

Prepared by and return to:
Michael F. King, Esq.
K&L Gates LLP
Post Office Box 17047
Raleigh, NC 27619-7047

STATE OF NORTH CAROLINA**COUNTY OF WAKE****SECOND AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PARK AVENUE**

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR PARK AVENUE (this "Amendment") is effective as of the date of its recordation in the Office of the Register of Deeds for Wake County, North Carolina and is made by **LENNAR CAROLINAS, LLC**, a Delaware limited liability company ("Declarant").

WHEREAS, Declarant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Park Avenue recorded in Book 17205, Page 321, Wake County Registry (as amended from time to time, collectively, the "Declaration").

Article XI, Section 1 of the Declaration provides that Declarant, during the period of Declarant control, without the consent or joinder of any Owner or Owners other than Declarant, shall have the unilateral right to make any amendments or modifications which Declarant deems necessary or desirable. The Declarant now desires to amend the Declaration in certain respects as set forth herein.

NOW, THEREFORE, Declarant, by this Amendment, does hereby amend the Declaration as follows:

1. Defined Terms. All capitalized terms used herein, unless otherwise defined herein, shall have the meanings set forth in the Declaration.
2. Leases. Article VIII Section 34 of the Declaration is hereby deleted in its entirety and replaced by the following:

310511185.1

Submitted electronically by K&L Gates LLP in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Wake County Register of Deeds.

“Leases Limited to Six (6) Month Minimum Term. Owners of Lots are hereby strictly prohibited from leasing any Lot for a shorter period than a term of six (6) consecutive months. Furthermore, each Owner leasing its Lot must provide the Board with a copy of the written lease for the Lot, which lease must contain (in addition to its terms) current and valid contact information for Owner and all tenants, including but not limited to the name of the tenants, the tenant's telephone number, and electronic mail address, if any, and each lease must likewise contain a statement that the lease is subject in all respects to the Governing Documents and that tenant must comply with the same and that tenant is in default of the lease for failure to do so.

The foregoing provision of this Section regarding a minimum lease term of no less than six (6) months shall not apply to a transfer or purchase by a Mortgagee which acquires its title as the result of owning a Mortgage upon the Lot concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successor in title or through foreclosure proceedings; nor shall such minimum lease term provision apply to a transfer, sale or lease by a Mortgagee which so acquires its title. Neither shall such minimum lease term provision require the approval of a purchaser who acquires the title to a Lot at a duly advertised public sale with open bidding which is provided by law including, but not limited to, an execution sale, foreclosure sale, judicial sale or tax sale. **Notwithstanding any inconsistent or contrary provision in this Declaration, if there are any FHA, VA or USDA insured loans affecting a Lot, and only for so long as any such loans affect the Lot, any restrictions in this Declaration on renting, subleasing, or reconveyance that violate any FHA, VA or USDA requirements shall not apply to such Lot or its Owner or to a transfer or purchase by a Mortgagee.”**

3. Effect of Amendment. The Declaration is hereby modified to the extent set forth herein, but only to the extent set forth herein. All provisions of the Declaration not modified by this Amendment shall remain in full force and effect in accordance with their original terms as set forth in the Declaration.

[SIGNATURE PAGES FOLLOW]

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Declarant has executed this Amendment as of the date set forth in the acknowledgement below.

DECLARANT:

LENNAR CAROLINAS, LLC,
a Delaware limited liability company

By: [Signature]
Name: Troy George
Title: Vice President

Wake County, North Carolina

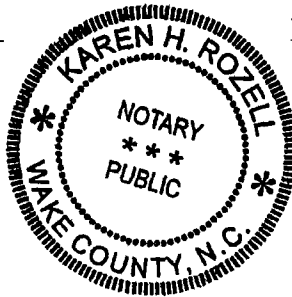
I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Troy George.

Date: 8/9/2021

My Commission Expires:

4-17-2025

[Affix Notary Stamp or Seal]



[Signature]
Notary Public
Print Name: Karen H Rozell

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

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

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

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

Prepared by and return to:
St. Amand & Efird, PLLC (MGS)
3315 Springbank Lane, Ste 308
Charlotte, North Carolina 28226

Submitted electronically by "St. Amand & Efird PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Wake County Register of Deeds.

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

WAKE COUNTY, NORTH CAROLINA

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARK AVENUE (the "**Declaration**") is made as of this 14th day of July, 2018, by LENNAR CAROLINAS, LLC, a Delaware limited liability company (hereinafter referred to as "**Declarant**").

RECITALS:

WHEREAS, Declarant is the owner of certain tract or parcel of land located in Wake County, North Carolina, which property is described on **Exhibit "A-1"** attached hereto (the "**Property**");

AND WHEREAS, the Property is hereby established as a planned community and master residential subdivision community known as "Park Avenue" (which also is referred to herein as the "**Community**" or the "**Subdivision**") under the Legal Requirements of applicable governmental entities, and which may include, but shall not be required by this Declaration to include, any one or more of the following: residential dwellings; public or private streets; utility easements; stormwater drainage systems and facilities; buffers; greenways; open space; recreational facilities and amenities; and other uses consistent with the zoning of the Property and the Governmental Authority approvals for the Subdivision;

AND WHEREAS, the Community will contain certain Common Areas that are shared Community-wide by all throughout the Community, and may (but need not) contain more distinct Neighborhoods, each with its own housing product types, level of Assessments, services and amenities;

AND WHEREAS, as hereinafter provided in this Declaration, Declarant has retained and reserved the right, privilege and option to annex Additional Property or to withdraw Property (as the case may be) to/from the encumbrance of this Declaration, from time to time or at any time, as herein provided;

AND WHEREAS, Declarant desires, among other things, to establish a general plan of development for the Subdivision, to provide for the maintenance and upkeep of the Lots, Dwellings, and Common Elements within the Subdivision, to provide for enforcement of the Declaration and other covenants and restrictions, if any, applicable to the Subdivision, to protect the value and desirability of the Property, and, to that end, desires to subject the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Subdivision and each owner of any part or all thereof;

AND WHEREAS, in furtherance of the foregoing, Declarant has incorporated or will incorporate under the nonprofit corporation laws of the State of North Carolina PARK AVENUE HOMEOWNERS ASSOCIATION, INC. (the "**Association**") to own and/or maintain and/or administer Common Elements, to administer and enforce this Declaration and other covenants, restrictions, and agreements applicable to the Subdivision, and to collect and disburse the assessments and charges provided for herein;

AND WHEREAS, Declarant may elect to administer Neighborhoods (if any) either through the Association, and/or by creation of one or more Neighborhood Association under Neighborhood Declarations (both defined below), in its discretion and as described herein;

AND WHEREAS, it is intended that every Owner of any of the Lots (as defined below) automatically, and by reason of such ownership and this Declaration, become a Member of the Association

and be subject to its rules and regulations and the assessments and charges made by the Association as provided herein.

NOW, THEREFORE, Declarant hereby declares that all of the Property, together with all Additional Property, if any, subjected to the Declaration pursuant to Article II hereof and less any real property withdrawn from this Declaration, all of which together is referred to as the “**Property**”, shall be held, transferred, sold, conveyed, given, donated, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are hereby imposed for the purpose of protecting the value and desirability of these lands and which restrictions, easements, charges, liens, conditions, and covenants shall touch and concern and run with the title to the Property and which shall be binding on all parties having any right, title or interest in the Property or any portion of them, all in accordance with the North Carolina Planned Community Act, as set forth in Chapter 47F of the North Carolina General Statutes, as the same may be amended by from to time. This instrument also binds the respective heirs, devisees, fiduciary representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone who purchases or takes any interest in real property within the lands subject to this Declaration.

**ARTICLE I
DEFINITIONS**

The below-listed capitalized words and terms, when used in the Declaration (including the Recitals) or any amendment hereto, or in any Supplemental Declaration, unless amended or unless the context clearly indicates otherwise, are defined as follows and are subject to the provisions contained in such definitions. It should be noted that one or more definitions contain provisions in addition to the defined word or terms, and such additional provisions are part of the Declaration in the same manner and to the same extent as if they had been set out in an Article or Section of the Declaration other than this Article I.

(a) “Act” shall mean the North Carolina Planned Community Act, currently codified in Chapter 47F of the North Carolina General Statutes, as it exists from time to time, including all amendments, supplements and replacements thereof.

(b) “Additional Property” shall mean any and all real property described on Exhibit “A-2” attached hereto and incorporated herein by this reference, provided the Additional Property shall not be part of the Property subject to this Declaration until it has been annexed (or subjected) to this Declaration in the manner required by this Declaration.

(c) “Annexation Declaration” shall mean a document, by whatever name denominated, that is recorded for the purposes of annexing Additional Property to this Declaration and causing such Additional Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and including any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

(d) “Annual Assessment” shall have the meaning specified in Article VI of this Declaration and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against all Lots each year for the purpose of raising the funds necessary to pay the Common Expenses (it being clear and express that the Annual Assessments may vary from Lot to Lot based on Dwelling type and Neighborhood).

(e) “Architectural Control Committee” (or “ACC”), referred to as the “Architectural Review Committee” (or “ARC”) from time to time, shall mean those individuals appointed to have jurisdiction

over construction on or within any portion of the Property and responsibility for administration of design guidelines, as more fully described in Article VII of this Declaration.

(f) "Architectural Guidelines" shall mean any guidelines and standards, if any, that are from time to time adopted by Declarant or the ACC (as the case may be and in accordance with Article VII) and in effect with respect to Dwellings and other improvements in the Property.

(g) "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

(h) "Association" shall mean Park Avenue Homeowners Association, Inc., a North Carolina nonprofit corporation.

(i) "Board of Directors" (or "Board") shall mean the body responsible for the administration of the Association, as provided in the Bylaws.

(j) "Builder" is defined as a Person, other than the Declarant, if any, who constructs residential dwellings for resale to other Persons, and who purchases or becomes the Owner of one or more Lots within the Property for the purpose of constructing thereon one or more residential dwellings for resale to other Persons. "Builders" refers to all such persons or entities collectively.

(k) "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

(l) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, or any successor federal revenue law.

(m) "Common Area" (or "Common Property" or "Common Elements", the terms Common Area and Common Elements and Common Property being used interchangeably herein, whether referring to Common Area or Limited Common Area) shall mean, singularly or collectively, as applicable, all real property (including all improvements and public and private streets, drives, lanes, and alleyways thereon, if any, except for any of the same, that are in any event owned by or dedicated to, and in fact maintained by a Governmental Entity or other Person who provides utility services to any part or all of the Property) and personal property, including easements, which Declarant owns (prior to turnover to the Association) or which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including any additional areas, if any, which by the terms of the Governing Documents, or by any Legal Requirement, or any Plat, or by contract or agreement with any other Person, become the responsibility of the Association. The term Common Area shall include the Limited Common Area, as defined below, provided, however, that unless a Common Area is expressly identified herein or on any Plat as a Limited Common Area, then it shall simply be the broader Common Area. Declarant shall have the right to unilaterally, and without need for consent of any person or party, convey any and all portions of the Common Area to the Association. Furthermore, Declarant shall have the right to unilaterally, and without need for consent of any person or party, convey any and all portions of the Common Area that are located on any portion of the Property that is subjected to a Neighborhood Declaration, to the applicable Neighborhood Association charged with management of the Neighborhood under the Neighborhood Declaration, if the Neighborhood Declaration identifies the Common Area as common area of the Neighborhood; provided, however, that any such Common Area (despite its ownership) shall remain subject to this Declaration but shall upon conveyance to the Neighborhood Association be deemed Limited Common Area of the Neighborhood and shall be maintained/insured as provided in the applicable Neighborhood Declaration. Without limiting the foregoing, the Common Area shall include all retaining walls and ponds, if any, on Lots or otherwise, within the Property.

(n) "Common Expenses" shall mean and include all of the expenses incurred by the Association in maintaining the Common Area, including reserves for future expenses, and in paying for all of its other operations, and obligations and liabilities under the Act, Legal Requirements, and the Governing Documents, whether or not the particular Common Expense is specifically described herein. Common Expenses also include all expenses for which the Association is liable under any contract or agreement entered into by the Association or by the Declarant on behalf of the Association as allowed herein. Expenses related to Limited Common Areas, if any, are Neighborhood Expenses, which are part of and are a subcategory of Common Expenses.

(o) "Community Wide Standards" shall mean the standard of conduct, maintenance or other activity generally prevailing throughout the Property. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors or the Architectural Control Committee. The Community Wide Standards may change at any time and from time to time as development of the Property progresses and/or as the needs and desires change within the Property. During the Development Period, the Declarant has the right to establish all of the Community Wide Standards, including amending any Community Wide Standards established by the Board of Directors or Architectural Control Committee.

(p) "Declarant" shall mean LENNAR CAROLINAS, LLC, a Delaware limited liability company, and shall include any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one "Declarant" hereunder at any one time.

(q) "Declarant Control Period" shall mean the period of time commencing on the date of recording of the Declaration and ending on the date on which the first of the following occurs:

(i) the date on which one hundred percent (100%) of the Lots permitted by the Subdivision Plan (i) have Dwellings thereon for which certificates of occupancy have been issued and (ii) have been conveyed to Members other than Builders. Provided, until such time as the Declarant Control Period would end under any other subparagraph of this definition, without the possibility of any reinstatement, the Declarant Control Period shall be reinstated automatically in order to resurrect and extend any lapsed Declarant Control Period from time to time if the Subdivision Plan is revised to include additional Lots; or

(ii) voluntary termination of the Declarant Control Period by a written instrument executed by Declarant and recorded in the Registry; or

(iii) termination of the Declarant Control Period required by any Legal Requirement; or

(iv) 11:59 PM on December 31, 2040.

Declarant has the sole authority to resolve any issues or disputes regarding the date on which the Declarant Control Period ends or is reinstated.

(r) "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions, as the same may be hereafter amended in accordance with the terms hereof.

(s) "Development Period" shall mean the period of time from the date of recording of this Declaration through and including 11:59 P.M. on the last of the following dates to occur.

(i) the date on which ALL of the Lots permitted by the Subdivision Plan (i) have Dwellings thereon for which certificates of occupancy have been issued and (ii) have been conveyed to Members other than Builders. Provided, until such time as the Development Period would end under any other subparagraph of this definition, without the possibility of any reinstatement, the Development Period shall be reinstated automatically in order to resurrect and extend any lapsed Development Period from time to time if the Subdivision Plan is revised to include additional Lots; or the last day on which Declarant owns any portion of the Property; or

(ii) termination of the Declarant Control Period required by any Legal Requirement;
or

(iii) 11:59 PM on December 31, 2040.

Notwithstanding the foregoing, if Declarant is delayed in the development of any part or all of the Property as a result of a sanitary sewer, water or building permit moratorium, or as the result of some other cause or event beyond Declarant's control, then the foregoing applicable time period shall be extended by the amount of time of the delay; provided, however, Declarant may terminate the Development Period at any time by recording a termination instrument in the Registry. Except in the case of voluntary termination by the Declarant, the Development Period also shall include any periods of time after the applicable termination event during which Declarant is conducting any activity within the Property that is required by Legal Requirements or for Declarant to fulfill any obligation to a Governmental Entity, the Association, or any Owner with respect to any portion of the Property. In the event of an assignment of Declarant rights, with respect to the rights assigned the Development Period shall remain in full force and effect through the applicable periods of time as they relate to the assignee rather than the original Declarant hereunder. Declarant has the sole authority to resolve any issues or disputes regarding the date on which the Development Period ends.

(t) "Development Plan" shall mean the most current land use or development plan approved by the applicable Governmental Entity for the Property or any part thereof, whether the approval is preliminary or final, and regardless of any name other than Development Plan under which it is approved by the Governmental Entity (for example, site plan, subdivision plan, cluster unit development plan, or master plan for a planned unit development). Declarant reserves the right, in its sole discretion but subject to Legal Requirements, to modify any Development Plan in whole or in part, including the addition or deletion of real property and including the reconfiguration of Lots and Common Area. The fact that real property is included on the Development Plan does not obligate Declarant to subject it to the Declaration, nor shall Declarant be prohibited from subjecting to the Declaration any property that is not included on the Development Plan.

(u) "Dwelling" is defined as any building or portion thereof within the Property which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one housekeeping unit, whether by the Owner thereof or by tenants or sub-tenants of the Owner.

(v) "Exempt Property" means all portions of the Property included within any of the following categories:

(i) Common Area (provided, however, a Lot on which Common Area is located -- for example, a Lot on which there is an easement constituting Common Area -- is not exempt from assessments); and

(ii) property owned by, or dedicated to and accepted by, the Town or Wake County, or a utility, including property within the right-of-way of publicly-dedicated streets and roads, unless such

property is a Lot that has a Dwelling thereon (and provided, that a Lot is not exempt from assessments because it has an easement located on it that has been dedicated to the Town or Wake County or a public utility/authority).

Exempt Property shall not be subject to the assessments provided for herein, and the Owner of such Exempt Property shall have no membership or voting rights in the Association associated with the ownership of such Exempt Property. Furthermore, unless and until such time, if any, as it loses its Exempt status, except as otherwise provided herein all Exempt Property owned by or subject to an easement in favor of the Town or a utility provider, and all Exempt Property within publicly-dedicated street rights-of-way, is exempt from all of the provisions of the Declaration, except for the provisions of the Declaration with respect to 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 provisions of the Declaration requiring Approved Plans for Dwellings and associated improvements.

Exempt Property that loses its status as Exempt Property (e.g., property within a publicly dedicated street right-of-way that has been closed as a public street, property formerly owned by/dedicated to the Town which has been conveyed to a Person whose status does not qualify for the exemption) shall be reclassified to another type of property under this Declaration, as appropriate, 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 portions of the Property having the same classification. All issues with respect to reclassification of Exempt Property shall be resolved by the Declarant, during the Development Period, and thereafter by the Board.

(w) “Fiscal Year” shall mean the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

(x) “First Mortgage” shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt of first priority.

(y) “Governing Documents” shall mean and include all of the following: this Declaration; the Articles and Bylaws of the Association; Architectural Guidelines and bulletins and Rules and Regulations of the Association; resolutions adopted by the Board; conditions of approval for development of any part or all of the property required by any Governmental Entity; Annexation Declarations; Supplemental Declarations; other declarations of restrictive or protective covenants applicable to the Property; all as the same may be amended, restated or supplemented from time to time. Any approvals granted by the Declarant under the Governing Documents shall be binding upon all successors to Declarant's approval authority.

(z) “Governmental Authority” or “Governmental Entity” shall mean and include any and all of the following that are applicable to the particular matter or matters addressed in the Governing Documents: the Town; the County of Wake, North Carolina; the State of North Carolina; the United States of America; and all other governmental entities and quasi-governmental entities that have jurisdiction over the Property or any part thereof, including all applicable departments and agencies of any of them.

(aa) “Improved Lot” shall mean a Lot (i) upon which there is located a Dwelling for which a certificate of occupancy has been issued by the applicable governmental authority, and (ii) which is owned by Person who is not the Declarant.

(bb) “Improvement” shall mean any improvement of or on any Lot or other applicable portion of the Property, including any or all of the following: Dwellings and other buildings and structures (specifically including exterior materials, colors, size, location, and architectural style); decks; patios;

stoops; porches; driveways; play structures; motor vehicle and other parking areas; exterior storage areas; exterior recreational areas, equipment and facilities; mail kiosks; exterior antennae, dishes and other apparatus to receive or transmit radio, television, or microwave or other signals; fences; exterior walls; hedges; other landscaping improvements (including edging material, planted areas, grassed areas, natural areas, and the plant and other materials therein); poles; flags; exterior decorative features and items; ponds; lakes; staking, clearing, grading, filling, change in grade or slope, and other site preparation; swimming pools; coverings for windows and other glass portions of a Dwelling or other building or structure (for example, curtains, blinds, and shutters), which coverings are visible from outside the Lot or other applicable portion of the Property; exterior lights and signs; lights and signs visible inside a Dwelling or other building or structure visible from outside the Lot or other applicable portion of the Property; and all other items used or maintained on a Lot or other applicable portion of the Property outside of a Dwelling or building or other structure located thereon or on the exterior surfaces of a Dwelling or other building or structure on the Lot or other applicable portion of the Property. The definition of improvements stated for the purposes of this definition includes both initial improvements and all subsequent alterations, changes and additions to same. The term “initial improvements” is defined as all of the improvements constructed or placed or located on a Lot or other applicable portion of the Property, or approved for construction, placement, or location on a Lot or other applicable portion of the Property by the Declarant, a Builder, or an Owner, in accordance with either Approved Plans or Architectural Guidelines existing at the time of issuance of a certificate of occupancy for the Dwelling on such Lot or other applicable portion of the Property. The examples of improvements stated for the purposes of this definition are not inclusive of all types of improvements and do not imply that all improvements listed as examples will be allowed in the Property, and all improvements are subject to the architectural approval provisions of the Declaration. For the purposes of this definition, the word “exterior” means located on a Lot or other applicable portion of the Property outside of the Dwelling or other building or structure thereon, as well as attached to the outside of (such as on a wall or roof) a Dwelling, building, or other structure on a Lot or other applicable portion of the Property.

(cc) “Legal Requirement” shall mean and include any duly adopted and applicable law, ordinance, regulation or requirement, including any agreement entered into for compliance with the same, and including the Act, the Nonprofit Corporation Act, and the Code, of any Governmental Entity or quasi-governmental entity or agency having jurisdiction over the Property or any portion thereof, including any branch, department, division, section, branch, agency, or other subdivision of any of the foregoing Governmental Authorities or quasi-governmental authorities or agencies. Legal Requirements apply to the exercise of all rights or the taking of all actions under this Declaration by Declarant, the Association, or any other Person, whether or not this Declaration states that a specific right or action is subject to Legal Requirements or must be exercised or taken in accordance with Legal Requirements.

