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Type of Instrument: DECLARATION OF PROTECTIVE COVENANTS  
FOR WEYCROFT RESERVE  
Prepared By and Mail to: Harold E. Russell, Jr., P. O. Box 19001, Raleigh, NC 27619

DECLARATION  
OF  
PROTECTIVE COVENANTS  
  
FOR  
  
WEYCROFT RESERVE

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 STATE OF NORTH CAROLINA.  
  
THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL  
SIGNS.

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EXHIBIT A

EXISTING PROPERTY .....

EXHIBIT B

ADDITIONAL PROPERTY

THAT DECLARANT MAY SUBJECT TO DECLARATION

WHETHER OR NOT DEVELOPMENT PERIOD HAS ENDED .....

STATE OF NORTH CAROLINA  
COUNTY OF CHATHAM

**DECLARATION OF PROTECTIVE COVENANTS  
FOR WEYCROFT RESERVE**

THIS “**DECLARATION OF PROTECTIVE COVENANTS FOR WEYCROFT RESERVE**”, is made on the date hereinafter set forth by **IPG OLD CHATHAM, LLC**, a North Carolina limited liability company, also referred to herein as “Declarant”;

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property in the Town of Cary, Chatham County, North Carolina described on **Exhibit A** attached hereto and incorporated by reference, all of which constitutes the “Existing Property”;

AND WHEREAS, Declarant intends to develop the Existing Property, together with any Additional Property annexed to the Declaration, into a residential subdivision to be known as “Weycroft Reserve” (which also may be referred to herein as the “Community” or the “Subdivision”) as a Planned Development District under the applicable provisions of the Town of Cary Code, which may (but shall not be required to) consist of any one or more of the following: detached single-family residential dwellings; public or private streets; buffers; stormwater drainage systems and facilities; greenways; open space; recreational facilities; and other uses consistent with the zoning of the Properties and the Town of Cary approvals for the Subdivision;

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 Areas 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 Properties, and to provide for maintenance of stormwater drainage systems and facilities within and for the Subdivision, 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;

WHEREAS, in furtherance of the foregoing, Declarant also desires to incorporate under the nonprofit corporation laws of the State of North Carolina **WEYCROFT RESERVE ASSOCIATION, INC.**, to own and/or maintain and/or administer Common Areas, to administer and enforce covenants and restrictions applicable to the Subdivision, and to collect and disburse the assessments and charges provided for herein;

NOW, THEREFORE, Declarant hereby declares that the Existing Property, together with all Additional Property, if any, subjected to the Declaration pursuant to Article II hereof, all of which together is referred to as the “Properties” as defined herein, is and shall be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed subject to the covenants, conditions, restrictions, easements, charges and liens set forth in the Declaration, all of which shall run with the Properties and, as provided herein, be binding on and inure to the benefit of all Persons owning any right, title or interest in said the Properties or any part thereof, and their heirs, personal representatives, successors and assigns.

**ARTICLE I  
DEFINITIONS**

The following words and terms, when used in the Declaration or any amendment hereto, or any Supplemental Declaration or Subdivision Declaration, unless amended or unless the context clearly indicates otherwise, are defined as follows (when these and other defined words or terms herein have an initial capital letter or letters, however, it is not required that their use in the Declaration have initial capital letters in order to have the defined meaning). When two different words or groups of words are defined as part of the same definition, those words or groups of words each have that definition when used herein. Terms and words used herein without definition shall have the meanings, if any,

specified therefor in the "Definitions" section of the Act or, if not defined in the Act, in the "Definitions" section of the Nonprofit Corporation Act, or if not defined in either the Act or Nonprofit Corporation Act, any applicable definitions section of the Code, and, in the event of any conflict between the definitions contained herein and the definitions contained in the Act, the Nonprofit Corporation Act or the Code, the Act or Nonprofit Corporation Act or Code, in that order and as appropriate, shall control:

- (a) "Act" is defined as the North Carolina Planned Community Act, currently contained in Chapter 47F of the North Carolina General Statutes, and including all amendments, supplements and replacements thereof.
- (b) "Additional Property" is defined as all real property annexed or subjected to the Declaration, in one of the ways allowed herein, following the initial recording of the Declaration in the Registry. As the context allows or requires, the term also includes real property that Declarant or any other Person desires to annex or subject to the Declaration, but no such Additional Property shall be subject to the terms of the Declaration until it has been annexed or subjected to the Declaration in one of the ways allowed herein.
- (c) "Architectural Guidelines" is defined as the guidelines and standards adopted and in effect with respect to Dwellings and other improvements in the Properties.
- (d) "Articles" is defined as the Articles of Incorporation of the Association, including all duly adopted amendments thereto.
- (e) "Association" is defined as **WEYCROFT RESERVE ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.
- (f) "Board" is defined as the Board of Directors of the Association, and is the "Executive board" as defined in the Act. The Board is responsible for the management and administration of the Association as provided for herein and in the Act.
- (g) "Builder" is defined as a Person, other than the Declarant, who regularly is in the business of constructing Dwellings for resale to other Persons, and who purchases or becomes the Owner of one or more Lots within the Community for the purpose of constructing thereon one or more Dwellings for resale to other Persons. "Builders" refers to all such persons or entities collectively.
- (h) "Bylaws" is defined as the Bylaws of the Association as they may now or hereafter exist, including all duly adopted amendments thereto.
- (i) "City" or "Town" or "governmental entity" is defined as the Town of Cary, North Carolina (also referred to herein separately as the "Town of Cary"), the County of Chatham, 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 Properties or any part thereof, whichever governmental entity or entities is/are applicable.
- (j) "Code" is defined as the Town of Cary ordinances, including all rules, regulations and policies lawfully adopted pursuant thereto, and including all amendments, supplements and replacements thereof.
- (k) "Common Expenses" is defined as any one or more of the following: i) expenses of maintenance of Common Property and Common Expense Property, including repair, restoration and replacement thereof; (ii) *ad valorem* taxes and public assessments, if any, levied against the Common Property or other assets of the Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained therein by the Association result in additional *ad valorem taxes* on such real property that would not be assessed in the absence of such improvements); (iii) premiums for hazard, liability and other insurance insuring the Common Property, assets of the Association, or the Association, its officers, directors and employees, if any; (iv) fees and expenses of attorneys, accountants, and other persons and entities employed by the Association for Association business; (v) expenses



declared to be or described as Common Expenses by the Act, the Code, or other Legal Requirements; (vi) expenses declared to be or described as Common Expenses by the provisions of the Governing Documents, including all expenses for implementation, administration, enforcement, and maintenance of Stormwater Control Measures; (vii) utility charges in connection with the Common Property, except to the extent that such charges are paid by users of Common Property or are part of any use fees or charges imposed by the Governing Documents for use of the Common Property (for example, paying a meter box attached to lights that light a tennis court); (viii) expenses required to be paid by the Association pursuant to any Stormwater Agreement, encroachment agreement, or other agreement with the City; (ix) expenses required to be paid by the Association pursuant to any agreement with a utility provider who provides utility services to any part or all of the Properties; (x) expenses determined by the Board or by the Members to be Common Expenses; (xi) reserve funds maintained by the Association pursuant to the Declaration or any Legal Requirement; (xii) expenses incurred by the Association for implementation, administration, and enforcement of the Governing Documents as the Board determines to be in the best interests of the Association or its Members; (xiii) all other expenses incurred by the Association in performing its functions and providing services under the Governing Documents, Legal Requirements, and the Association's contractual obligations, including operating, management and administrative expenses; and (xiv) expenses incurred by the Association for all other purposes required or allowed under the Governing Documents, the Act, the Code, and other Legal Requirements.

(l) "Common Property" and "Common Area" are defined as any one or more of the following: (i) all real property and improvements thereon owned in fee or leased or used by the Association, or with respect to which the Association has a financial obligation, for the common use, enjoyment or benefit of the Properties or the Members of the Association; (ii) all personal property owned or leased or used by the Association, or with respect to which the Association has a financial obligation, for the common use, enjoyment or benefit of the Properties or the Members of the Association; and (iii) all rights and easements of the Association in, on, under, over, through and to any real property or personal property not owned in fee or leased by the Association, together with all improvements that are owned or maintained by the Association on such real property, each such easement or right and improvements also being referred to herein as "Common Expense Property". Common Expense Property is included within the definition of Common Property, even though Common Expense Property at times may be referred to herein separately from Common Property. Common Property and Common Expense Property typically will be identified either by plat recorded in the Registry or by an instrument, whether or not recorded in the Registry, conveying real property or granting or reserving an easement or right in real property to or for the Association (including instruments granted to or reserved by or on behalf of the Association or by or on behalf of the Declarant for later transfer or assignment to the Association, for the use, enjoyment or benefit of the Properties or the Members of the Association) and labeled or described thereon or therein as "Common Area", "Common Property", "Open Space", "Common Open Space", "Private Open Space", "Permanently Protected Open Space", "Permanently Protected Undisturbed Open Space", "Permanently Preserved Open Space", "Private Street", "Landscape Easement", "Sign Easement", "Greenway", "Greenway Easement", "Street Island", "Median", "Encroachment", "Buffer", "Stormwater Drainage Easement", "Drainage Easement", "Private Drainage Easement", "Stormwater Control Facility", or some other similarly descriptive term. Stormwater Control Measures may be on Common Property or on Common Expense Property. Common Expense Property may include portions of public street rights of way or other property owned by or dedicated to a governmental entity that are subject to an encroachment agreement with such governmental entity, and may include signs, landscaping and other improvements identifying any part or all of the Subdivision and located on a portion of the Properties that is not Common Property or located in a public street right of way in or adjacent to the Properties. This definition of Common Property also includes Limited Common Property, which is a sub-classification of Common Property and is for the use, enjoyment and benefit of Owners of less than all of Lots in the Properties. All Common Property shall be maintained by the Association as provided herein. The Town of Cary has required the construction of certain "Greenway Trails" or "Trails" which will be depicted on the recorded plats. The maintenance of said trails by the Association is a requirement of The Town of Cary and said trails are for the benefit of the general public and the Owners. It is anticipated that the Association may implement rules and regulations as to the usage of said trails that are not contrary to other rules, regulations or ordinances of a governmental entity. (Note: This definition of Common Property in the Declaration is broader than the definition of "common elements" in the Act.)

Common Property also includes the following:

- (1) any private street and private sidewalks in the Properties (but excluding private sidewalks on and solely for the benefit of an individual Lot);
  - (2) Stormwater Control Measures (but excluding Stormwater Control Measures on and solely for the benefit of an individual Lot);
  - (3) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any City utility easement;
  - (4) any Code-required shared facility or open space for the Properties, except for open space owned by the City;
  - (5) any road right-of-way in or adjoining the Properties constructed or installed by the Declarant or the Association, or required to be constructed or installed by the Declarant or the Association, that has been dedicated to public use or offered to dedication for public use, but not accepted for maintenance by the applicable Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant or the Association, as applicable, of any obligation it has to take such action as is necessary to have any street or road accepted. The Declarant and the Association each has the right to enforce this obligation against the other, and the obligated party shall be liable to the enforcing party for all costs and expenses, including court costs and reasonable attorney's fees, incurred by the enforcing party in connection with such unaccepted street or road and enforcement of these rights;
  - (6) any object or improvement located on, under, in or over City property or a City right-of-way or easement, which object or improvement is subject to an encroachment agreement with the City, including signs, landscaping, irrigation facilities, drain pipes, decorative surfaces, and brick pavers; and
  - (7) all other real and personal property and improvements, if any, required to be included as Common Property by the Code or other Legal Requirements, and all other real and personal property and improvements, if any, declared to be Common Property by the Declaration or other Governing Documents.
- (m) "Community-Wide Standard" is defined as the standard of conduct, maintenance, or other activity generally prevailing in the Subdivision, or the minimum standards established pursuant to the Architectural Guidelines, Restrictions and Rules, and Board resolutions, whichever is a higher standard. Declarant initially may establish the Community Wide Standard and it may contain both objective and subjective elements. The Community-Wide Standard may change as development of the Subdivision progresses and as the needs and desires within the Subdivision change.
- (n) "Declarant" is defined as **IPG OLD CHATHAM, LLC**, a North Carolina limited liability company. The term "Declarant" also includes any Person to whom or which Declarant assigns or delegates the rights and/or obligations of Declarant under the Declaration by an assignment of Declarant's rights recorded in the Chatham County Registry. The term "Declarant" also includes any Person designated by Declarant as its "affiliate".
- (o) "Declarant Control Period" is defined as the period of time between the date of recording of the Declaration and ending on the date on which the first of the following occurs:
- (1) the date on which more than 75% of the total number of Lots permitted by the Subdivision Plan (i) have Dwellings thereon for which certificates of occupancy have been issued and (ii) have been conveyed to Class A Members other than Builders. Provided, until such time as the Declarant Control Period ends under any other subparagraph of this definition, without the possibility of any reinstatement, the Declarant Control Period shall be reinstated automatically as the Subdivision Plan is revised such that the foregoing requirements for termination of the Declarant Control Period no longer are met; or
  - (2) voluntary termination of the Declarant Control Period by a written instrument executed by Declarant and recorded in the Registry; or
  - (3) termination of the Declarant Control Period required by any Legal Requirement; or
  - (4) 5:00 p.m. on December 31, 2031.

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

(p) "Declaration" is defined as this "Declaration of Protective Covenants For Weycroft Reserve", including all duly adopted amendments hereto.

(q) "Development Period" is defined as the period of time from the date of recording of the Declaration in the Registry through and including 5:00 p.m. on the **last** of the following dates to occur:

- (1) December 31, 2031; or
- (2) the date that is five (5) years after the date of recording of the most recent Supplemental Declaration executed by the Declarant subjecting real property to the Declaration; or
- (3) the date of release of the last bond (or letter of credit or other, similar financial guarantee) posted by Declarant with the City in connection with Declarant's development of the Properties or any portion thereof.

Notwithstanding the foregoing, if Declarant is delayed in the development of any part or all of the Properties 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. The Development Period also shall include any periods of time after the applicable termination event, including voluntary termination by Declarant, during which Declarant is conducting any activity within the Properties that is required by Legal Requirements or for Declarant to complete development of any part of the Properties, or for Declarant to fulfill any obligation to the City, the Association, a Builder or any Owner with respect to any portion of the Properties. 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. Any approvals, waivers, or variances granted by the Declarant under the Governing Documents shall be binding upon all successors to Declarant's approval, waiver, or variance authority.

(r) "Dwelling" or "Dwelling Unit" is defined as any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or sub-tenants of the Owner. At the time of the recording of the Declaration in the Registry, it is contemplated by Declarant, but not required by the Declaration, that each Dwelling in the Properties will be a detached single-family dwelling.

(s) "Exempt Property" is defined as all portions of the Properties included within any of the following categories:

- (1) Common Property (provided, however, a Lot on which Common Expense Property is located is not exempt from assessments);
- (2) property within the right-of-way of publicly-dedicated streets and roads
- (3) property owned by the City or a utility provider, 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 City or a public utility or that constitutes Common Expense Property); and
- (4) property owned by a charitable or nonprofit organization exempt from taxation by Legal Requirements, unless the property is a Lot that has a Dwelling thereon.

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 City 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 City 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 (*e.g.*, property within a publicly-dedicated street right-of-way that has been closed as a public street, property formerly owned by the City or a tax-exempt charitable or nonprofit organization which has been conveyed to a Person whose status does not qualify for the exemption) shall be reclassified as a Lot or Common Property, 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 Lots and Common Property.

(t) “fiscal year” of the Association is defined as the calendar year until such time as the Board, by appropriate resolution, establishes a different fiscal year for the Association.

(u) “Force Majeure” is defined as any one or more of the following: acts of God, earthquakes, blizzards, tornadoes, hurricanes, fire, flood, malicious mischief, insurrection, terrorism, riots, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, war (declared or undeclared), landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any court, tribunal or judicial authority of competent jurisdiction, inability to obtain materials or supplies after the exercise of all reasonable efforts, substantial interference in construction activities resulting from construction activities conducted simultaneously on adjacent lands by or under the direction of unrelated parties, and any other similar circumstances beyond the reasonable control of the Person responsible for complying with some provision of the Declaration.

(v) “Governing Documents” is defined as the Declaration, the Articles of Incorporation, the Bylaws, Restrictions and Rules, Board resolutions, Architectural Guidelines, all applicable Supplemental Declarations and Subdivision Declarations, all Stormwater Agreements and other agreements with governmental entities, and all duly adopted amendments and revisions to any of the foregoing documents.

(w) “Improvement” is defined as any improvement of or on any Lot, including Dwellings and other buildings and structures (specifically including exterior materials, colors, size, location and architectural style), decks, patios, porches, driveways, motor vehicle and other parking areas, storage areas located outside of a Dwelling, recreational areas, equipment and facilities located outside of a Dwelling, mailboxes, exterior antennae, dishes and other apparatus to receive or transmit radio, television, or microwave or other signals, fences, walls, hedges, other landscaping (including planted areas, grassed areas, natural areas and the plant and other materials therein), poles, flags, decorative features and items attached to or on the exterior of a Dwelling or in the yard, ponds, lakes, clearing, grading and other site preparation, swimming pools, coverings for windows and other glass portions of a Dwelling (for example, curtains, blinds, and shutters), which coverings are visible from anywhere outside of the Dwelling, lights and signs located on or outside of a Dwelling or visible inside a Dwelling from a street or adjoining portion of the Properties, and all other items used or maintained on a Lot outside of the Dwelling. The definition of Improvements 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 any Lot in accordance with Approved Plans or Architectural Guidelines not requiring Approved Plans at the time of issuance of a certificate of occupancy for the Dwelling thereon. The examples of improvements stated for the purposes of this definition do not imply that all such improvements will be allowed in the Properties, and all improvements are subject to the architectural approval provisions of the Declaration.

(x) “include” or “including” is defined as being inclusive of, but not limited to, the particular matter described, unless otherwise clearly obvious from the context.

(y) “Institutional Lender” is defined as a Mortgagee who is a commercial bank, savings bank, savings and loan association, trust company, credit union, industrial loan association, insurance company, pension fund or business trust, including real estate investment trust, any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lender, or any combination of any of the foregoing

entities and who holds a first lien deed of trust encumbering a Lot ("first lien" meaning that it has priority over all other security interests in the Lot). Only for the purposes of the notice and inspection rights contained in the Declaration in the portions hereof dealing specifically with Institutional Lenders, amendment of the Declaration and termination of the Declaration, the term "Institutional Lender" also shall include the Federal Housing Administration ("FHA"), the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac"), the Federal National Mortgage Association ("FNMA" or "Fannie Mae"), the Department of Veterans Affairs ("VA"), the Government National Mortgage Association ("GNMA" or "Ginnie Mae") and any other public or private secondary mortgage market agency participating in purchasing, guaranteeing or insuring mortgages which has notified the Board of such participation in writing (each of whom generically is referred to herein as a "Secondary Mortgage Market Agency"). Where the approval of Institutional Lenders is required, such approval consists of any one or more of the following: (i) written approval; (ii) any written waiver of approval rights; (iii) a letter stating no objection; or (iv) presumptive approval if an Institutional Lender does not respond to a notice from the Association requesting approval by notifying the Association, in the manner required herein for giving notices, within thirty (30) days after the Association gives notice to the Institutional Lender of the request for approval.

