01. Conflict with the Act; Conflict with Town Code; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act in which event the Declaration shall control. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Town Code, the provisions of the Town Code shall control unless the Town Code permits the Declaration to override the Town Code in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

18.02. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

18.03. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

18.04. Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payments or other consideration necessary therefor or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney in fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board.

18.05. Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

18.06. Notices. Notices shall be in writing and shall be addressed as follows: (a) if to an Owner, to the address of his or her Lot; (b) if to Declarant, to 1100 Perimeter Park Drive, Suite 112, Morrisville, North Carolina 27560; and (c) if to the Association, to 1100 Perimeter Park Drive, Suite 112, Morrisville, North Carolina 27560. The Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to all Owners and to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

18.07. Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

18.08. Enforcement. The failure of any Owner to comply with the provisions of this Declaration, the Bylaws, the Articles or the Rules and Regulations shall entitle the Association, any Owner, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so

thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

18.09. Equal Opportunity Housing. This Property provides equal opportunity housing. Each Lot sold shall be sold without regard to the race, creed, color, national origin, ancestry, religion, marital status, familial status, handicap, age, or sex of the purchaser.

18.10. Amendments.

(a) Except as otherwise expressly provided herein, this Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant.

This Declaration may be amended or modified at any time by the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association. Provided, however, that if the percentage of the Voting Power necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Owners is required pursuant to this Section 18.10 shall become effective when an instrument executed by the Owners voting for such amendment or modification is filed of record in the Office of the Register of Deeds of Wake County, North Carolina; provided, however, such an amendment or modification, in lieu of being executed by the Owners voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Owners, as provided in this Section 18.10.

Notwithstanding the terms of the immediately preceding paragraph of this Section 18.10, during the period of Declarant control as set forth in Section 8.06, Declarant, without obtaining the approval of any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provisions of this Declaration.

(b) Any action to challenge the validity of an amendment adopted under Section 18.10(a) must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

18.11. Release of Property. Declarant shall have the right, in its sole and absolute discretion, without the consent of the Association or any other Owner, to release any portion of the Property then owned by Declarant from the terms of this Declaration by recording a release in the Office of the Register of Deeds of Wake County, North Carolina. After the

recordation of such release, the portion of the Property described therein shall not be subject to the terms of this Declaration.

ARTICLE 19
STORMWATER FACILITY MAINTENANCE

19.01. Stormwater Facilities. In accordance with the requirements of the Town one (1) or more Stormwater Facilities will be located on the Common Area and from time to time adjoining property subject to the easement rights of Declarant and the Association. The operation and maintenance of the Stormwater Facilities are subject to the terms of the Stormwater Facility Agreements and Stormwater Maintenance Manuals. Upon dedication by map or conveyance in fee of the Common Area to the Association, the Association shall operate and maintain the Stormwater Facilities.

19.02. Expenditure Priority. To the extent not inconsistent with other applicable Legal Requirements, the Association's obligations under the Stormwater Facility Agreements shall receive the highest priority for expenditures with the exception of expenditures for (i) assessments levied by the local governmental authorities (ii) ad valorem property taxes (iii) liability and hazard insurance required to be maintained by the Association (iv) any other expenditures which are required by law to have a higher priority.

19.03. Reconstruction and Repair Fund. The Association shall establish and maintain a fund for the maintenance, reconstruction and repair of the Stormwater Facilities. The reconstruction and repair fund shall contain the dollar amount reasonably determined from time to time by the Board to be adequate to pay for the probable reconstruction and repair cost of the Stormwater Facilities. The reconstruction and repair fund shall be listed as a separate line in the Association's budget and shall be kept in an account insured by the Federal Deposit Insurance Corporation or by another entity acceptable to the Board. The Association shall submit a report to the Town certifying that the funds have been set aside.

19.04. Special Assessments. The Association shall charge Annual and/or Special Assessments, if necessary, to meet the Association's obligations under the Stormwater Facility Agreements and Stormwater Maintenance Manuals.

19.05. Dissolution and Transfer. Notwithstanding any provision to the contrary contained in the Declaration and to the extent permitted by applicable law, the Association shall not enter into voluntary dissolution unless the Stormwater Facilities are transferred to a person or entity who assumes the maintenance obligation of the Stormwater Facilities as set forth in the Stormwater Facility Agreements and the Stormwater Maintenance Manuals, and that to the extent permitted by applicable law, the Association shall not sell, convey or otherwise transfer any interest in the Common Area on which the Stormwater Facilities are located to any party until the intended assumes the maintenance obligation of the Stormwater Facilities as set forth in the Stormwater Facility Agreements and the Stormwater Maintenance Manuals.