(dd) “Limited Common Area” shall mean, singularly or collectively, as applicable, all real and personal property, including easements, private streets and private alleys, which the Association owns, leases, or otherwise holds possessory or use rights in for the exclusive or primary and common use and enjoyment of one or more, but less than all, of the Neighborhoods or Lots in the Property, and which are designated as such by the Declarant herein, or by Declarant during the Development Period (even if originally designated as Common Area), or by the Association at any time during the Development Period, and/or including portions of the Property shown as Limited Common Area on any Plats of the Property.

(ee) “Lot” (or “Unit”), referred to as “Homesite” from time to time, shall mean each portion of the Property shown on any of the Plats which may be independently owned and conveyed and which is intended for development, use, and occupancy, or actually is used or occupied, as a residence for a single family.

(ff) “Maintain”, “maintenance”, “maintaining”, or any similar term used herein shall mean and include any one or more of the following, as the context requires or allows: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

(gg) “Member” shall mean a Person subject to membership in the Association pursuant to Article V hereof.

(hh) “Mortgagee” shall mean the beneficiary or payee under any mortgage or deed of trust, and the term mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

(ii) “Neighborhood” shall mean a group of Lots, if any, designated as a separate Neighborhood pursuant to Article II for purposes of sharing one or more Limited Common Areas, and/or receiving other benefits or services from the Association (or from a Neighborhood Association if a Neighborhood Declaration is recorded), which may be common to those Lots and not provided to all Lots. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property. Neighborhood boundaries may be established and modified as provided in Article II hereof. Neighborhoods need not be subjected to Neighborhood Declarations and may simply be administered directly by the Association and under this Declaration.

(jj) “Neighborhood Assessments” shall mean assessments levied against Lots in a particular Neighborhood to fund Neighborhood Expenses, as described in Article VI; provided, however, that there may be no Neighborhood Assessments in a particular Neighborhood if instead a Neighborhood Declaration is recorded and a Neighborhood Association instead assesses for Neighborhood level expenses.

(kk) “Neighborhood Association” shall mean a nonprofit homeowners association, if any, created by Declarant in order to own and/or maintain and/or administer Limited Common Areas of any Neighborhood, and to enforce the Neighborhood Declaration, and to collect and disburse the assessments and charges provided for therein.

(ll) “Neighborhood Declaration” shall mean an instrument, if any, recorded in the Registry which designates and/or imposes additional/other covenants, restrictions and/or obligations on only a designated Neighborhood and provides for the creation of a Neighborhood Association to own and/or maintain and/or administer Limited Common Areas of the Neighborhood, and to enforce the Neighborhood Declaration, and to collect and disburse the assessments and charges provided for therein. All Property subject to a Neighborhood Declaration shall be first in time/foremost subject to this Declaration such that any Neighborhood Declaration shall be subordinate hereto.

(mm) “Neighborhood Expenses” shall mean the actual and estimated expenses, if any, which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood, including maintenance of Limited Common Areas assigned to such Neighborhood, which expenses may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration, or in any Neighborhood or other Supplemental Declaration applicable to such Neighborhood; provided, however, that there may be no Neighborhood Expenses in a particular Neighborhood assessed under this Declaration if instead a Neighborhood Declaration is recorded establishing Neighborhood level expenses.

(nn) "Neighborhood Services" shall mean all goods, services and other provisions made by the Association for Lots, Owners, Improvements in one or more but fewer than all Neighborhoods; provided, however, that there may be no Neighborhood Services provided by the Association, if instead a Neighborhood Declaration is recorded and a Neighborhood Association is charged with providing services that would otherwise constitute Neighborhood Services under this Declaration.

(oo) "Notice and Opportunity for Hearing" or "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 or such other body or group as may be required by the Act, orally or in writing, not less than five (5) days before the effective date of the proposed action.

(pp) "Owner" shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation or as a tenant or occupant shall not be an Owner.

(qq) "Person" shall mean a natural person, corporation, trust, limited liability company, partnership or any other legal entity.

(rr) "Plans" shall mean the complete plans and specifications for a proposed improvement showing (where applicable) the size, shape, dimensions, materials, exterior finishes and colors, location on the applicable portion of the Property, driveway, parking areas, provisions for handling stormwater, landscaping, floor plans and elevations, and other items, all as specified from time to time in any applicable Architectural Guidelines or required by the Reviewer. "Approved Plans" shall mean Plans that have been approved by the Reviewer.

(ss) "Plats" shall mean all plats for any portion of the Property recorded in the Registry, including any amendments to such Plats recorded in the Registry.

(tt) "Property" or "Property" shall mean all real property subject to this Declaration, including any annexed Additional Property, as applicable. The Property initially subject to this Declaration is described on Exhibit A-1.

(uu) "Recreational Amenities" or "Recreational Amenity" shall mean, singularly or collectively, as applicable, all Common Areas, equipment and facilities, IF ANY, which Declarant owns (prior to turnover to the Association) or which is leased or possessed or owned by the Association, for the use and benefit of the Members for recreational purposes, whether active or passive recreation, or, if part of Limited Common Area, then solely for the use and benefit of the Members (and their guests, tenants and invitees) benefited by the Limited Common Area. Without limitation, any Community pool and cabana, if any, is a Recreational Amenity and Common Area.

(vv) "Registry" shall mean the office of the Office of the Register of Deeds for Wake County, North Carolina.

(ww) "Reviewer" shall mean the Declarant, Board, Architectural Control Committee, or other Person who has the authority to review and approve Plans under the architectural control provisions of this Declaration.

(xx) "Rules and Regulations" is defined as rules, regulations, requirements, prohibitions, and/or conditions with respect to any one or more of the following that are adopted by the Declarant or the Association and are in effect from time: (i) use of the Property or any part thereof, including the

Common Elements, or (ii) the conduct of Persons while in or on the Property or any part thereof, including the Common Area, or (iii) implementation and enforcement of the Governing Documents, or (iv) any other matters that the Declarant or Board, as applicable, determines to adopt as part of the Association's Rules and Regulations.

The Board may adopt, amend, modify, and enforce Rules and Regulations for the use and operation of the Common Area (including the Limited Common Area) and/or for the implementation and enforcement of the Governing Documents without having to comply with the procedures specified herein for adoption, amending, modifying, and enforcing other Rules and Regulations. Such Rules and Regulations with respect to use and operation of the Common Area and/or implementation and enforcement of the Governing Documents also may be referred to herein as "Board Policies."

(yy) "Special Declarant Rights" or "Declarant Rights" is defined as all rights granted to, or reserved by, or established for the benefit of, Declarant, in the Act or in this Declaration or in other Governing Documents, whether or not such rights are referred to as Special Declarant Rights or Declarant Rights in the Act, this Declaration, or other Governing Documents. Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, subject to such terms and conditions as Declarant specifies in the assignment document. Unless this Declaration or other Governing Documents specify that Special Declarant Rights may be exercised by any Person other than the Declarant or that they become rights exercisable in whole or in part by the Association at any time, or as otherwise provided in Legal Requirements, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, executed by the assignor and assignee, and the assignment becomes effective only upon the recording of the document in the Registry or any later date specified therein. Special Declarant Rights shall be construed broadly so as to allow Declarant the greatest flexibility in development and sale of the Property.

(zz) "State" shall mean the State of North Carolina.

(aaa) "Stormwater Agreement" is defined as any agreement recorded in the Registry among the Declarant, the Association, and a Governmental Entity, or between the Declarant and a Governmental Entity, or between the Association and a Governmental Entity, if any, relating to Stormwater Control Measures for the Property or any part thereof, and includes all amendments and supplements to such agreements.

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

(ccc) "Subdivision Plan" shall mean the most current land use or development plan or plans approved by the Town or by Wake County for the Property (it being recognized that there may be two or more development plans approved by the Town or by Wake County that together constitute the

Subdivision Plan under this definition), whether the approval is preliminary or final, and regardless of any name other than Subdivision Plan under which it approved by the Town or by Wake County (for example, site plan, cluster unit development plan, or master plan for a planned unit development), all as the same may be revised at any time or from time to time; it being express that the Property need not be developed in accordance with any one version of the Subdivision Plan. Declarant reserves the right, in its sole discretion but subject to Legal Requirements, to modify any Subdivision Plan in whole or in part, including the addition or deletion of property and including the reconfiguration of Lots and Common Area. The fact that property is included on the Subdivision Plan does not obligate Declarant to subject it to the Declaration, nor shall Declarant be prohibited from subjecting to the Declaration any Additional Property that is not included on any Subdivision Plan.

(ddd) “Supplemental Declaration” shall mean an instrument recorded in the Registry which designates and/or imposes restrictions and/or obligations on the land described in such instrument in addition to or different from (when this Declaration allows) those imposed by this Declaration. A Neighborhood Declaration and/or an “Annexation Declaration” would be a Supplemental Declaration, but not all Supplemental Declarations are necessarily either Neighborhood Declarations or Annexation Declarations.

(eee) “Town” shall mean the Town of Apex, North Carolina.

ARTICLE II
PROPERTY SUBMITTED TO THIS DECLARATION;
ANNEXATION; WITHDRAWAL

Section 1. Property Hereby Subjected to this Declaration. The Declarant, for itself and its respective successors and assigns, hereby submits the real property described on Exhibit A-1 to this Declaration, and such real property constitutes the "Property" initially subjected to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2. Annexation of Additional Property. The Declarant may, at any time and from time to time during the Development Period, in its sole discretion annex all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording in the Registry an Annexation Declaration describing the portion of the Additional Property being annexed. Declarant further has the right to convey to the Association (or any Neighborhood Association if applicable) additional Common Areas contained within such Additional Property, the maintenance of which may increase the Annual Assessment as provided elsewhere herein and may increase the amount of Annual Assessment which shall be levied against each Lot.

From and after such recording, the annexed Additional Property shall be part of the Property and shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such Additional Property.

No approval, consent or joinder from any Member of the Association, or from any other party whatsoever, shall be required for the Declarant to subject Additional Property to this Declaration.

Section 3. Withdrawal of Property. The Declarant may, in its sole discretion at any time and from time to time during the Development Period, withdraw any portion of the Property from the coverage of this Declaration, regardless of the fact that such actions may affect the relative voting strength of any Member or class of membership in the Association or increase or reduce the number of Owners subject to assessment under this Declaration, by recording an amendment to this Declaration describing the portion of the Property being withdrawn; provided, however, if the property is part of the Common Areas and is owned or leased by the Association, the written consent of the Association shall be required to effect such withdrawal. From and after such recording, the withdrawn portion of the Property no longer shall be part of the Property and may be held, transferred, sold, conveyed, used, given, leased, occupied, mortgaged or otherwise encumbered free and clear of any and all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration.

Section 4. Order of Development and Annexation. Declarant contemplates that it may develop any portion of the Property it owns in accordance with a Development Plan, as modified from time to time; provided, however, but subject to Legal Requirements that provide otherwise, no Development Plan shall obligate the Declarant to develop any particular portion of the Property now or in the future, whether for the purposes shown thereon or for any other purpose, the Declarant shall not be required to follow any particular sequence or order of development of the Property, and the Declarant may annex or consent to annex Additional Property to the Declaration, and/or withdraw portions of the Property from the Declaration, before completing development of all of the Property previously subjected to the Declaration.

Section 5. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to accept title to such Lot, and to be bound by, all of the terms and provisions of this Declaration. Each Lot is subject to all burdens, and enjoys all benefits, made applicable hereunder.

Section 6. Neighborhoods. The Declarant, in its sole discretion, may establish Neighborhoods within the Property by Supplemental Declaration (including if applicable by a Neighborhood Declaration if Declarant wishes to create a Neighborhood Association rather than operating the Neighborhood through the Association) in order to subject such Neighborhood to additional covenants and restrictions or to benefit said Lots therein differently from other Lots on the Property. During the Development Period, the Declarant, in its sole discretion and without the joinder of any other Person, may assign portions of the Property to a specific Neighborhood, redesignate Neighborhood boundaries, remove portions of the Property from a specific Neighborhood, and/or record Neighborhood Declarations subjecting any portion of the Property thereto.

Any Neighborhood may, upon the written consent of at least fifty percent (50%) of the Owners in such Neighborhood including all Builders therein, request that the Association provide a higher level of service or special services (than are specified herein) for the benefit of Lots in such Neighborhood and upon written consent of a majority of Owners of the Lots within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The costs of such services, which may include a reasonable administrative charge in such amount as the Board may deem appropriate (provided such administrative charge shall apply at a uniform rate per Lot to all Neighborhoods receiving the same service), shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to Article V herein.

No action may be taken by a Neighborhood which is adverse to the interests of the Association or its Members or that is inconsistent with the Community Wide Standards. If a Neighborhood fails to comply with such requirements of the Association as specified by the Association in writing the Association may assess the Lots within such Neighborhood for any expense incurred by the Association to correct the inconsistency or deficiency.

**ARTICLE III
ASSOCIATION PROPERTY**

Section 1. Common Areas. The Declarant shall have the right to transfer and convey to the Association (or any Neighborhood Association if applicable) any portion of the Property, and the Association (or any Neighborhood Association if applicable) shall accept all such transfers and conveyances from the Declarant. All portions of the Property which the Declarant shall so transfer or convey shall thereafter constitute Common Areas or Limited Common Areas, as the case may be. Said right may be exercised by the Declarant any time, and from time to time, prior to the end of the Development Period.

Common Areas shall be conveyed to the Association (or any Neighborhood Association if applicable) by special warranty deed free of debt encumbrance, and subject to this Declaration and all applicable rights of way and easements, including the rights and easements set forth in this Article and shown on Plats, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements. Upon Declarant's written request at any time during the Development Period, the Association (or any Neighborhood Association if applicable) shall reconvey to Declarant any unimproved portions of the Common Area which Declarant originally conveyed to the same for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines or as part of the Development Plan. In addition to the foregoing, Declarant reserves the right to convert Lots it owns to Common Area or Common Area to Lots, and the right to move or relocate and the right to change the use of any Common Area, all at any time or from time to time during the Development Period, and all in Declarant's sole and absolute discretion.

Notwithstanding any other terms and provisions herein, Declarant and its assigns and/or social invitees shall have the right to use all Common Areas (including without limitation, Recreational Amenities) for all purposes for which they are intended.

Section 2. Member's Rights in Common Area. Except in the case of Common Areas designated as Limited Common Areas, each Owner shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot owned by such Owner. Where Common Areas are or become designated as Limited Common Areas, then except as otherwise provided herein, the Owners of Lots benefited by said Limited Common Areas shall have the exclusive right and easement of enjoyment and use in and to said Limited Common Areas. The right and easement of enjoyment and use of the Common Areas and Limited Common Areas are and shall be subject to the easements which are described in this Article and to the following:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:

(i) adopt rules regulating use and enjoyment of the Common Area, including Recreational Amenities, and including rules limiting the number of guests who may use the Common Area (it being express that except as otherwise allowed with case-by-case permission of the Board, no Member may bring more than six (6) guests to any Recreational Amenity except in conjunction with a reserved event held by/at request of the Member;

(ii) suspend an Owner's right to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent; and (ii) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing as required by the Governing Documents or the Act. Provided, however, and notwithstanding anything to the contrary appearing in any Governing Documents, (i) if ingress and egress from a public street to and from any Lot is over any part of the Common Area as shown on any Plat or described in any instrument recorded in the Registry, or (ii) Stormwater Control Facilities, stormwater drainage, sanitary sewer, water or other utility services are provided to a Lot over or through an easement located on the Common Area as shown on any Plat or described in any instrument recorded in the Registry, any conveyance or encumbrance of the affected portion of the Common Area shall be subject to those easements for ingress and egress and/or utilities, and no suspension of the rights of the Owner of said Lot in and to the use and enjoyment of the Common Area as allowed herein shall include suspension of any such rights of such Owner to ingress and egress or utilities;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in the Governing Documents and/or the Act;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any Recreational Amenity situated upon the Common Area;

(v) permit use of any Recreational Amenity by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Common Area as open for the use and enjoyment of the public; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to such approval requirements as may be set forth in the Governing Documents and/or the Act.

(d) The rights of certain Owners to the exclusive or primary use of those portions of the Common Area designated "Limited Common Areas" as described herein.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

Section 3. No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all mortgages encumbering any portion of the Property.

Section 4. Condemnation. For the purposes of this Section, "condemnation" or "taking" or "taken" means an acquisition of all or any part of the affected portion of the Property or of any interest therein or right accruing thereto as a result of, in lieu of, or in anticipation of, the exercise of the right of

condemnation or eminent domain, or any other action by a Governmental Authority or other Person having the power of eminent domain that affects the value of the applicable portion of the Property or any part thereof so severely as to amount to a taking. In the event that any part of the Common Areas shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of, and under threat of, condemnation by the Board acting on the written direction of at least eighty percent (80%) of the Class A votes and, during the Development Period, the written consent of Declarant, the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent available unless, within sixty (60) days after such taking at least eighty percent (80%) of the Class A votes and Declarant (if during the Development Period) otherwise agree. The provisions of subsection 6 of this Article III below regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

Section 5. Insurance on Common Areas. The Association shall maintain and keep in good repair the Common Areas. Additionally, the Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U S Department of Housing and Urban Development, as applicable to the Common Areas. The Board shall obtain casualty insurance for all insurable improvements located on the Common Areas, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of any insurable improvement in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy with a combined single Limit of at least One Million and No/100 Dollars (\$1,000,000.00) applicable to the Common Areas covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association. An insurer that has issued an insurance policy under this Section 5 shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, Mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Section 5 may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each Mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 6. Damage or Destruction. In the event that any improvements located on any Common Areas shall be damaged or destroyed on account of the occurrence of any casualty, the Board shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by at least eighty percent (80%) of the Class A votes (including 100% of those to whom any Limited Common Area is allocated), and by Declarant during the Development Period, not to so repair or reconstruct such damage. In the event that it shall be so decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for

the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Class A Members, levy Special Assessments to cover the shortfall.

Section 7. Actions Requiring Owner Approval. If the U.S. Department of Housing and Urban Development is insuring the Mortgage on any Lot or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Lot, then any conveyance or mortgaging of the Common Areas by the Association shall require the consent of at least sixty-seven (67%) of the Class A votes held by Members other than the Declarant and, during the Development Period, the consent of Declarant. Notwithstanding anything to the contrary in this section, however, the Association, acting through the Board, may grant easements over the Common Areas for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Section 8. Limited Common Area.

(a) Any Limited Common Area, if any, shall be designated as such in the deed conveying such area to the Association, or on the Plat relating to such Limited Common Area, or by the recording by Declarant of another document containing the designation (including by Declarant's recordation of a Neighborhood Declaration or other Supplemental Declaration [whether expressly or not referencing Limited Common Areas or not] designating common areas of the Neighborhood to be managed/maintained by the Neighborhood Association); provided, however, any such designation shall not preclude Declarant, at any time during the Development Period but only with the written consent of any Builder who owns any Lot or has the right to purchase any Lot from Declarant, from assigning or reassigning use of the same Limited Common Area to additional Lots and/or Neighborhoods.

Following the end of the Development Period, and only with the written consent of any Builder, if any Builder still owns or has the right to purchase any Lot from Declarant, portions of the Common Area may be designated as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Voting Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed designation or reassignment.

(b) Upon approval of a majority of Owners of Lots within a Neighborhood or other portion of the Property to which any Limited Common Area is assigned, including the written approval of any Builder who owns any Lot or has the right to purchase any Lot from Declarant in the Neighborhood, the Association may permit Owners of Lots in other Neighborhoods or portions of the Property, and/or may permit other Persons who are not Owners, to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area.

Section 9. Stormwater Management. Except for maintenance responsibilities (i) placed on Owners by the Declaration and/or Legal Requirements, or (ii) assumed or undertaken by other Persons (for example, the Town), the Association shall maintain the Stormwater Control Measures as part of the Common Expenses. As used in the immediately preceding sentence, the word "maintain" includes provision for maintenance of, which may include financial contributions toward maintenance of Stormwater Control Measures located on and/or shared with other Property not subject to the Declaration. Provided, however, such maintenance obligations shall cease and terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time as the Town or State, through a department of public works or some other agency or division, accepts responsibility to maintain, in whole or in part, the

Stormwater Control Measures for the Property, or some other Person is providing the necessary maintenance therefor (for example, pursuant to an agreement which requires monetary payments by the Association to the Person who is performing the maintenance). Following any such assumption of maintenance by the Town, State or other Person, the Association may, without obligation, continue to provide maintenance to the extent that the Town, State or other Person fails to provide adequate maintenance in the opinion of the Board, or to the extent required by any Legal Requirements, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the Town, State or such other Person has not assumed maintenance responsibility, or following termination of the Town's, State's or such Person's maintenance responsibility. The Owner of any Lot on, over or through which any Stormwater Control Measures or portion thereof is located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable, unless the Association assumes such responsibility; and (ii) removal of debris and other materials to the best of the Owner's ability, where such debris or materials has impeded or threatens to impede the free flow of stormwater on, over or through the Stormwater Control Measures located on the Lot. Such Owner's responsibility shall include notification of the Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter which the Owner reasonably believes is beyond the Owner's ability to remove, and any excessive erosion within any such Stormwater Control Measures. The Owner of a Lot on which a Stormwater Control Measure is located shall not obstruct it or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all stormwater drainage easements and stormwater management facilities located on and used exclusively in connection with such Owner's Lot or the improvements thereon, including guttering, and pipes and drains for transportation of stormwater from such Lot into any other Stormwater Control Measures. All issues as to whether a stormwater drainage easement or stormwater management facility is part of the Stormwater Control Measures for which the Association is responsible or whether it is the responsibility of an Owner shall be determined by the Declarant during the Development Period (unless Declarant assigns such right to the Board), and thereafter by the Board.