(z) "landscaping" includes any or all of the following: flowers, plants, shrubs, trees, grass, natural areas (for example, areas covered with pine straw, mulch, or naturally growing vegetation), fences, walls, statues, brick pavers or other decorative ground covering of a similar nature, ornamental water features, and any other items that the Board, in the exercise of its reasonable discretion, determines should be included in the term "landscaping" under the Declaration.

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

(bb) "Limited Common Expenses" is defined as all expenses of the type included within the term Common Expenses, but that are related solely and specifically to Limited Common Property. Limited Common Expenses shall be paid out of assessments against Members who own Lots in the particular phase or section or portion of the Subdivision for or in which the associated Limited Common Property has been established. All references in the Declaration to Common Expenses in the context of Limited Common Property are deemed to refer to Limited Common Expenses for the applicable Limited Common Property.

(cc) "Limited Common Property" and "Limited Common Area" are defined as Common Property, if any, that is established by the Declarant or the Association for the benefit of the Owners of less than all of the Lots in the Properties, and which has been designated as Limited Common Property by the Declarant or the Association. Limited Common Property may include, for example, private alleys or landscaped medians in streets and private alleys adjacent to Lots in particular sections of the Subdivision, and may include Stormwater Control Facilities that serve more than one, but less than all, of the Lots in the Properties.

(dd) "Lot" is defined as any portion of the Properties with delineated boundary lines, whether improved or unimproved, that is intended for independent ownership and either has a Dwelling constructed thereon or is intended for construction of a Dwelling thereon, and is shown on a plat recorded in the Registry. A "Proposed Lot" is defined as any portion of the Properties with delineated boundary lines, whether improved or unimproved, that is intended for independent ownership and either has a Dwelling constructed thereon or is intended for construction of a Dwelling thereon, and is shown on Subdivision Plan but not shown on a plat recorded in the Registry. A Proposed Lot becomes a Lot from and after the date on which a plat thereof is recorded in the Registry. The definition of Lot also includes Unsubdivided Land as described in the definition of Unsubdivided Land. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new plat, the newly platted lot thereafter shall constitute a Lot under this definition, except as otherwise may be provided herein with respect to allocation of votes and assessments applicable to the newly platted Lot.

- (ee) "maintain", "maintaining", "maintenance" or any substantially similar term used in the Declaration, is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, monitoring, testing, examination, upkeep, cleaning, renewal, alteration, repair, replacement, painting, staining, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering, and preservation. Maintenance also includes any action necessary for real or personal property to be maintained so that it functions for the purposes for which it is intended and so that it complies with the Community Wide Standard.
- (ff) "Member" is defined as each Person who or which holds membership in the Association.
- (gg) "mortgage" or "deed of trust" is defined as any mortgage, deed of trust or other instrument that creates a security interest in real property, and includes all acts required to create such security interest.
- (hh) "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust.
- (ii) "Nonprofit Corporation Act" is defined as the "North Carolina Nonprofit Corporation Act", currently contained in Chapter 55A of the North Carolina General Statutes, and including all amendments, supplements and replacements thereof.
- (jj) "Owner" is defined as the current owner of record in the Registry, whether one or more Persons, of fee simple title to any Lot, but excluding in all cases any Person owning or holding an interest merely as security for the performance of an obligation.
- (kk) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or other legal or commercial entity.
- (ll) "Plans" is defined as the 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 Properties, driveway, parking areas, provisions for handling stormwater, decorative landscape planting and other decorative landscaping features, floor plans and elevations, and other items specified in any applicable Architectural Guidelines or required by the Person from whom approval of the Plans must be obtained in accordance with the Declaration. "Approved Plans" is defined as Plans that have been approved by the Declarant or by the Architectural Review Committee (or by the Board, on appeal from the Architectural Review Committee).
- (mm) "present" at a meeting of the Association is defined as being present in person or by a proxy that has been executed and is effective under Legal Requirements and the Governing Documents.
- (nn) "Properties", or "Community", or "Subdivision" is defined as the Existing Property, together with all Additional Property annexed to the Declaration pursuant to Article II hereof, less and except all real property that is withdrawn from the Declaration as allowed herein. References to the Properties includes any part or all of the Properties, as applicable, in accordance with the context of such reference herein, whether or not the reference specifically states that it is referring to any part or all of the Properties.
- (oo) "property manager" or "management company" is defined as a Person employed by the Association to manage or assist in the management of the business and property of the Association.
- (pp) "Recreational Amenities" is defined as those portions of the Common Property on which a swimming pool, clubhouse, bathhouse, and/or other recreational facilities, including associated parking and other improvements, have been constructed or placed for use, subject to the Governing Documents, by the Declarant, by Lot Owners and their family members, tenants and guests, and by Recreational Amenities Users. Provided, however, nothing herein shall be construed as imposing any obligation on the Declarant or any other Person to construct or provide for any Recreational Amenities, except to the extent, if any, that Declarant or such other Person is so obligated under Legal Requirements.

(qq) "Recreational Amenities User" is defined as each natural Person, other than Declarant, Builders, Lot Owners and their family members, tenants and guests, who, subject to rules, regulations and fees adopted by the Board, has been granted the right to use part or all of the Recreational Amenities in the Subdivision. A Recreational Amenities User shall have no voting rights in the Association, but a Recreational Amenities User shall be subject to payment of such charges for use of the Recreational Amenities as established by the Board and subject to all of the rules and regulations for use of the Recreational Amenities applicable to Owners, as well as any additional rules and regulations adopted by the Board, including rules and regulations relating to use of the Recreational Amenities by family members, tenants, and guests of Recreational Amenities Users.

(rr) "Registry" is defined as the office of the Register of Deeds for Chatham County, North Carolina, or any successor office in which deeds, plats, easements, mortgages and deeds of trust are recorded. Any reference herein to a plat or document being recorded refers to such plat or document as recorded in the Registry.

(ss) "Restrictions and Rules" or "Rules and Regulations", the terms being used interchangeably herein with respect to matters adopted by the Declarant or the Association, as applicable, is defined as rules, regulations, requirements, prohibitions, and/or conditions for any one or more of the following as are adopted, amended, or repealed by the Declarant or the Association: (i) matters governing use of the Properties or any part thereof, including the Common Property, or (ii) matters governing conduct of Persons while in or on the Properties or any part thereof, including the Common Property, or (iii) providing for the 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 Restrictions and Rules.

In addition to any other provisions of the Declaration authorizing the Association to adopt rules and regulations, the Association, separate and apart from the Restrictions and Rules, may adopt, amend, modify, and enforce reasonable rules and regulations for the use and operation of the Common Property and/or for the implementation and enforcement of the Governing Documents.

(tt) "Special Declarant Rights" is defined as all development and other rights granted to, or reserved by, or established for the benefit of, Declarant in the Declaration and other Governing Documents, whether or not such rights are referred to as Special Declarant Rights in the Declaration or other Governing Documents. As long as a Special Declarant Right exists under the Declaration or other Governing Document, Declarant may exercise it at any time and from time to time. Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, at any time and from time to time, subject to such terms and conditions as Declarant specifies in the assignment document. Unless the 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, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, and the assignment becomes effective only upon the recording of the document in the Registry or any later date specified therein.

(uu) "Stormwater Agreement" or "Stormwater Replacement Agreement", or "Stormwater Control Structure And Access Easement And Agreement", which terms include any other agreement under Legal Requirements related to Stormwater Control Facilities, by whatever name the agreement is denominated therein, is defined as any agreement related to Stormwater Control Facilities (i) required by the Code or other Legal Requirement and between or among the City or another Person and the Declarant and/or the Association and/or one or more Owners, or (ii) voluntarily entered into between or among the City or another Person and the Declarant and/or the Association and/or one or more Owners.

(vv) "Stormwater Control Facilities" or "Stormwater Control Measures" is defined as any one or more of the following that serves or benefits any part or all of the Properties or is required by Legal Requirements in connection with any part or all of the Properties, whether located in the Properties or outside of the Properties: (i) "stormwater drainage easements" (also referred to herein as "stormwater easements" or "drainage easements") that are shown on plats of the Properties recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Property or benefit or serve more than one (1) Lot; and (ii) all "stormwater management facilities" for the Properties, including ponds, man-made or natural areas and/or planted or landscaped areas into which stormwater drains, or in which stormwater is collected, or from which it is discharged, as well as drains, pipes, conduits, inlets, creeks, streams, channels, dams, ditches, filters, buffers, bio-retention areas, level spreaders, constructed wetlands,



and other equipment, facilities and stormwater management measures used for inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging and/or managing stormwater. Except as otherwise provided herein, Stormwater Control Facilities are part of the Common Property or Limited Common Property, as applicable, and maintenance of Stormwater Control Facilities is a Common Expense or Limited Common Expense, as applicable. References in the Declaration to stormwater management include all applicable Stormwater Control Facilities, Stormwater Agreements and Stormwater Maintenance Manuals.

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

(xx) "Subdivision Declaration" is defined as any declaration, recorded subsequent to the Declaration, that subjects any phase, section, subdivision, or other portion of the Properties to restrictions, terms, and/or conditions that are different from or in addition to the restrictions, terms, and/or conditions of the Declaration, or is recorded for any other purpose for which the Declaration allows a Subdivision Declaration to be recorded

(yy) "Subdivision Plan" is defined as the most current land use or development plan approved by the City for the Properties or any part thereof, whether the approval is preliminary or final, and regardless of any name other than Subdivision Plan under which it approved by the City (for example, site 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 amend or 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 does it prohibit Declarant from withdrawing it from the Declaration, nor shall Declarant be prohibited from subjecting to the Declaration any property described on **Exhibit B** that is not included on the Subdivision Plan.

(zz) "Supplemental Declaration" is defined as any declaration, recorded subsequent to the Declaration, that annexes Additional Property to the Declaration or is recorded for any other purpose for which the Declaration allows a Supplemental Declaration to be recorded.

(aaa) "Unsubdivided Land" is defined as all portions of the Properties owned by any Person which are not Lots or Exempt Property, and on which no Dwellings are located. Solely for the purposes of membership in the Association and payment of assessments, all Unsubdivided Land owned by any one Person together constitutes one (1) Lot under the Declaration, and each separate parcel of Unsubdivided Land on which a Dwelling is located constitutes one (1) Lot under the Declaration.

(bbb) "utility" or "public utility" is defined as any one or more of the following used in any part or all of the Properties: electricity; telephone; Internet service; water; sanitary sewer; natural gas; television; refuse collection; collection of materials for recycling; and any other service or facility generally recognized as a public utility or determined to be a public utility by the Declarant (during the Development Period, and thereafter, by the Board); "utility provider" or "public utility provider" is defined as the Person who provides a utility to any part or all of the Properties.

(ccc) "utility apartment" is defined as a portion of a Dwelling that complies with all of the following requirements: (i) it physically is part of the Dwelling or part of a garage attached to or detached from the Dwelling; (ii) it is occupied by a Person or family unit other than the Person or family unit that occupies the rest of the Dwelling; (iii) the Person or family unit that occupies the utility apartment either is related to an Owner of the Dwelling by blood or marriage and within the third degree, or is providing physical care for an Owner of the Dwelling or a family member of an Owner of the Dwelling who is residing in the Dwelling with the Owner; (iv) the utility apartment contains a floor area not in excess of 1/4 of the gross floor area of the Dwelling, exclusive of the utility apartment (for example, if the Dwelling contains 2,000 square feet, the utility apartment may contain a maximum of 500 square feet); and (v) the utility apartment complies with all Legal Requirements and with any Restrictions and Rules applicable thereto. Subject to Legal Requirements, the Board has the sole authority to resolve any issue as to what constitutes a family unit under the Declaration.



**ARTICLE II**  
**THE PROPERTIES; ANNEXATION; WITHDRAWAL;**  
**SUPPLEMENTAL DECLARATION; SUBDIVISION DECLARATION**

**Section 1. Existing Property.** The Existing Property which is and shall be owned, held, transferred, sold, conveyed, leased, used, occupied and mortgaged subject to the Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto, and constitutes the Properties at the time of the recording of the Declaration.

**Section 2. Annexation of Additional Property.**

(a) **Annexation by the Declarant.** Prior to the end of the Development Period, Declarant may annex Additional Property to the Declaration by recording a Supplemental Declaration extending the operation and effect of the Declaration thereto. In addition to the foregoing, and whether or not the Development Period has ended, Declarant may annex to the Declaration as Additional Property any part or all of the real property described on **Exhibit B**. If the Additional Property being annexed is not owned by Declarant, the Supplemental Declaration also must be executed by all Owners of the Additional Property. Except to the extent, if any, required by Legal Requirements, nothing herein shall be deemed to require the Declarant to annex any Additional Property to the Declaration or to develop it in any manner whatsoever.

(b) **Other Annexation.** If the Declarant desires to annex Additional Property to the Declaration other than as allowed in the immediately preceding subsection (a), or if a Person other than the Declarant desires at any time to annex Additional Property to the Declaration, such Additional Property may be annexed to the Declaration only by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association for which the notice of the meeting includes notice of the proposal to annex such Additional Property, and the recording in the Registry of a Supplemental Declaration signed by the owner of such Additional Property and by the appropriate officers of the Association certifying the required meeting and vote. In addition to the foregoing, at any time during the Development Period that a Person other than Declarant desires to annex Additional Property to the Declaration, to be effective such annexation must have the written consent of Declarant, as evidenced by Declarant's execution of the Supplemental Declaration or another instrument specifically consenting to the annexation.

(c) **Approval by Governmental Entities.** All annexations of Additional Property to the Declaration must be approved by the Town of Cary, if required by the Code.

(d) **Supplemental Declaration.** Each Supplemental Declaration shall be effective to annex (or subject, those two words being used interchangeably in the context of adding Additional Property to the Declaration) Additional Property to the Declaration only upon obtaining all approvals required by the Declaration and upon its recording in the Registry, and the effective date of such annexation shall be the later of the date specified therein, if any, or the date of recording. Each Supplemental Declaration shall describe the Additional Property annexed and indicate that the Additional Property is being annexed to the Declaration. A Supplemental Declaration need not be in any specific form and need not be titled Supplemental Declaration (for example, the annexation language may be contained in a deed from the Declarant conveying the Additional Property being annexed), but it shall indicate clearly the intention to annex such Additional Property to the Declaration. Any Supplemental Declaration may specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such Additional Property as the Person annexing such Additional Property to the Declaration may determine. Provided, however, the Declaration shall control over any provision of any Supplemental Declaration that conflicts with the Declaration.

(e) **Votes Allocated to Additional Property.** Except as otherwise provided herein or in any Supplemental Declaration annexing Additional Property to the Declaration, votes in the Association shall be allocated to Additional Property in the same manner that votes are allocated to the Properties already subject to the Declaration.

(f) **Conveyance of Common Property in Additional Property.** Common Property, if any, located within any Additional Property or the applicable phase or portion thereof, shall be conveyed to the Association pursuant to the requirements of the Declaration for conveyance of other Common Property to the Association.

**Section 3. Order of Development and Annexation.** Declarant contemplates that it may develop any portion of the Properties it owns in accordance with a Subdivision Plan. Provided, however, but subject to Legal Requirements that provide otherwise, no Subdivision Plan shall obligate the Declarant to develop any particular portion of the Properties 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 Properties, and the Declarant may annex or consent to annex Additional Property to the Declaration before completing development of all of the Properties previously subjected to the Declaration.

**Section 4. Withdrawal of Properties from the Declaration.**

(a) Subject to Legal Requirements, during the Development Period the Declarant, in its sole discretion, without the approval or joinder of the Association or any Owner or other Person except the Owner (if not Declarant) of the portion of the Properties being withdrawn, may record in the Registry a "withdrawal declaration" to withdraw one or more portions of the Properties from the Declaration, except that Declarant may not withdraw from the Declaration Lots on which there are Dwellings at the time of the withdrawal. All portions of the Properties withdrawn from the Declaration shall be identified in the withdrawal declaration either by a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the withdrawal declaration is recorded in the Registry, or on such later date specified therein. All such withdrawals also must be approved by the Town of Cary, if required by the Code.

(b) After the end of the Development Period, and subject to Legal Requirements, one or more portions of the Properties may be withdrawn from the Declaration upon approval by the Owner of such portion of the Properties and by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association for which the notice of the meeting includes notice of the proposal to withdraw such portion of the Properties from the Declaration. Provided, however, the required percentage vote of the Members for withdrawal of any Lot on which there is a Dwelling at the time of the proposed withdrawal is eighty percent (80%) or more. All such withdrawals also must be approved by the Town of Cary, if required by the Code.

Following approval of any such withdrawal, the Association and the Owner of the portion of the Properties to be withdrawn from the Declaration shall record a withdrawal declaration particularly describing the withdrawn portions of the Properties by reference to a plat recorded in the Registry or by a metes and bounds description. The withdrawal shall be effective on the date the withdrawal declaration is recorded in the Registry, or on such later date specified therein.

**Section 5. Effect of Annexation or Withdrawal.** Other than as specifically limited by the Governing Documents or any Legal Requirement, the Declarant shall have full power to add to, subtract from, or make changes in, any Subdivision Plan, and annex real property to and withdraw real property from the Declaration, regardless of the fact that such actions may affect the relative voting strength of any class of membership in the Association or reduce the number of Owners subject to assessment under the Declaration. Any portion of the Properties that is withdrawn from the Declaration may be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed in any manner allowed under Legal Requirements, and shall be released from the terms and provisions of the Declaration on the date the withdrawal becomes effective as provided herein, subject to any terms of the withdrawal declaration and except that all easements specifically affecting such withdrawn portions of the Properties, as shown on plats recorded in the Registry or as described in documents recorded in the Registry, shall remain in force and effect unless released or terminated by all Persons having rights to exercise such easements.