19.06. Easement to the Town. Declarant hereby grants to the Town an easement for ingress, egress and regress over and across the Common Area on which the Stormwater Facilities exist for the purpose of inspecting the Stormwater Facilities and for the purpose of

inspecting, monitoring, maintaining, repairing and reconstructing the Stormwater Facilities and exercising the other rights of the Town that are provided for by the Stormwater Facility Agreements and the Stormwater Maintenance Manuals. Notwithstanding the foregoing, the Town shall not be obligated to maintain or repair the Stormwater Facilities unless and until the Town has agreed in writing to assume the maintenance responsibility for the Stormwater Facilities and has accepted any and all rights necessary to carry out that maintenance.

ARTICLE 20
AGE RESTRICTION

20.01. Age Restriction Affecting OccupancY. Auburn Village is intended to provide housing primarily for Persons 55 years of age or older. The Property shall be operated as an age restricted community in compliance with all applicable state and federal laws. Each Lot, if occupied, shall be occupied by at least one (1) individual 55 years of age or older, provided, however, that once a Lot is occupied by an Age-Qualified Occupant, other Qualified Residents of that Lot may continue to occupy the Lot, regardless of the termination of the Age-Qualified Occupant's occupancy. Notwithstanding the above, at all times, at least eighty percent (80%) of the improved and occupied Lots within the Property shall be occupied by at least one (1) individual 55 years of age or older. The Board shall establish policies and procedures from time to time as necessary to verify the names and ages of all occupants and Owners of the Lots and to monitor and maintain its status as an age restricted community under state and federal law. The Association may levy monetary fines against the Owner and the Lot for each day the Owner fails to provide information requested by the Association and/or the Board. The Association shall provide, or contract for the provision of those facilities and services designed to meet the physical and social needs of older Persons as may be required under such laws. The provisions of this Section may be enforced by the Association and/or by an action in law or equity, including, without limitation, an injunction requiring specific performance hereunder.

20.02. Exceptions. Any Owner may request in writing that the Board make an exception to the requirements of this Article with respect to his or her Lot, based on a hardship that is substantiated by documentation supplied with the written request. The Board may, but shall not be obligated to, grant exceptions to this Section in its sole discretion, provided that all of the requirements of the state and federal laws under which the Property may be developed and operated as an age-restricted community are met in any event.

20.03. Notification of Chance in Occupancy. In the event of any change in occupancy of any Lot, as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, or otherwise, the Owner of the Lot shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Lot and such other information as the Board may reasonably require to verify the age of each occupant required to comply with the state and federal laws under which the Property may be developed and operated as an age-restricted community. In the event that an Owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association may levy monetary fines against the Owner and the Lot for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the occupants continue to meet the requirements of this

Article, in addition to all other remedies available to the Association under this Declaration and North Carolina law.

20.04. Records. The Association shall be responsible for maintaining records to support and demonstrate compliance with the Fair Housing Act, as amended, and all applicable state and federal laws. The Board shall adopt policies, procedures and rules to monitor and maintain compliance with this Article, including policies regarding visitors, updating of age records, the granting of exemptions to compliance and enforcement. The Association shall periodically distribute such policies, procedures and rules to the Owners and make copies available to owners, tenants, and mortgagees upon request.

20.05. Enforcement. The Association, acting through the Board, may enforce this Article in any legal or equitable manner available, as the Board deems appropriate, including, without limitation, conducting a census of the occupants of Lots, requiring that copies of birth certificates or other proof of age for one (1) new Age-Qualified Occupant per Lot be provided to the Board on a periodic basis, and in the Board's sole discretion, taking action to evict the occupants of any Lot which does not comply with the requirements of the and restrictions of this Article. The Association's records regarding individual Members shall be maintained on a regular basis and shall not be disclosed except as legally required and then only to governing authorities having jurisdiction and seeking to enforce state and federal laws. Each Owner shall fully and truthfully respond to any request from the Association or Board for information regarding the occupancy of his or her Lot which, in the Board's judgment, is reasonably necessary to monitor compliance with this Article. Each Owner hereby appoints the Association, which may act through the Board, as its attorney in fact for the purpose of taking legal or equitable action to dispossess, evict or otherwise remove the occupants of his or her Lot as necessary to enforce compliance with this Article.