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

With respect to its obligations under this Section, the Association shall pay, post, provide for or comply with all bonds and other financial obligations under Legal Requirements, Stormwater Agreements, and/or other agreements related to Stormwater Control Measures that are executed by the Association (or, during the Development Period, by the Declarant on behalf of the Association or for later assignment to the Association), and the Association (and, during the Development Period, the Declarant on behalf of the

Association) may enter into Stormwater Agreements and/or other agreements and amend, add to, or supplement existing Stormwater Agreements and other agreements (and when Stormwater Agreements or other agreements are referred to in this Section, the reference includes amendments, additions, and supplements thereto), with the Town, State another association that exists for purposes similar to those of the Association, or any other Person with respect to inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating and managing any part or all of the stormwater on, to, or from the Property and/or any or all of the Stormwater Control Measures for the Property, whether such Stormwater Control Measures are located within or outside of the Property. Such Stormwater Agreements and other agreements shall be binding on all Owners (or, with respect to Limited Common Area, all Owners to whose portion of the Property such Limited Common Area is assigned), and may require payments from the Association or the Owners whose Lots are served by the applicable Stormwater Control Measures for the services provided by the Town, State or such other Person in inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such Stormwater Agreements and other agreements may include all other terms and obligations required by Legal Requirements. In connection with the foregoing purposes expressed in this paragraph, the Association (and, during the Development Period, the Declarant on behalf of the Association) may grant rights over, in, under, upon and through any and all stormwater drainage easements in the Property, and may grant rights over, in, under, upon and through all easements in the Property that provide pedestrian and/or vehicular access from a publicly dedicated street right of way to and from stormwater drainage easements and/or Stormwater Control Measures. Provided, however, during the Development Period no such Stormwater Agreement or other agreement shall be valid unless the same shall have been consented to in writing by the Declarant.

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the Property (for example, because of the topography of the different Neighborhoods or phases of the Property, as different portions of the Property are developed it may be desirable for a portion of the Property to have Stormwater Control Measures separate from and/or in addition to, other Stormwater Control Measures in or serving other portions of the Property and it may be desirable for other portions of the Property to utilize Stormwater Control Measures located outside of the Property), and in further recognition of the desire of the Declarant for the provisions of the Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Property of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by the Town or State, in fulfilling its obligations under the Declaration the Association (or, during the Development Period, the Declarant on behalf of the Association or for later assignment to the Association) may enter into different Stormwater Agreements and other agreements for different portions of the Property, and/or may amend, add to, or supplement existing Stormwater Agreements (including the Town/County Stormwater Agreement, subject to all of the other terms of the Declaration. It further is recognized and contemplated by the Declaration that if such multiple Stormwater Control Measures and/or Stormwater Agreements or other agreements are determined to be necessary or desirable: (i) the costs of maintaining such Stormwater Control Measures and/or funding such Stormwater Agreements or other agreements may be different for different portions of the Property and annual assessments and/or stormwater assessments (as defined herein) may be different for Lots in different portions of the Property (for example, there may be different portions of the Subdivision that have different Stormwater Control Measures or different portions of the Subdivision that share some of the same Stormwater Control Measures but also have one or more separate Stormwater Control Measures); and (ii) some Stormwater Control Measures may be classified as Limited Common Area (and during the Development Period Declarant has the right to designate Stormwater Control Measures as Limited Common Area, including existing and new Stormwater Control Measures in the Property as well as existing and new Stormwater Control Measures associated with Additional Property).

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

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

ARTICLE IV
EASEMENTS AND PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Easements and Agreements Regarding Association Property. All Common Areas, including Limited Common Areas, shall be subject to, and Declarant and the Association do hereby reserve or grant, as applicable, the following easements:

(a) Use of Common Areas. An easement in favor of Declarant and any Builder for the exclusive use of such portions of the Common Areas, including, but not limited to any Recreational Amenities, on the Common Area, as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the marketing or sale of; any Lots, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by any and all Persons whom the Declarant or any Builder shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers, and their subcontractors, of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant or any Builder. Such easements in favor of Declarant or any Builder shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate two (2) years after the later of the end of the Development Period or the date that all of the Lots are Improved Lots. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Areas shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(b) Declarant Activities. Notwithstanding any provision contained in the Governing Documents to the contrary, or any amendments thereto, until the expiration of the Development Period, Declarant expressly reserves for itself, and any Builder, and any Person authorized by Declarant or any Builder, in the sole discretion of the Declarant or Builder (as applicable) and without payment of any fee or charge

or compensation to any Person for doing so, the right to do any and all of the following, which right also includes the right of vehicular and pedestrian access, ingress, egress and regress over any portion of the Property reasonably necessary for the exercise of the right to: (i) tie into any portion of the Property with driveways, parking areas, and walkways; (ii) tie into and/or maintain any device which provides utility or similar service including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under, or over the Property; (iii) carry on sales, marketing, and promotional activities on the Property; (iv) construct and operate business offices, signs, construction trailers, and model residences; (v) maintain and carry on, upon such portion of the Property as Declarant or any Builder (as applicable) may deem necessary, such facilities and activities as may reasonably be desired by the Declarant, Builder, and such authorized Persons; and (vi) take any corrective actions as may be necessary or desirable to complete development and build-out under the Subdivision Plan. The rights of Declarant, Builder, and any Person approved by Declarant under this subsection shall further specifically include, without limitation, the right to keep entrances to the Property unlocked and open during the sales office hours.

Section 2. Easements Over All Lots. Without limiting any other rights of Declarant, the Association or any Builder hereunder, the Lots shall be subject to, and the Declarant does hereby grant, the following non-exclusive easements for the enjoyment of Declarant, the Association, any Builders, and any subcontractors authorized by Declarant or Builder, the Members, the Owners, and the successors-in-title of each, which shall run perpetually except that to the extent they run in favor of Declarant they shall run until expiration of the Development Period (unless otherwise expressly stated):

(a) Easements Shown on Plats. Each portion of the Property shall be subject to all easements, borders, setbacks, buffers and other matters which are shown and depicted on the Plats as affecting and burdening such portion of the Property.

(b) Entrance Monuments. Any Lot on which an entrance monument, sign, or other improvement (including landscaping, walls, fences) related to such entrance monument or sign is located, or on which there is an easement reserved for any such entrance monument, sign, or other improvement, shall be subject to a perpetual easement in favor of the Association (and during the Development Period the Declarant) for maintenance of such entrance monument or sign and related improvements which are or will be located on said Lot. The Owners of these Lots shall not remove, camouflage, damage or otherwise alter in any way said entrance monuments or sign and related improvements. These same Lots shall also be subject to a temporary easement for real estate sales signs which shall be exercisable by any and all persons who the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and Builders of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant. Such temporary easement shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate thirty (30) days after all Lots in the Community are Improved Lots.

(c) Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration.

(d) Encroachments. Reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, are hereby established between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment

exist if such encroachment occurred due to willful and knowing conduct on the pad of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(e) Maintenance. Each Lot shall be subject to a perpetual easement in favor of the Association and its contractors for the maintenance of Lots (or Improvements thereon, or generally adjacent thereto, including but not limited to retaining walls and ponds, if any), or other maintenance if and to the extent contemplated in the Declaration.

(f) Private Streets. All Lots shall be subject to a perpetual easement in favor of the Association and all other Lot Owners for maintenance, management, repair, landscaping, and non-exclusive use and enjoyment of the private streets, lanes, drives and alleyways (including those that have been dedicated to public but not yet accepted for maintenance and maintained), if any, which are located on the Property, as shown on the Plats, whether said streets and drives are located in the Common Areas or are located on Lots. This easement right includes the right of contractors engaged by the Association to enter upon the Lots from time to time as necessary in order to perform such repair and maintenance work. The Owners of the Lots shall not impair access to, or otherwise alter in any way, said street and drives. The Association shall also have the right, but not the obligation, to cut, remove and plant trees, shrubbery and flowers along said streets, drives and alleyways.

(g) Slope Control. Each Lot shall be subject to an easement in favor of the Declarant, the Association, Builders, and subcontractors, as well as any Governmental Entity for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(h) Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over and across such Lot.

(i) Utilities. Each Lot shall be subject to a perpetual easement in favor of the Declarant, the Association, Builders, and subcontractors, as well as any Governmental Entity or public utility company who installs, provides, or maintains such services, for the erection, installation, construction and maintenance of wires, lines, conduits, attachments, and other facilities and equipment, both above and below ground, in connection with the transmission of electricity, gas, water, telephone, community antennae or satellite dish, television cables, systems for sending and receiving data and/or other electronic signals, security and similar systems, and other utilities. The easement rights to which the Lots shall be subject shall include the right of employees, agents or contractors engaged by the Declarant, or any Builder, the Association, the Town, or the applicable utility company, to enter upon said Lots from time to time as necessary in order to perform repair and maintenance work and to read utility meters. The Association shall be responsible for the maintenance and management of the private water and sewer facilities, if any, located on or under the Common Areas.

(j) Corrections. Without limitation, easements and related rights: (i) to inspect, monitor, test, redesign, and correct any structure, improvement, or condition (including any wall, swale or lack thereof) which may exist on any portion of the Property, including on Lots, and (ii) a perpetual, nonexclusive easement of access throughout said Property, all as and to the extent reasonably necessary to exercise the rights described in this subsection (j) or otherwise in this Declaration. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a house shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise

Section 3. Specific Easements. Declarant reserves for itself, during the Development Period, the non-exclusive right and power to grant and record such specific easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any portion of the Property. The Association (with respect to Common Area) or the Owner of any Lot to be burdened by any easement granted pursuant to this subsection shall be given written notice in advance of the grant and if any such easement burdens any portion of the Property owned by a Builder, then such Builder's written consent shall be required to grant such easement. The location of the easement shall be subject to the written approval of the Association or other Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

Section 4. Minimal Interference. All work associated with the exercise of the easements described in this Article shall be performed in such a manner as to minimize interference with the use and enjoyment of the portions of the Property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the affected portions of the Property, to the extent reasonably possible, to the same or better condition in which it was in immediately prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into any Dwelling or other structure on any Lot or the Common Area, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Section 5. Easements for Maintenance, Emergency, and Enforcement. Easements are hereby established for the Association over the Property as may be reasonably necessary to enable the Association to fulfill its maintenance responsibilities under the Declaration. The Association also shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. The Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

**ARTICLE V
THE ASSOCIATION**

Section 1. The Association. Declarant has caused or will cause the Association to be formed, and the Association does or will exist under its Articles of Incorporation and Bylaws. The Association is and shall be responsible for the maintenance of the Common Area including all Limited Common Area (unless otherwise provided in a Neighborhood Declaration), the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association under the Governing Documents or as the Board of Directors shall deem to be in the best interests of the Members or applicable portion of Members of the Association. The Association shall have all rights and powers reasonably necessary to provide the services and perform the obligations and functions required of it by the Governing Documents.

Section 2. Membership. Each and every Owner of a Lot is a Member of the Association, with classes of membership as provided herein, and, by execution of the Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association and to be subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Lot. An Owner's membership in the Association automatically terminates whenever such Person ceases to be an Owner, and Declarant shall be the Class B Member at all times that Declarant owns at least one (1) Lot (or any unsubdivided land that is part of the Property if Declarant owns no other Lots in the Property). Termination of membership shall not release or relieve any such Owner from any liability or obligation incurred under the Declaration during the period of such Owner's membership in the Association, nor impair any rights or remedies which the Association or any other Owner has with respect to such former Owner.

Section 3. Classes of Membership Voting Rights. The Association initially shall have two classes of voting membership: Class A and Class B.

(a) Class A. The Class A Members shall be all those Persons holding an interest required for membership in the Association (including without limitation all Builders), as specified in this Article, except for those Persons who are Class B Members. Until such time as the Class A Members shall be entitled to full voting privileges, as hereinafter specified, the Class A Membership shall be a non-voting membership except as to such matters and in such events as are hereinafter specified.

Except that Class Members may vote for Directors upon expiration of the Declarant Control Period, the Class A Members shall be entitled to full voting privileges as and where required by the Act, and otherwise on the earlier of the following dates to occur: (i) the date which the Declarant may so designate by notice in a writing delivered to the Association, or (ii) the end of the Development Period. Provided, however, prior to entitling Class A Members to full voting privileges, in any such notice delivered by Declarant to the Association, Declarant may entitle Class A Members to limited voting privileges, subject to such terms and conditions as Declarant, in its sole discretion, determines (provided, however if not sooner granted, the Class A Members shall have full voting privileges upon the expiration of the Development Period). Until the earlier of these dates occurs, the Class A Members shall be entitled to vote only on matters for which it is provided by law that approval of each and every class of membership of the Association is required. When entitled to vote, a Class A Member shall be entitled to cast one (1) vote for each Lot owned by said Class A Member, and where more than one Person owns a Lot, each shall be a Member but there shall only be a single vote allocated to their Lot and exercisable by the Members together; in no event will more than one (1) vote be cast per Lot.

(b) Class B. Declarant shall be the only Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Members shall be entitled to vote on all matters and in all events. During all times that the Class B membership exists the Class B Member is the only Member eligible to vote on Association matters, unless a Legal Requirement requires that all Members have a right to vote. With respect to each Association matter on which all Members are eligible to vote, the Class B Member has ten (10) votes for each Lot owned by Declarant and ten (10) votes for each Lot owned by a Person other than Declarant. Any one or more times that the Class B membership terminates because Declarant owns no Lots, and Declarant later acquires ownership of one or more Lots, the Class B membership shall be reinstated until such time as Declarant again owns no Lots. With respect to any Additional Property annexed to this Declaration by Declarant, Declarant may provide for such additional Class B Member votes in the Association as Declarant determines, in its sole discretion, and such additional Class B Member votes in the Association shall be added to the other Class B Votes in the Association possessed by Declarant to determine the total number of Class B Member votes in the Association. Provided, however, if no specific Class B Member votes is provided by Declarant for Additional Property annexed to this Declaration, Declarant shall have ten (10) votes for each Lot owned

by Declarant and ten (10) for each Lot owned by a Person other than Declarant. At such time as the Class A Members shall be entitled to full voting privileges, as provided in paragraph (a) hereof, the Class B membership shall automatically terminate and cease to exist, and the Class B Member shall be and become a Class A Member insofar as it may then hold any interest required for membership.

Section 4. Joint Ownership. When more than one (1) Person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 5. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Governing Documents for a period of thirty (30) days, said Owner's right to vote as a Member of the Association may be suspended for each infraction of the Governing Documents after Notice and Opportunity for Hearing, and if suspended after Notice and Opportunity for Hearing shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

Section 6. Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Governing Documents by any Owner or such Owner's licensees and invitees. No fine shall be imposed unless the Owner is provided Notice and Opportunity for Hearing. If it is decided after Notice and Opportunity for Hearing that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation without further hearing for each day more than five (5) days after the decision that the violation occurs. All fines shall constitute a lien on all Lots or Units owned by the Owner and shall be paid within thirty (30) days following imposition. Except as otherwise limited by the Act or other applicable law, failure to pay any fine shall subject the Owner to the same potential penalties and enforcement as failure to pay any assessments under Article VI of this Declaration.

Section 7. Limitation on Claims. No claim arising against Declarant or any officer, director, member, manager, employee or other representative of Declarant, including without limitation any claims arising from Declarant's exercise of any right arising from Declarant's Class B membership or arising from any action or inaction by any person in such person's capacity as an officer, director, member or manager of the Association, shall be asserted by the Association more than six (6) months following the later of termination of the Class B membership or the termination of such person's service as an officer or director of the Association. All claims that are not filed in a proper court within the foregoing time period shall be deemed forever waived and released. This section shall not be subject to amendment without the written approval of the Declarant.

Section 8. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is otherwise required by the Legal Requirements or otherwise specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B Member) shall be personally liable to any Owner of any Lot for any mistake of judgment or for any other act or

omission of any nature whatsoever while acting in the capacity of a member of the Board, officer of the Association, or member of a committee appointed by the Board, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud. The foregoing shall not preclude such Person who also is the Owner of a Lot from being liable for matters in the same manner and to the same extent as Owners of other Lots with respect to matters not related to such Person's actions as a member of the Board, officer of the Association, or member of a committee appointed by the Board.

Section 9. Professional Management. The Association may, but shall not be obligated to, as a Common Expense, obtain and pay for the services (inclusive of and other related expenses) of any Person to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association. The Board may delegate such authority to such Person, and authorize such Person to act on behalf of the Association, as the Board determines in the exercise of its discretion.

Section 10. Period of Declarant Control. During the Development Period, the Declarant shall be entitled to appoint, remove, and replace all of the directors of the Board and the officers of the Association, from time to time or at any time, or Declarant may authorize one (1) or more directors of the Board to be elected by the Class A Members of the Association, upon such terms and conditions as Declarant, in its sole discretion, determines. Quorum and meeting requirements are not applicable to Declarant's right to appoint, remove, or replace directors and officers, with no meeting being necessary for Declarant to exercise these rights.

**ARTICLE VI
ASSESSMENTS**

Section 1. Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for a Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such Person in accordance with the terms and provisions of the Act and/or the Governing Documents as applicable. All assessments and charges shall be established and collected as hereinafter provided. All assessments and charges remaining unpaid for a period of thirty (30) days or longer, together with the costs of collection thereof, including reasonable attorneys' fees, shall constitute a lien on the Lot against which they are assessed or charged from the time of the filing of a lien in the office of the Clerk of Superior Court of Wake County, North Carolina, and shall be the personal and continuing obligation of the Person who was the Owner of such Lot at the time when the assessment or other charge first became due and payable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid, as the covenant to pay assessments herein stated is and shall be a covenant running with land.

No Owner shall be exempt from liability for any assessment provided for herein by reason of non-use of the Common Area or such Owner's Lot, or abandonment of a Lot, or temporary unavailability of the use or enjoyment of the Common Area; provided, however that Declarant shall be exempted from paying assessments as herein provided. No Owner shall be relieved of, or released from, the obligation to pay assessments and other charges under the Governing Documents because of any resignation or attempted resignation by such Owner of membership in the Association while such Owner owns a Lot, or because of any suspension of such Owner's membership or membership rights in the Association as allowed under the Governing Documents.

If necessary to establish the right to collect reasonable attorneys' fees under the Declaration, any

obligation of an Owner to pay assessments or other charges or monetary obligations under the Declaration shall constitute evidence of indebtedness for the purpose of establishing under Section 6-21.2 of the North Carolina General Statutes (or any successor statute) the right to collect reasonable attorneys' fees in any action or proceeding to enforce or collect payment of such obligation. Provided, however, the foregoing sentence specifically is intended to supplement, and not to interfere, limit, invalidate or be in conflict with, any provisions of the Act with respect to reasonable attorneys' fees, and in fact this entire Section 1 supplements all provisions of the Act relative to establishment and enforcement of assessment liens, all of which apply as if repeated herein.

Section 2. Purposes of Assessments. The assessments levied by the Association pursuant to this Article shall be used to pay the Common Expenses and other charges as required or allowed by the Declaration. Without limiting the generality of the foregoing, the Association may assess the following types of assessments for payment of the Common Expenses: (i) annual assessments; (ii) working capital assessment; (iii) stormwater assessments; (iv) special assessments for capital improvements or other matters as set forth herein; (v) specific assessments levied against an Owner to reimburse the Association for maintenance expenses resulting from the failure of such Owner to maintain adequately that Owner's Lot, or for damages to Common Elements, or for such other purposes as stated herein; (vi) architectural review fees and costs as specified herein; (vii) fines for violations of Restrictions and Rules and/or Association rules and regulations with respect to use of the Common Elements; (viii) late payment penalties and interest on unpaid assessments and other charges; and any other assessments, if any, for any/all of the following purposes: (1) costs and expenses incurred by the Association in connection with the maintenance of the Common Area and the Association's other operations and Common Expenses; (2) payment of the premiums for all fidelity bonds which shall be obtained by the Association; (3) the payment of the fees of such management firms as the Board of Directors shall employ; (4) payment of fees for the provision of such professional or other services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting, architectural, property management; (5) loans to the Association for construction of the Recreational Amenities; and (6) the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; (7) other charges imposed under authority contained in the Act (specifically including all fees allowed under Section 47F-3-102 of the Act) or Governing Documents (architectural review fees, fines, penalties, interest and other fees and charges all being referred to herein collectively as "other charges"), and, in addition to such assessments and other charges, to pay all costs, fees and expenses, including reasonable attorneys' fees, incurred by the Association in enforcing or collecting any of the foregoing assessments or other charges against such Owner or the Lot of such Owner; and (8) such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its Members.

All assessments and other charges collected by the Association shall be the separate property of the Association. As assessments and other charges are paid to the Association by Owners, such funds may be commingled with assessments and other charges paid to the Association by other Owners. No Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer, such Member's interest in the assets of the Association, except as an appurtenance to the Lot owned by such Member. When any Owner ceases to be a Member of the Association, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association or any portion thereof which may have been paid to the Association by such Owner or acquired with any funds paid to the Association by such Owner.