**Section 6. Subdivision Declaration.** Within the Properties there could be two or more separate and distinct phases, sections, or subdivisions. Because such phases, sections or subdivisions may have varying Lot sizes, types of Dwelling Units, marketing considerations and other differences, it may be necessary or desirable to establish, by the recording of a Subdivision Declaration, additional and different covenants and restrictions which are applicable solely to such phase, section or subdivision. Accordingly, the Declarant or other Person who owns any such phase, section or subdivision of the Properties may subject such phase, section or subdivision to such Subdivision Declarations as the Declarant or other Person, in his, her or its sole discretion, determines. Provided, however, during the Development Period no Person other than the Declarant may subject any phase, section or subdivision of the Properties to any Subdivision Declaration unless the Declarant consents in writing thereto. More than one phase, section or subdivision,

including all of the Properties, may be subjected to the same Subdivision Declaration. Any Subdivision Declaration may do any one or more of the following: (i) create and regulate the use of and assessments for Limited Common Area; (ii) establish minimum building setback distances and minimum Dwelling square footage requirements for such phase, section or subdivision that are more or less than the minimum building setback distances and minimum Dwelling square footage requirements, if any, that are specified in the Declaration or in any Architectural Guidelines; (iii) establish a property owners association with respect to the portion of the Properties subject to the Subdivision Declaration (for example, a condominium association or townhouse association), which shall be in addition to and not in place of, the Association, and (iv) specify use restrictions and/or contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not in conflict with the Declaration, as the Person subjecting such real property to the Subdivision Declaration may determine. Except for the foregoing matters that may be different in a Subdivision Declaration from the requirements in the Declaration, the Declaration shall control over any provision of any Subdivision Declaration that conflicts with the Declaration. A Subdivision Declaration also may be referred to as a Supplemental Declaration. A Subdivision Declaration need not be in any specific form and need not be titled Subdivision Declaration or Supplemental Declaration (for example, applicable provisions may be contained in a deed from the Declarant conveying the portion of the Properties or Additional Property being subjected to the Subdivision Declaration).

**Section 7. Restrictions on Subdivision Declarations and Supplemental Declarations.** Notwithstanding anything to the contrary herein, a Subdivision Declaration or a Supplemental Declaration may create a new or different class of membership from those then existing under the Declaration, either with the same or different assessment obligations as the classes of membership then existing under the Declaration, only in the following circumstances: (i) the Subdivision Declaration or Subdivision Declaration is executed by Declarant with respect to a portion of the Properties or any Additional Property owned by Declarant; or (ii) during the Development Period, the Declarant gives its written consent to the Subdivision Declaration or Supplemental Declaration with respect to any portion of the Properties or any Additional Property that is owned by a Person other than Declarant; or (iii) following the end of the Development Period, the Subdivision Declaration or Supplemental Declaration with respect to any portion of the Properties or any Additional Property owned by a Person other than Declarant is approved by the affirmative vote of sixty-seven percent (67%) or more of the total vote of the membership of the Association.

**Section 8. Declarant's Right to Record Subdivision Declarations and Supplemental Declarations.**

Notwithstanding anything to the contrary herein, during the Development Period the Declarant has the right to record one or more Supplemental Declarations or Subdivision Declarations with respect to any portion of the Properties or Additional Property owned by Declarant that contain use restrictions and/ or such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not in conflict with the Declaration, as the Declarant determines.

**ARTICLE III  
ASSOCIATION**

**Section 1. Board Acts for Association.** All obligations required or allowed to be performed by the Association shall be performed in accordance with Legal Requirements and applicable provisions of the Governing Documents. Unless reserved by or for the Declarant in the Declaration, other Governing Documents or Legal Requirements, or unless otherwise required by Legal Requirements, all rights, powers, easements, functions, services, obligations and duties of the Association may be performed, exercised, directed, or contracted for by the Board on behalf of the Association. There is no distinction intended in the Declaration between items that may be adopted, enforced, acted upon, or waived by the Board and items that may be adopted, enforced, acted upon, or waived by the Association, except where a vote of the Members of the Association is required therefor. The officers of the Association may act on behalf of the Association as authorized in the Governing Documents and/or as directed by the Board.

**Section 2. Powers and Obligations.** Subject to Legal Requirements and the Governing Documents, the Association has the following powers and obligations (the matters addressed in this Section do not constitute a complete list of the powers and obligations of the Association, as other powers and obligations may be addressed in other Sections of the Declaration, other provisions of Governing Documents, and in Legal Requirements):

- (a) The Association may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property.
- (b) The Association has the sole and exclusive power and authority to regulate use of the Common Property by Owners and other Persons, including establishment of rules and regulations for use and user fees or charges.
- (c) The Association has the power and authority to enter into such Stormwater Agreements, encroachment agreements and other agreements with the City, utility providers, and other Persons as are reasonably necessary to enable the Association to maintain Common Property, including Common Expense Property, and to perform its obligations under the Declaration. During the Development Period, the Declarant has the power and authority to enter into Stormwater Agreements, encroachment and other agreements with the City, utility providers, and other Persons as Declarant, in its sole discretion, determines, each of which agreements may be binding on the Association and all Owners.
- (d) The Association shall accept transfer of ownership from Declarant of any and all Common Property and any and all improvements on Common Expense Property, including transfer or assignment of any and all associated rights, easements, and obligations.
- (e) The Association shall accept from Declarant any and all assignments of Declarant rights and obligations under any part or all of the Declaration, any Subdivision Declaration, any Supplemental Declaration, any Stormwater Agreement, any encroachment agreement with the City, or any other agreement with the City, a utility provider, or any other Person, including assumption of all Declarant or Association obligations which are contained in such documents and agreements or which are incident to such assignments, as they relate to any Common Property, Common Expense Property, architectural approvals or other functions or services performed or provided by the Association.
- (f) The Association shall accept from Declarant any and all appointments of the Association as the agent of Declarant for administration and enforcement of any of the provisions of the Declaration or any Subdivision Declaration or Supplemental Declaration, and shall assume all obligations which are incident to such appointments as they relate to any Common Property, architectural approvals or other functions or services performed or provided by the Association.
- (g) All rights and powers granted to, or reserved for, or established for the benefit of, the Association may be exercised by the Association (or, as the case may be, on behalf of the Association by the Board or a Committee of the Board), at any time and from time to time.

**Section 3. Functions and Services.** The Association shall or may, as indicated, do, provide, provide, for, perform, accept, or be responsible for the following, the expenses for which are Common Expenses, and in carrying out these and other functions and providing services as required or allowed by the Governing Documents, the Association has all of the following described or referenced rights and powers.

- (a) The Association shall carry out the Association's obligations and business under the terms of Legal Requirements and the Governing Documents, including legal, financial, accounting and communications services, and shall provide or procure the administrative services necessary in connection therewith.
- (b) The Association shall maintain the Common Property, Common Expense Property, and any other property owned or leased by the Association in such manner and to such extent as reasonably determined by the Board, giving due consideration to the Community Wide Standard and to the level of maintenance, if any, that may be performed by the City or other Person (including Owners - for example, mowing of grass in a stormwater drainage easement on a Lot or in a general utility easement around the boundaries of a Lot typically would be the responsibility of the Owner of the Lot, unless the Association determines it is in the best interest of the Association to provide such maintenance).
- (c) The Association shall operate the Architectural Review Committee(s) as and when provided in the Declaration, any Subdivision Declaration, or any Supplemental Declaration.

- (d) The Association shall keep records of all its acts and corporate business, and, in particular, the Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act.
- (e) The Association shall provide an annual financial report to each Member making written request therefor and paying the reasonable charge for same established by the Board and, upon either the (i) the affirmative vote of majority of the votes cast by the Members present at a meeting of the Association, or (ii) the written request of the Members possessing twenty-five percent (25%) or more of the total number of votes of all the Members of the Association, shall have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Member making written request therefor.
- (f) The Association shall make available for inspection by the Members and Mortgagees, upon reasonable request, during normal business hours and upon payment of reasonable copying and administrative costs, current copies of the Governing Documents, and the books, records and financial statements of the Association.
- (g) As required by the Governing Documents and Legal Requirements, the Association shall establish a proposed annual operating budget, shall establish the amount of and collect assessments, and shall establish reserve funds.
- (h) The Association shall hold meetings and give proper notice thereof, as required by the Governing Documents and Legal Requirements.
- (i) The Association shall pay all applicable *ad valorem* property taxes and City assessments, if any, on the Common Property owned by the Association and on other property or assets owned by the Association.
- (j) The Association shall obtain and maintain insurance and fidelity bonds as required in the Governing Documents.
- (k) The Association shall be responsible for stormwater management and maintenance of Stormwater Control Measures as provided in the Declaration and in any applicable Stormwater Agreement.
- (l) The Association shall be responsible for all financial and other obligations of the Association pursuant to any encroachment agreement or other agreement with the City, or agreement between the Association and any utility provider or other Person.
- (m) The Association may take all actions and do all things its deems necessary or desirable to enforce and implement the provisions of Legal Requirements and the Governing Documents, and to exercise the rights, satisfy the obligations, and perform the functions or services the Association is required or allowed to do by the Governing Documents, and in connection therewith, except as specifically limited by the Declaration the Association shall have all of the rights and powers under the Act.
- (n) The Association may grant easements, leases, licenses and concessions through or over the Common Property, as the Board determines to be in the best interests of the Association.
- (o) The Association may enter into contractual agreements or covenants to share costs with any neighboring property or its owners or association of property owners to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.
- (p) The Association may maintain grass, landscaping, decorative paving or other decorative features, and all equipment and facilities associated therewith, within street rights of way and on sidewalks in or adjacent to the Properties, with such frequency and in such manner as determined by the Board. In determining the level of maintenance to be performed by the Association, the Board may give due consideration to the extent to which the City or any other Person is responsible for and performs such maintenance and to the terms of any encroachment agreement between the Declarant or the Association and the City. The Association may enter into encroachment and other agreements with the City or other Persons with respect to such maintenance.

- (q) To the extent that such services are not, in the opinion of the Board, provided adequately by the City, the Association may provide services of a governmental nature for maintenance of portions of the Properties not owned by the Association.
- (r) As provided in the Governing Documents, the Association may adopt, amend, and repeal Restrictions and Rules.
- (s) The Association may enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Property.
- (t) The Association may provide, or provide for, services and facilities for Owners and their Lots and Dwellings (as distinguished from services and facilities relating to Common Property), and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided to or for an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the annual assessment if provided to all Owners. By way of example, such services and facilities might include landscape maintenance, insect and pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. Provided, however, prior to providing any such service to all Owners that will be paid for as part of the annual assessment, the Association first shall obtain a 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 (such vote is not required in connection with services that the Association is required to provide by the Governing Documents or Legal Requirements), and (ii) prior to the end of the Development Period, upon obtaining the written consent of Declarant. In addition, the Association shall accept assignment of all such contracts entered into by the Declarant when the Declarant is the owner of all of the Properties, or entered into at any time by all of the Owners (the execution of the contract by any one of multiple owners of a Lot being sufficient with respect to that Lot).
- Nothing in this subsection shall be construed as a representation, promise, warranty, or guaranty by Declarant or the Association as to what, if any, of such services will be provided.
- (u) The Association may borrow funds to pay costs of operation of the Association, which borrowing may be secured by assignment or pledge of Association rights to receive and collect assessments or by liens on Common Property or other Association assets, as determined by the Board, subject to the Governing Documents and Legal Requirements.
- (v) The Association may enter into contracts to maintain one or more bank accounts.
- (w) The Association may sue or defend in any court of law on behalf of the Association, and may employ attorneys and other necessary professionals in connection therewith.
- (x) The Association may adjust the amount, collect, and use insurance proceeds to repair damage to or replace Common Property, and if proceeds are insufficient to repair damage to or replace same, levy special assessments (in the manner provided herein) to cover the deficiency.
- (y) The Association may employ a property manager and may employ or contract with independent contractors or other Persons as the Board deems necessary.
- (z) The Association may retain the services of legal and accounting firms and such other professionals and/or tradesmen as it deems necessary and appropriate.
- (aa) The Association may contract with Declarant or any other Person for performance of services provided by the Association, such contracts to be at competitive rates and upon such terms and for such consideration as the Board deems proper, advisable and in the best interests of the Association.
- (bb) The Association may establish and maintain the nonprofit corporation tax status of the Association for federal and State of North Carolina income tax purposes, as determined by the Board to be in the best interests of the Association.

(cc) The Association may contract with other nonprofit corporations or associations which exist for purposes substantially similar to those for which the Association exists, with respect to the maintenance of property owned by such corporation or association.

(dd) The Association may impose reasonable charges for late payment of assessments and, subject to any applicable notice and hearing requirements of the Act, may suspend privileges or services provided by the Association (except rights of access to Lots and rights of access to easements in the Properties that provide stormwater drainage or public utility services to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer after the payment due date.

(ee) Subject to any applicable notice and hearing requirements of the Act, the Association may impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Lots and rights of access to easements in the Properties that provide stormwater drainage or public utility services to Lots) for reasonable periods for violations of the Declaration or other Governing Documents.

(ff) In addition to the insurance coverages required by the Declaration, the Association may obtain and maintain such other insurance coverage as the Board determines to be in the best interests of the Association, and may adjust the amount, collect, and use the proceeds of such insurance as the Board determines.

(gg) As a Common Expense, the Association may provide educational and training opportunities within the Subdivision, including providing funding and permitting facilities use for such purposes. As examples, the Association may provide education and training activities as a tool for fostering Owner and resident awareness of the Subdivision and the facilities and services provided by the Association, as well as governance and operation of the Association. Other appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and benefitting from and contributing to the Subdivision. The Association also is authorized to fund and support the education and training required for officers, directors, and committee members.

**Section 4. Stormwater Management.** Except for maintenance responsibilities (i) placed on Owners by the Governing Documents or Legal Requirements, or (ii) assumed or undertaken by other Persons (for example, the City), 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 properties 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 City, 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 Properties, 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 City or other Person, the Association may, without obligation, continue to provide maintenance to the extent that the City or other Person fails to provide adequate maintenance, in the opinion of the Board, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the City or such other Person has not assumed maintenance responsibility, or following termination of the City's or such Person's maintenance responsibility. Notwithstanding anything to the contrary herein, the Owner of any Lot on, over or through which any Stormwater Control Measures or portion thereof is located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable, unless the Association assumes such responsibility; (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; (iii) 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; (iv) not obstructing or interfering with its normal and intended operation; and (v) each Owner of a Lot, and not the Association, shall be responsible for maintenance of all Stormwater Control Measures 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 maintenance of a particular Stormwater Control Measure is the obligation of the Association or 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 City, may grant, relocate, abandon and/or release one or more stormwater drainage easements in the Properties, subject to the following: (i) the grant of any such stormwater drainage easement also shall be consented to in writing by the Owners of all portions of the Properties 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 Properties, 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; (ii) no such relocation, abandonment or release shall materially adversely affect the portions of the Properties on which the stormwater drainage easement then is located or the portions of the Properties 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 Properties on which such stormwater drainage easement is located and which are served thereby; and (iii) no such grant, relocation, abandonment or release shall materially adversely affect the Stormwater Control Measures for the Properties. The provisions of this paragraph also are applicable to any access easement over any portion of the Properties 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 one or more 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 City, another association that exists for purposes similar to those of the Association, or any other Person with respect to inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating and managing any part or all of the stormwater on, to, or from any part or all of the Properties and/or any or all of the Stormwater Control Measures for the Properties, whether such Stormwater Control Measures are located within or outside of the Properties. Such Stormwater Agreements and other agreements shall be binding on all Owners (or, with respect to Limited Common Property, all Owners to whose portion of the Properties such Limited Common Property is allocated), 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 City, such other association or such other Person in inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such Stormwater 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 Properties, and may grant rights over, in, under, upon and through all easements in the Properties 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.

It is contemplated by Declarant that there may be more than one Stormwater Agreement with respect to the Properties as they are developed and/or as Additional Property is annexed to the Declaration.

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the Properties or phases of the Subdivision (for example, because of the topography of the Properties it may be desirable for a portion of the Properties to have Stormwater Control Measures separate from and/or in addition to, other Stormwater Control Measures in or serving the Properties and it may be desirable for other portions of the Properties to



utilize Stormwater Control Measures located outside of the Properties), 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 Properties of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by the City, 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 Properties, and/or may amend, add to, or supplement existing Stormwater Agreements, 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 Properties and annual assessments and/or stormwater assessments (as defined herein) may be different for Lots in different portions of the Properties (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 Property (and during the Development Period Declarant has the right to designate Stormwater Control Measures as Limited Common Property, including existing and new Stormwater Control Measures in the Properties as well as existing and new Stormwater Control Measures associated with Additional Property).

Declarant hereby informs all Owners and other Persons who deal with or come in contact with the Properties, that as stormwater drains from the Properties or other properties into any of the Stormwater Control Measures for the Properties, 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 stormwater 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 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 City or other Persons and the granting of easements to the City or other Persons.

**Section 5. Dedication, Conveyance or Exchange of Common Property.** The Association, (i) upon obtaining the minimum required voting percentage under applicable provisions of the Act for conveyance of Common Property (at the time of recording of the Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) or more of the total number of votes in the Association), and (ii) prior to the end of the Development Period, upon obtaining the written consent of Declarant, may dedicate portions of the Common Property to public use and/or convey or exchange portions of the Common Property with the Declarant or any other Person, for any purpose approved by such Members, including any one or more of the following purposes: (i) to eliminate unintentional encroachments of improvements or easements; (ii) to correct any building or other setback violations; (iii) to adjust boundary lines of portions of the Properties; (iv) to facilitate the orderly subdivision and development of the Properties; or (v) to conform the configuration of the Properties to any applicable Subdivision Plan. All conveyances and exchanges of Common Property are subject to the following: (i) no such conveyance or exchange (either alone, or in conjunction with other conveyances or exchanges) shall result in a reduction of the portion of the Common Property that constitutes "open space" below the minimum amount of "open space", if any, required by the City; (ii) if required by Legal Requirements,

the City must approve any exchange or boundary line adjustment; (iii) any boundary line adjustment must be approved by the Owners of all portions of the Properties affected by the adjustment; (iv) properties received by the Association in an exchange must be of like value and utility to the Common Property of the Association that was part of the exchange transaction; (v) each Lot contiguous to Common Property prior to the conveyance shall remain contiguous to Common Property after the conveyance, unless otherwise approved by the Owner of the Lot that no longer will be contiguous; (vi) the conveyance shall not materially conflict with any applicable Subdivision Plan; (vii) no conveyance of Common Property shall deprive any Lot of its rights of access and support; and (viii) any conveyance of real property to the Association must be free and clear of all encumbrances except for the Declaration and any applicable Supplemental Declaration, Stormwater Agreements and other agreements executed as allowed by the Declaration, Legal Requirements, street rights of way or access easements, greenway easements, easements for utilities, and stormwater drainage easements.