20.06. Compliance. Each Owner shall be responsible for ensuring compliance with the requirements and restrictions of this Article and the Association rules and regulations adopted hereunder, by itself and by its tenants and any other occupants of his or her Lot(s). Each Owner, by acceptance of title to a Lot, agrees to indemnify, defend, reimburse, and hold Declarant, any affiliate of Declarant, and the Association harmless from any and all claims, losses, damages, and causes of action which may arise from failure of such Owner to uphold the obligation set forth in the foregoing sentence. Such defense costs shall include, but not be limited to, attorney fees and costs.

20.07. Government Enforcement. Each Owner acknowledges that as a condition of the zoning of the Property the Association is required to enforce the provisions of this Declaration. In the event that the Property becomes non-compliant with the provisions of this Article and/or the Association is notified by the Town of a zoning violation or a potential zoning violation, the Association shall take such actions as necessary to remedy the violation and bring the Property into compliance.

ARTICLE 21
DISPUTE RESOLUTION

21.01. Consensus for Association Action.

(a) Except as provided in this Section, the Association may not commence a legal proceeding or an action under this Article without the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association. This Section shall not apply, however, to (i) actions brought by the Association to enforce the Declaration or the Articles, the Bylaws and Rules and Regulations (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of Annual or Special Assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(b) Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including, but not limited to, an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

21.02 Alternative Method for Resolving Disputes. Declarant, its officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any Approved Builder, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each such individual or entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 21.03 (collectively, "Claims") to the procedures set forth in Section 21.04, both herein below.

21.03 Claims. Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based, including, but not limited to, Claims (a) arising out of or relating to the interpretation, application or enforcement of the Declaration or the Articles, the Bylaws and Rules and Regulations or the rights, obligations and duties of any Bound Party under the Declaration or the Articles, the Bylaws and Rules and Regulations, (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 21.04 below.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 21.04 below.

(a) any suit by the Association against any Bound Party to enforce the provisions of Article 9 (Covenants for Assessments);

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article 7 (Use Restrictions) or Article 13 (Architectural Control);

(c) any suit between or among Owners, which does not include Declarant, an Approved Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration or the Articles, the Bylaws and Rules and Regulations; and

(d) any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 21.04 below.

21.04 Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

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

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

(iii) the proposed remedy; and

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

(b) Negotiation and Mediation.

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

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Supplemental Mediation Procedures for Residential Construction.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on

account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

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

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Section 21.04 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 21.04. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one (1) non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

(c) Binding Arbitration.

(i) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Supplemental Arbitration Procedures for Residential Construction. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), the dispute shall be heard and determined by three (3) arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one (1) arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(ii) Unless provided otherwise by AAA's Supplemental Arbitration Procedures for Residential Construction, each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in

defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(iii) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.

21.05 Amendment of Article. Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty (20) years from the effective date of this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration as of the date first above set forth.

DECLARANT:

CalAtlantic Group, Inc.,
a Delaware corporation

By: _____
Name: Troy J. George
Title: Vice President

Wake County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Troy J. George.

Date: 06.10.19

My Commission Expires:

05.25.20
[Affix Notary Stamp or Seal]

_____
Notary Public
Print Name: KALYN C DAVIS

KALYN C DAVIS
Notary Public
Wake Counry. North Carolina
My Commissori Expires 05/25/2020

EXHIBIT A

Property

BEING all of that certain tract or parcel of land located in the Town of Apex, White Oak Township, Wake County, North Carolina and being more particularly described as follows:

BEING all of those certain tracts or parcels of land identified as Lot 1 and Lot 2 as shown on that certain plat of survey recorded in Book of Maps 2017, Pages 1445 and 1446, Wake County Registry, which plat is referenced for a more particular description.

AND BEING all that certain tract or parcel of land designated as "Portion of Former Lot 3 Area: 19.288 Acres (To Be Conveyed To CalAtlantic Group, Inc.)", Auburn Village Subdivision as shown on plat of survey and recorded in Book of Maps 2019, Page 868, Wake County Registry, which plat is referenced for a more particular description.

EXHIBIT B

Additional Land

Those certain tracts or parcels identified as:

1. Any land owned by the Declarant or hereinafter acquired by Declarant located immediately adjacent to or in proximity to the Property.



WAKE
COUHTY
NO RTH CARO L I NA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Charles P. Gilliam
Register of Deeds
Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp ☐ $25 Non-Standard Fee

@ Additional Document Fee ☐ Additional Reference Fee

This Customer Group

_____# of Excessive Entities

_____# of Time Stamps Needed

This Document

_____# of Pages