Section 3. Commencement and Liability for Payment. The assessments provided for herein shall commence as to a Lot on the date that a Lot becomes an Improved Lot and is owned by a Person who is not the Declarant or a Builder (it being expressly provided herein that Builders shall pay no assessments of any kind hereunder for Lots owned by Builders except on Improved Lots they own, if any)

with all Improved Lots owned by the same class of Members of the Association being assessed equally, except for any additional assessments that may be required to pay Neighborhood Expenses associated with a Lot which such assessments shall only be assessed against those Lots in the Neighborhood benefitted by the Neighborhood Expenses. The Annual Assessment for any Lot that first commences with respect to such Lot on any day other than the first day of the applicable fiscal year of the Association is determined for that first fiscal year by multiplying the applicable Annual Assessment amount by a fraction whose numerator is the number of days remaining in that fiscal year from and after the day on which it becomes a Lot and whose denominator is the total number of days in that fiscal year.

Section 4. Operating Budget and Annual Assessment. For the fiscal year beginning on such date as the Board shall determine in its sole discretion and for subsequent fiscal years, the Board shall adopt for each fiscal year a proposed "annual operating budget," also referred to herein as the "budget," containing an estimate of the total amount believed to be necessary to pay all of the Common Expenses for that fiscal year (including, at the Board's discretion, estimated amounts for unexpected contingency items). Based on such proposed budget, the Board shall determine the amount to be assessed against each Lot for that fiscal year to fully fund the proposed budget, such amount being referred to herein as the "annual assessment." In adopting a proposed budget and annual assessment, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the applicable fiscal year. In the Board's discretion, a proposed budget may include a provision that allows the Board to assess and collect from the Owners during the applicable fiscal year, without the necessity of revising the budget and holding a meeting of the membership of the Association to vote on ratification of the revised budget, one or more additional annual assessments, not to exceed a total amount as specified by the Board, as necessary to pay for Common Expenses that exceed the budgeted amount and/or new or unexpected additional Common Expenses incurred during the applicable fiscal year.

Within thirty (30) days after adoption of the proposed budget, the Board shall provide a copy or summary of the proposed budget and annual assessment to all Members (a copy or summary provided to any one (1) of multiple Owners of a Lot is deemed to be provided to all Owners of such Lot), together with a notice of the annual or special meeting of the Association at which ratification of such proposed budget will be considered, including a statement that the proposed budget may be ratified without a quorum for the meeting. The annual or special meeting at which ratification of the proposed budget is to be considered shall be held not less than ten (10) days nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting at which ratification of the proposed budget is to be considered (although if other matters are to be considered at such meeting applicable quorum requirements are in effect with respect to those other matters). The budget is deemed ratified unless rejected at that meeting as follows: (i) if the proposed annual assessment does not exceed the annual assessment for the immediately preceding fiscal year by more than twenty percent (20%), or if any increase over and above a twenty percent (20%) increase from the prior year results from non-controllable expenses (defined below) then the budget is deemed ratified unless ninety percent (90%) of the total votes of the members paying the assessment are cast to reject the budget; (ii) if the proposed annual assessment per Lot exceeds the actual annual assessment per Lot for the immediately preceding fiscal year by more than twenty percent (20%) and the increase is not due to an increase in non-controllable expenses, then budget must be approved by vote of sixty-seven percent (67%) of the votes of the Members paying the increased assessments or it is deemed rejected. In the event that the proposed budget is or deemed rejected in accordance herewith, the budget for the immediately preceding year shall be in effect until such time as the Members ratify a subsequent budget proposed by the Board is adopted by the Members. For purposes hereof, "non-controllable expenses" shall mean all those expenses which are both essential to the operation of the Association and the Community all as herein contemplated and which are set based on rates which are beyond the control of the Association; for example costs to insure the Common Areas, taxes levied on the Common Areas, security for the Common Areas (if applicable)

and utilities for the Common Areas (including irrigation costs for the Common Areas) are non-controllable expenses.

Beginning with the annual assessment for the first fiscal year of the Association, as initially established by the Board, the annual assessment shall be set at nine hundred and seventy-five and no/100 dollars (\$975.00) per Lot. Following the expiration of the first fiscal year of the Association, the failure of the Board to establish the amount of any annual assessment or send timely notice as required herein shall not constitute a violation, waiver or modification of the provisions of the Declaration, or a waiver of the Board's right to establish and collect the annual assessment at any time during the fiscal year to which it is applicable, or a release of any Member from the obligation to pay the assessment or any installment thereof for that or any subsequent fiscal year. Until the Board has established an annual assessment for a fiscal year, the annual assessment for the immediately preceding fiscal year shall continue in effect, but when the new annual assessment is established, it shall be retroactive to the first day of the applicable fiscal year, and notice of same shall be sent to the Members not less than thirty (30) days in advance of the payment due date specified in the notice. If the annual assessment for any fiscal year has not been established by the last day of the immediately preceding fiscal year, the Board may send a notice of assessment to the Members for the amount of the immediately preceding fiscal year's annual assessment, together with notice that a new assessment may be established for that fiscal year that may require an additional payment. Once the new annual assessment is established, any additional amount owed is due and payable by the payment due date specified in a supplemental notice to the Members sent not less than thirty (30) days in advance of the payment due date specified in the supplemental notice.

During any fiscal year, the Board may revise the budget and adjust the annual assessment (including the maximum amount of any additional annual assessment), subject to the same notice and ratification requirements as those applicable to the initial budget for that fiscal year. Upon ratification of a revised budget, it shall replace all previously ratified budgets for the applicable fiscal year.

Section 5. Special Assessments. In addition to other authorized assessments, the Association may levy "special assessments" during any fiscal year to pay for any or all of the following: (i) unbudgeted Common Expenses; (ii) Common Expenses in excess of those budgeted; or (iii) the costs of any capital improvements or capital repairs. No special assessment shall be imposed unless approved by the affirmative vote of fifty percent (50%) of the votes of those who would pay the assessments are cast by said Members at a meeting of the Association and, during the Development Period, including the written consent of the Declarant. Notices for all meetings of the Association at which there is to be a vote on a special assessment shall include notice of the purpose and amount of the proposed special assessment. A special assessment is effective on the later of the date it is approved by the Members or Declarant (if such approval is required), or such later date adopted by the Members in the vote approving the special assessment, and is due and payable as established by the vote of the Members approving the special assessment, or, if not established by such vote of the Members, as established by the Board. Each Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this section.

Section 6. Specific Assessments. The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Area, or of any monument, landscaping, detention pond or other thing maintained by the Association, which is occasioned by the acts of individual Owners(s) and not the result of ordinary wear and tear or (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder; provided, that Declarant shall not be obligated to pay any specific assessments. Failure of the Board to exercise its authority under this section shall not be grounds for any action against the Association or the

Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Board shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 7. Neighborhood Assessments. The Board may specifically assess Owners of Lots within Neighborhoods for Neighborhood Expenses as follows: (a) expenses of the Association which benefit all of the Lots in a Neighborhood but not the Lots in other Neighborhoods may be specifically assessed equitably among all of the Lots in such Neighborhood according to the benefit received; and (b) expenses of the Association which benefit all Lots in a Neighborhood, but which do not provide an equal benefit to all such Lots, may be assessed equitably among all Lots in the Neighborhood according to the benefit received.

Neighborhood Expenses shall be budgeted and Neighborhood Assessments shall be determined subject to the same procedures in this Declaration for establishing budgets for Common Expenses and determining annual assessments and special assessments to pay for Common Expenses; provided, however, that some or all Neighborhoods may instead be administered through Neighborhood Associations and under Neighborhood Declarations if established by Declarant, all as herein provided.

Section 8. Working Capital Contribution. Upon the closing of any sale of any Improved Lot by Declarant or by any Builder, to a homeowner, and only upon such initial sale, the Owner shall pay to the Association a one-time initial capital contribution in the amount of \$500.00 for each Lot. This contribution shall be collected at the applicable closing and shall be part of the general operating funds of the Association. It shall be the obligation of every purchaser to verify with the Association the amount of the working capital amount due at the Lot closing. Such sum is and will remain distinct from the annual assessment and will not be considered advance payment of the annual assessment. The working capital receipts may be used by the Association in covering operating expenses or any operating short-fall, as well as any other expense or capital outlay incurred by the Association pursuant to this Declaration and the Bylaws.

Section 9. Reserve Funds. The Association shall establish and maintain one or more reserve funds, as the Board shall determine, for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Property which the Association may be obligated or deem desirable to maintain. Such reserve funds shall be established out of regular annual assessments in accordance with standard accounting practices and procedures for Common Area replacements and maintenance in the initial budget of the Association. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in at least the amount of reserves established in the initial budget unless a lower level of reserves is approved by the vote or written consent of greater than fifty percent (50%) of all votes in 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 greater than fifty percent (50%) of all votes in 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 or any later-adopted budget of the Association and expended for the purpose for which such other reserve fund has been established.

Section 10. Collection of Assessments; Penalties for Late Payment.

(a) Assessments may be collected on a monthly, quarterly, annual or other basis, as determined

from time to time by the Board, with the payment due date to be specified in the notice of the applicable assessment. The billing schedule and payment due date shall be the same for all Owners. Provided, however, the Board has the power, in its sole discretion and upon such terms as the Board deems appropriate, to allow percentage discounts to Owners who pay assessments earlier than the payment due date therefor; provided, however, all such discounts shall be made available and applied uniformly to all Owners.

(b) Subject to any limitations contained in the Declaration, other Governing Documents, or any Legal Requirement, the Board has the authority to establish the payment due dates, interest rate on unpaid amounts, and penalties for late payment of assessments and other charges. Assessments and other charges not paid by the payment due date shall bear interest at a rate equal to the lesser of (i) eighteen percent (18%) per annum, or (ii) the highest lawful rate under Legal Requirements, or (iii) the amount, if any, established by the Board (or, in the absence of any amount being established by the Board, the lesser amount otherwise established by this subsection). In addition to the obligation to pay the assessment and other charges and interest charges thereon, the defaulting Owner also shall pay all of the Association's costs and expenses of collection thereof, including reasonable attorneys' fees.

(c) The Board may authorize a management company or other billing agent, on behalf of the Association, to bill and collect all assessments and other charges payable under the Declaration.

Section 11. Certification of Assessments Paid. The Association, or any property manager or agent authorized by the Association, upon written request, shall furnish to any Owner or such Owner's authorized agents, a certificate signed by an officer of the Association or other Person authorized by the Board to give such certificate setting forth whether or not and through what date the assessments and other charges against that Owner's Lot have been paid, and the amount of any unpaid assessments or charges. The certificate shall be furnished within ten (10) business days after receipt of the request therefor and is binding on the Association, the Board and every Owner. The Association or property manager or agent authorized to furnish the certificate may charge a reasonable fee for furnishing the certificate as established or approved by the Board.

Section 12. Assessment Lien and Foreclosure. The assessments and other charges provided for herein shall be the personal and individual debt of each Person who, at the time of the assessment or other charge, is an Owner of the Lot against which they are assessed or charged. Any assessment or other charge not paid on or before the payment due date and remaining unpaid for a period of thirty (30) days or longer, together with the fines, penalty and interest charges as provided in the Declaration, plus the costs of collection (including reasonable attorneys' fees), shall be a charge and continuing lien on the Lot against which they are assessed or charged from and after the date on which a claim of lien is filed by the Association in the office of the Clerk of Superior Court of the County in which the Lot is located. Except as otherwise provided in the Declaration or by Legal Requirements, such lien shall be superior to all other liens and charges against the Lot. The Board shall have the power, in its sole discretion, to subordinate the Association's lien to any other lien. The claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed. In addition to the claim of lien, the Association may execute, issue or record such other evidence of the lien as the Board deems necessary. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under a Power of Sale or in any other manner allowed or required by Legal Requirements, and/or the Association may institute suit against the Owner personally obligated to pay the assessment or charge, and/or the Association may seek any other available remedy or relief. In any foreclosure proceeding, the Association shall have the right to appoint a trustee or commissioner (or other appropriately named Person) to implement the foreclosure, and the defaulting Owner shall be required to pay the costs, expenses, trustee's (or commissioner or other) fees, and reasonable attorneys' fees incurred by the Association. The Association shall have the power to

bid on and purchase the Lot at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal therewith. The remedies against a defaulting Owner and such Owner's Lot are cumulative and not mutually exclusive, and the Association may seek none, or any one or more of such remedies, separately or simultaneously, as deemed appropriate by the Board.

Section 13. Lien Priority. The lien for unpaid assessments and other charges provided for herein is prior to all liens and encumbrances on a Lot except (i) liens for ad valorem taxes on the Lot; (2) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; (3) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot; and (4) the lien of any mortgage given by any Builder or other Person to secure payment of any sum owed to the Declarant, whether or not Declarant is the seller of the Lot liens and encumbrances. Provided, however, this Section does not affect the priority of mechanic's or materialmen's liens. A lien for unpaid assessments and other charges is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing of the claim of lien in the office of the Clerk of Superior Court of the County in which the Lot is located. Where the holder of a First Mortgage, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a First Mortgage or deed or other proceeding in lieu of foreclosure, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Owners, including such purchaser, its heirs, successors, and assigns in the event that the Association is unable to collect, or chooses not to pursue collection, from the Person who was the Owner of the Lot during the time the assessments were assessed against the Lot.

Section 14. Exempt Property. All Exempt Property is exempt from the assessments, charges and liens established pursuant to the Declaration.

Section 15. Declarant's Obligation; Lots owned by Declarant or Builder. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Lot owned by the Declarant shall be subject to any assessment provided for in this Article VI. Rather, all Lots owned by the Declarant shall be exempt from the payment of all assessments for so long as such Lots are owned by the Declarant. However, in the event the Declarant shall pay any amount(s) necessary to cover any shortfalls or deficits in the budget or to pay any expenses that should have been paid from the Annual Assessments, such amount(s) so paid by the Declarant shall be credited against the Declarant's obligations to pay any further assessments, if such obligation to pay assessments were imposed upon the Declarant by law. At such time as any Lot which is owned by the Declarant shall be conveyed or transferred by the Declarant then all liens and assessments provided for in this Article VI shall be thereafter due and payable as herein provided. The amount of each Annual Assessment which shall become so payable with respect to any Lot shall be prorated according to the respective portions of the fiscal year that such Lot was owned by the Declarant and by such successor owner.

For each Lot owned by any Builder (other than Declarant), Builder shall pay twenty-five percent (25%) of all assessments for each Lot owned by such Builder until such time as the Lot becomes an Improved Lot. At such time as the Lot becomes an Improved Lot, Builder shall commence paying the full amount of the assessments for such Lot.

**ARTICLE VII
ARCHITECTURAL CONTROL**

Section 1. Architectural Control.

(a) Except for ordinary and routine maintenance to an existing Improvement, and excluding routine planting and maintenance of flowers, bushes, grass, and trees that do not result in any material change in the landscaping approved as part of the Approved Plans ("material" being as determined from time to time by the Reviewer) or allowed by any Architectural Guidelines without the necessity of obtaining Approved Plans, and except as otherwise provided herein (for example, portions of the Property exempt from architectural review), no improvement, and no alteration, addition to, or changes to any Lot shall be commenced, nor shall any of the same be placed, altered or allowed to remain, until the Reviewer has approved in writing the Plans therefore, or the Architectural Guidelines allow the improvement without the necessity of obtaining Approved Plans.

(b) No structure or Improvement shall be constructed, placed at or installed upon any Lot in a location without the prior written approval of the ACC, which approval may be withheld in the sole discretion of the ACC. No fence shall be constructed or erected upon any Lot in any location without the prior written approval of the ACC. No chain link, wire, or mesh fencing material shall be erected or maintained on any Lot or other portion of the Property.

Section 2. Combination/Subdivision of Lots. No Contiguous Lots may be combined together, nor may any Lot be subdivided into more than one Lot, without prior written consent of the Declarant, during the Development Period. Where two Lots are combined they shall be assessed as two Lots and where one Lot is subdivided into two Lots each resulting Lot shall be assessed as any other Lot.

Section 3. Architectural Review.

(a) Until the later of the end of the Development Period or the date on which one hundred percent (100%) of the Lots are Improved Lots and are owned by Persons other than the Declarant, the Declarant has the sole right under the Declaration to serve as the Reviewer with respect to all improvements. In reviewing and acting upon any request for approval of Plans for improvements, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant, in its sole discretion, may designate one or more Persons to act on its behalf in reviewing Plans. Declarant may, at any time and from time to time, temporarily or permanently, but without any obligation to do so, delegate all or any portion of its rights reserved under this Article to an ACC. Prior to the end of the Development Period, Declarant may modify or terminate any or all its rights reserved under this Article in whole or in part, at any time and from time to time, temporarily or permanently, by recording an instrument in the Registry describing the action taken by Declarant.

(b) Upon delegation by Declarant during the Development Period, and upon the end of the Development Period, the Association, acting through an ACC appointed by the Board, shall assume jurisdiction and responsibility for architectural review under this Article. The members of any ACC need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals. The number, qualifications, composition, jurisdiction, procedures (including appeal of its decisions to the Declarant or Board), and compensation of the members, if any, of the ACC shall be established from time to time by the Declarant or Board, as applicable.

(c) The Declarant or the Board, as applicable, may establish and charge reasonable fees for review of applications and Plans hereunder and may require such fees to be paid in full prior to review thereof. Such fees may include the reasonable costs incurred in having any Plans reviewed by architects, engineers or other professionals. If any such fees are required in connection with any review, no Plans submitted for review shall be complete until such fees are paid.

Section 4. Review Procedures. When Approved Plans are required for commencement of

any improvement, the required number of sets of Plans for the proposed improvement (as determined by the Reviewer), together with any application or request for approval and review fees required by the Reviewer, shall be submitted to the Reviewer by the Person requesting the approval or such Person's authorized representative. The Architectural Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application. All of the foregoing together constitutes a "complete application", and no time period within which any Reviewer under this Declaration is required to complete the review shall commence until the Reviewer has received a complete application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review (except with respect to appeals to the Declarant or Board as may be authorized by the Declarant or Board) so long as made in good faith and in accordance with the procedures set forth herein.

The Reviewer shall make a determination on each application within forty-five (45) days after receipt by the Reviewer of a complete application. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer shall notify the applicant in writing of the final determination on any application within five days after making the determination. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond in a timely manner to a complete application, the application shall be deemed to have been rejected. However, no approval, expressly, shall be inconsistent with the Architectural Guidelines unless a written variance has been granted. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the United States Postal Service and addressed to the applicant at the mailing or residence address indicated on the application for review. However, personal delivery of such written notice shall be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project within one (1) year (or within any other shorter or longer commencement timeframe specified in the written decision of the Reviewer with any such timeframe trumping the one-year default timeframe) after the date of approval or conditional approval (as the case may be), then such approval or conditional approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Section 5. Architectural Guidelines. Declarant may (but need not) prepare initial Architectural Guidelines, which may contain general provisions applicable to all of the Property as well

as specific provisions which vary from Neighborhood to Neighborhood. Any Architectural Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Architectural Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Architectural Guidelines does not guarantee approval of any application. Declarant shall have sole and full authority to put in place and implement and amend the Architectural Guidelines during the Development Period, notwithstanding a delegation of reviewing authority to the ACC or any other Person, unless Declarant also delegates the power to amend the Architectural Guidelines to the ACC. Upon termination or delegation of Declarant's right to amend, the ACC shall have the authority to amend the Architectural Guidelines with the consent of the Board, and the Board shall have the authority to amend the Architectural Guidelines following the end of the Development Period.

Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

Upon request, the Reviewer shall make the Architectural Guidelines available to Owners and Builders who seek to engage in development or construction within the Property in Declarant's discretion, such Architectural Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

Section 6. No Waiver of Future Approvals. Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future Approval of Plans, granting of variances, or other approvals given in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

Section 7. Legal Requirements. Approval by the Architectural Control Committee of any Plans shall not relieve the Owner, Builder, or applicant from any obligation to obtain all required Town and State approvals and permits, and shall not relieve the Owner, Builder, or applicant of the obligation and responsibility to comply with all Legal Requirements with respect to such improvements.

Section 8. Variances. The Reviewer may authorize variances from compliance with any of the applicable Architectural Guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall: (a) be effective unless in writing; (b) be contrary to this Declaration; (c) preclude the Reviewer from denying a variance in any other circumstances; or (d) be contrary to any Legal Requirements. For purposes of this Section, the inability to obtain approval of any Governmental Authority, the issuance of any permit or the terms of any financing shall not be considered a hardship warranting a variance.

Section 9. Limitation of Liability. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; they do not create any duty to any Person. Review and approval or denial of approval or conditioning of approval

of any application pursuant to this Article may be made on the basis of aesthetic considerations only, and the Reviewer 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, nor for ensuring that all Dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners.

Declarant, the Association, the Board, the ACC, or member of any of the foregoing shall not be held liable for any of the following: soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder or their failure to comply with Legal Requirements; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a builder in the Property or anywhere else; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any improvement. In all matters, the Association shall indemnify the Board, the ACC, and the members of each as provided in the Governing Documents.

Section 10. Certificate of Compliance. Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Reviewer shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall preclude the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

Section 11. Violation. When Approved Plans are required under this Article prior to the commencement of the construction, installation, alteration, addition, removal, or maintenance of any improvement, in the event that any such construction, installation, alteration, addition, removal, or maintenance commences, or is undertaken or performed in the absence of Approved Plans or in violation of Approved Plans, the Person upon whose portion of the Property such activity was undertaken or performed may be required by the Declarant (during the Development Period) or by the Board to restore to its original condition, at such Person's sole expense, the portion of the Property upon which the activity was undertaken or performed. Upon the failure or refusal of any Person to perform the restoration required herein, the Declarant or Board, as applicable, or their authorized agents or employees, may, after fourteen (14) days' prior notice to such person, enter upon such portion of the Property and make such restoration as the Declarant or Board, as applicable, in the exercise of its discretion, may deem necessary or advisable. The Owner of the portion of the Property upon which such restoration work shall have been performed shall be personally liable to the Declarant or Association, as applicable, for all direct and indirect costs which the Declarant or Association incurs in the performance of such restoration work, including without limitation attorney's fees and court costs related to the collection of such costs from the Owner, and the liability for such costs shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration.