All real property acquired by the Association is part of the Common Property and, without further act of the Association or its Members, is released from all provisions of the Declaration (and any applicable Supplemental Declaration) except those applicable to the Common Property, but it remains subject to the easements and other matters listed in numbered item (viii) of the immediately preceding paragraph of the Declaration. Any Common Property dedicated to public use, conveyed or exchanged by the Association, without further act of the Association or its Members, ceases to be Common Property and shall be subject to those provisions of the Declaration (and any applicable Supplemental Declaration) that would have been applicable to such real property had it not been Common Property, except that, if required by the City or a utility provider, such portion of the Common Property may be conveyed by the Association to the City or utility provider, as the case may be, free and clear of all of the terms of the Declaration and any applicable Supplemental Declaration. Further provided, with respect to any Common Property conveyed by the Association, including any Common Property exchanged by the Association for other real property, that is not going to be part of the Subdivision following such conveyance or exchange (for example, Common Property conveyed to an owner of real property adjoining, but not part of, the Subdivision to settle a boundary issue), it shall be released from the provisions of the Declaration upon the recording in the Registry of the deed or other instrument used for the conveyance or exchange.

**Section 6. Mortgage and Pledge of Common Property.** The Association, (i) upon complying with the minimum required voting percentage under applicable provisions of the Act for conveyance or dedication of Common Property (at the time of recording of the Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) or more of the total number of votes in the Association), and (ii) prior to the end of the Development Period upon obtaining the written consent of Declarant, shall have the power and authority to mortgage the Common Property and to pledge its assets as security for loans made to the Association, which loans shall be used by the Association in performing its functions and providing services under the Declaration. Declarant may, but shall not be required to, make loans to the Association, subject to the foregoing and further subject to approval by the Declarant of the use of such loan proceeds and the terms pursuant to which such loans will be repaid. Notwithstanding anything in the Declaration to the contrary, at any time that there is any unpaid amount owed to Declarant under any loan made by it to the Association, without Declarant's written consent the annual assessments shall not be reduced below the amounts in effect at the time such loan first was made.

**Section 7. Liability Limitations.** Except as required by Legal Requirements or the Declaration, or agreed to by any of the following Persons otherwise excluded from liability by the provisions of this sentence, neither Declarant, nor any Builder, nor any current or former Member of the Association, nor the Board, nor any director on the Board, nor any officer of the Association, nor any member of the Architectural Review Committee or any other committee appointed by the Board, nor any shareholder, director, officer, partner, member, manager, agent or employee of any of the foregoing, shall be personally liable for debts contracted or incurred by the Association or for a tort of another current or former Member, whether or not such other current or former Member was acting on behalf of the Association, unless such Person specifically agrees in writing to be obligated for any such debt of the Association (but the foregoing shall not relieve such Person from that Person's obligation, if any, under the Declaration, to pay assessments to the Association or other obligations as a Member of the Association). Neither Declarant, nor the Association, nor the Board, nor any director on the Board, nor any officer of the Association, nor any member of the Architectural Review Committee or any other committee appointed by the Board, nor any shareholder, director, officer, partner, member, manager, agent or employee of any of the foregoing, acting in those official capacities, shall be liable for any incidental or consequential damages for failure to inspect any Owner's Lot or improvements thereon, or for failure to maintain the same (provided, however, and

notwithstanding the foregoing, as required herein Declarant shall maintain all portions of the Properties it owns, and, except as otherwise specifically provided herein, directors on the Board and officers of the Association and members of the Architectural Review Committee shall have all of the other obligations and liabilities of an Owner under the Declaration with respect to portions of the Properties owned by such Persons). The Association shall indemnify all Association directors and officers, and members of the Architectural Review Committee and other committees of the Board, as required by the Articles and Bylaws.

Neither the Board or any director of the Board, the Association or any of its officers, the Declarant or any of its shareholders, directors, officers, partners, members, managers, agents or employees, nor any current or former Member of the Association, shall be considered as a bailee of any personal property stored or placed on the Common Property (including vehicles parked on the Common Property), whether or not exclusive possession of the particular area is given to the Person who owns such personal property, nor shall any of the foregoing Persons (other than the Person who owns the personal property) be responsible for the security of such personal property or for any loss or damage thereto. With the exception of liability for gross negligence, the Association shall not be liable for any personal injury or damage to property arising out of or resulting from any of the following: (i) failure of or interruption to any service to be obtained by the Association or paid for as a Common Expense; (ii) weather or other natural events or events of Force Majeure; (iii) the acts or omissions of any Owner or any other Person; or (iv) electricity, water, snow or ice which may leak or flow from or over any portion of the Properties or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type resulting from the foregoing. No diminution, offset or abatement of any assessment or other charge shall be claimed or allowed for inconvenience or discomfort arising from maintenance of the Common Property or from any action taken by the Association to comply with any Legal Requirement. This Section is not intended, nor shall it be construed, to relieve any insurer of its contractual obligations under any policy benefitting the Association or any Owner.

The Association shall indemnify directors, officers, and committee members as provided in the Articles or other Governing Documents.

**Section 8. Merger or Consolidation.** Upon a merger or consolidation of the Association with another association in accordance with all Legal Requirements, the properties, rights and obligations of the Association, by operation of law, may be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association, by operation of law, may be added to the properties, rights and obligations of the Association as the surviving corporation pursuant to a merger or consolidation. The surviving or consolidated association shall be considered the Association under the Declaration and may administer the terms and provisions of the Declaration and any applicable Supplemental Declaration or Subdivision Declaration, together with the terms and provisions of any declarations, covenants and restrictions applicable to other property under the jurisdiction of the surviving or consolidated Association, as a common plan. Other than as specifically stated in the plan of merger or consolidation approved pursuant to all Legal Requirements, no merger or consolidation shall effect any revocation of the provisions of the Declaration with respect to the Properties, including the limits on any assessment or any other matter substantially affecting the interests of the members of the Association. In addition to obtaining the minimum required voting percentage under applicable provisions of the Act for merger or consolidation with another association, during the Development Period such merger or consolidation must have the written consent of Declarant.

**ARTICLE IV**  
**RIGHTS IN AND TO COMMON PROPERTY**

**Section 1. Owners' Easements of Enjoyment and Access.** Except as limited by the provisions of this Section, or by other provisions of the Declaration or any other Governing Document, every Owner shall have a non-exclusive right and easement of enjoyment in, use of and access to, from, and over the Common Property, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following:

- (a) restrictions, easements, and other matters applicable to any real property conveyed to the Association existing at the time of the conveyance.

- (b) subject to the provisions of the Code and the Governing Documents, the right of the Association to charge reasonable admission and other fees for the use of any Common Area and to regulate the use thereof by Owners and other Persons.
- (c) the right of the Association to regulate or limit use and access by Owners to Common Expense Property to only such use or access as is reasonably necessary to the full use and enjoyment of the portion of the Properties owned by such Owner. In this regard, it is contemplated that there may be some Common Expense Property to which no Owners, or only a limited number of Owners, will have any right of use or access.
- (d) limitation of use of Limited Common Property to those Lots and Owners to whom such Limited Common Property is allocated or with whom it is associated.
- (e) subject to any applicable notice and hearing requirements of the Act and maximum fine limitations of the Act, the right of the Association to fine an Owner and/or suspend the voting rights of an Owner and/or suspend other rights and easements of enjoyment in and to the Common Property of an Owner and such Owner's family members, tenants, contract purchasers, guests, or other Persons to whom the Owner has delegated such rights, for any period during which any assessment or other amount owed by the Owner to the Association remains unpaid, and for a reasonable period of time for any violation or infraction of the Governing Documents by an Owner or such Owner's family members, tenants, contract purchasers, guests, or other Persons to whom the Owner has delegated such rights or who are asserting any rights through such Owner. Provided, however, no such suspension shall constitute a waiver or discharge of the Owner's obligation to pay any assessment or other charge under the Declaration. Further provided, the Association shall not suspend the right of any Owner to use any portion of the Common Property over which there is an private street or easement that provides access for ingress and egress from a public street to and from such Owner's Lot, or over which a stormwater drainage easement or sanitary sewer, water or other utility easement is located that provides such drainage or utility services to such Owner's Lot, or on which there are any Stormwater Control Facilities that serve the Owner's Lot, but such Owner shall remain subject to the rules and regulations, if any, established by the Association for use of such portion of the Common Property.
- (f) the right of the Association to dedicate, sell, transfer or exchange all or any part of the Common Property, subject to the applicable voting requirements for such actions.
- (g) the right of the Declarant, during the Development Period, and the right of the Association, to grant easements over, across, in, on, under, and through the Common Property to any public agency, authority or utility for the installation and maintenance therein of water and sanitary sewer, natural gas, electric, telephone, cable television and other utilities, and Stormwater Control Measures.
- (h) the right of the Association to borrow money and, subject to the applicable voting requirements for such actions, to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Property or its other assets as security for such indebtedness. Provided, however, that the rights of any such lender or Mortgagee shall be subordinate to the property rights of the Members and the Association as provided in the Declaration.
- (i) the right of the Association, as provided by and consistent with the provisions of the Code, the Act and the Declaration, to exchange all or part of the Common Property for other property or consideration.
- (j) the right of the Association to close or limit the use of Common Property for maintenance of improvements thereon or to close or limit use of Common Property temporarily in order to prevent or defeat any claims of adverse possession or unintentional dedication to public use.
- (k) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Property.
- (l) the Special Declarant Rights and any other rights of the Declarant.

**Section 2. Delegation of Use.**

- (a) **Family.** Subject to all provisions of the Governing Documents for use of the Common Property applicable to Owners, members of the Owner's family unit who occupy the Dwelling of the Owner within the Properties as their principal residence may use the Common Property in the same manner and to the same extent as the Owner. Provided, however, any use of the Common Property by occupants of a utility apartment is subject to such rules and user fees as the Board, in the exercise of its discretion, adopts or imposes.
- (b) **Tenants.** Subject to all provisions of the Governing Documents applicable to Owners and tenants, tenants to whom an Owner has delegated the Owner's right to use the Common Property may use the Common Property in the same manner and to the same extent as the Owner.
- (c) **Guests.** Subject to all applicable provisions of the Governing Documents, guests of Owners and guest of tenants to whom an Owner has delegated the Owner's right to use the Common Property, may use the Common Property in the same manner and to the same extent as the Owner.
- (d) **Suspension of Use Privilege.** All uses of the Common Property by an Owner's family members, tenants, and guests constitute a privilege and not a right. The privilege of any Person under this Section to use the Common Property may be suspended for violation of the Governing Documents and as otherwise provided in the Governing Documents, and such privilege shall be suspended during any period of time that the rights of the Owner through whom the Person derives his or her privilege to use the Common Property are suspended.

**Section 3. Conveyance of Title to the Association.** Declarant covenants, for itself, its successors and assigns, that it will convey Common Property to the Association as required by Legal Requirements or the Declaration. Provided, however, specific performance shall be the only remedy available for any failure of Declarant to do so, and the Association shall accept conveyance of Common Property from the Declarant at any time. During the Development Period Declarant reserves an easement in, over, across, under and through the Common Property for the purpose of constructing any improvements on the Common Property or for the benefit of the Subdivision as it deems necessary or advisable, provided that any such improvements must comply with Legal Requirements. Except as otherwise stated herein, all conveyances by Declarant to the Association of real property may be by special warranty deed and shall be free and clear of all encumbrances and liens, except for the Declaration, Legal Requirements, rights of the Declarant provided for in the Declaration or other Governing Documents, applicable rights of way and easements in instruments or plats recorded in the Registry, agreements affecting the Common Property that have been executed as allowed by the Declaration, applicable ad valorem property taxes for years subsequent to the year in which the conveyance occurs, the Declaration, conservation easements granted to any Person or governmental entity, and other exceptions to title that existed prior to the time Declarant acquired title to such Common Property.

Any improvements constructed or placed on, in, under, or over the Common Property by Declarant and intended for the common use and enjoyment of some or all of the Owners, shall become the property of the Association upon the conveyance of such Common Property to the Association or, as determined by the Declarant, upon the later completion of such improvements. Provided, however, and notwithstanding the foregoing sentence, the following types of improvements constructed or placed on, in, under, or over the Common Property shall not become the property of the Association upon conveyance of the Common Property to the Association: (i) improvements (for example, pipes for transmission or water or sanitary sewer) owned by any Governmental Entity or with respect to which dedication to public use is accepted by any Governmental Entity, regardless of when such ownership or dedication occurs, or (ii) improvements (for example, pipes, wires, and other facilities for transmission of electricity, telephone, natural gas, cable television, or internet service) owned by a utility provider, regardless of when such ownership occurs, or (iii) improvements (for example, a storm water drainage pipe) that are located in any easement reserved by Declarant or allowed to be established by Declarant under the Declaration and which serve or benefit other real property that is not part of the Properties and which improvements either are owned by a property owners association or Person other than the Association or such property owners association or Person has maintenance obligations with respect thereto.

All conveyances of Common Property to the Association are subject to the right and easement of Declarant and its successors and assigns to construct, install, and maintain such improvements on, in, over, or under such Common

Property as Declarant determines are necessary or desirable for the development of the Properties or in the exercise of any other rights or easements of the Declarant provided for in the Declaration or other Governing Documents. Declarant may convey or transfer to the Association real property, personal property and rights and easements in Common Property by written instrument, without warranty, and in an "as is, where is" condition, or may convey or transfer the same to the Association in any other manner determined by Declarant.

**Section 4. Rights and Responsibilities as to Common Expense Property.**

(a) Owners. Each Owner of a Lot upon which a Common Expense Property lies shall pay all *ad valorem* property taxes and assessments levied against such Lot, including that portion of such tax or assessment as is attributable to such Common Expense Property, and shall maintain the portion of such Owner's Lot subject to the Common Expense Property in the same manner as the Owner is required to maintain the remainder of the Lot under the Declaration, except that the Association shall maintain those improvements in the Common Expense Property constructed or installed by or on behalf of the Association for use in connection with the Common Expense Property, and the Association shall reimburse the Owner for any additional *ad valorem* property taxes assessed against the Lot specifically for such improvements associated with the Common Expense Property. Notwithstanding any other provision of the Declaration, no Owner or other Person shall, without the prior written consent of the Association (or, during the Development Period, the prior written consent of the Declarant): (i) remove any trees or other vegetation or improvements located within a Common Expense Property; (ii) maintain gates, fences, or other improvements in or on a Common Expense Property; (iii) place any garbage receptacles in or on a Common Expense Property; (iv) fill or excavate a Common Expense Property or any part thereof; or (v) plant trees or other vegetation in, or otherwise restrict or interfere with, the maintenance of a Common Expense Property.

(b) Declarant and Association. The Declarant and Association, and their respective employees, agents, contractors and subcontractors, have a nonexclusive right and easement at all times to enter upon any Common Expense Property for any or all of the following purposes: (i) maintaining entrance signs, monuments and decorative features, and other signs, all of which shall have been approved by the City if such approval is required under Legal Requirements; (ii) maintaining landscaping, Stormwater Control Measures, and other improvements to or in the Common Expense Property that have been constructed or installed by the Declarant or the Association; and (iii) maintaining the Common Expense Property in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the Common Expense Property free from obstructions and impediments to its use.

**Section 5. Ingress and Egress; Utilities.** Notwithstanding anything to the contrary appearing in the Declaration, (i) if ingress and egress from a public street to and from any Lot is over any part of the Common Property 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 Property 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 Property 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 Property as allowed herein shall include suspension of any such rights of such Owner to ingress and egress or utilities.

**ARTICLE V  
MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** Each and every Owner of a Lot, is a Member of the Association, and Declarant is the Class B Member of the Association 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, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Lot owned by such Owner. An Owner's membership in the Association automatically terminates whenever such Person ceases to be an Owner of a Lot (except that the Declarant's Class B Membership shall terminate only as provided herein), but such termination 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 2. Classes of Voting Members.**

The Association shall have two (2) classes of voting Members as follows:

(a) **Class A.** Class A Members are all Owners of Lots, except for the Class B Member. A Class A Member is allocated one (1) vote for each Lot owned by the Class A Member; provided, however, only one (1) Class A Member vote is allocated for each Lot, regardless of the number of Owners thereof. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine, but fractional voting shall not be allowed.

(b) **Class B.** The Class B Member is the Declarant. The Class B Member shall have three (3) votes for each Lot and Proposed Lot owned by the Class B Member. At the time of the recording of the Declaration, the Class B Member is entitled to 135 votes, as the number of Lots and Proposed Lots at the time of the recording of the Declaration is 45, and 45 multiplied by 3 is 135.

Provided, however, and notwithstanding anything to the contrary in the Declaration or any other Governing Document, with respect to the dedication, conveyance, or exchange of Common Property (but not with respect to the mortgage and pledge of Common Property), at all times during the Development Period the Class B Member is deemed to have more than the minimum voting percentage required under applicable provisions of the Act to authorize and require the Association to dedicate, convey, or exchange Common Property.

The Class B Membership shall terminate at the end of the Development Period, subject to reinstatement as provided in the definition of Development Period. At any time that the Class B Membership does not exist, the Declarant shall be a Class A Member with respect to any Lots owned by the Declarant.

**Section 3. Exercise of Voting Rights.** The exercise of voting rights shall be governed by the Articles and/or Bylaws of the Association, as applicable, including exercise of voting rights by written consent or other method allowed in the Articles and/or Bylaws instead of a vote at a meeting of the Association, or by any combination of voting at a meeting and other method of voting as allowed in the Articles and/or Bylaws. Any provision of the Declaration that refers to a vote of the membership of the Association shall not preclude the exercise of voting rights by such other methods.

**ARTICLE VI  
ASSESSMENTS AND OTHER CHARGES**

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** Each Owner, by execution of the Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies on behalf of the Association) all assessments and other charges as required or allowed by the Declaration, including the following: (i) annual assessments; (ii) working capital assessment; (iii) stormwater assessments; (iv) special assessments for capital improvements or other matters as set forth herein; (v) individual 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 such other purposes as stated herein; (vi) architectural review fees and costs as specified herein; (vii) fines for violations of Restrictions and Rules and Association rules and regulations with respect to use of the Common Property; (viii) late payment penalties and interest on unpaid assessments; and (ix) other charges imposed under authority contained in the Governing Documents (architectural review fees, fines, penalties, interest and other 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 the obligated Owner. All assessments and other charges shall be established and collected as hereinafter provided. All assessments and other 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 Chatham 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. No Owner shall be exempt from liability for any assessment provided for herein by reason of non-use of the Common Property or such Owner's Lot, or abandonment of a Lot, or temporary unavailability of the use or enjoyment of the Common Property. 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 attorneys' fees.

**Section 2. Liability for Assessments After Change in Membership Status.** No Owner shall be relieved of, or released from, the obligation to pay assessments and other charges under the Declaration 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.

**Section 3. Nature, Purpose and Use of Assessments.** The assessments shall be used by the Association to pay the Common Expenses. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies set aside for reserves, for the fiscal year to which it applies and in accordance with the annual operating budget adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board.

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 4. Commencement of Assessments.** Each Lot becomes subject to all assessments under the Declaration from and after the date on which it becomes a Lot. The annual assessment for any Lot that is not a Lot on the first day of the applicable fiscal year and becomes a Lot on any other day during that fiscal year is determined 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 5. Annual Operating Budget and Annual Assessments.**

(ddd) Beginning with the fiscal year that starts on January 1, 2012, the Board shall adopt for each fiscal year a proposed annual operating budget, also referred to herein as the "proposed budget", containing an estimate of the total amount believed to be necessary to pay the Common Expenses for that fiscal year, including such reasonable amounts as the Board deems necessary to pay for: (i) maintenance of Stormwater Control Measures; (ii) payment of any amounts the Association is required to pay pursuant to a Stormwater Agreement; (iii) maintenance of Common Areas other than Stormwater Control Measures; (iv) working capital (available for day-to-day operating expenses of the Association and otherwise uncommitted for specific expenses); (v) reserves for contingencies; and (vi) reserves for replacement of Common Property, and the budget shall contain separate line items for each of the foregoing (but no budget shall be invalid if any one or more of such items are not shown separately). 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. The budget shall state the amount of the annual assessment per Lot proposed by the Board as necessary to pay for the budgeted Common Expenses, which is the annual assessment that will be assessed upon ratification of the proposed budget. Unless a lesser percentage is proposed by the Board and stated in the proposed budget, the Board may assess and collect from the Owners during the applicable fiscal year one or more additional assessments, not to exceed a total of 50% of the annual assessment, determined by the Board to be necessary to cover actual Common Expenses that exceed the budgeted amount therefor and new or unexpected additional Common Expenses incurred during the applicable fiscal year. The amount of the annual assessment resulting from budget ratification, plus the total amount of additional assessments permitted for that fiscal year, is referred to herein as the "maximum annual assessment" (for example, if the annual assessment is \$100.00 per Lot and the additional assessment amount that could be assessed and collected during the applicable fiscal year is \$50.00 per Lot, then the maximum annual assessment for that fiscal year is \$150.00 per Lot). The total amount of the annual assessment actually assessed against each Lot during a fiscal year is referred to herein as the "actual annual assessment" (for example, if the annual assessment resulting from budget ratification is \$100.00 per Lot and an additional \$25.00 per Lot is assessed during the fiscal year, the actual annual assessment for that fiscal year is \$125.00).

Within thirty (30) days after adoption of the proposed budget, the Board shall provide a copy or summary thereof 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, and there is no quorum requirement applicable to the ratification vote on the proposed budget (although if other matters are to be considered at such meeting, applicable quorum requirements are in effect with respect to those other matters). The proposed budget is ratified unless rejected at that meeting as follows: (i) if the proposed annual assessment per Lot does not exceed the actual annual assessment for the immediately preceding fiscal year by more than 50% (for example, if the actual annual assessment for the immediately preceding fiscal year was \$100.00 per Lot, then does not exceed \$150.00 per Lot), the budget is ratified unless Members possessing ninety percent (90%) or more of the total number of votes in the Association reject it; (ii) if the proposed annual assessment per Lot exceeds the actual annual assessment per Lot for the immediately preceding fiscal year by more than 50%, the budget is ratified unless Members possessing sixty-seven percent (67%) or more of the total number of votes in the Association reject it. In the event that the proposed budget is rejected, the budget last ratified by the Members shall be ratified budget for that fiscal year until such time as a subsequent proposed budget from the Board is ratified by the Members.

(eee) As the Declarant is the only Member of the Association at the time of the recording of the Declaration in the Registry, and as the fiscal year of the Association at the time of the recording of the Declaration is the calendar year, the Declarant has adopted an annual operating budget for 2011 that establishes an annual assessment as follows:

**For fiscal year 2011, the annual assessment is \$900.00 per Lot.**

(fff) Beginning with the annual assessment for the fiscal year that starts on January 1, 2012, the Association shall send written notice of each annual assessment to the Members of the Association (for purposes of notice of all assessments under the Declaration, notice sent to any one (1) of multiple Owners of a Lot is deemed to be notice sent to all of such Owners) not less than thirty (30) days in advance of the payment due date specified in the notice (which shall not be earlier than the first day of the applicable fiscal year), which written notice may be in the form of an invoice for the annual assessment. 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 annual assessment or any installment thereof for that or any subsequent fiscal year. Until an annual assessment has been established for a fiscal year, the actual 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 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.

(ggg) 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.

(hhh) Except as otherwise provided in the Declaration, or in any Supplemental Declaration or Subdivision Declaration not in conflict with the Declaration, or by Legal Requirements (for example, additional or different assessments for Limited Common Property, which are applicable to some but not all of the Lots, and stormwater assessments, which may be applicable to Lots in different amounts), all annual assessments shall be the same for all Lots.

#### **Section 6. Declarant's Obligation to Pay Annual Assessments.**

(a) During the Declarant Control Period, Declarant may satisfy its obligation for payment of annual assessments on Lots which it owns either by paying annual assessments in the amount per Lot assessed for that fiscal year or by paying the difference between the total amount of the actual annual assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year for items contained in the budget (paying the difference being referred to herein as the "deficit funding obligation" or "funding the deficit"). Unless Declarant otherwise notifies the Board prior to the Board's adoption of a proposed annual operating budget for the next fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the current fiscal year. Declarant has elected to fund the deficit for fiscal year 2011. The deficit funding obligation does not include any expenses that the Association is unable to meet because of nonpayment of any assessment by Owners other than the Declarant, or because of unusual or extraordinary or unanticipated expenses not included in the annual operating budget (for example, a judgment obtained against the Association, or a Common Expense obligation caused by the negligence or misconduct of any Owner or occupant. The deficit funding obligation of the Declarant may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners. At Declarant's option, the deficit funding obligation for any fiscal year may not be assessed against Declarant unless the maximum annual assessment for that fiscal year has been assessed.

Regardless of Declarant's election as to payment of annual assessments or funding the deficit, Declarant's obligations with respect to annual assessments may be satisfied by Declarant by any combination of the provision of services or materials toward satisfaction of Common Expenses (including payment for such services or materials directly to the providers thereof), or payment of money to the Association. Beginning with the first fiscal year after the end of the Declarant Control Period, Declarant shall pay annual assessments on its Lots in the same manner as any other Owner.

(b) Following the end of the Declarant Control Period, the Declarant, at its sole option, will receive an "assessment credit" toward payment of annual assessments applicable thereafter to Lots owned by Declarant, in an amount equal to the following: the total amount paid or provided by Declarant to fund the deficit less the total amount of annual assessments that Declarant would have been obligated to pay the Association in those fiscal years in which Declarant elected to fund the deficit rather than paying annual assessments on Lots owned by Declarant. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been applied in full against all annual assessments otherwise due and payable by Declarant.

**Section 7. Special Assessments.** In addition to the annual assessments authorized herein, except for matters related to stormwater management by the Association (a stormwater assessment being established in another Section of the Declaration) and subject to the other requirements of the Declaration, the Association may levy special assessments for the purpose of defraying, in whole or in part, the costs or expenses of any one or more of the following:

- (a) Maintenance of a capital improvement in or on the Common Property, including fixtures and personal property related thereto.
- (b) Additions to the Common Property.
- (c) The necessary facilities and equipment to enable the Association to perform the functions and offer the services required or authorized herein.
- (d) The Common Expenses of the Association, to the extent that such Common Expenses are not covered by annual assessments and applicable reserve funds.
- (e) Repayment of any loan made to the Association to enable it to pay the Common Expenses or to perform the other functions and provide the other services required or authorized herein.

Each special assessment assessed under this Section first shall be approved by the affirmative vote of more than fifty percent (50%) of the votes cast by the Members present at a meeting of the Association and, during the Development Period, the written consent of the Declarant. Provided, however, the Board may impose, against the Lots in the Properties at the time the assessment is imposed, a special assessment to pay for a judgment against the Association, and no vote of the Members is required with respect to such special assessment. 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. Except as otherwise allowed by the Declaration (for example, additional or different special assessments applicable to Limited Common Property, which are applicable to some but not all of the Lots), all special assessments shall be the same for all Lots.

**Section 8. Stormwater Assessment.** Notwithstanding anything to the contrary in the Declaration, and in keeping with the obligation of the Association under Section 47F-3-107(a) of the Act to be "responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement", (i) if the Board determines that the amount required in any fiscal year to pay for the Common Expenses, including the Association's obligation for stormwater management, maintenance of Stormwater Control Measures and payment of sums due from the Association under any Stormwater Agreement for any part or all of the Properties, would cause the Association's total expenses for that fiscal year to exceed the amount that would be due and payable to the Association if all Lots were assessed in the amount of the maximum annual assessment for that fiscal year (such excess amount of total expenses for that fiscal year being referred to in this Section as "excess expenses"), and (ii) the Board determines that there are not sufficient reserve funds available both to pay the excess expenses and continue to have adequate reserve funds, and (iii) the maximum annual assessment has been assessed for that fiscal year, and (iv) during the Declarant Control Period, Declarant either has paid annual assessments to the Association or has funded the deficit for that fiscal year in an amount equal to the maximum annual assessment on all

Lots owned by Declarant, then the Board may assess, as an additional assessment for that fiscal year, a "stormwater assessment" in an amount sufficient to pay for the excess expenses. The amount of such stormwater assessment shall be determined and assessed against all Lots in the Properties at the time the assessment is made, and no vote of the Members is required. The payment due dates for such stormwater assessment shall be as determined by the Board and shall be enforceable against Owners and their Lots in the same manner as annual assessments. Provided, however, during the Development Period no such stormwater assessment shall be valid unless the same shall have been consented to in writing by the Declarant. Further provided, except as may be necessary to account for different Stormwater Control Measures and/or Stormwater Agreements (or other agreements related to stormwater) applicable to different Lots as allowed in the Declaration, all stormwater assessments shall be the same for all Lots. Any stormwater assessment for excess expenses is in addition to all other assessments provided for herein.

**Section 9. Collection of Assessments; Penalties for Late Payment.**

- (a) Assessments may be collected on a monthly, quarterly, annual or other basis, as determined 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 10. 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 11. 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 Chatham County Clerk of Court. 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 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 12. 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 and encumbrances (specifically including a first lien mortgage or deed of trust on a Lot) recorded before the docketing of the claim of lien in the office of the Chatham County Clerk of Court, and (ii) liens for real estate taxes and other governmental entity assessments and charges against the Lot. 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 Chatham County Clerk of Court. Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust 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 13. Exempt Property.** All Exempt Property is exempt from the assessments, charges and liens established pursuant to the Declaration.

**Section 14. Reserve Funds.** From the annual assessments and working capital assessments the Board, in the exercise of its reasonable discretion, shall establish and maintain reserve funds for working capital, contingencies, acquisition, replacements, and maintenance of Common Property, and other financial obligations of the Association. Reserve funds are subject to the following:

(a) Extraordinary expenditures not originally included in the annual operating budget, including (i) major rehabilitation or repair of the Common Property, (ii) emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss, or (iii) the initial costs of any new service to be performed by the Association, first shall be charged against the appropriate reserves in such amount as determined by the Board. Except for expenses of normal and routine maintenance included in the annual operating budget, all expenses for repair or replacement of the Common Property first shall be charged against appropriate reserves in such amount as determined by the Board.

(b) If reserve funds become excessive, as determined by the Board, the Board may adjust the reserve funds by reallocation to other annual operating budget items or by applying excess amounts as credits against annual assessments, or by refunding the excess amount to the then Owners.

**Section 15. Working Capital Assessment.** At the closing of the sale by Declarant of a Lot on which a Dwelling exists, or at the closing of the sale of a Lot by the Declarant to any Person other than a Builder or a successor or assignee Declarant, or at the closing of the sale of a Lot by a Builder to any Person, whether or not there is a Dwelling on the Lot, the purchaser of the Lot or the Lot and Dwelling shall pay to the Association at the time of the closing of the purchase a "working capital assessment" in the amount \$300.00 to be applied to payment of Common Expenses as determined by the Board.

**Section 16. Assessments for Limited Common Property.**

(a) With respect to any portion of the Properties owned by Declarant (and, with the written consent of the Owner thereof, with respect to any portion of the Properties not owned by Declarant), the Declarant reserves the right, by recording Supplemental Declarations or Subdivision Declarations or other documents, to subject such portions of the Properties located in one or more phases, sections, groups, or subdivisions of the Properties to provisions requiring the Owners thereof to pay additional assessments to the Association for the maintenance of Limited Common Property allocated to such phase, section, group, or subdivision of the Properties, including any one or more of the following: (i) private streets; (ii) alleys; (iii) landscaping, signs and decorative features; (iv) Common Expense Property; (v) Stormwater Control Measures; and (vi) anything else with respect to such Limited Common Property that would be a Common Expense for Common Property.

All of the provisions of the Declaration relating to annual assessments, special assessments and stormwater assessments shall apply to the additional annual assessments, special assessments and stormwater assessments for Limited Common Property, with the following exceptions: (i) the additional assessments with respect to any particular Limited Common Property are assessed only against those Owners of the Lots to which such Limited Common Property is allocated; (ii) the initial additional maximum annual assessment and additional annual assessment for each Limited Common Property may be established in the Supplemental Declaration or Subdivision Declaration that creates or establishes that Limited Common Property; (iii) the additional annual assessments, special assessments and stormwater assessments for Limited Common Property may vary with respect to different groups of Lots or from phase to phase, section to section, or subdivision to subdivision within the Properties; and (iv) the additional annual assessments, special assessments and stormwater assessments for Limited Common Property with respect to any particular group of Lots or in any particular phase, section or subdivision of the Properties shall be used exclusively in connection with the Limited Common Property allocated to such group of Lots or phase, section or subdivision.

**Section 17. No Default Under Insured Mortgage.** Nothing contained in the Declaration shall be construed as stating or implying that any failure of an Owner to pay assessments constitutes a default under any mortgage on such Owner's Lot that is insured by the FHA, VA, FNMA, FHLMC, or other Secondary Mortgage Market Agency, or any mortgage program administered by any of said agencies.

**ARTICLE VII  
INSURANCE****Section 1. General Provisions.**

(a) The Board shall have the power on behalf of the Association to: (i) purchase insurance policies relating to the Common Property and the activities of the Association; (ii) adjust all claims arising under such policies; and (iii) sign and deliver releases upon payment of claims. The cost of all insurance policies purchased by the Board as allowed or required by the Declaration is a Common Expense. Neither the Board, nor a property manager, nor Declarant, shall be liable for failure to obtain any insurance required by this Article, or for any loss or damage that could have been paid by such insurance, if such insurance is not reasonably available. With respect to insurance required by Legal Requirements, either by hand delivery, or United States Mail, postage prepaid, or by other method allowed by the Declaration or Legal Requirements, the Association promptly shall notify the Owners if such insurance is not reasonably available, or if there is any material adverse modification, lapse, or cancellation of, such insurance that is not being replaced by other insurance.

(b) To the extent such policy provision is reasonably available, no policy obtained by the Association shall be canceled, invalidated or suspended due to the conduct of any Owner, or such Owner's tenant or such Owner's (or tenant's) household members, guests, employees or agents, or of any director, officer or employee of the Board, or the property manager, without a prior demand in writing that the Association or the property manager cure the defect and a period of not less than thirty (30) days within which to cure such defect.

(c) To the extent reasonably possible, the Association shall require that an insurer who has issued an insurance policy to the Association for property insurance on the Common Property or for liability insurance issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or Mortgagee. If such agreement is reasonably available from the insurer, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30)

days after notice of the proposed cancellation or non-renewal has been mailed to the Association and each Owner and Mortgagee to whom certificates or memoranda of insurance have been issued, to their respective last known addresses.

(d) All policies of insurance obtained by the Association shall be written by reputable companies licensed or qualified to do business in North Carolina.

(e) The deductible or retained limit (if any) on any insurance policy obtained by the Association shall be a Common Expense.

(f) The Association may procure such fidelity bonds as the Board determines are reasonable or necessary, including such bonds as may be necessary to comply with Legal Requirements and to satisfy the applicable requirements of FHA, VA, FNMA, Office of Interstate Land Sales Registration of the Department of Housing and Urban Development ("OILSR") or other governmental agency or Secondary Mortgage Market Agency.

## **Section 2. Property Insurance.**

(a) The Association, to the extent that it is reasonably available, shall obtain and maintain property insurance on all improvements on all real property owned by the Association and on all improvements owned by the Association and located on real property not owned by the Association, insuring against all risks of direct physical loss commonly insured against, including fire damage and extended coverage perils. The total amount of such insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the improvements at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. The foregoing property insurance shall be obtained by the Association as it becomes the owner of the improvements to be insured, but in any event with respect to such improvements not later than the first conveyance of a Lot to a Class A Member of the Association who is not a Builder. As and when determined to be necessary by the Board, the Association also may obtain and maintain appropriate coverage on any other personal property owned by the Association.

(b) To the extent that such provisions are reasonably available, each such property policy also shall provide that:

- (1) each Owner is an insured person under the policy to the extent of such Owner's insurable interest;
- (2) the insurer waives its right to subrogation under the policy against any Owner or member of that Owner's household;
- (3) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will preclude recovery under the policy; and
- (4) if, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the Association's policy, the Association's policy provides primary insurance coverage.

(c) To the extent reasonably possible, the Association shall require the insurer to deliver to each Institutional Lender who requests the same in writing certificates of property insurance on the Common Property, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums.

**Section 3. Liability Insurance.** The Association, to the extent that it is reasonably available, shall obtain and maintain liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of all real property owned by the Association and of all improvements owned by the Association and located on real property not owned by the Association. The foregoing liability insurance shall be obtained by the Association as it becomes the owner of the real property or becomes the owner of improvements, as the case may be, but in any event not later than the first conveyance of a lot to a Class A Member of the Association who is not a Builder. "Umbrella" liability insurance in excess of the primary limits may be obtained in reasonable amounts as determined by the Board in its sole discretion.