Section 12. Declarant and Association Exemption. NOTWITHSTANDING ANYTHING STATED TO THE CONTRARY HEREIN, NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED AS PROHIBITING OR LIMITING ANY CONSTRUCTION, INSTALLATION, ALTERATION, ADDITION, REMOVAL, OR MAINTENANCE OF ANY IMPROVEMENT, BY DECLARANT OR AT THE DIRECTION OF DECLARANT, OR BY ANY BUILDER WHO HAS WRITTEN APPROVAL FOR SUCH ACTIVITIES BY DECLARANT; THIS ARTICLE SHALL NOT APPLY TO ANY SUCH ACTIVITIES AND NO APPROVALS UNDER THIS ARTICLE ARE REQUIRED THEREFOR.

Section 13. Right of Entry to Inspect Improvements. Notwithstanding those rights of entry

and easements otherwise reserved for the Association, the Board, and the ACC, and in any event in addition thereto and in no way limiting the same, the Association, Board and ACC shall have the right of entry, access, and are hereby granted a perpetual easement onto and over any Lot for the purpose of inspecting Improvements, approved or otherwise, and the rights under this Section 13 shall not expire and need not be exercised in conjunction with the timing of any construction of aforesaid Improvements, but may be exercised at any time by the Association, Board, and ACC.

**ARTICLE VIII
USE OF THE PROPERTY**

In order to provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the provisions in this Article; EXCEPT THAT this Article shall not apply in any way limited development, construction, corrections, sales and marketing efforts, activities and signage of Declarant (or as approved in writing by Declarant) during the Development Period, and EXCEPT THAT this Article shall not apply in frustration of any express allowances for special use of Common Areas under Article III, Sections 10 and 11 herein:

Section 1. Residential Use. Except as otherwise provided in this Declaration, all the Lots are hereby restricted to residential uses only and for single-family occupancy, and no business or business activity shall be carried on or upon any Lot at any time, except with the prior written approval of the Board of Directors and in accordance with the terms and conditions set forth herein below. When used herein, “single-family occupancy” shall mean occupancy by (a) an individual and the individual’s children and/or parents, or (b) two (2) or more persons related by blood, marriage, adoption, guardianship, or duly-authorized custodial relationship and their children and/or parents, or (c) any two unrelated persons and the children and/or parents related to either of them, or (d) a group of no more unrelated persons than the number of bedrooms in the residence located on the lot, living together as a single housekeeping unit. A group of unrelated persons will be deemed to be living together as a “single housekeeping unit” when the occupants have a family-like structure, and/or a sharing of responsibility associated with the household such as equitable rent, use of space, etc. This definition is intended to exclude (i) any group whose association is temporary or seasonal in nature, such as a group of college students sharing a house, and (ii) any group providing a framework for transients or transient living.

(a) Business Activity. Nothing herein shall prevent the Declarant or any Builder of homes in the Subdivision who is approved by Declarant from using any Lot owned by Declarant or such Builder for the purpose of carrying on business related to the development, improvement and sale of property in the Subdivision; and provided, further that, to the extent allowed by applicable zoning laws, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling. Except as provided in this Declaration, no Owner shall use or cause or permit his Lot to be used for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose, except with the approval of the Board or ACC empowered by the Board to do so, and provided that:

- (i) The existence or operation of the business is not apparent or detectable by sight, sound or smell from outside the dwelling;
- (ii) The business activity conforms to all zoning requirements for the Subdivision;

(iii) The use of a portion of a residence as an office by an Owner or an occupant will not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic;

(iv) The business activity does not involve door-to-door solicitation of residents in the Subdivision; and

(v) The business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, a hazardous or offensive use or threaten the security or the safety of other residents of the Subdivision, as may be determined in the sole discretion of the Board of Directors of the Association.

The term “business” and “trade” as used in this Section shall be construed to have the ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether:

- (A) such activity is engaged in full or part time;
- (B) such activity is intended or does generate a profit; or
- (C) a license is required therefor.

This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Lots that it owns within the Subdivision.

Sections 2. Sales Offices; Model Homes. Notwithstanding the provisions of Section 1 of this Article or any other provision of this Declaration, Declarant, for itself and its successors or assigns, hereby reserves the right to maintain sales offices and model homes for sales of Lots throughout the Property. Declarant, its successors or assigns, shall have the right to relocate, and to discontinue and re-establish, sales offices and model homes within the Property from time to time until all of the Lots have been conveyed to Owners other than Declarant. Declarant, its successors and assigns, also shall have the right to change the use or combination of uses of such offices or model homes. Model homes are those homes constructed by Declarant, as well as by any Builder of homes in the Subdivision approved by Declarant to build model homes, which are used for the purpose of inducing the sale of other homes in the Subdivision. Declarant, its successors or assigns, also reserves the right to erect and maintain signs on the Common Area, or on any Lot owned by Declarant or Builder, advertising the Property until all of the Lots have been conveyed to Owners other than Declarant or Builder.

Section 3. Minimum Square Footage. The minimum square footage of each home constructed upon a Lot shall be not less than one thousand nine hundred (1,900) square feet of heated space; provided, however, that the aforesaid square footage requirement shall be based on interior floor space, exclusive of basements, garages, porches, decks, balconies and overhangs.

Section 4. Temporary Structures. Except as provided in this Declaration, no residence or structure of a temporary nature (unless approved by the Board or ACC empowered by the Board to perform such review and approval) shall be erected or allowed to remain on any Lot, and no boat, truck, trailer, camper, shack, tent, barn, detached garage, recreational vehicle or any other building or vehicle of a similar nature shall be used as a residence on any Lot, either temporarily or permanently; provided, however that

this Section shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

Section 5. Accessory Structures and Sheds. No metal carport, free standing metal garage, or free-standing metal utility building shall be erected on any Lot or attached to any residence located on the Lot. Any accessory structure which is approved for construction shall comply with the architectural requirements of this Declaration and the Board or the ACC so empowered by the Board, and shall be made of similar material and colors to match the existing home. All accessory structures must be located on any Lot so that it is directly behind the residence as viewed from a point on a line of sight along the side of the house perpendicular to the street right-of-way. Such structures shall not exceed 120 square feet, unless the Board or ACC so empowered by the Board approves a greater square footage.

Section 6. Outdoor Living Space. The Declarant/Builder reserves the right to build an outdoor living space to be designed at its discretion. Homeowners must submit an architectural approval request for any additions or changes being made to the exterior of their property as noted in Article VII of this Declaration.

Section 7. Mailboxes. Declarant may install one (1) or more cluster mailboxes on the Property and may assign a single box in each cluster to each Lot. If cluster mailboxes are installed and assigned to a Lot then the Owner of said Lot may not install any additional mailbox on its Lot. The Association shall be responsible for the maintenance, repair and replacement (if necessary) of all cluster mailboxes, with any and all costs associated with the same being a Common Expense (or a Neighborhood Expense, as applicable). Declarant may install, maintain, repair and/or replace cluster mailboxes on any portion of the Common Area or in any easement area shown on any record plat (including any easement on a Lot if applicable). Notwithstanding the foregoing, if at the time of any conveyance, cluster mailboxes are located on any portion of any Lot, the Association shall have an easement over said Lot as reasonably necessary for maintenance, repair and replacement of the same, regardless of whether or not said easement is shown on a record plat. Except that the Association shall maintain, repair and replace any cluster mailboxes so as to keep the same in good working order (with each Owner having the duty to report any problems with its mailbox to the Board), neither the Association, the Board, nor Declarant shall have any liability relative to condition, operation or access of/to the cluster mailboxes (or any events/actions/occurrences arising from the same or lack of the same) AND BY ACCEPTANCE OF THE DEED FOR ANY LOT, EACH OWNER THEREBY WAIVES ANY OR ALL CLAIMS, ACTIONS AND/OR DAMAGES REGARDING OR ARISING OUT OF THE SAME, AGAINST THE BOARD, THE ASSOCIATION OR THE DECLARANT.

Section 8. Obstructions. No part of any structure or the lower branches of trees or other vegetation shall be permitted to obstruct the view at street intersections. 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.

(a) Removal of Obstructions.

(i) The Declarant, its successors or assigns, or the Association, without notice, may remove any obstructions of any nature located within road rights-of-way (including, but not limited to, trees, shrubs, fences, basketball goals and mailboxes) which, in the opinion of the Declarant, its successors or assigns, or the Association, either might produce a hazard or might interfere with the ability or willingness of the State or any municipality (or agency or department thereof) to take over the responsibility for maintenance of the roads.

(ii) The Declarant, its successors or assigns, or the Association, shall have the right, in its sole discretion, to charge the actual cost of removing obstructions to the Lot Owner who,

directly or through his agents, contractors or invitees, caused or permitted the obstruction to be placed in the road right-of-way, and such Lot Owner shall indemnify and save the Declarant, its successors or assigns, and the Association, harmless from all liability, claims, damages and expense imposed upon the Declarant, its successors or assigns, or the Association, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-way and its removal. In the event that the Lot Owner responsible for such charge or liability fails and refuses, after demand by the Declarant, its successors or assigns, or the Association, to pay said charge or liability, then the Declarant, its successors or assigns, or the Association, shall have the right to levy a specific assessment against the Lot of that Owner for the violation or non-compliance. The amount of a specific assessment may include any cost to remedy the violation or non-compliance, and/or to enforce compliance (including attorney's fees) and any costs of collection and/or enforcement.

Section 9. No Timeshares. No part of the Property subject to this Declaration, including any improvements thereon or to be built thereon, will be used for or subject to any type of Time Share Program or Time Share Project as defined by the North Carolina Time Share Act, N.C. Gen. Stat. 93A-41 (1983), or any subsequent laws of this State dealing with that or similar type of ownership by a Lot Owner, or which is used for, in conjunction with and/or as an advertised part of any time share exchange program which makes available as accommodations the Lot and which is not otherwise registered as a Time Share Program or Time Share Project or which utilizes the Lot as accommodations for time share sale prospects of any person.

Section 10. No Offensive and Unlawful Activity. No noxious, offensive or unlawful activities shall be conducted on any Lot, on the Common Area, or in any other part of the Subdivision. Nothing shall be done within the Subdivision that is, or becomes an unreasonable annoyance, inconvenience or nuisance to other residents of the Subdivision, or which unreasonably interferes with the quiet enjoyment of occupants of Lots.

Section 11. Parking. Without limitation, the Board may enforce this Section 11 by towing vehicles (or having them towed) at the sole cost and expense of the Owner of the Lot being visited or serviced by the vehicle that is improperly parked. The following parking restrictions apply in the Community:

(a) Commercial vehicles are prohibited within the Community except as expressly provided in this Section. For purposes of this Declaration, a "commercial vehicle" shall include any vehicle having a carrying capacity and/or size designation greater than or equal to three-fourths (3/4) ton; any vehicle other than a law enforcement vehicle bearing a company name or logo; any vehicle with ladders on top or in a truck bed; and any "box" van or truck. The Board shall have the authority to further define the term "commercial vehicles" in the Rules and Regulations to include other vehicles used primarily for commercial purposes other than commuting to and from the workplace.

(b) Unless otherwise permitted by the Rules and Regulations, no boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or left (a) on any part of the Common Area, except such portions of the Common Area (if any) as may have been designated by the Board for such purpose; (b) in any driveway or (c) on any other part of a Lot, (d) or otherwise in the Community unless the same are fully enclosed within the garage located on the Lot and the garage door closed when not entering and exiting the garage.

(c) Restrictions contained in this Section shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant and such Builders as may be designated by Declarant and their agents, invitees and contractors in the conduct of their business prior to Completion of Sales.

(d) No boat, truck, trailer, pre-manufactured home, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Community. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Community, except in the case of emergency and except as may be permitted by the Rules and Regulations. No unlicensed, wrecked or inoperable vehicles may be left on a Lot outside an enclosed structure.

(e) Public street-side parking (meaning parking along any street or road in the Community) of any vehicles is prohibited; provided, however, that temporary street-side parking by guests or invitees visiting or providing services to any Owner at its Lot is allowed so long as: (i) the visiting/servicing vehicle is parked directly in front of the benefitted Lot, (ii) the street-side parking does not inhibit or materially impede traffic and/or create an unsafe condition within in the Community; and (iii) the street-side parking does not continue for more than 8 consecutive hours or 8 hours in any single calendar day.

(f) Private street-side parking (meaning parking along any private street, drive, lane, alleyway, or road in the Community owned or maintained by the Association) of any vehicles for any purpose or for any length of time is prohibited.

Section 12. Garages. Garage doors are required for garages. All ducts, pipes and wiring in garages shall be concealed from view above the level of the finished ceiling. For aesthetic purposes, all garage doors shall remain closed whenever possible. Carports are not allowed within the Community.

Section 13. Signs, Window Coverings, Lighting, and Flags. No advertising signs or billboards shall be erected on any Lot. This restriction shall not apply to signs used to identify and advertise the Subdivision as a whole, nor to signs for selling Lots and/or houses during the development and construction period or for the re-selling of houses, provided such signs are approved by the Board or ACC empowered by the Board to do so. Also, the provisions of this Article shall not apply to notices posted in connection with judicial or foreclosure sales conducted with respect to a mortgage. No display of For Rent or For Lease signs visible on any portion of an Improved Lot.

(a) No Owner shall place on or about any window any metallic foil or other coating, substance or material which acts as a reflector of light and no Owner shall display, hang, store or use any signs (including, without limitation, political signs), curtains, draperies, shades, stained glass, flags (including, without limitation, flags of the United States of America or the State) or other articles whatsoever outside of the Dwelling on any Lot so as to be visible from outside the Lot, excluding seasonal decorations, the flag of the United States of America or the State, and political signs, provided that such seasonal decorations, flags of the United States of America, flags of the State, and political signs, conform with the requirements of this Section, and with all Regulations.

(b) Window coverings, including but not limited to drapes, curtains, and sheers, must be white, off-white, beige, taupe, or a similar color on the side visible from outside the Lot.

(c) Flagpoles for seasonal decorations, the flag of the United States of America, and/or the flag of the State must be attached to the main Dwelling, shall be no more than five (5) feet in length and shall not be mounted on the roof of any Dwelling. Only one flag (whether a seasonal decoration, the flag of the United States of America, the flag of the State, or any other flag) may be displayed on any Lot at any given time. No flag (whether a seasonal decoration, the flag of the United States of America, the flag of the State, or any other flag) may exceed the size of three feet by five feet.

(d) No more than two (2) political signs may be displayed on any Lot at any one time, unless the applicable municipal or County ordinance allows more than two signs, in which event no more signs than are allowed by the applicable municipal or County ordinance shall be displayed on any Lot at any one time. Political signs may not be displayed any earlier than 45 days before the day of the election for which the political sign is being displayed or later than 7 days after an election day for which the political sign is being displayed. No political sign may exceed the dimensions of 24 inches by 24 inches, unless the applicable municipal or County ordinance allows a greater size, in which case no political sign shall exceed the dimensions set forth in such municipal or County ordinance. For purposes of this Section, “political sign” means a sign that attempts to influence the outcome of an election including supporting or opposing a candidate or an issue on the election ballot.

(e) Notwithstanding the anything contained in this Section 13 to the contrary, one professionally manufactured sign of not more than five (5) square feet advertising a Lot for sale may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. Owners may place one sign within the boundaries of their Lot. The prohibitions in this Section shall not apply to Declarant or its agents, who may erect such signs or flags as Declarant deems desirable to promote the sale of Lots.

(f) Holiday “Christmas” decorative lighting shall be allowed from Thanksgiving to January 15 of each calendar year; provided, however, the Board may adopt Regulations limiting the type, intensity and number of decorative lights so allowed. Other seasonal decorations are approved two weeks prior to the event until two weeks after the event, celebration, or observance.

Except as approved in writing by the Declarant, all exterior and landscape lighting shall be approved in writing by the Board of Directors or ACC empowered by the Board to do so prior to installation.

Section 14. Antennas and Satellite Dishes. No radio or television transmission or reception towers, antennas, satellite dishes or disks or similar transmission equipment shall be erected on any structure or on any Lot or within the Property, except in accordance with the Telecommunications Act of 1996 and the implementing rules therefor issued by the Federal Communications Commission and by the Board or the ACC empowered by the Board to do so in compliance with the Regulations adopted therefor.

Section 15. Laundry. No laundry or wash shall be dried or hung upon the exterior of any Lot or any place visible within the Subdivision from outside such Lot. Clotheslines are not permitted.

Section 16. Perimeter and Privacy Fences. No perimeter fence or wall shall be erected on any Lot closer to the street than the rear back corner of the Dwelling or the side street setback for corner Lots. However, Declarant has the right to grant a fence location variance on any particular Lot due to the particular character of said Lot. All proposed perimeter or privacy fences shall be subject to review and approval by Architectural Control Committee and subject to such terms, conditions and design standards as may be established therefor, from time to time. The Architectural Guidelines may provide that perimeter fencing on certain Lots or on all Lots containing certain types of Dwellings (product/collections/model types) shall be aluminum fencing. Except where the Architectural Guidelines allow for wooden privacy fencing, if at all, all perimeter fencing on all Lots shall be black aluminum fencing. Any other fencing material, including chain link, mesh, wire, split rail, PVC, or other type of metal fencing, is expressly prohibited. The spacing between the pickets of perimeter fencing shall not be less than one and one-half (1½”) inches and no greater than 3 13/16” apart and all such pickets shall be installed on the exterior of the supporting fence posts. However, Declarant may install any fencing make or style and may install temporary decorative fencing on a model home. No perimeter fence or wall shall be erected on any berm of dirt which was placed on side or rear Lot line by the Declarant. All wooden privacy fencing shall be treated with a semi-transparent stain in Sherwin Williams “Charwood,” Olympic “Espresso,” or similar

color, within 6 months of the construction of the fence.

(a) Lots with Rear Property Lines Adjacent to Parcel Located Outside Community. Unless otherwise required or allowed in the Architectural Guidelines, Owners of Lots with rear property lines adjacent to parcels located outside of the Community may install a fence along the rear Lot line, provided such fence shall not exceed six feet (6') in height and shall be painted taupe; any other fencing, including chain link, split rail, wood privacy, or other type of metal fencing, is expressly prohibited. The foregoing applies only to Lots adjacent to parcels outside of the Community and shall not apply to Lots that back up to another Lot, to a Common Area or to a road within the Community.

(b) Wall or Fence Forming a Courtyard. Notwithstanding the restrictions provided in this Section 16, an Owner may install a fence or wall generally parallel with the side of a residence that forms an enclosed courtyard with that portion of the residence set back from the remainder of the side of the residence with which the fence or wall runs parallel, and subject to terms, conditions and design standards from time to time adopted therefor and the written approval of its location by the Board or the ACC.

Section 17. Pets; Animals.

(a) Except as otherwise expressly permitted herein, no animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other small household pets may be kept or maintained, subject to applicable leash laws, and provided that they are not kept, bred or maintained for commercial purposes. The number of household pets shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience, nuisance or threat to any other Owner, or creates or causes unsanitary conditions. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience, nuisance, threat or creates an unsanitary condition, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience, nuisance, threat or creates an unsanitary condition, the Board may require that such animal be removed from the Subdivision. All animals shall be kept on a leash when in the Common Area or any other area within the Subdivision other than a fenced area on a Lot. Owners shall be required to properly remove any excrement deposited by a pet on any Lot and/or any portion of the Property and dispose of same properly and in accordance with any Regulations pertaining thereto. Owners shall also be responsible for repairing any damage caused to any Lot and/or any portion of the Property by a pet. Violations by an Owner or an Owner's pet under this Section may subject an Owner to an Assessment for Non-Compliance.

(b) The Board may adopt Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that animals be restricted from 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 Subdivision 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, nuisance, threat or creating unsanitary conditions be removed from the Subdivision.

Section 18. Trash and Vegetation.

(a) Trash. No trash, rubbish, garbage, debris or waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in an appropriate area screened and concealed from view of neighboring Lots and streets, except on the day of collection when such

containers may be moved on the Lot to the location designated for its collection. Trash cans and recycle bins shall never be stored on the front or side of Dwellings. Trash cans and recycle bins shall be stored in the garage or directly behind the Dwelling and shall be screened from neighbor's view. Plastic, vinyl, or PVC, portable, non-affixed garbage can screens are strictly prohibited.

(b) **Landscaping.** Only Bermuda grass shall be used in the Subdivision. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Subdivision shall be kept trimmed, and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. No weeds or dead or dying vegetation shall be permitted to accumulate on any Lot or any portion of the Subdivision which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the Owners or occupants of any property in such vicinity. Trees, shrubs, vines and plants which die shall be promptly removed. If any Owner, after Notice and Opportunity for Hearing, fails to maintain such Owner's Lot in the manner provided by this Section, the Association, at the expense of such Owner, may take such steps as are necessary in order to remedy such condition, including cutting and removing of weeds, vegetation, rubbish, debris, garbage, waste materials and other accumulations on any Lot at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a Special Assessment against such Owner to obtain reimbursement of the cost therefor as provided in this Declaration, or, after Notice and Opportunity for Hearing, levy a fine against such Owner.