**Section 4. Other Insurance or Bonds.** The Association may obtain and maintain other insurance or bonds as follows:

- (a) adequate fidelity coverage to protect against dishonest acts on the part of directors, officers, trustees, agents and employees of the Association and all others who handle or are responsible for handling funds of the Association, including any property manager and volunteers. If the Association has delegated some or all of the responsibility for handling funds to a property manager, such property manager shall be covered by its own fidelity insurance in such amounts as required by the Board; however, the Association may purchase additional fidelity coverage for the property manager as well. Such fidelity insurance (except for fidelity insurance obtained by the property manager for its own personnel) shall: (i) name the Association as an obligee; (ii) be written in an amount not less than one-fourth of the total annual assessment for Common Expenses or the amount required by the Institutional Lenders, the FNMA or the FHLMC, whichever is greatest; and (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.
- (b) if required by a majority of the Institutional Lenders or any applicable Legal Requirement, flood insurance on the real property owned by the Association in accordance with the then applicable regulations for such coverage.
- (c) workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement).
- (d) directors and officers liability insurance.
- (e) such other insurance or bonds as the Board may determine in the exercise of its reasonable discretion, or as may be requested by the affirmative vote of a majority of the Members present at a meeting of the Association.

**Section 5. Owners' Insurance.** In addition to any insurance policy issued to the Association, each Owner shall have the right to acquire and maintain insurance on Common Property for such Owner's benefit, at such Owner's expense. Provided, however, no Owner shall acquire or maintain insurance coverage on the Common Property so as to: (i) decrease the amount which the Association may realize under any insurance policy maintained by the Association; or (ii) cause any insurance coverage maintained by the Association to be brought into contribution with insurance coverage acquired or maintained by an Owner.

## ARTICLE VIII REPAIR AND RESTORATION OF THE PROPERTIES

### Section 1. When Required.

(a) Common Property. If all or any part of the Common Property for which property insurance is required under the Declaration or Legal Requirements is damaged or destroyed, the Association promptly shall repair or replace same unless (i) the Declaration is terminated, (ii) repair or replacement would be illegal under any Legal Requirement, or (iii) the Members decide not to repair, restore or replace by a vote of eighty percent (80%) or more of the votes cast by the Members present at a meeting of the Association (which vote, with respect to any Limited Common Property, must have the approval of one hundred percent (100%) of the Members to which such Limited Common Property is allocated). The cost of repair or replacement in excess of insurance proceeds and applicable reserves is a Common Expense, for which there may be a special assessment against the applicable Members. This Section shall not be construed as any limitation on the rights of the Association under the Act against an Owner who is responsible for the damage to the Common Property or the rights of the Association to seek damages or other relief against any other Person who is responsible for the damage to the Common Property.

If the damage is not repaired or replaced, then (i) the Association, first using the insurance proceeds attributable to the damaged property, shall remove all remnants of the damaged improvements and restore the damaged area to a condition compatible with the remainder of the Properties, (ii) the insurance proceeds attributable to Limited Common Property which are not repaired or replaced shall be distributed to the Members to whom such Limited Common Property was allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the insurance proceeds shall be



distributed to all of the Members or lienholders, as their interests may appear, in proportion to the Common Expense liabilities of all of the Lots. Provided, however, and notwithstanding the foregoing, if the Declaration is terminated, the distribution of insurance proceeds shall be in compliance with the applicable requirements of the Act.

(b) Lots. If a Dwelling or other improvement located upon a Lot is damaged or destroyed, the Owner thereof shall restore the site either: (i) by repairing or replacing such Dwelling or other improvement; or (ii) by clearing away the debris and restoring the Lot to a condition compatible with the remainder of the Properties as determined by the Architectural Review Committee. Unless the Architectural Review Committee permits a longer time period, such work must be commenced within six months and substantially completed within twelve months after the occurrence of the damage or destruction. Any repair or replacement that differs in any material respect from the previously Approved Plans for the Dwelling or other improvement that was damaged or destroyed first must be approved by the Architectural Review Committee in the manner required herein.

## **Section 2. Eminent Domain.**

(a) Definitions. For the purposes of this Section, "Taking" means an acquisition of all or any part of the affected portion of the Properties 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 a change of grade caused by the action of the City affecting the value of the applicable portion of the Properties or any part thereof so severely as to amount to condemnation.

(b) Taking of Lot. If there is a Taking of all of a Lot, or a Taking of part of a Lot leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted under the Declaration, the award shall compensate the Owner for the Lot and the Owner's interest in the Common Property. Upon such Taking, there shall be no votes in the Association allocated to such Lot, or remnant thereof, nor shall such Lot or remnant thereof, be subject to any further assessments under the Declaration, the Lot's "allocated interests" (as defined in the Act) automatically are to be reallocated as provided in the Act, and the remnant remaining following a partial Taking shall be Common Property. If any reallocation occurs under this subsection, the Board promptly shall prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

If there is a Taking of part of a Lot that leaves the Owner with a remnant which practically and lawfully may be used for any purpose permitted under the Declaration: (i) the award shall compensate the Owner for the reduction in value of the Lot; and (ii) with respect to determining the award and the allocated interests of the Lot in the Association following the Taking, there shall be no reduction in the vote allocated to that Lot nor in the assessments assessed against such Lot.

(c) Taking of Common Property. If there is a Taking of all or any part of the Common Property, then the Association shall notify the Owners, but the Board shall act on behalf of the Association in connection with the Taking and no Owner shall have any right to participate in the proceedings incident thereto as an Owner. The award made for such Taking shall be paid to the Association. If the Taking involves a portion of the Common Property on which improvements have been constructed, then the Association, to the extent reasonably practicable and in accordance with plans reasonably adopted by the Board, shall restore or replace such Common Property improvements, unless a contrary determination is made by Declarant, during the Declarant Control Period, or, following the end of the Declarant Control Period, by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association.

If any portion of any award for a Taking of the Common Property is attributable to any Limited Common Property, such portion of the award shall be apportioned among the Owners of the Lots to which the Limited Common Property was allocated at the time of the Taking as follows: the amount of the award shall be divided by the number of Lots associated with the Limited Common Property subject to the Taking, and the resulting amount shall be allocated to each Lot and distributed to the Owners of that Lot.

## **ARTICLE IX**

**Section 1. Use of the Properties.** Except as allowed by the exercise of a Special Declarant Right, no portion of the Properties shall be used for other than single-family residential purposes, which under the Declaration means one Dwelling per Lot and related purposes such as streets, utilities, greenways, open space, recreation, stormwater management, other purposes substantially related to residential use which are allowed under applicable City zoning ordinances for the Properties, unless such substantially related purposes are prohibited by other provisions of the Governing Documents, and for all other purposes specifically required (as contrasted with allowed) by Legal Requirements. Provided, however, and notwithstanding the foregoing sentence, during the Development Period, and subject to Legal Requirements: (i) Declarant, and any Builder or other Person with Declarant's consent, may maintain model homes, sales offices and temporary construction trailers and other facilities within the Properties for the purpose of conducting business related to the development, improvement and/or sale of any part or all of the Properties; and (ii) Declarant, and any Builder or other Person with Declarant's consent, may conduct such activities within the Properties as may be necessary or desirable in connection with the development and/or sales or marketing of any part or all of the Properties.

**Section 2. Leases.** Every lease for any Lot or Dwelling shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and other Governing Documents, and that each lessee shall comply with the terms of such documents. Provided, however, the Declaration and other Governing Documents apply to all such leases, whether or not so stated therein.

**Section 3. Legal Requirements.** Nothing herein contained shall be deemed to constitute a waiver of any Legal Requirement applicable to any portion of the Properties, and all Legal Requirements relative to the construction of improvements on, and/or use and utilization of, any portion of the Properties shall be complied with by the Owners and occupants of such portions of the Properties, whether or not the Approved Plans for same are in compliance with such Legal Requirements. Provided, that in any instance in which the Governing Documents contain a provision that requires something more than or in addition to, or prohibits something otherwise allowed under, a Legal Requirement (for example, prohibition of a use allowed under a Legal Requirement or requirement of a greater distance or size than required under a Legal Requirement), the provisions of the Governing Documents shall control unless prohibited by a Legal Requirement.

**Section 4. New Construction.** Unless otherwise allowed by Declarant during the Development Period, construction of new Dwellings only shall be permitted on Lots (as contrasted with the moving of any existing building or structure onto any Lot and remodeling or converting same into a Dwelling). Provided, however, the foregoing shall not be construed as prohibiting maintenance of, remodeling of, or construction of additions to, existing Dwellings that previously have been constructed in compliance with the Declaration, provided that such maintenance, remodeling or addition is performed in accordance with the Approved Plans therefor (or Architectural Guidelines not requiring Approved Plans) and other requirements of the Declaration.

The Architectural Control Committee has the right (but is not required) to implement and enforce requirements for the location and screening of construction materials, the use, type and location of fencing, the use, location and screening of portable toilets, the use, location and screening of receptacles for the collection of construction debris and excess materials, and the use, location and screening of other materials and devices used in connection with construction or maintenance of improvements on Lots.

**Section 5. Obstructions, etc.** No Owner shall obstruct any of the Common Property, City greenways or greenway easements or any pedestrian access easements providing access to Common Property or City greenways or greenway easements, nor shall anything be kept, stored, altered, constructed or planted in or on the Common Property or removed therefrom (except as necessary to prevent injury to person or property or to comply with a Legal Requirement), without the prior consent of Declarant, during the Development Period, and, thereafter, the Board, or except in the exercise of any valid easement over any portion of the Common Property. Provided, however, the Association, and, during the Development Period Declarant and Builders (with Declarant's consent), shall have the right to maintain signs in and on the Common Property, and to maintain in the Common Property such materials, equipment and other apparatus, as may be reasonably necessary to enable the Association to perform its functions and provide the services under the

Declaration, or to enable Declarant or such Builders to market, develop, and sell the Properties. Following the end of the Development Period each Builder shall have the right, subject to the reasonable review and approval of the Board (or Architectural Control Committee if directed by the Board), to maintain signs in the Common Property as such Builder determines is reasonably necessary or desirable for marketing and selling all portions of the Properties owned by such Builder. The rights of use and enjoyment of the Common Property conferred upon Owners by the Declaration do not include the right to interfere with the use or maintenance of the Common Property by Declarant, any Builder, or the Association.

**Section 6. Owner Liability.** If any Owner is legally responsible for damage inflicted on any Common Property, the Association may direct such Owner to repair such damage, or the Association itself may cause the repairs to be made and recover damages from the responsible Owner, including costs incurred in seeking and enforcing such recovery or other applicable legal remedies, including reasonable attorneys' fees.

**Section 7. Prohibition on Use for Streets.** Without the written consent of Declarant during the Development Period (and, thereafter, by the Board), which consent may be given or denied in the sole discretion of the party having the right to give the consent, and which consent may be given and evidenced only by the execution by the consenting party of a plat or document recorded in the Registry, no Lot or portion thereof may be used, established or dedicated as a public street right of way or a private street right of way or driveway, where one of the purposes therefor or results thereof is to provide pedestrian or vehicular access to any property that is not part of the Properties, except for such vehicular and/or pedestrian access easements as are described or shown in documents or on plats of the Properties recorded in the Registry and are established to provide access to City greenways or greenway easements.

**Section 8. Recreational Areas, Equipment, and Facilities.** The Association may adopt and enforce Restrictions and Rules relating to the location, type, number, and use of recreational areas, equipment and facilities on Lots and other portions of the Properties, including requirements for screening from view.

**Section 9. Restricted Actions by Owners.** No Owner shall do or permit anything to be done or kept within the Properties or on the Common Property which will result in the cancellation of or increase in the cost of any insurance carried by the Association, or which would be in violation of any Legal Requirement or any Restriction or Rule established by the Association. No waste shall be committed on the Common Property, except as may be necessary to enable Declarant, a Builder, the Association, an Owner, or the holder of an easement to construct or maintain improvements (in accordance with Approved Plans when applicable), or to exercise any rights reserved or afforded to them hereunder or provided in an applicable easement, or except as may be necessary to enable the Association to perform its functions and provide services under the Declaration. Each Owner shall comply with all Legal Requirements applicable to any part or all of the Properties, including applicable zoning ordinances and building codes.

**Section 10. Soil Erosion Control.** During all periods of construction on any portion of the Properties, the Owner thereof, or the Person exercising easement rights thereon, shall maintain proper and adequate soil erosion control to protect other portions of the Properties from accumulated silt and other soil erosion. The Owner of each Lot is responsible for compliance with any and all Governmental ordinances and regulations as they pertain to soil erosion control and each agrees to hold harmless the Declarant from any and all damages resulting from non compliance by any Owner including attorney's fees, if any.

**Section 11. Impervious Surfaces.** The Declarant shall have no liability for violation of impervious surfaces violation by any Builder or Owner of any lot and each Builder and Owner agrees to indemnify and hold harmless the Declarant for any such violations or legal requirement.

**Section 12. Temporary Structures Prohibited.** No structure of a temporary character shall be used on any portion of the Properties at any time as a Dwelling.

**Section 13. Wetlands; Neuse River Buffers.** Portions of the Properties may have been determined to meet Legal Requirements for designation as a regulatory wetland. Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, and whether or not the Approved

Plans for any improvements on the portion of the Properties on which such wetlands are located are in compliance with applicable wetlands rules, any subsequent fill or alteration of any portion of the Properties that has been determined to be a regulatory wetland under Legal Requirements shall conform to the requirements thereof in force at the time of the proposed alteration. The intent of this Section is to prevent additional wetland fill or alteration except as allowed under Legal Requirements, so the Owner of any such portion of the Properties should not assume that any application for fill or alteration of a wetland will be approved. The Owner of any portion of the Properties subject to any such future application shall report the name of the Subdivision, together with the name of the particular phase, section or subdivision within the Properties, if any, in any application pertaining to wetland rules. The provisions of this Section are intended to ensure continued compliance with wetland rules under Legal Requirements and this Section may be enforced by the United States, State of North Carolina or any other governmental entity having jurisdiction over the subject wetlands.

Portions of the Properties also may be subject to Neuse River (or other applicable river or stream) buffer requirements in connection with the Neuse River (or other river or stream) and its tributaries. Owners of all portions of the Properties subject to such buffer requirements shall at all times comply with same, whether or not the Approved Plans for any improvements are in compliance therewith.

The provisions of this Section shall run with the Properties and be binding on all Owners of any part or all of the Properties and all persons claiming under them.

**Section 14. Exclusion for Declarant.** Notwithstanding any other provision of the Declaration or any other Governing Documents, Declarant, during the Development Period (and thereafter, the Board) has the right, permanently or temporarily (as determined in the discretion of Declarant or the Board, as applicable) to waive any one or more of the provisions of this Article with respect to construction or maintenance of any improvements in the Properties, except that there shall be no waivers with respect to soil erosion controls and Legal Requirements. Any such waiver granted by the Declarant to a Builder or other Person during the Development Period shall be binding on the Board after the Development Period has ended.

## ARTICLE X RESTRICTIONS AND RULES

**Section 1. Framework for Regulation.** As part of the general plan of development for the Properties, the Governing Documents establish a framework of affirmative and negative covenants, easements, and restrictions. Within that framework, the Declarant, Board, and Members need the ability to be more specific and to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article discusses Restrictions and Rules and procedures for modifying and expanding Restrictions and Rules. This Article does not apply to rules and regulations relating to use and operation of the Common Area adopted by the Board, unless the Board in its discretion chooses to submit to such procedures. Except for the provisions requiring compliance with Restrictions and Rules and enforcing such compliance, this Article does not apply to administrative policies which the Board adopts to interpret, define or implement the Restrictions and Rules, nor does it apply to Architectural Guidelines.

**Section 2. Restrictions and Rules.** All Owners and occupants of Lots and their guests and invitees shall abide by the Restrictions and Rules. The Declarant and the Association shall have the power to enforce compliance with the Restrictions and Rules in the same manner and to the same extent that the Declaration provides for enforcement of the Declaration, and any Person determined by judicial action to have violated the Restrictions and Rules shall be liable to the Declarant or Association for all damages and fines, including all costs incurred in seeking and enforcing applicable legal remedies, including reasonable attorneys' fees.

**Section 3. Rule Making Authority.**

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt, amend, modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice to all Owners (notice to any one Owner of a Lot being sufficient) concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being

taken. During the Development Period, no action taken by the Board shall be effective unless approved in writing by the Declarant.

Prior to any such action taken by the Board becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner (notice to any one Owner of a Lot being sufficient), which notice shall state the effective date of the action, which shall be not less than 30 days following the date on which the notice is given by the Board. The Association shall provide to any requesting Owner (but not to more than one Owner of a Lot), without cost, one copy of the Restrictions and Rules then in effect, together with the action taken by the Board. Additional copies may be provided by the Association upon payment of a reasonable charge as established by the Board. The action taken by the Board shall become effective on the later of the 31<sup>st</sup> day after the Board gives the notice of the action to the Owners or such effective date specified in the notice, unless, prior to the effective date, Members representing more than 50% of the total number of votes in the Association disapprove such action at a meeting or in writing to the Board. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt, prior to the effective date of the action taken by the Board, of a petition of the Members as required by the Governing Documents for special meetings of the Association or a written request from the Declarant. Upon such petition of the Members or written request from the Declarant prior to the effective date of any Board action under this Section, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Class A Members representing more than 50% of the total number of votes in the Association, at an Association meeting called for such purpose, may vote to adopt rules that modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Provided, however, during the Development Period no such action shall be effective without the written approval of the Declarant.

(c) No action taken by the Board or Class A Members under this Article shall have the effect of modifying, repealing or expanding the Architectural Guidelines or any provision of the Declaration or other Governing Documents. Prior to the end of the Development Period, no such action shall be effective unless approved in writing by the Declarant. In the event of a conflict between the Architectural Guidelines and the Restrictions and Rules, the Architectural Guidelines shall control.

(d) Notwithstanding the foregoing procedures for amending the Restrictions and Rules, and notwithstanding anything to the contrary elsewhere in this Article or the Declaration, during the Development Period the Declarant, in its sole discretion and without any prior notice to any Person, may adopt, amend, modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules, and all such Restrictions and Rules shall control over any contrary Restrictions and Rules adopted, amended, modified, canceled, limited, excepted, or expanded in any other manner during the Development Period. Commencing with the time that there are any Class A Members of the Association other than Builders, prior to any action taken by the Declarant under this subsection becoming effective, the Declarant, or the Board at the direction of the Declarant, shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner (notice to any one Owner being sufficient), which notice shall state action taken and the effective date of the action, which date may be any time on or after the date on which the notice is given to the Owners.