Section 19. Above Ground Pools. No above ground pools shall be erected/installed on a Lot.

Section 20. Window Air Conditioners. No window air conditioners are allowed in any window of the Dwelling, garage, shed, or any detached or accessory structure.

Section 21. Construction Material. The storage of construction material, equipment and/or other objects on a Lot in a manner that is unsightly or for a period that is deemed inappropriate by the Declarant, the Board and/or the ACC is prohibited.

Section 22. Play and Exercise Equipment. All swing sets, play structures, basketball goals and similar equipment must be located within the applicable building setback lines and comply with the Rules and Regulations, and the location thereof must be approved in writing by the Board or the ACC in accordance with the provisions of this Declaration and subject to terms and conditions from time to time established therefor. No metal swing sets shall be allowed. In addition, portable basketball goals (meaning with no permanent poles) shall be stored in the garage or out of view of the street when not in active use. Portable basketball goals shall only be used on the Lot's driveway and at no time within the street positioned in a manner as to allow basketball to be played in the street or a Common Area. No trampolines shall be permitted on any Lot.

Section 23. Changing Elevations. No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted on any Lot which materially affects surface grades of surrounding Lots or any drainage or erosion or other water discharge from or to a Lot, unless approved in advance in writing by the ACC.

Section 24. Completion of Construction and Condition of Site.

(a) Construction of any "primary" improvements on any Lot (such as a Dwelling and the initial installation of walls and landscaping therefor) shall proceed consistently and diligently and shall, unless a variance is granted by the Declarant during the Declarant Control Period, and thereafter by the Board or the ACC, be completed within one (1) year from the date of commencement of construction. An Owner shall be solely responsible for securing from the governmental entity with jurisdiction over the

Property, and at the Owner's sole cost and expense, such permits and approvals as shall be required prior to any construction or installation governed thereby.

(b) The period that is appropriate for the completion of "secondary" improvements (such as walls, fences, paving, landscaping, etc. or the modification to an existing structure), shall be determined by the Declarant or the Board (when such authority is transferred to the Board by the Declarant), or by an ACC established by either.

(c) During construction, the Owner shall, at all times, maintain the construction site in accordance with any standards and Regulations established by the Declarant and/or the Board and/or the ACC. The Board shall have the right to take appropriate legal action, whether at law or in equity, or to levy specific assessments, to compel the immediate completion of any primary improvements not completed within eighteen (18) months from the date of commencement of construction or any secondary Improvements not completed by the deadline set out in the approval for the modification provided to the Owner of the Lot. The Declarant, the Board and/or the ACC shall have the right, but not the obligation, to extend any time period for completion, but any such extension must be in writing and a copy kept on file with the corporate records of the Association.

(d) If an Owner or their builder, agents, representatives, employees, family members, and/or contractors store construction material, equipment and/or other objects on a Lot in a manner that is unsightly or for a period that is deemed inappropriate by the Declarant, the Board and/or the ACC, the Declarant, Board and/or the ACC may impose an Assessment for Non-Compliance on the Owner of the Lot.

(e) No building or other structure shall be placed or permitted to remain on any Lot which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the drainage, water and/or sewer facilities and appurtenances thereto serving the Subdivision. No Owner shall perform, or permit to be performed, 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, except to the extent such alteration in drainage pattern is approved in writing by the Association, Declarant and all public (or quasi-public) authorities having jurisdiction. All drainage, water and sewer facilities and appurtenances shall at all times be accessible to Declarant until the Subdivision is completed and shall at all times 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 plats, engineering plans, and/or other instruments showing the approximate locations of subsurface storm drainage facilities, subsurface groundwater drainage facilities, water and sewer lines and appurtenant 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 Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in such instrument.

Section 25. Sewage System. Sewage disposal shall be through the municipal system or, a type approved by appropriate State and local agencies. No Owner shall construct, place or permit to remain on any Lot any building or other structure which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the sewer lines, facilities and appurtenances thereto serving any portion of the Subdivision.

Section 26. Water System. Water shall be supplied through the municipal system or, a type approved by appropriate State and local agencies. No Owner shall construct, place or permit to remain on any Lot any building or other structure which may alter, damage or interfere with the use, maintenance,

repair or replacement of any of the water lines, facilities and appurtenances thereto serving any portion of the Subdivision.

Section 27. Utility Facilities. Declarant reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including but not limited to water, telephone, electric, cable, natural gas and sewage systems, which may be in variance with these restrictions. No Owner shall construct, place or permit to remain on any Lot any building or other structure which may alter, damage or interfere with the use, maintenance, repair or replacement of any of the utility lines, facilities and appurtenances thereto serving any portion of the Subdivision.

Section 28 Dog Pens and Runs. No dog pen or dog runs are permitted; provided, however, dog houses are permitted as long as they are located completely in the rear yard of a Dwelling and not visible from the street. In addition to other requirements of this Declaration applicable to pets, pets must be on a leash or restrained at all times.

Section 29. Exterior Changes. All exterior changes for improvements to any Lot shall first be approved in writing by the Board or the ACC empowered by the Board to review and approve such change, and as further provided in this Declaration. All exterior colors must conform to the original, approved scheme incorporated into the original construction, unless otherwise approved by the Declarant, the Board or the ACC, as applicable. Shutters and doors must complement the approved exterior color scheme and conform to the original, approved colors incorporated into the original construction, unless otherwise approved by the Declarant, the Board or the ACC, as applicable. When submitted a request for a color change, color chips and siding examples shall be attached to the architectural approval request form.

Section 30. Storm Doors. Storm doors are permitted provided that prior written approval is granted therefor by the Board, or by the ACC empowered by the Board, following review and approval of a request therefor using the standard form of request adopted for architectural review submissions. Permitted storm doors shall be full-view or full-lite glass and must match the existing façade color scheme. Door hardware shall also match the existing hardware (i.e. brass handle for brass lights, etc.). No screen or partially screened doors are permitted.

Section 31. Window Boxes and Planters. Window boxes and planters shall be allowed; provided, however, window boxes and planters must be of a color and material complementary to the residence exterior and shall be maintained in a neat and attractive manner. Dead, dying and diseased plants and all weeds shall be promptly removed. Statues and figurine planters, however, shall not be allowed.

Section 32. If Rule or Regulation Requiring Irrigation Adopted. If the Association enacts any rule or Regulation requiring the irrigation of landscaping, such requirement to irrigate landscaping shall be suspended during periods of mandatory water conservation measures as provided in § 47F-3-122. No Owner may drill or use a private well for irrigation, nor draw water from any pond or other body of water within the Community.

Section 33. Unintentional Violations; Waiver of Setbacks, Building Lines and Building Requirements. In the event of the unintentional violation of any of the building setback line restrictions set forth herein, Declarant reserves the right to change or grant variances for the setbacks, location of Lot lines, and easements; provided, however, that such changes shall not be in violation of any provisions of the zoning provisions of the appropriate governmental authority. The Declarant, or the ACC, may, for good cause, waive unintentional violations of the setbacks and minimum square footages provided for in this Declaration. Such waiver shall be in writing and recorded in the Registry. A document executed by the Declarant or the ACC shall be, when recorded, conclusive evidence that the Owner of a Lot has met

the requirements of this Declaration regarding such violation. The Declarant, the Board, and/or the ACC may also handle violations of setbacks and boundary lines by amending the any plat of the Subdivision showing the amendment or adjustment. Nothing contained herein shall be deemed to allow the Declarant or the ACC to waive violations, which must be waived by an appropriate governmental authority.

Section 34. Leases Limited to Twelve (12) Month Minimum Term. Owners of Lots are hereby strictly prohibited from leasing any Lot for a shorter period than a term of twelve (12) consecutive months. Furthermore, each Owner leasing its Lot must provide the Board with a copy of the written lease for the Lot, which lease must contain (in addition to its terms) current and valid contact information for Owner and all tenants, including but not limited to the name of the tenants, the tenant's telephone number, and electronic mail address, if any, and each lease must likewise contain a statement that the lease is subject in all respects to the Governing Documents and that tenant must comply with the same and that tenant is in default of the lease for failure to do so.

Section 35. Weapons. No weapons, including but not limited to Open or Concealed Carry Firearms, are allowed on Common Area or any property owned, operated, or maintained by the Association.

ARTICLE IX GENERAL MAINTENANCE AND NEIGHBORHOOD MAINTENANCE

Section 1. Association's General Maintenance Responsibility. The Association shall keep in good condition, order and repair the Common Area, including but not limited to the private (and public if not yet accepted for maintenance by the applicable Governmental Entity) streets, drives and alleyways as shown on the Plats, sidewalks and rights of way, curbing, detention/retention ponds, bulkheads, all entry features and entry landscaping, whether or not such features and landscaping are on a Lot, privately owned property or in the right of way and all street signage and street lights, and any other or any Common Areas and Limited Common Areas (except as otherwise provided in any Neighborhood Declaration, if at all). The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such responsibility is assumed and carried out by any local, state or federal government or quasi-governmental entity accepting responsibility for such maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is desirable or necessary to maintain the Community Wide Standards. In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the occupant, family member, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed against the Owner as a specific assessment.

The Board of Directors, in its sole discretion, may leave portions of the Common Area as undisturbed natural areas and may change the landscaping on the Common Area at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers. Any common irrigation system installed by the Declarant or the Association for the use by the Association shall be operated, maintained, repaired and replaced by the Association.

If and to the extent the following portions of the Common Area are not maintained adequately (in the opinion of the Board) by a governmental entity, the Association shall also maintain the following Common Area (whether or not constituting Common Areas), including: (a) entry features to the Property; (b) streets, parking areas and sidewalks; (c) perimeter fencing; and (d) landscaping within public street rights-of-way abutting or within the Property; (e) Stormwater Control Measures; and (f) Recreational Amenities. Additionally, the Association has the right, but not the obligation, to maintain the front, rear

and side yards of Lots and to provide for trash and debris removal.

In the event that the Association determines that any maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the occupant, family member, guest, invitee or lessee of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof not paid for by insurance shall be assessed against the Owner as a specific assessment.

Section 2. Maintenance by Owners.

Except where the Association has the express obligation to do so under this Article IX, each Owner, at all times, shall maintain, repair and otherwise be responsible for the condition and maintenance of his Lot and all Improvements thereon. Without limiting the generality of the foregoing, and subject to the requirements of this Declaration, an Owner shall be responsible for maintaining in good condition, the paint on the exterior of his Improvements, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawns, trees, shrubs, driveways, walks, and other exterior improvements, as well as those areas on a Lot or adjacent thereto which the Association requires a Lot Owner to maintain at his expense; replacement and reconstruction of improvements on an Owner's Lot required because of damage or destruction by fire or other casualty, maintenance, repair and replacement of the surface and subsurface drainage facilities and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of his Lot and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the Association, County or other Governmental Entity. Landscaping for each Lot as set forth in the landscaping plan required under Article VII shall be installed and completed within thirty (30) days of occupancy of the Dwelling and shall not be substantially modified without the prior written consent of the Board or ACC so empowered by the Board.

(a) The Association reserves the right, in its sole discretion, to plant, install, cut, edge and seed grass, cut or trim shrubbery and trees, install pine needles and/or to require certain Lots from time to time to be grassed, cut, trimmed, and maintained, all of which shall be at the expense of the particular Lot Owner. If the Association manages lawn maintenance in a particular section of the Subdivision, Owners with fences will be required to make arrangements to leave the gate open on lawn servicing dates; otherwise the Owner will be responsible for the portion of their yards enclosed by such fences.

(b) Each Owner shall maintain his Lot such that no activities, buildings, structures, or other Improvements thereon shall be placed or permitted to remain on any Lot which may damage or interfere with the surface and subsurface drainage facilities and appurtenances located on his Lot, and/or damage or interfere with the use, maintenance, repair or replacement of such drainage facilities and appurtenances. 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, except to the extent such alteration in drainage pattern is approved in writing in advance by the Association, Declarant and all public (or quasi-public) authorities having jurisdiction over the Property. All such drainage facilities and appurtenances shall at all times be accessible to Declarant until all Lots in the Subdivision have been sold 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 the 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 Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in any such instruments.

Section 3. Failure of Owner to Maintain.

(a) In the event that the Owner neglects or fails to maintain his Lot and/or the exterior of his Dwelling in the Subdivision, or any easement areas and/or improvements required by the Association to be maintained by the Owner of that Lot, the Association may, but shall not be obligated to, provide such maintenance at the Owner's expense. Other than where such maintenance, repair and replacement pertains to a vacant or unimproved Lot or where, in the sole determination of the Board of Directors, such failure to maintain, repair or replace constitutes a significant nuisance or hazard to other Owners, the Association shall first be required to provide such non-complying Owner with written notice: (a) of the required maintenance, repair and/or replacement to be performed by that Owner and of the time frame for compliance; and (b) where applicable, of the Association's intent to remedy such violation by providing such maintenance, repair and/or replacement at the Owner's expense, should such maintenance, repair and/or replacement not be performed by the Owner by the deadline set out in the notice. The determination as to whether an Owner has neglected or failed to maintain his Lot and/or Dwelling in a manner consistent with other Lots and Dwellings in the Subdivision and what constitutes a significant hazard or nuisance to other Owners shall be made by the Board, in its sole discretion. In order to enable the Board to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access, egress and regress over and upon each Lot at all reasonable times to perform the maintenance, repair and/or replacement, as provided in this Article.

(b) If any Owner, after Notice and Opportunity for Hearing, fails to maintain their Lot and the improvements thereon, the Association, at the expense of such Owner, may, but shall not be obligated to, perform such maintenance, repair and/or replacement, and the Board, without the vote or written consent of Members, may levy a specific assessment against such Owner in an amount to be determined by the Board, which shall be added to and become a part of the Assessment to which such Lot is subject, and constitute the Association's lien upon that Lot.

Section 4. Work Required by Owner's Willful or Negligent Act. In the event that the Association determines that any need for maintenance, repair and/or replacement, is caused through the willful or negligent act of an Owner or the family, guests, lessees, or invitees of any Owner, then the Association may, but shall not be obligated to, perform such maintenance, repair and/or replacement at such Owner's sole cost and expense, and all costs thereof, together with a penalty determined by the Board, shall be added to and become a part of the specific assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

Section 5. Rights of Entry.

(a) By Declarant and Association.

This Declaration hereby reserves unto the Declarant, the Association and their successors, agents, representatives, employees, and contractors an easement for ingress, egress, access and regress and for maintenance, repair and replacement over, upon and through every Lot and the Common Area, when necessary, practical or desired, in order to inspect, repair, maintain, construct, and/or replace improvements or to bring a Lot into compliance with this Declaration, the Architectural Guidelines or the Regulations for which the Association is responsible for enforcing, and each Owner accepting title to a Lot in the Subdivision takes title subject to such right of access of the Association and Declarant and their successors, agents, representatives, employees, and contractors.

(b) By Safety and Emergency Personnel.

In addition, this Declaration reserves unto any police, fire, paramedic and other safety and emergency personnel, and to such governmental agencies having jurisdiction over the

Subdivision, their agents and employees, the right of immediate access to the Common Area and the Lots at all times for emergency situations, and for the preservation of public health, safety and welfare.

Section 6. Individual Insurance. Except where the Association has the express obligation to insure, if any, each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner will carry at all times all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.

ARTICLE X MORTGAGEE PROVISIONS

Section 1. Obligation of Association to First Mortgagees. So long as any First Mortgagee shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such First Mortgagee, upon timely written request to the Association, shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board, such financial statement or report to be furnished by April 15 of each calendar year;

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration, the Articles of Incorporation, or the Bylaws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association;

(c) To receive notice of any condemnation or casualty loss affecting the Common Areas or any portion thereof;

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(e) To have the right to approve any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association; and

(f) To be given notice of any delinquency in the payment of any Assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the First Mortgagee, such notice to be given in writing and to be sent to the principal office of such First Mortgagee, or to the place which it may designate in writing.

Section 2. Requirements of First Mortgagee. Whenever any First Mortgagee desires to avail itself of the provisions of this Article, it shall furnish written notice thereof by certified mail, postage prepaid, return receipt requested, to the Association at the Registered Agent's address registered with the Secretary of State for the State identifying the Lot or Lots upon which any such First Mortgagee holds any first lien or identifying any Lot or Lots owned by such First Mortgagee and such notice shall designate the place to which notices, reports or information are to be given by the Association to such First Mortgagee.

Section 3. 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.

**ARTICLE XI
AMENDMENT**

Section 1. Amendment by Declarant. Until the expiration of the Development Period, Declarant may, in its sole discretion, and unilaterally, without the requirement of approval, joinder or consent of the Owners or any other party, amend this Declaration as long as such amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or use of the Common Area (not including Limited Common Area where the right has otherwise been reserved for Declarant to unilaterally re-allocate/convey/move/convert/change the use of the same pursuant to a Neighborhood Declaration or otherwise herein) as set forth in this Declaration and the amendment does not adversely affect the title to any Lot owned by any party other than Declarant, unless such Owner shall consent in writing thereto, which consent shall be filed with such amendment. Any amendment to the Declaration adopted by the Declarant shall be effective upon the later of the effective date contained therein or the date of its recording in the Registry.

Declarant may (in Declarant's sole discretion) also amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association, or other similar agency, or to comply with any applicable Legal Requirements. Any such amendment must be with the consent and approval of such agency and must be recorded in the office of the Register of Deeds for the County.

Section 2. Amendment by the Members. Unless amended as allowed under Section 1 of

this Article, the Declaration may be amended only as follows:

(a) Unless a higher percentage or different voting requirement is specified herein or by Legal Requirements, the Declaration may be amended only by (i) the written agreement or consent of those Members, or the affirmative vote at a meeting of the Association of those Members, who hold sixty-seven percent (67%) or more of the total number of votes in the Association, and (ii) during the Development Period, with the written consent of Declarant.

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to the Declaration is to be voted on, together with at least a summary description of the proposed amendment, shall be given to all Members not less than ten (10) days and not more than sixty (60) days in advance of the date of such meeting.

(c) When any amendment to the Declaration is approved by Members of the Association (and Declarant, when applicable) as provided in this Section, the appropriate officers of the Association (and Declarant, when applicable) shall execute in the same manner as a deed and record in the Registry, a document setting forth the following: the amendment; the effective date of the amendment (if no effective date is stated the amendment shall be effective upon the recording of same in the Registry); and if applicable, the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes required to constitute a quorum at such meeting, the total number of votes present at such meeting, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of such amendment and the total number of votes cast against the amendment. The document shall be recorded in the Registry within thirty (30) days following the date of the meeting at which the amendment was adopted or the written agreement for the amendment is completed. Provided, however, and notwithstanding the foregoing or anything to the contrary appearing herein, no amendment to the Declaration duly adopted by the Members of the Association shall be void or invalid solely because the document describing the amendment is not recorded in the Registry within said thirty (30) day period, and any such duly adopted amendment to the Declaration recorded following the end of said thirty (30) day period shall become effective on the later of the effective date specified therein, if any, or on the date it is recorded in the Registry.

(d) Amendment of Subdivision Declarations and Supplemental Declarations shall be governed by the provisions for amendment contained therein, if any; otherwise, the provisions regarding amendment of the Declaration shall apply to amendment of those documents.

Section 3. Consent of Mortgagees. No consent of any Mortgagee to any amendment of the Declaration is required unless (i) the amendment adversely affects the rights of Mortgagees under the Declaration, or (ii) a Legal Requirement requires the consent of Mortgagees or a percentage of Mortgagees, or (iii) the mortgage held by such Mortgagee specifically requires the Mortgagee's consent with respect to the portion of the Property subject to the mortgage, and if either (ii) or (iii) is applicable, the Mortgagee has notified the Association of its rights regarding consent to amendments in the same manner required for an Mortgagee to notify the Association in the Article of the Declaration dealing with Mortgagee Provisions. If the amendment is adopted by the required percentage of Members exclusive of the Member or Members who own portions of the Property for which consent of a Mortgagee is required under this Section, then the amendment is valid whether or not the necessary Mortgagees have consented to the amendment.

Section 4. Prohibited Effects of Amendment. Notwithstanding the provisions of Sections 1, 2 and 3 of this Article allowing amendments to the Declaration, no amendment to the Declaration, whether adopted by the Declarant, by the Association, or by the Members or any applicable group of Members of the Association, shall do or result in any of the following:

- (a) without the written consent of Declarant, diminish, impair, or in any way affect the rights of Declarant, including Declarant's rights to develop any part or all of the Property in accordance with a Subdivision Plan;
- (b) without the written consent of Declarant, impose additional obligations upon Declarant;
- (c) diminish or impair the express rights of Mortgagees under the Declaration without the prior written approval of a majority of the Mortgagees who have requested the exercise of such rights as provided herein;
- (d) terminate or revise any easement established by the Declaration, without the written consent of the Person benefitted by the easement or by the Owner of the portion of the Property benefitted (and/or, with respect to a revision, burdened) by the easement, whichever is applicable;
- (e) violate any provision of any Stormwater Agreement in effect, if any;
- (f) alter or remove or attempt to alter or remove any otherwise applicable Legal Requirement.

ARTICLE XII
DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION

Section 1. Duration. Unless sooner terminated as required by Legal Requirements, the Declaration shall run with and bind the Property and each Owner, and shall inure to the benefit of the Association, and each other Owner of any portion of the Property, and their respective heirs, successors, and assigns, from and after the recording of the Declaration in the Registry and in perpetuity or until such time as it is terminated by a written termination agreement, executed or ratified in the same manner as a deed, by those Members who hold eighty percent (80%) or more of the total number of votes in the Association, and also with the written consent of Declarant during the Development Period. Execution or ratification by any one of multiple Owners of a Lot is sufficient for that Lot unless, prior to the time the termination agreement is recorded in the Registry, any other Owner of that Lot files with the Association a written objection to the termination of the Declaration (in which event the vote allocated to that Lot shall be considered as not having been exercised). The termination agreement shall specify a date after which it will be void unless it is recorded in the Registry before that date. The termination agreement may not be recorded in the Registry unless and until the requisite number of signatures have been obtained as provided herein, and it shall be effective only upon recording. If, pursuant to the termination agreement, any real estate in the Property is to be sold following termination of the Declaration, the minimum terms of the sale shall be set forth therein.

Section 2. Dissolution of the Association. The Association shall be dissolved upon the termination of the Declaration. Provided, however, until any sale of the Common Property authorized by the termination agreement or approved by the Owners in the same manner as required for approval of the termination agreement is completed and the sale proceeds distributed, the Association shall continue in existence with all of the powers it had before termination. The Association, on behalf of the Owners, may contract for the sale of the Common Property, but the contract is not binding unless such sale has been authorized in the termination agreement or it has been approved by the Owners in the same manner as required for approval of the termination agreement or otherwise as/if required by the Act. Proceeds of the sale of Common Property shall be distributed to the Owners and lienholders as their interests may appear, as provided in the termination agreement or other agreement approved by the Owners in the same manner as required for approval of the termination agreement. If the Common Property is not to be sold following termination of the Declaration, title to the Common Property vests in the Owners upon termination, as

tenants in common in proportion to their respective interests as provided in the termination agreement.

Upon dissolution of the Association or upon loss of ownership of all of the Common Property by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Property as allowed by the Declaration, or by reason of merger and/or consolidation with any other association as allowed by the Declaration), except as otherwise provided in the termination agreement, other agreement approved by the Owners in the same manner as required for approval of the termination agreement, or Legal Requirements (in particular, Section 47F-2-118 of the Act, or any successor Section of the Act), any portion of the Common Property not under the jurisdiction of and being maintained by another association substantially similar to the Association, together with all other assets of the Association, first shall be offered to the Town (or, if the Town refuses such offer, then to some other appropriate Governmental Entity or public agency as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Property and such assets were required to be devoted by the Association. If the Town or such other appropriate Governmental Entity or public agency accepts the offer of dedication, such portion of the Common Property and assets shall be conveyed by the Association to the Town or such other appropriate Governmental Entity or public agency, subject to the superior right of an Owner to an easement (if necessary) for reasonable ingress and egress to and from such Owners Lot and the public or private street(s) on which that Lot is located, subject to all other applicable rights of way and easements, and subject to ad valorem property taxes subsequent to the date of such conveyance.

If the Town or such other appropriate Governmental Entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Property and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Property was required to be devoted by the Declaration, such transfer and conveyance to be made subject to the rights of Owners and the other matters set forth in the immediately preceding paragraph of this Section. If there is no nonprofit corporation, association, trust or other entity who will accept such transfer and conveyance of the Common Property and assets of the Association, then such Common Property and assets shall be distributed as provided in the plan of termination/dissolution adopted by the Association.

**ARTICLE XIII
DISCLOSURES AND WAIVERS**

The following are in addition to any other disclosures and waivers in the Declaration, and do not in any way limit the same or otherwise limit the rights of Declarant hereunder, and each Owner by acceptance of any deed for any Lot in the Community acknowledges and agrees to all the following disclosures and waivers.

Section 1. Construction Activities. All Owners and other Persons who use the Property hereby are placed on notice that Declarant, Builders and/or their respective agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within the Property. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Property generally, such Owners and such other Persons acknowledge, stipulate, and agree: (i) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (ii) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the portion of the Property where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (iii) that Declarant, Builders and their respective agents, contractors, subcontractors, licensees, and other designees,

successors, and assigns, shareholders, directors, officers, partners, members, managers, agents and employees shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (iv) that any purchase or use of any portion of the Property has been and will be made with full knowledge of the foregoing; and (v) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of the Property.

Section 2. Conveyance of Common Property. Declarant may convey or transfer all Common Property, including all improvements thereon, to the Association in an "AS IS, WHERE IS" condition. Declarant hereby disclaims and makes no representations, warranties or other agreements, express or implied, by law or fact, with respect to the Common Property and improvements thereon, including, without limitation, representations or warranties of merchantability regarding the condition, construction, accuracy, completeness, design, adequacy of size or capacity thereof in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials, furniture, or equipment used therein. Neither the Association nor any Owner or any other Person shall make any claim against Declarant, its successors and assigns, relating to the condition, operation, use, accuracy or completeness of the Common Property, or for incidental or consequential damages arising therefrom.

Declarant shall transfer and assign to the Association, without recourse, all warranties received from manufacturers and suppliers relating to any of the Common Property or improvements thereon, or relating to any personal property transferred by Declarant to the Association, which exist at the time of transfer and are assignable, but Declarant's failure to do so shall not constitute any grounds for any claim, cause of action or other legal recourse against Declarant for failing to do so, other than to compel Declarant to transfer or assign same.

Section 3. Liability for Association Operations. The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant, its successors and assigns, and its shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of Common Property and the collection of assessments.

Section 4. Public Facilities and Services. Certain facilities and areas within and adjoining the Property may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: greenways, trails and paths, parks, and other neighborhood areas conducive to gathering and interaction, roads, sidewalks, and medians. In addition to any such facilities and areas that are open for use and enjoyment of the public pursuant to Legal Requirements, Declarant may designate facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Common Property or the Board may so designate at any time thereafter.

Section 5. Safety and Security. Each Owner and occupant of a Dwelling, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the level of safety or security which each Person provides for himself or herself or itself and his or her or its property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or

ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, not that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing such Owner's tenants and all occupants of its Dwelling that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Property assumes all risks of personal injury and loss or damage to property, including Dwellings and the contents of Dwellings, resulting from acts of third parties.

Section 6. View Impairment. None of Declarant, any Builder or the Association guarantee or represent that any view from, over, or across any portion of the Property will be preserved without impairment, and without limitation, improvements and fencing installed by Declarant or a Builder or the Association may obstruct views permanently or temporarily and at any time and from time to time. None of Declarant, any Builder or the Association shall be obligated to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement, if any. The Association (with respect to the Common Property) has the right to add or remove trees and other landscaping to and from the Common Property, subject to Legal Requirements. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 7. Water Management. Each Owner and any other Person who uses any portion of the Property acknowledges and agrees that any or all bodies of water (including lakes, ponds, creeks, streams, and wetlands in the Property), together with any dams or other facilities or devices that contain, control, or direct such waters, may be designed as water management areas (including designation as Stormwater Measures) and not designed solely as aesthetic features, and that, with respect to those that are water management areas, due to fluctuations in ground water elevations within the immediate area and/or the receipt or discharge of stormwater, the water level of such lakes, ponds, and wetlands may rise and fall. Each Owner and other such Person further acknowledges and agrees that Declarant has no control over such elevations. Therefore, each Owner and other such Person releases and discharges Declarant, and its successors, assigns, contractors, subcontractors, shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water elevations.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the perpetual, non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the adjoining the Property to do any or all of the following: (i) install, operate, maintain, and replace pumps to supply irrigation water to the Common Areas; (ii) construct, maintain, and repair structures and equipment used for retaining water; and (iii) maintain such areas in a manner consistent with the Community Wide Standard.

Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and Lots (but not the Dwellings thereon) adjacent to or within fifty (50) feet of bodies of water within or adjoining the Property, in order to do any or all of the following: (i) temporarily flood and back water upon and maintain water over such portions of the Property; (ii) alter in any manner and generally maintain the bodies of water within and adjoining the Property; and (iii) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage to a Lot resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding

due to hurricanes, heavy rainfall, or other natural occurrences.

Owners and other Persons who use any portions of the Property shall not alter, modify, expand, or fill any lakes, ponds, or wetlands located in the Property without the prior written approval of the local permitting authority, the Town, the Association, the Declarant, the U.S. Army Corps of Engineers (to the extent it has authority), and such other governmental entities as may have relevant jurisdiction over such matters.

Section 8. Landscape Buffers and Tree Conservation Areas. Owners and other Persons who use any portions of the Property shall not clear, disturb, alter, modify, expand, or diminish, encroach upon, or install any temporary or permanent Improvements, in or upon any areas designated as landscape buffers or tree conservation or tree-save areas (together “Non-disturbance Areas”), without prior written approval of the Association and all applicable Governmental Authorities. Furthermore, all Owners and other Persons using the Property shall comply in all respects with all Legal Requirements relative to use/non-use of the Non-disturbance Areas.

**ARTICLE XIV
INTENTIONALLY OMITTED**

**ARTICLE XV
MISCELLANEOUS**

Section 1. Enforcement. The Declarant, the Association, each Owner, and, when enforcement rights are granted by the Declaration, a Mortgagee, shall have the right, but not the obligation, to enforce the Declaration by any proceeding at law or in equity (or otherwise, as provided in the Declaration) against any Person who has violated, is violating, or is attempting to violate, any part of the Declaration, either to restrain the violation, recover damages, or seek other available legal or equitable remedies. Any failure by the Declarant, the Association, an Owner, or any other Person to enforce the Declaration or seek any applicable remedy with respect to any specific violation or lien shall not constitute a waiver of the right to do so thereafter, nor shall it constitute a waiver of the right to enforce the Declaration at any other time with respect to the same or substantially similar matter. All rights, remedies and privileges granted to the Declarant, the Association, any Owner, or any other Person herein are cumulative, and the exercise of any one or more of such rights, remedies or privileges shall not constitute an election of remedies or preclude subsequent exercise of other rights, remedies and privileges.

Section 2. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of the Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent and final jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of the Declaration shall continue in full force and effect and shall not be affected thereby. To the extent that any provision of the Governing Documents is determined to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision without destroying its intent, then the narrower or partially enforceable provision shall be applied and, to the extent lawful, shall be enforced. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 3. Notice. Except as otherwise provided herein, whenever written notice to any Person (including Owners and Members) is required hereunder; such notice may be hand delivered to such Person, or given by first class United States mail, postage prepaid, or given in such other manner specifically allowed or required by Legal Requirements, or given in such other manner determined by the

Board to be proper and which does not violate any Legal Requirements, addressed to the address of such Person appearing on the records of the Association or to the address for such Person appearing in the records of the Wake County Tax Collector. Properly addressed notice shall be deemed to have been given by the Association as follows: (i) in the absence of any delays in delivery by the United States Postal Service resulting from acts of war or terrorism, on the third day following the date the notice was deposited in the United States mail, first class postage prepaid; or (ii) on the date of personal delivery to the Person or an adult residing with the Person, as evidenced by a receipt signed by the Person or such other Person; or (iii) on the delivery date indicated on a return certified or registered mail receipt, or (iv) on the date indicated by the records of a national, regional or local same day or overnight courier service, or (v) on the date acknowledged in writing by the recipient Person or other adult residing with such Person, or (vi) upon execution of a written waiver of such notice by the Person. Notice to the Association may be given and shall be deemed to have been given in the same manner as notice to a Person, when addressed to the principal business office of the Association or the property manager employed by the Association. It shall be the duty of each Owner and Member to keep the Association informed of such Owner's or Member's current mailing address and telephone number. If an Owner or Member has not provided the Association with such current mailing address the Association may use as the mailing address the street address of the Lot owned by such Owner or Member or the address for such Owner or Member in the records of the Wake County Tax Collector. If no address for an Owner or Member is reasonably available to the Association, the Association shall not be required to give notice to such Owner or Member. Notice given to any one of multiple Owners of any portion of the Property shall be deemed to have been given to all of such Owners.

Section 4. Titles. The titles, headings and captions which have been used throughout the Declaration are for convenience only and are not to be used in construing the Declaration or any part thereof, except as necessary with respect to any cross-referencing of any provisions of the Declaration.

Section 5. Number and Gender. Whenever the context of the Declaration requires, the singular shall include the plural and one gender shall include all.

Section 6. No Exemption. No Owner may become exempt from any obligations imposed hereby by non-use or abandonment of the Common Property or any Lot owned by such Owner.

Section 7. Consent. Except as otherwise may be specifically required by the Governing Documents or Legal Requirements, where the consent of the Owner of a Lot is necessary, and such Lot is owned by more than one Person, the consent of any one of such Owners is sufficient.

Whenever the written consent of Declarant is required for the effectiveness of some action under the Declaration in addition to any required vote of the Members of the Association, the votes in the Association allocated to Declarant shall be counted in determining the vote of the Members, the written consent requirement being in addition to the voting requirement, whether or not Declarant actually participates in the voting.

Section 8. Subdivision Combination of Lots; Plat Re-recording. A Lot may be subdivided, and the boundaries of a Lot may be altered, only with the written consent of the Owner thereof and the Declarant (during the Development Period and, thereafter, the Board), and with any prior approval required of the Town. Provided, however, and notwithstanding the foregoing sentence, such written consent of the Declarant is not required for leases, deeds of correction, deeds to resolve boundary line disputes or similar corrective instruments, or deeds or other instruments granting any easement, right-of-way or license to Declarant, the Association, the Town or a public utility provider, provided that the number of then existing Lots in the Property is not changed by any such action.

One or more Lots may be combined into a single Lot, and a Lot may be subdivided into two (2) or more Lots, only with the written consent of the Owner thereof and the Declarant (during the Development Period and, thereafter, the Board). When two (2) or more Lots are combined into one (1) Lot, the resulting Lot shall continue to be assessed and have voting rights in the Association based on the number of Lots that were combined into one (1) Lot. When one Lot is subdivided into two (2) or more Lots, the resulting Lots each shall be considered as a separate Lot and each shall be subject to assessments and have voting rights in the Association in accordance with the assessments and voting rights then applicable to a Lot. When the boundaries of two (2) or more such Lots are changed but the resulting number of Lots is the same as the original number of Lots, the assessments and voting rights in the Association for those resulting Lots shall continue as they were immediately prior to the change. When two (2) or more such Lots are combined into one (1) lot, the easements reserved by the Declaration or a Plat around the boundaries of the former Lots shall continue in effect, except that any such easements reserved along the former common boundary line(s) between the combined parcels and not actually being exercised or used by any Person shall terminate. Provided, however, it shall be the responsibility of the Owner of such resulting Lot to obtain any documentation that is necessary or required to confirm such termination and to obtain termination or relocation of any such easements that are actually being exercised or used at the time of the combination of Lots. When a Lot is subdivided into two (2) or more Lots, the easements established herein adjacent to the boundaries of a Lot shall apply to all of the resulting Lots.

Nothing contained herein shall prohibit or restrict the right of Declarant, during the Development Period to (i) subdivide, combine, re-subdivide or recombine, or to record or rerecord Plats relating to, any portion of the Property owned by Declarant, or (ii) to approve or disapprove such activities with respect to portions of the Property owned by other Owners. The provisions of the immediately preceding paragraph with respect to the effects of subdivision or combination of Lots are applicable to subdivision or combination of Lots owned by the Declarant unless the Declarant otherwise indicates on the plat of such subdivision or combination recorded in the Registry or in an instrument recorded in the Registry prior to the end of the Development Period.

Section 9. Exclusive Rights to Use Name of Subdivision. During the Development Period, no Person shall use the name "Park Avenue," or any derivative of such name in any logo or depiction, in any printed or promotional material without Declarant's prior written consent; except that Builders may use such names in conjunction with any and all marketing, sales and construction efforts without need for consent of Declarant. Furthermore, and notwithstanding the foregoing, all Owners may also use the name "Park Avenue," in printed or promotional matter where such term is used solely to specify that a particular Lot is located within the Property, and the Association shall be likewise be entitled to use such names in its name and in Association materials.

Section 10. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases which affect or relate to the Property or any part thereof and which (i) are entered into prior to the time that the first Board elected by the Members takes office, and (ii) are not bona fide or were unconscionable to the Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the first Board elected by the Members takes office, upon not less than ninety (90) days written notice to the other parties to the contract or lease (or any different minimum time period provided for in the Act), and all such commas and leases are terminable as provided in this Section, whether or not the right of the Association to terminate is stated therein.

Section 11. Conflicts. Whenever there exists a conflict among the Governing Documents of the Association, the provisions of the Declaration and thereafter, any applicable Supplemental Declaration or Subdivision Declaration, shall control, except as to matters of compliance with the Nonprofit

Corporation Act, in which event the Articles shall control. Whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control. The provisions of the Bylaws shall control over any conflicting provision of any rules and regulations, Board resolutions, or Architectural Guidelines. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act, the Nonprofit Corporation Act and the Code shall in all cases control over any construction inconsistent therewith.

Whenever the Act, the Nonprofit Corporation Act, or the Code provides for limitations on any amount of assessments, fines, late payment fees, charges, or attorney fees that may be assessed, fined, charged, imposed, or collected by the Association, and the amount of any such assessment, fine, late payment fee, charge, or attorney fee allowed or authorized by the Declaration or other Governing Documents (including any assessment, fine, late payment fee, charge, or attorney fee amount established by the Board as allowed by the Declaration or other Governing Documents) exceeds the applicable limitation of the Act, the Nonprofit Corporation Act, or the Code, unless the applicable limitation specified by the Act, the Nonprofit Corporation Act, or the Code is a mandatory limitation that cannot be exceeded by provisions in the Declaration or other Governing Documents allowing or providing for the possibility of a greater amount than the applicable limitation otherwise allows, the provisions of the Declaration or other Governing Documents control and are deemed to constitute an express provision contrary to the limitation contained in the Act, the Nonprofit Corporation Act, or the Code. The provisions of the Act and Nonprofit Corporation Act shall in all cases control over any conflicting provisions of the Code. The Governing Documents shall be construed together with the construction that avoids, insofar as possible, conflicts among them.

For the purposes of this Article and any other references in the Declaration to similar conflicts, a ‘conflict’ is a situation in which the provisions in question cannot be reconciled or where enforcement of one provision necessarily would prohibit enforcement of another provision. Two provisions that are different, but not mutually exclusive or prohibitive of each other do not constitute a conflict for the purposes of this Article, and where two restrictive provisions are merely different, the more restrictive shall apply.

Section 12. Assignment. Declarant specifically reserves the right, in Declarant’s sole discretion, to assign temporarily or permanently any or all of its rights, privileges, powers and/or obligations under the Declaration or under any Supplemental Declaration or Subdivision Declaration, including assignment of any or all of same as security for any obligation of Declarant to any Person. Except as otherwise provided in this Section, no such assignment shall be effective unless (i) it is in writing, (ii) it is executed by the assignee, (iii) it is recorded in the Registry or other governmental entity office required under Legal Requirements, with the date of recording or such later effective date stated in the assignment being the effective date thereof (and the terms of the recorded assignment shall be conclusive and binding as to the matters assigned), and (iv) if it purports to assign any obligations of the Declarant to complete initial capital improvements within the Subdivision required by the Subdivision Plan or other Legal Requirements, it describes the specific obligations assigned.

Upon Declarant's request, the Association shall execute any such assignment by Declarant to the Association, but Declarant may not assign to the Association any obligation to complete initial capital improvements within the Property required by the Subdivision Plan or other Legal Requirements. With respect to assignments described in any instrument under which Declarant rights specifically or impliedly are given as security for an obligation of Declarant, the terms of such instrument shall control over the provisions of this Section, including execution and recording requirements and the matters assigned thereby. Upon any completed foreclosure sale pursuant to any instrument under which the Declarant rights become security for an obligation, or the recording or filing of a deed or other instrument in lieu of foreclosure, the purchaser at the foreclosure sale, or the grantee under any deed or other instrument in lieu

of foreclosure, shall receive the rights, privileges, powers and/or obligations that were assigned as security for the Declarant's obligation, unless the foreclosure documents or conveying document specifically exclude such rights, privileges, powers and/or obligations.

Notwithstanding anything to the contrary in this Section, with respect to the Common Area (including Common Property and Stormwater Control Measures) and utilities in the Property, Declarant may assign to the Association, and the Association shall accept assignment of and execute the assignment document with respect to, any or all of the following in whole or in part, including the costs thereof: all rights, duties, liabilities, obligations and indemnities of the Declarant under all permits issued by the Town or any provider of utilities to any part or all of the Property, and/or under all agreements between the Declarant and the Town or any provider of utilities to any part or all of the Property, with respect to maintenance of the Common Area and/or utilities in the Property. Provided, however, and notwithstanding the foregoing, Declarant may not assign to the Association any of its obligations or liabilities or indemnities directly related to the improvements for the initial installation of Common Property, Stormwater Control Measures, utilities and/or publicly dedicated street in the Subdivision as required by the Town or a utility provider for development of the Property in accordance with a Subdivision Plan, including warranties for construction of such improvements, if any, required by any governmental entity or utility provider prior to its acceptance of maintenance responsibility, if any, for such improvements (it being recognized that one or more of such improvements may not be of a type that are accepted for maintenance by a governmental entity or utility provider). Declarant shall have the authority to resolve any dispute as to what rights, duties, liabilities, obligations and/or indemnities can be assigned to the Association pursuant to this paragraph.

Section 13. Costs and Reasonable Attorneys' Fees. In any action to enforce the provisions of any Governing Documents, the court may award reasonable attorneys' fees to the prevailing party, even if such action is settled prior to any trial, judgment or appeal. It also is the specific intent of this Section that it constitutes the allowance of the award of reasonable attorneys' fees as required under Section 47F-3-120 of the Act.

Section 14. Dispute Resolution.