**Section 4. Owners' Acknowledgment and Notice to Purchasers.** All Owners are given notice that use of their Lots, Dwellings, and the Common Area is limited by the Restrictions and Rules. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of such Owner's Lot and Dwelling can be affected by this provision and that the Restrictions and Rules may change at any time. All purchasers of Lots and Dwellings are notified that, as provided for herein, the Declarant or the Board may adopt Restrictions and Rules or changes to any Restrictions and Rules in effect at any particular time.

**Section 5. Protection of Owners and Others.** Except as may be set forth in the Governing Documents, all Restrictions and Rules shall comply with the following provisions:

(a) **Similar Treatment.** Similarly situated Owners shall be treated similarly, the determination of which Owners are similarly situated being in the reasonable judgment of the Declarant or Board or Members, as applicable.

(b) **Displays.** The rights of Owners to display religious and holiday signs (the word "sign" or "display" as used in the Declaration includes signs, banners, flags (including a flag of the United States of America, an American flag, a United States flag, or a North Carolina flag), symbols, decorations, and other displays) inside Dwellings shall not be abridged, except that there may be rules regulating the number, size, time, and place and manner of posting or displaying such signs that are located outside of or visible from outside of the Dwelling, including regulation or specification of design criteria (for example, color, style, materials).

No rules shall regulate the content of political signs; however, rules may regulate the number, size, time, and place and manner of posting or displaying, such political signs that are located outside of or visible from outside of the Dwelling, including regulation or specification of design criteria (for example, color, style, materials).

Signs required by Legal Requirements or prohibited by Legal Requirements from being excluded or prohibited shall be allowed (for example, a street number sign for a Dwelling required by the City). However, to the extent that it would not violate the Legal Requirement, rules may regulate the number, size, time, and place and manner of posting or displaying, such signs, including regulation or specification of design criteria (for example, color, style, materials).

(c) **Household Composition.** No rule shall interfere with the Owners' freedom to determine the composition of their households, except that rules may require that all occupants be members of a single housekeeping unit and may limit the total number of occupants permitted in each Dwelling on the basis of the size and facilities of the Dwelling and its fair use of the Common Area.

(d) **Activities Within Dwellings.** No rule shall interfere with the activities carried on within the confines of Dwellings, except that rules may prohibit activities not normally associated with property restricted to residential use, and may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Dwellings, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling, or that create an unreasonable source of annoyance, or that violate Legal Requirements.

(e) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this subsection shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided herein.

(f) **Alienation.** No rule shall prohibit leasing or transfer of any Dwelling, or require consent of the Association or Board for leasing or transfer of any Dwelling; provided, rules may require a minimum lease term of up to 12 months and the use of lease forms approved by the Board, but shall not impose any fee on the lease or transfer of any Dwelling greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(g) **Abriding Existing Rights.** No rule shall require an Owner to dispose of personal property that was in a Dwelling or on a Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(h) **Declarant Rights.** Without the written consent of Declarant, no rule or action by the Board or Members shall restrict, impair, prohibit, exclude, impede, interfere with, or in any way adversely affect any Special Declarant Right.

The limitations in subsections (a) through (g) of this Section shall only limit the rule making authority exercised under this Section; they shall not apply to amendments to the Declaration adopted as provided in the Declaration.

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ARTICLE XI  
ARCHITECTURAL APPROVAL

**Section 1. Architectural Review Committee - Jurisdiction and Purpose.** Except for ordinary and routine maintenance to an existing Dwelling or other improvement on a Lot, and excluding planting and maintenance of flowers, bushes, grass and trees that do not result in any material change in the landscaping for a Lot approved as part of the Approved Plans ("material" being as determined by the Architectural Review Committee) or allowed by Architectural Guidelines, and except as otherwise provided herein: no site preparation of a Lot, no change in grade or slope, no construction of, alteration of, additions to, or changes to any improvement on a Lot (including a Dwelling or other building or improvement on a Lot, and including any conversion of a garage or carport into living space) shall be commenced, nor shall any of the same be placed, altered or allowed to remain, until the "Architectural Review Committee" has approved in writing the Plans therefor or the Architectural Guidelines allow the improvement without obtaining Approved Plans. The Architectural Review Committee is established to assure, insofar as is reasonable and practicable, that improvements are constructed and maintained in a manner that provides for harmony of external design and location in relation to Dwellings and other improvements in the Properties and to natural features and topography, that avoids improvements deleterious to the aesthetic or property values of any portion of the Properties, and that promotes the general welfare of the Owners. Notwithstanding anything to the contrary expressed or implied herein: (i) all Plans and other architectural approvals given by the Declarant during the Development Period, all improvements constructed or maintained by Declarant or the Association within the Properties, all portions of the Properties owned by Declarant or the Association, all Common Property and improvements therein maintained by the Association, and all portions of the Properties owned by or subject to easements in favor of the City or public utility providers (except for any such portions of the Properties that contain or are proposed to contain Dwellings or other buildings and associated improvements), are specifically excluded from the requirements of this Article; and (ii) during the Development Period (x) the Declarant has the right to exercise all rights of the Architectural Review Committee and the Board that are described in this Article, including whether to utilize an Architectural Review Committee or to serve as the Architectural Review Committee itself, (y) the Declarant determines the matters, if any, to be reviewed by the Architectural Review Committee, and (z) any decision of the Declarant made during the Development Period with respect to any matter subject to this Article controls over any contrary decision of the Architectural Review Committee or the Board. Declarant, in its sole discretion, may require applicants for approvals being considered by Declarant to follow the procedural requirements of this Article, or may impose procedural requirements that are different from those contained in this Article.

**Section 2. Composition.** During the Development Period, the Architectural Review Committee, if utilized by Declarant, may consist of such number of Persons as determined by Declarant. Declarant, in its sole discretion, has the right to remove and replace the Persons appointed by it to the Architectural Review Committee. Following the end of the Development Period, the Architectural Review Committee shall consist of not less than three (3) Persons, who shall be appointed by, and shall be subject to removal with or without cause by, the Board (or the Board may serve as the Architectural Review Committee if it is unable to obtain 3 or more Persons to serve). Persons who serve on the Architectural Review Committee are not required to be Members of the Association.



**Section 3. Procedure.**

(a) Unless otherwise permitted by the Architectural Review Committee in its sole discretion, prior to the commencement of any construction, alteration, addition, or placement of any improvement requiring approval by the Architectural Review Committee, Plans for the proposed improvement shall be submitted to the Architectural Review Committee, in such format and in such numbers or sets (not to exceed three) as the Architectural Review Committee may require. The Architectural Review Committee shall have the right to refuse to approve any Plans for improvements which are not, in its sole discretion, suitable or desirable for the Properties, including for any of the following: (i) lack of harmony of external design with surrounding structures and environment; and (ii) aesthetic reasons. Each Owner acknowledges that determinations as to such matters may be subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. Unless a written response is given by the Architectural Review Committee within sixty (60) days following its receipt of the required number of complete sets of Plans and payment by the applicant of any applicable processing fee and consulting fees due and payable at the time request for approval of Plans is submitted by the applicant, the Plans shall be deemed approved. At any time that the Architectural Review Committee consists of more than one individual, decisions of the Architectural Review Committee shall be by majority vote of its members present at a meeting thereof (or by the written consent of a majority of all the members of the Architectural Review Committee). The written response of the Architectural Review Committee may be an approval, a denial of approval, a conditional approval, or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was incomplete or inadequate, and the sixty (60) day time period for further Architectural Review Committee response shall commence only upon receipt of the requested additional information. If conditional approval is granted, and construction, alteration, addition or placement of the improvement thereafter commences, the conditions imposed shall become fully a part of the Approved Plans. Any material modification or change in the Approved Plans must again be submitted to the Architectural Review Committee for its review in accordance with the foregoing requirements or such other procedures as adopted by the Architectural Review Committee. If the Plans are approved, or conditional approval is given, at least one set of Approved Plans shall be retained by the Architectural Review Committee and at least one set of Approved Plans shall be returned to the applicant. The Architectural Review Committee shall keep such other records of its activities as it is instructed to keep by either the Declarant or the Board, whichever is applicable.

(b) The Declarant or the Board, as applicable, may adopt procedures for the Architectural Review Committee to conduct the architectural reviews and its other duties, provided that such procedures do not conflict with the specific requirements of the Declaration. Such procedures may include reasonable fees for processing requests for approval, and also may include fees for the services of an architect or other consultant to assist the Architectural Review Committee in its review of any Plans, the costs of all such fees being the responsibility of the applicant. Processing fees shall be due and payable to the Association at the time the Plans are submitted to the Architectural Review Committee, and the fees of the architect or consultant shall be due and payable to the Association either at the time the Plans are submitted to it or immediately upon its receipt of an invoice therefor, as determined by the Architectural Review Committee. Prior to incurring any architect or consultant fees not due and payable at the time Plans are submitted, the Architectural Review Committee shall afford the applicant a reasonable opportunity either to agree to pay such fees or to withdraw the request for approval. The sixty (60) day time period within which the Architectural Review Committee is required to respond to a request for approval does not commence until all processing fees and architect or consultant fees due and payable at the time of submission of the request for approval have been paid. Notwithstanding anything to the contrary in this Article, in no event shall approval of Plans by the Architectural Review Committee be deemed to have been given until all such processing fees and architect or consultant fees have been paid by the applicant. The payment of such fees and costs, as well as other expenses of the Architectural Review Committee required to be paid, whether or not the applicant's Plans are approved, is deemed to be an individual assessment, enforceable against any applicant in the same manner provided herein for enforcement of other assessments.

(c) The Declarant, during the Development Period and, thereafter, the Board, and the Architectural Review Committee as authorized by the Declarant or the Board, as applicable, may establish, amend, revise and/or delete Architectural Guidelines for one or more types of improvements to be constructed or maintained on any portion of the Properties, which Architectural Guidelines shall not conflict with the specific terms of the Declaration or any applicable Supplemental Declaration or Subdivision Declaration, shall be fair and reasonable, and shall carry forward the spirit and intention of the Declaration. Architectural Guidelines may be enforced in the same manner and to the same extent as the



provisions of the Declaration may be enforced. If there is any conflict between Approved Plans and Architectural Guidelines, the Approved Plans control, it being within the discretion of the Architectural Review Committee to approve Plans that differ in one or more respects from the then existing Architectural Guidelines. Compliance with Architectural Guidelines does not guarantee approval by the Architectural Review Committee of Plans for improvements that must be submitted for approval. With respect to improvements other than initial construction of a Dwelling, the Architectural Guidelines may, but shall not be required to, allow construction or maintenance of one or more types of improvements in accordance with the Architectural Guidelines without submitting the Plans therefor to the Architectural Review Committee and going through the formal approval process provided for herein, and subject to such conditions and requirements as specified in the Architectural Guidelines. Architectural Guidelines may include any or all of the following: types of improvements allowed; types of materials allowed; permitted colors; architectural styles; minimum and/or maximum square footage for Dwellings, garages, and other buildings or structures; minimum distances that Dwellings and other improvements must be located from Lot boundary lines; landscaping requirements; and screening requirements. The Architectural Guidelines in effect at the time construction of an improvement is commenced or, if no construction is required, the time that the improvement is first placed or used on the Lot, govern whether or not that improvement complies with the Architectural Guidelines.

(d) The Declarant or the Board, as applicable, in its sole discretion, may appoint more than one Architectural Review Committee, with the specific division of authority between or among such Architectural Review Committees to be as specified by the Declarant or Board, as applicable. Each such Architectural Review Committee separately shall be subject to and shall comply with the provisions of the Declaration applicable to the Architectural Review Committee, including the appointment, removal and replacement of its members and the review of Plans by the Architectural Review Committee. The members of each Architectural Review Committee may consist of one or more of the same Persons.

(e) Approval by the Architectural Review Committee of any Plans shall not relieve the owner of the applicable Lot from any obligation to obtain all required City approvals and permits, and shall not relieve such Owner of the obligation and responsibility to comply with all Legal Requirements with respect to such improvements. An Owner also must comply with all applicable Legal Requirements with respect to Improvements constructed, placed, or used on a Lot in compliance with Architectural Guidelines.

(f) Approval of any particular Plans does not waive the right of the Architectural Review Committee to disapprove the same or substantially similar Plans subsequently submitted, nor does such approval relieve an applicant of the requirement to resubmit such Plans for approval in connection with any portion of the Properties other than the portion for which the Plans were approved. Each Owner acknowledges that the Persons reviewing Plans, as well as compliance with Approved Plans and Architectural Guidelines, may change at any 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 Architectural Review Committee may refuse to approve similar proposals in the future and may revise Architectural Guidelines with respect to such improvements.

(g) Notwithstanding anything to the contrary herein, architectural approvals given prior to the end of the Development Period by the Declarant or by an Architectural Review Committee appointed by the Declarant shall remain in effect following the end of the Development Period, but subject to expiration if the construction or installation of the approved improvements is not completed within any applicable time limits required by any Governing Documents or the Approved Plans. Approved Plans may not be revoked or withdrawn by the Architectural Review Committee without the written consent of the Person who owns the portion of the Properties to which the Approved Plans are applicable.

(h) The Architectural Review Committee shall have the right, but not the obligation, to inspect improvements that are being constructed or maintained on any portion of the Properties to monitor compliance with the provisions of this Article, with the Approved Plans for such improvements, and with the Architectural Guidelines, such right to include entry onto such portion of the Properties at reasonable times to inspect the improvements. Provided, however, without the consent of an Owner or occupant of the Dwelling, no member of the Architectural Review Committee shall have the right to enter an occupied Dwelling, or a Dwelling for which a certificate of occupancy has been issued, or a Dwelling in which doors and windows capable of being locked have been installed and are locked. With respect to such improvements, the

Architectural Review Committee has the right and authority to require the Owner on whose portion of the Properties the improvements are being constructed or maintained to take such actions as may be required, in the sole discretion of the Architectural Approval Committee, to comply with this Article, the Approved Plans, or the Architectural Guidelines, as applicable.

(i) Unless the Declarant is serving as the Architectural Committee, an applicant Owner who disagrees with any decision of the Architectural Review Committee may appeal the decision to the Board by giving written notice of appeal within fifteen (15) days following receipt of notice of disapproval or of approval with conditions not agreeable to the applicant Owner. The Board then shall review the Plans and any additional information requested by the Board, and shall give the applicant Owner and the Architectural Review Committee a reasonable opportunity, at one or more meetings of the Board, to present evidence and arguments as to why the decision should be affirmed or overruled. Following the last such meeting the Board, by majority vote, either shall affirm or overrule, in whole or in part, the decision of the Architectural Review Committee, and shall notify the Architectural Review Committee and the applicant Owner of its decision within thirty (30) days following its decision. The decision of the Board is final, subject to the rights of Declarant during the Development Period to overrule any such decision of the Board.

**Section 4. Landscaping; Utility Lines.** No fence, wall, sign, tree, hedge, shrub, or other vegetation or improvement which obstructs sight lines for vehicular traffic on public or private streets in the Properties shall be placed or permitted to remain on any portion of the Properties. Pavement, fences, walls, signs, trees, hedges, shrubs, and other vegetation shall not be placed or permitted to remain on any portion of the Properties: (i) if such materials may damage or unreasonably interfere with any easement for the installation or maintenance of utilities; or (ii) in violation of the requirements of such easements; or (iii) unless in conformity with applicable standards of the holder of the easement; or (iv) if such materials may unreasonably change, obstruct or retard direction or flow of any stormwater drainage. Otherwise, the installation and maintenance of such materials within utility easements shall be permitted as allowed by Approved Plans or Architectural Guidelines. Except for hoses, gauges and controls for well pumps, temporary lines and other equipment reasonably necessary in connection with construction or maintenance activities or normal landscape or yard maintenance, no water pipe, sewer pipe, gas pipe, stormwater drainage pipe, television or telephone cable, electric line or other, similar transmission line shall be installed or maintained on any Lot above the surface of the ground, except for those located in easements maintained by the City or applicable public utility provider or otherwise required by the City or applicable public utility provider, or as necessary for such pipes, lines and other facilities to function properly, or as approved by Approved Plans or allowed by Architectural Guidelines.

**Section 5. Tree Cutting.** Architectural Guidelines also may address the cutting or removal of trees and other vegetation. The initial Architectural Guidelines include the following: no live trees with a diameter in excess of six (6) inches, measured at ground level, nor "flowering trees" (such as dogwood or redbud) or broad leaf evergreens (such as holly, laurel or rhododendron) trees in excess of two (2) inches in diameter, similarly measured, no live vegetation on slopes of greater than twenty percent (20%) gradient or marked "no cut" areas on Approved Plans, may be cut or removed from the Properties without the prior written approval of the Architectural Review Committee, unless necessary to construct improvements based on Approved Plans (when required), or to prevent injury to Persons or property, or to remove dead or diseased trees, or to promote the continued growth of other trees near to the tree(s) being cut or removed, or to comply with Legal Requirements. No trees planted by the Declarant to comply with Legal Requirements shall be cut without the prior written approval of the Declarant, during the Development Period, and thereafter, only with approval of the Architectural Review Committee.

**Section 6. Commencement and Completion of Construction.** Unless the time period is extended by the Architectural Review Committee, Approved Plans for a Dwelling or other improvement expire unless construction or installation of the Dwelling or other improvement commences within twenty-four (24) months after the date of the approval. Construction or installation of all such improvements shall be completed not later than twelve (12) months immediately after construction or installation is commenced, or shall commence and be completed by such later dates as specified in the Approved Plans. For the purposes of this Section, construction or installation is "commenced" when a building permit has been issued by the City (or if no building permit is required, when work commences or materials for the improvement are delivered to the applicable portion of the Properties), and construction or installation is "completed" when it has been completed in compliance with Approved Plans or Architectural Guidelines and the City has issued a

certificate of occupancy or completion for the improvement (or if no certificate of occupancy is required, when the improvement has been substantially completed as determined by the Architectural Review Committee). The Architectural Review Committee, in its sole discretion, may grant waivers or extensions of the foregoing time period for completion of construction or installation of improvements, and, when requested and upon reasonable evidence of the existence thereof, shall grant reasonable waivers or extensions for events of Force Majeure that delay or prevent a Person from completing construction or installation within the foregoing time periods. Each Owner is responsible for providing that maintenance of improvements not addressed in the foregoing provisions of this Section (for example, repainting of a Dwelling) is diligently pursued until completion.

**Section 7. Compensation.** No member of the Architectural Review Committee shall be compensated for service as a member of the Architectural Review Committee. However, the Association may reimburse members of the Architectural Review Committee for reasonable out-of-pocket expenses incurred in serving on the Architectural Review Committee.