(a) Provisions Mandatory. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in this Sections ("Claims") shall be resolved using the procedures set forth below in lieu of filing suit in any court. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of any of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Common Area shall be subject to the provisions of this Section 14. Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of this Section:

- (i) any suit by the Association against any Bound Party to enforce the provisions of Article VI (Assessments);
- (ii) any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief, and such other ancillary relief as permitted to enforce the provisions of Article VII (Architectural Control) and Article VIII (Use of the Property);

(iii) any suit by an Owner to challenge the actions of the Declarant, the Association, the ACC, or any other committee of the Board with respect to approval, disapproval, application or enforcement of the provisions of Article VII (Architectural Control) or Article VIII (Use of the Property);

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

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

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

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

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

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

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

(iii) Claimant's proposed remedy; and

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

(c) Negotiation and Mediation.

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

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

(iii) If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to

have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

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

(v) Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "C" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

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

(e) Allocation of Costs of Resolving Claims.

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

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

(f) Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures

herein. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

Section 15. Actions Against Declarant. The affirmative vote or consent of the Members that is equal to or greater than sixty-seven percent (67%) of the total number of votes in the Association first shall be required prior to the Association doing any or all of the following with respect to the Declarant or any successor Declarant, regardless of whether such Person is the Declarant at the time the Association takes the action or obtains the necessary vote or consent required to take such action: (i) file a complaint, on account of any act or omission of Declarant, with any governmental entity which has regulatory or judicial authority over the Property or any part thereof; or (ii) assert a claim against Declarant or file suit against Declarant in any court of law or equity or before any administrative or other board or committee or branch of any Governmental Entity, or request legal or equitable relief against Declarant.

Section 16. Rule Against Perpetuities. As provided in Section 47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, or the Bylaws, rules, or regulations adopted pursuant to Section 47F-3-102(1) of the Act. In the event of the absence of the protection of Section 47F-2-103(b) of the Act, if the Declaration or any provision thereof violates any applicable Rule Against Perpetuities, the Declaration or such provisions shall be deemed reformed to continue in effect for the maximum period of time that the Declaration or such provision could exist without violating such applicable Rule Against Perpetuities.

Section 17. Reserved Rights. Whenever the Declaration reserves a right for, or requires or authorizes a consent, approval, variance or waiver by, Declarant during the Declarant Control Period or Development Period, and thereafter confers such right upon, or requires or authorizes such approval or waiver by, the Association or Board, the applicable right may be exercised, or the applicable approval or variance or waiver may be given, only by Declarant (or its assigns, which may include the Board) during the applicable period, and, thereafter; only by the Board or its authorized designee (unless a vote or consent of the Members of the Association also is required or alone is required).

Section 18. Legal Requirements. All Governing Documents shall be subject to and construed in accordance with all Legal Requirements, including all applicable provisions of the Code. It shall be the responsibility of each Owner to comply with all Legal Requirements, whether or not any approval, disapproval, waiver or variance of the terms of any Governing Documents has been given by Declarant, the Association or the ACC. It is the express intention of the Governing Documents to comply with the Act, and any provisions of the Governing Documents that are not in compliance with the Act shall be deemed reformed from time to time to comply therewith. Provided, however, it also is the intention of the Governing Documents that, unless its provisions violate the Act, such provisions shall control, and, insofar as reasonably possible, the provisions of the Governing Documents shall be construed in such manner as to be consistent with, and not in violation of, the Act.

Section 19. Public Water System; No Private Individual Wells, Irrigation Restrictions. All water supplies necessary to serve the Community with potable drinking and irrigation water (the "Water System"), and all water mains, pipes and other equipment necessary for the operation and maintenance of the Water System within the Community shall be public systems, owned, operated, repaired and maintained by a public utility company duly licensed and operating under the authority granted by the North Carolina Department of Public Utilities Commission. All Owners shall connect to the Water System for domestic water service including for irrigation. No well may be dug or constructed on any Lot for the purpose of providing domestic water supply including for irrigation. Neither Declarant nor the Association nor their successors or assigns shall in any manner be liable for any interruption in

Water Systems services. Furthermore, each Owner agrees to release and discharge the Declarant and the Association from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to the Water System. Irrigation on individual Lots "Individual Irrigation") is encouraged but not required. If installed, the Individual Irrigation system shall be permitted by and constructed to the Town of Apex's standards. The Individual Irrigation system shall be automatically controlled by a time clock. Frequency and duration of use of irrigation system shall be determined by individual Lot requirements. Pop-up sprinklers and drip system shall be used as to not allow the irrigation heads to be visible when not in use. An Irrigation Plan shall be submitted to the ACC for approval prior to installation. All irrigation head locations, pipe sizes, valve locations, and related equipment should be drawn on the Irrigation Plan.

Section 20. Marketable Title Act. It is the intention of the Declarant that the Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or replacement statute or any other Legal Requirement that would or could terminate the Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may re-record in the Registry the Declaration or some memorandum or other notice hereof in order to continue the Declaration in full force and effect and/or to qualify the Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other Legal Requirement.

[The remainder of this page is intentionally left blank. Signature page immediately follows.]

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year notarized below.

LENNAR CAROLINAS, LLC, a Delaware
limited liability company

By: _____

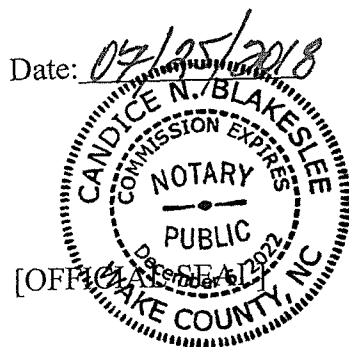
Name: Troy J. George

Title: Vice President and Division President

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I certify that the following person(s) personally appeared before me this day, each acknowledging 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: _____



Official Signature of Notary Public

Candice N. Blakeslee, Notary Public
Wake County, NC

My commission expires: 12/06/2022

Exhibit “A-1”

Legal Description of Property

All of that real property described in those deeds into Lennar Carolinas, LLC, recorded in the following Books/Pages in the Office of the Register of Deeds of Wake County, North Carolina:

- Deed Book 16862, Page 01351**
- Deed Book 16862, Page 01346**

Exhibit "A-2"

Additional Property

Being all or any real property that either is contiguous to any boundary of the Property or is located within five (5) miles of any boundary of the Property initially subjected to this Declaration.

4815-5479-3571, v. 4

PARK AVENUE HOMEOWNERS ASSOCIATION, INC. (the "Corporation")

Resolution Adopting Bylaws and Appointing Officers

The undersigned Directors of the Corporation, being all such Directors, with the undersigned LENNAR CAROLINAS, LLC, a Delaware limited liability company, consenting as "Declarant" under that Declaration of Covenants, Conditions, and Restrictions for Park Avenue, a North Carolina Planned Community, recorded or to be recorded in the Office of the Register of Deeds of Wake County (as amended and supplemented from time to time, the "Declaration"), all together, whether not all are in fact required, do hereby waive any and all requirements for the holding of a meeting, if any such requirements would otherwise apply, and by authority under the Declaration, the Articles of Incorporation of the Corporation and under the North Carolina Planned Community Act, all as applicable and as the case may be, do hereby take the following actions and adopt the following resolutions by signing their written consent hereto:

1. Adoption of Bylaws

RESOLVED, that the Bylaws attached hereto as Exhibit A are incorporated herein and are hereby adopted as the Bylaws of the Corporation, all in accordance with the Declaration, the Articles of Incorporation and the North Carolina Planned Community Act.

2. Appointment of Officers

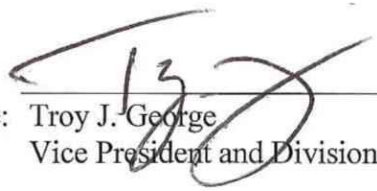
RESOLVED, that the following individuals are hereby elected and appointed by the Corporation and the Board of Directors, under the attached Bylaws, as Officers, in the capacity indicated beside their name, as follows:

Candice Blakeslee	-	President
Patrick Adams	-	Vice President and Secretary
Kristi Grabow	-	Vice President and Treasurer

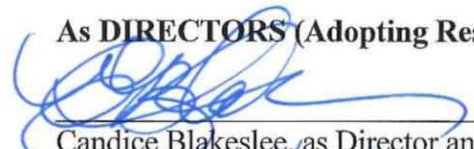
The undersigned Directors and Declarant, do hereby consent that the resolution/action set forth in the foregoing resolutions are hereby taken and shall be effective as if taken at a duly constituted meeting (if applicable), effective as of the date hereof, and do hereby direct that this document be filed with the minutes of the Corporation as part of the permanent records of the Corporation.

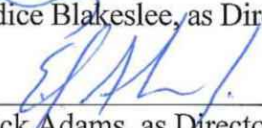
IN WITNESS WHEREOF, this Resolution is dated and effective as of the 17th day of July, 2018.

LENNAR CAROLINAS, LLC, a Delaware limited liability company

By: 
Name: Troy J. George
Its: Vice President and Division President

As DIRECTORS (Adopting Resolutions):


Candice Blakeslee, as Director and President


Patrick Adams, as Director and Vice President/Secretary

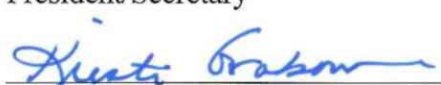

Kristi Grabow, as Director and Vice President/Treasurer

Exhibit A
Bylaws

4825-1145-7601, v. 1

**BYLAWS
OF
PARK AVENUE HOMEOWNERS ASSOCIATION, INC.**

Article I Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Park Avenue Homeowners Association, Inc. (the "**Association**").

1.2. Principal Office.

The principal office of the Association shall be located in Wake County, North Carolina. The Association may have such other offices, either within or outside North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions.

Unless otherwise specified, the words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Declaration of Covenants, Conditions and Restrictions for Park Avenue initially recorded or to be recorded in the Office of the Register of Deeds of Wake County, North Carolina, as it may be amended from time to time (the "**Declaration**"), unless the context indicates otherwise. The term "**majority**," as used in these Bylaws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Article II Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association initially shall have two classes of membership, Class A and Class B as more fully set forth in the Declaration and in the Articles. The provisions of the Declaration and the Articles pertaining to membership are incorporated by this reference.

2.2. Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3. Annual Meetings.

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. The Board shall schedule subsequent regular annual meetings to occur during the same quarter (of the Association's fiscal year) each year, on such date and at such time and place as the Board shall determine.

2.4. Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Class A votes in the Association.

2.5. Notice of Meetings.

The President, the Secretary, or the officers or other persons calling a meeting of the Members shall deliver or cause to be delivered to each Member entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Declaration, or these Bylaws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 9.5, not less than 10 nor more than 60 days before the date of such meeting.

2.6. Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If any meeting of the Members cannot be held because a quorum (see Section 2.10) is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the meeting when originally called, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of Members leaving less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting.

The voting rights of the Members set forth in the Declaration and in the Articles are

specifically incorporated by this reference.

2.9. Proxies.

Members may vote in person or by proxy, subject to the limitations of North Carolina law and subject to any specific provision to the contrary in the Declaration or these Bylaws. Every proxy shall be in writing, shall identify the Lot for which it is given, and shall be signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) transfer of title to any Lot for which it was given; (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person; or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Quorum.

Except as otherwise provided in these Bylaws or in the Declaration, the presence of Members representing ten percent (10%) of the total Class A votes in the Association shall constitute a quorum at all meetings of the Association membership. If any meeting cannot be held because a quorum is not present, the quorum requirement for any subsequent attempt to convene such meeting shall be one-half of the previous quorum requirement.

2.11. Conduct of Meetings.

The President shall preside over all meetings of the Association. The Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.12. Action Without a Meeting.

Any action required to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting.

Article III Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. Except with respect to directors appointed by the Declarant, directors must be Owners or residents. A “**resident**” shall be any natural person 18 years of age or older whose principal residence is a dwelling located on a Lot within the Park Avenue Project. No more than one eligible person from any Lot may serve on the Board at any time. If a Member is not a natural person, any officer, director, or partner, or any other representative designated in writing by the Member, shall be eligible to serve as a director unless the Member otherwise specifies by written notice to the Association; provided, no Member may have more than one such representative serving on the Board at a time, except in the case of directors appointed by the Declarant.

3.2. Number of Directors.

The Board shall consist of three (3) to five (5) directors as described in this Article III.

3.3. Selection of Directors; Term of Office.

(a) Initial Board. The initial Board shall consist of the three (3) directors appointed by the Declarant, who shall serve until their successors are appointed or elected as provided in this Section 3.3.

(b) Directors During Declarant Control. Except as otherwise provided in this Section 3.3(b), the Declarant shall be entitled to appoint, remove and replace the members of the Board in its sole discretion until expiration of Declarant’s Class B membership (“Declarant administration of the Association” for purposes hereof) under Article 3 of the Declaration.

(c) Directors After the Class B Membership.

(i) Not later than 90 days after termination of Declarant administration of the Association, the President shall call for an election by which the Class A Members shall elect three (3) replacement directors. Two directors shall serve a term expiring at the second annual meeting following the six-month anniversary of their election and one director shall serve a term expiring at the first annual meeting following the six-month anniversary of his/her election, as such directors determine among themselves. Notwithstanding the foregoing, the Class A Members may expand their 3-director Board to include a total of five (5) directors by majority vote of those Class A votes present and entitled to vote at any annual meeting (such directors would roll on/off the board three (3) at once and two (2) on the off year).

(ii) Upon expiration of the term of office of each director elected by the Class A Members, Class A Members shall be entitled to elect a successor to serve a term of two years, Directors elected by the Class A Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

3.4. Nomination and Election Procedures.

(a) Nomination of Candidates. At least 30 days prior to any election of directors by the

Class A Members, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a member of the Board of Directors, and three or more Class A Members or representatives of Class A Members. The Nominating Committee shall serve a term of one year or until their successors are appointed. The names of the members of the Nominating Committee shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Class A Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at any meeting at which an election is held, or by write-in on any ballot. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. At each election, voting shall be by written ballot. Each Class A Member may cast the one vote assigned to each of its Lots for each position to be filled by Class A votes. No cumulative voting shall be permitted. Those number of candidates equal to the number of positions to be filled by Class A votes receiving the greatest number of votes shall be elected.

3.5. Removal of Directors and Vacancies.

Any director elected by Class A votes (rather than by Declarant appointment) may be removed, with or without cause, by the vote of Members holding a majority of the Class A votes. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Class A Members, a successor shall be elected by the Class A Members to fill the vacancy for the remainder of the term of such director.

Any director elected by Class A votes who has three consecutive unexcused absences from Board meetings, or who is more than 30 day's delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

Except as provided below, in the event of the death, disability, or resignation of a director elected by Class A votes, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class A Members may elect a successor for the remainder of the term.

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

B. Meetings.

3.6. Organizational Meetings.

The first meeting of the Board shall be held in short order following the first annual meeting of the membership.

3.7. Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, provided, however, that in any event, once twenty-five percent (25%) of the projected Lots in the Project (based on the total amount allowed in the Project under applicable zoning and entitlements) are sold to Class A members, that at least two such Board meetings shall be held during each fiscal year with at least one every other quarter.

3.8. Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, or other electronic mail, messaging or communication device, with printed confirmation of successful transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or mailing or physical address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

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

3.10. Telephonic Participation in Meetings.

Members of the Board or any committee that the Board appoints may participate in a meeting of the Board or committee by conference telephone, video conference, or similar communications equipment, provided all persons participating in the meeting can hear each other simultaneously. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

3.11. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these Bylaws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of some directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Conduct of Meetings.

The President shall preside over all meetings of the Board and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. Subject to the terms of Section 3.15(q) below, meetings of the Board need not be open to the Members, provided, however, that records of the Corporation are open to review by the Members as and to the extent provided herein, in the Declaration, and under the North Carolina Planned Community Act and the North Carolina Nonprofit Corporations Act, as the case may be.

3.13. Action Without a Formal Meeting.

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

C. Powers and Duties.

3.14. Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Project Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Declaration or North Carolina law require to be done and exercised exclusively by the membership. Board determinations as to the meaning, scope, and application of Project Document provisions shall be upheld and enforced so long as such determinations are reasonable.

3.15. Duties.

Duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget; and
- (b) levying and collecting such assessments from the Owners; and

- (c) providing for the operation, care, upkeep, and maintenance of the Common Area; and
- (d) designating, hiring, and dismissing personnel (including without limitation a property management company) necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties; and
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment, in depositories other than banks; and
- (f) making and amending restrictions and rules in accordance with the Declaration; and
- (g) opening bank accounts on behalf of the Association and designating the signatories required; and
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these Bylaws; and
- (i) enforcing by legal means the provisions of the Declaration and these Bylaws and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration; and
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate; and
- (k) paying the cost of all services rendered to the Association; and
- (l) keeping books with detailed accounts of the Association's receipts and expenditures; and
- (m) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any First Mortgage on any Lot, current copies of the all books, records, and financial statements of the Association as provided in Section 9.4; and
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Lots and Common Area; and
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles and these Bylaws; and
- (p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration; and
- (q) at regular intervals, providing Members an opportunity to attend a portion of a Board

meeting to raise issues and concerns. The Board may place reasonable restrictions on the number of and time restrictions on such persons who speak at such meeting; and

(r) dedicating, selling or transferring all or any part of the Common Area, subject to the terms of the Articles of Incorporation and any applicable provisions in the Declaration, if any.

Article IV Officers

4.1. Officers.

Officers of the Association shall be a President, Vice President(s), Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. One person may hold two or more offices, except that the offices of President and Secretary shall be held by different persons.

4.2. Election and Term of Office.

Subject to Section 4.3, the Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, with Officers serving one-year terms until replaced at a subsequent meeting of the Board.

4.3. Resignation, Removal and Filling of Vacancies.

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

(b) The Board may remove and replace any officer whenever in its judgment the best interests of the Association will be served.

(c) The Board may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Article V Committees

5.1. General.

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than five Members. Acting in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article VIII of these Bylaws and no Member of the Covenants Committee shall be a current officer of the Association or a current Member of the Board.

Article VI Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in these, Bylaws, in the Articles and in the Declaration and in any appurtenant rules and regulations adopted pursuant to the same (altogether, the "Project Documents").

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under state law and as otherwise provided by the Project Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under the North Carolina Nonprofit Corporation Act.

6.2. Liability. The following shall apply in addition to any other protections provided for in the Project Documents:

(a) A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Section 6.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Project Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Lot); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The officers, directors, and committee members of the Association shall not be liable for any mistake of judgment, negligence, or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

6.3. Indemnification. The following shall apply in addition to any other protections provided for in the Project Documents:

Subject to the limitations of North Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under the North Carolina Nonprofit Corporation Act; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in the North Carolina Nonprofit Corporation Act, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable North Carolina corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Project Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall be encouraged to complete a training seminar within the first six months of assuming such position.

Article VII Management and Accounting

7.1. Compensation of Directors and Officers.

Directors and officers shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class A votes in the Association at a regular or special meeting of the Association. Any director or officer may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies furnished to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association, provided that such director's or officer's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding any interested director.

7.2. Right of Declarant to Disapprove Actions.

Until termination of Declarant administration of the Association, Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the sole judgment of Declarant, would tend to impair rights of Declarant or Builders under the Project Documents, or interfere with development or construction of any portion of the Park Avenue Project or diminish the level of services being provided by the Association.

(a) Notice. Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy, or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

Declarant, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

7.3. Managing Agent.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.15. Declarant or its affiliate may be employed as managing agent or manager.

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

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Declarant administration of the Association unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Declarant Administration of Association, upon not more than 90 days' written notice.

No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association. Any financial or other interest that the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

7.4. Accounts and Reports

(a) The following accounting standards shall be followed unless the Board by resolution specifically determines otherwise:

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

(ii) accounting and controls should conform to generally accepted accounting principles; and

(iii) cash accounts of the Association shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis; and

(ii) a statement reflecting all cash receipts and disbursements for the preceding period; and

(iii) a variance report reflecting the status of all accounts in an actual versus approved budget format; and

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).

(c) Upon Members' request, an annual report consisting of at least the following shall be made available to all Members to copy at Members' own expense within 75 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, however, that this shall be limited if/as/to the extent provided in the Project Documents.

7.6. Right to Contract.

The Association shall have the right to contract with any person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within and outside Park Avenue Project. Any common management agreement shall require the consent of a majority of the total number of directors on the Board.

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by the President of the Association or by at least two other officers, or by such other person or persons as the Board may designate by resolution.

Article VIII Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Project Documents as provided in the Declaration. To the extent expressly required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions/enforcement under the Declaration:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, (c) a period of not less than 15 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; and (d) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within 15 days of the notice.

The alleged violator shall respond to the notice of the alleged violation in writing within such 15-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 15-day period the Board may, but shall not be obligated to, waive the sanction.

Prior to the effectiveness of sanctions imposed pursuant to this Article VIII, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 15-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed then before the Board in executive session, in either case, not less than 5 days prior to the date on which the enforcement is set to occur. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the decision of the Board or Committee) and the sanction, if any, to be imposed.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 15-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

8.3. Appeal.

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 15 days after the hearing date.

Article IX Miscellaneous

9.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law or the Project Documents.

9.3. Conflicts.

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

9.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Project Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Park Avenue Project as the Board shall designate.

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

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

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

9.5. Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Declaration or these Bylaws or by law, all notices, demands, bills, statements, or other communications under the Declaration or these Bylaws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by telephone facsimile or electronic mail with written confirmation of transmission.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, telephone facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Declarant, at the principal address of the Declarant as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery;

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

(a) By Declarant. Prior to termination of Declarant Administration of the Association, Declarant may unilaterally amend these Bylaws.

(b) By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the total Class A votes in the Association, and the consent of Declarant if during Declarant administration of the Association, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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

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