**Section 8. Limitation of Liability.** Neither the Architectural Review Committee nor the members thereof, nor Declarant, nor the Association, nor any shareholders, directors, officers, partners, members, managers, agents or employees of Declarant or the Association, shall be liable in damages or otherwise to any Person by reason of: (i) mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of Plans, or the failure to approve or disapprove any Plans, except where the foregoing results from gross negligence or willful misconduct; or (ii) any failure of Approved Plans to comply with any Legal Requirements, including zoning and building codes; or (iii) any defect in, or lack of structural soundness or integrity of, any improvements constructed, placed, or maintained on any portion of the Properties.

**Section 9. Violation; Enforcement.** Each failure of an Owner or any other Person to construct or maintain any improvement in accordance with the Approved Plans or applicable Architectural Guidelines shall be a violation of the Declaration. Declarant, each Owner and the Association each shall have the right, but not the obligation, to enforce the provisions of this Article against an Owner or any other Person who violates or attempts to violate same, either to restrain the violation, recover damages, or seek other available legal or equitable remedies. Any failure to enforce this Article of the Declaration or seek any applicable remedy with respect to any specific violation hereof shall not constitute a waiver of the right to do so thereafter, nor shall it constitute a waiver of the right to enforce this Article of the Declaration at any other time with respect to the same or substantially similar matter. All such rights, remedies and privileges granted in this Section 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.

## ARTICLE XII EASEMENTS AND OTHER RIGHTS

**Section 1. Exercise of Easement Rights.** Each easement described in this Article include the following rights as reasonably necessary for the full exercise of the easement: vehicular and pedestrian ingress, egress, and regress (together referred to as "access") over other portions of the Properties as reasonably necessary to go to and from the easement area (the "easement area" being defined as the portion of the Properties subject to the easement) and to transport equipment and materials to and from the easement area; the right to maintain equipment, structures, facilities and soil and water impoundments in the easement area; the right to remove any obstruction within the easement area that constitutes interference with the use of the easement or with the maintenance of any equipment or structures or facilities or soil or water impoundments located therein; and the right to use as temporary work space such portions of the Properties immediately adjacent to and outside of the easement areas as may be reasonably necessary for the full exercise of such easements. Provided, with respect to any portion of the Properties outside of the applicable easement area damaged as a result of the exercise of such access or temporary work space rights, the Person who exercises the access or temporary work space rights, as soon as practicable after completion of the work (and during the performance of the work if such restoration is necessary to prevent injury or death to any Person or damage to any other property), shall restore all such portions of the Properties to substantially the same condition as they were in immediately prior to the occurrence of the damage.

The easements established in this Article may be exercised in the discretion of the Declarant, the Association, or other Person for whom they are established, but this Article does not impose any obligation on the Declarant, the Association, or other Person to exercise any such easements or rights.

**Section 2. Easements Reserved by Declarant.** Declarant, for itself, and its successors and assigns (which may include the Association, the City and public utility providers), reserves the following easements and rights in, over, under, across and through the Properties, which may be exercised by Declarant or its successors or assigns in its sole discretion, in whole or in part, without any obligation to exercise any of same. These easements specifically include the right to connect to and use and maintain new and existing wires, poles, lines, pipes, conduits, meters, equipment, structures, facilities, and soil and water impoundments and other Stormwater Control Measures in the easement areas, without payment of any charge or fee to the Association or any Owner of any part or all of the Properties, and during the Development Period the right (without obligation) to exercise all of the easements reserved for the Association in this Article:

- (a) The right to grant perpetual, exclusive or non-exclusive, and alienable easements for development, as determined by Declarant, of the Properties or any real property described on **Exhibit B** or any real property adjoining any part of the Properties, including development required by any Legal Requirement or contractual obligation of Declarant, including the exercise of any right reserved by or granted to the Declarant under the Governing Documents, and including the maintenance of streets (both publicly dedicated and private streets), water, sanitary sewer and other utilities and related appurtenances and equipment, soil and water impoundments, and Stormwater Control Measures, including wires, poles, lines, pipes, conduits, meters, equipment, structures, and facilities related thereto, in, over, under, across, and through all of the following: (i) easement areas that have been identified as easements on plats or in documents that have been executed by the Declarant or other Owner of such portions of the Properties and recorded in the Registry; (ii) all streets in the Properties, including both publicly dedicated and private streets; (iii) an area on each Lot that is five (5) feet in width and adjacent to each side boundary line thereof (and ten (10) feet in width adjacent to each side boundary line of a Lot that does not adjoin another Lot or Common Property) and an area on each Lot that is ten (10) feet in width adjacent to each front and rear boundary line thereof; (iv) any other portion of a Lot, subject to the written approval of an Owner of the Lot, which approval shall not be unreasonably withheld, delayed, or conditioned; and (v) the Common Property, including Common Expense Property. Provided, however, neither the foregoing reservation of easement rights nor any similar reservation of easement rights contained in the Declaration shall create or impose any obligation upon Declarant, or its successors and assigns, to provide or maintain any such street, wire, pole, line, pipe, conduit, meter, equipment, structure, facilities, or soil and water impoundment or other Stormwater Control Measure. Declarant's rights under this Section include the right to assign its rights under the easements and/or to grant easements to other Persons in, over, under, across and through those portions of the Properties described in items nos. (i), (ii), (iii), (iv) and (v) in this sub-section.
- (b) The non-exclusive right and power, with respect to any portion of the Properties, to grant and record in the Registry such specific easements as may be necessary, in Declarant's sole discretion, for the complete and orderly development of the Properties or any real property described on **Exhibit B** or any real property adjoining any part of the Properties. The Owner of any Lot to be burdened by any such easement granted by Declarant shall be given written notice in advance of the grant. The location of any such easement on the Lot of an Owner, except for those portions along the boundaries of such Lot as described in the immediately preceding subsection (a), shall be subject to the written approval of the Owner of the Lot to be burdened by the easement (written consent of any one of multiple Owners of the Lot being deemed sufficient), which approval shall not be unreasonably withheld, delayed, or conditioned.
- (c) The right to subject the Properties and/or the Association to a contract with Progress Energy (or other, appropriate utility provider) for the installation and maintenance of above ground or underground electric cables and lines and/or the installation and maintenance of street lighting (including poles and light fixtures), either or both of which may require an initial payment and/or a continuing monthly payment by each Owner and/or by the Association as part of the Common Expenses. The Association shall accept assignment from Declarant of contracts entered into by the Declarant with Progress Energy or other appropriate utility provider for such electrical and/or lighting services.
- (d) A perpetual, non-exclusive, and alienable easement to maintain all vegetation required or allowed under any planting, landscaping, or replanting plan required or approved for the Subdivision pursuant to Legal Requirements.

**Section 3. Agreements With Other Persons.** In connection with its exercise of any easements or rights reserved in this Article, Declarant reserves the additional right, which may be exercised by Declarant or its successors or assigns in its sole discretion, in whole or in part, without any obligation to exercise such right, to enter into agreements on behalf of and binding on the Association with other Persons (including other associations of property owners) for any one or more of the following: (i) use and maintenance of any easements and associated improvements and facilities therein located on the Properties or on the properties owned or used by such other Persons, which agreements may provide for financial and/or management responsibilities for the Association and/or for such Persons; and (ii) use and maintenance of Stormwater Control Facilities in the Properties and/or on the properties owned or used by such Persons.

**Section 4. Easements Reserved for the Association.** Easements are reserved for the Association as follows, which may be exercised by the Association in its sole discretion, without any obligation to exercise any of same. These easements specifically include the right to connect to and use and maintain new and existing wires, poles, lines, pipes, conduits, meters, equipment, structures, facilities, and soil and water impoundments and other Stormwater Control Measures in the easement areas, without payment of any charge or fee to any Owner of any part or all of the Properties:

(a) A perpetual, non-exclusive and alienable easement in, over, under, across and through all portions of the Properties to enable the Association to perform its functions and provide the services under the Declaration. Provided, however that any such entry by the Association upon any portion of the Properties shall be made with as minimum inconvenience to the Owner of such portion of the Properties as reasonably practicable, and any damage caused by or resulting from the gross negligence or willful misconduct of the Association's employees, contractors or agents shall be repaired by the Association at the expense of the Association.

(b) In addition to the foregoing, and in order to implement effective and adequate soil erosion controls and/or stormwater management, a perpetual, non-exclusive easement to enter upon any portion of the Properties, before and after improvements have been constructed or placed thereon, to maintain or cause to be maintained soil erosion control and/or stormwater management; provided, however, the Association shall not at any time be required to exercise this easement, and no exercise of the easement shall interfere unreasonably with any permanent improvements constructed on any such portion of the Properties (which improvements have been approved by the Architectural Review Committee as required herein). If the need for stormwater management or soil erosion controls results from the construction of improvements on any portion of the Properties or any excavation, grading, removal, reduction, addition or clearing of any portion of the Properties, unless such activities are performed by a governmental entity or utility provider the cost of any such work performed by the Association for the purpose of implementing effective and adequate stormwater management or soil erosion control shall be assessed against the Owner of such the portion of the Properties on which such work has been performed, and shall be a lien and be enforceable in the same manner as assessments. Provided, however, if the Association determines that appropriate corrective action is necessary on any portion of the Properties, prior to exercising this easement the Association shall give the Owner of such portion of the Properties written notice of the proposed corrective action and a reasonable opportunity to take the corrective action specified in such notice. If such Owner fails to complete the corrective action by the date specified in the notice, the Association then may exercise this easement.

(c) A perpetual, non-exclusive, and alienable easement to maintain all vegetation required or allowed under any planting, landscaping, or replanting plan required or approved for the Subdivision pursuant to Legal Requirements.

(d) The Association has the right to assign its rights under its easements as it deems reasonable in the best interests of the Properties.

**Section 5. Easement Reserved for the City and Public Utilities.** Perpetual, non-exclusive and alienable easements are hereby reserved and established over all portions of the Properties for the City and for all public utility providers serving the Properties, and their agents, employees and contractors, for the purposes, as applicable to the City or utility provider, of setting, removing and reading utility meters, maintaining Stormwater Control Measures, maintaining utility equipment, facilities and connections, and acting for other purposes consistent with the public safety and welfare, including garbage removal, police protection, fire protection (including access to any and all fire hydrants located outside of public street rights of way or easements dedicated to the City) and delivery of mail. Except in an emergency, these

easements shall be exercised in a reasonable manner and at reasonable times. Any pedestrian access easement established by Declarant or the Association over any portion of the Properties for the purpose of providing pedestrian access to and from City greenways or City greenway easements are established for the benefit of the City and the public in general, and the Association has the responsibility with respect to such pedestrian access easements that Legal Requirements of the Code impose on owners of properties over which such pedestrian access easements are located and on property owner associations that serve properties over which such pedestrian access easements are located.

**Section 6. Easements Shown On Recorded Plats.** Declarant, for itself and its successors and assigns (which may include the Association, the City, and public utility providers), and in addition to all other easements reserved in the Declaration, hereby reserves perpetual, non-exclusive and alienable easements in the locations and for the purposes shown and indicated on all plats of the Properties recorded in the Registry. These easements specifically include the right to maintain in the easement areas identified on such plats all improvements deemed necessary, in the reasonable discretion of the Person who exercises the easement rights, for the full exercise of such easements.

**Section 7. Easement for Encroachments.** If, in accordance with Approved Plans, any Dwelling is closer than five (5) feet to any boundary line of the Lot on which that Dwelling is located (for the purposes of this Section, the "subject Lot"), then the Owner of the Dwelling, and such Owner's tenants and contractors, shall have a perpetual, non-exclusive access easement over the adjoining Lot or other portion of the Properties as reasonably necessary to facilitate maintenance of the Dwelling on the subject Lot. All such maintenance shall be done expeditiously and the exercise of this easement shall in all respects be reasonable and, upon completion of the maintenance, as reasonably practicable the Owner of the subject Lot shall restore the Lot or other portion of the Properties on which the easement has been exercised to substantially the same or better condition as it was in prior to the maintenance. When the foregoing easement exists, except in accordance with Approved Plans no fence, wall, storage shed, or similar structure or any other kind of obstruction to the exercise of the easement shall be permitted on the adjoining Lot or other portion of the Properties (as a guideline, the area on the adjoining Lot or other portion of the Properties within five (5) feet of the common boundary line of the adjoining Lot or other portion of the Properties and the subject Lot shall be left free of all such obstructions). Provided, however, the easement established by this Section shall not restrict or impair any other easements established herein in favor of the Declarant, the Association, an Owner or any public utility provider.

**Section 8. Restriction on Entry.** Notwithstanding anything to the contrary contained in this Article, no right or easement granted, reserved or established in the Declaration shall be construed to give Declarant, the Association, an Owner, the City or any other Person the right to enter any Dwelling or other building located on any portion of the Properties, except as otherwise specifically stated in the provision of the Declaration relating to the particular right or easement or as reasonably and necessarily implied in order for the right or easement to be exercised (for example, maintenance of a party wall), or as allowed by the Owner of the applicable portion of the Properties. Provided, however, each Owner hereby is given notice that Legal Requirements may allow such entry by the City or other Persons, even though the particular easement granted, reserved or established in the Declaration does not allow such entry.

**ARTICLE XIII  
OWNER MAINTENANCE RESPONSIBILITIES**

**Section 1. Duty to Maintain.** Except for those items for which the Association has maintenance responsibility under the Governing Documents, each Owner, at such Owner's sole cost and expense, shall maintain such Owner's Lot, including all improvements thereon, in a safe, clean and attractive condition at all times, subject to and in a manner consistent with the Governing Documents and Community Wide Standard, including all of the following:

- (a) Prompt removal of all litter, trash, refuse and wastes.
- (b) Lawn mowing and maintenance on a regular basis, including, subject to any Legal Requirements, any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such Lot that are not maintained by the Association or are not maintained by the City in accordance with the Community Wide Standard.
- (c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material.

- (d) Maintenance of flower and plant gardens.
- (e) Maintenance of exterior lighting and mechanical facilities.
- (f) Maintenance of parking areas and driveways.
- (g) Complying with all Legal Requirements.
- (h) Soil erosion control as required by the Declaration.
- (i) Maintenance of Stormwater Control Measures as required by the Declaration.

The foregoing responsibilities shall be performed in a manner that does not unreasonably disturb or interfere with the reasonable enjoyment of the Properties by Persons entitled thereto. Provided, however, and notwithstanding anything to the contrary appearing herein, Declarant is exempt from the required maintenance provisions of this Article with respect to all portions of the Properties it owns, except for any of same on which Dwellings are located.

**Section 2. Enforcement.** If any Owner fails to perform any of the foregoing maintenance responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required maintenance. If any such Owner fails to perform the required maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's Lot and perform such maintenance without any liability for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Person an invoice therefor. If any Owner fails to reimburse the Association as required, the Association may impose an individual assessment against the Owner and such Owner's Lot for the amount owed and the Association shall have the same rights and remedies against such Owner and such Owner's Lot as the Association has with respect to the enforcement and collection of assessments.

**Section 3. Unimproved Portions of the Properties.** Notwithstanding the foregoing provisions of this Article, but subject to the other applicable provisions of the Declaration, Owners of unimproved Lots or other unimproved portions of the Properties shall be required to maintain same only in accordance with such maintenance standards, if any, as are established by the Declarant, during the Development Period, and thereafter, in accordance with such reasonable maintenance standards established by the Board.

#### ARTICLE XIV INSTITUTIONAL LENDERS; MORTGAGEES

**Section 1. Notice to Board.** Upon request from the Board, any Owner who mortgages such Owner's Lot shall notify the Association of the name and address of the Mortgagee. No Institutional Lender shall be entitled to any rights under the Declaration unless it has notified the Association as required in this Article and has requested Institutional Lender rights under the Declaration.

**Section 2. Requirements of Institutional Lender.** Whenever any Institutional Lender desires to avail itself of the rights afforded Institutional Lenders under the Governing Documents, it shall furnish written notice thereof to the Association by certified or registered mail, or by overnight delivery service, identifying the Lot upon which such Institutional Lender holds a first lien mortgage or deed of trust, specifying which rights it wishes to exercise, specifying notices or other information it wishes to receive, and designating the name of the person and mailing address to which notices, reports or information are to be sent by the Association. The Institutional Lender shall be responsible for updating the information required by this Section, and the Association is obligated to give the required notices only to the most current name and address it has received from the Institutional Lender. Such notice shall be deemed to have been received by the Association only upon actual delivery thereof, as evidenced by the return registry receipt or records of the overnight delivery service.



Upon payment in full of the indebtedness secured by the lien of the mortgage subject to the notice given to the Association by the Institutional Lender, the Institutional Lender promptly shall notify the Association that it no longer wishes to exercise the rights requested in the previously given written notice, such new notice to be given in the same manner as the previously given notice.

**Section 3. Obligation of Association to Institutional Lenders.** From and after giving the required notice to the Association and continuing as long as the Institutional Lender is the holder of the indebtedness secured by the mortgage on the applicable Lot, such Institutional Lender shall have each of the following rights that are specifically requested in the notice to the Association:

- (a) To inspect and receive copies of Governing Documents and other Association documents and records on the same terms as the Members of the Association. The Association has the right to charge a reasonable amount to Members and Institutional Lenders for production and delivery of copies of such Governing Documents and other Association documents and records.
- (b) To receive a financial statement of the Association for the immediately preceding fiscal year of the Association.
- (c) To be notified of any proposed amendments to the Declaration and any meetings of the Association at which such proposed amendments are to be voted on.
- (d) To be notified of any proposed action of the Association that requires the consent of a specified percentage of Institutional Lenders.
- (e) To be notified of any condemnation or casualty loss affecting either a material portion of the Common Area or the Lot securing its Mortgage.
- (f) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (g) With respect to the Lot that secures its mortgage, to be notified of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days), and to be notified of any other default of the provisions of the Declaration by the Owner of such Lot. Provided, however, any failure of the Association to notify the Institutional Lender of the delinquency or default shall not affect the validity of any Association lien, or any other Association rights and remedies, against the defaulting Owner or such Owner's Lot.
- (h) To be notified of any other matters for which applicable Institutional Lender rules and regulations or other governmental entity rules or regulations require the Association to give notice to Institutional Lenders, and the Institutional Lender desiring to be notified of such matters shall described the matters and applicable rules and regulations in the notice it gives to the Association.

**Section 4. Institutional Lenders Not Obligated to Collect Assessments.** No Institutional Lender shall have any obligation to collect any assessment under the Declaration.



ARTICLE XV      BOOK 1567 PAGE 1094  
AMENDMENT OF DECLARATION

**Section 1. Amendment by Declarant.** In addition to specific amendment rights, if any, granted or reserved elsewhere in the Declaration, during the Declarant Control Period Declarant may unilaterally, and in its sole discretion, without the joinder or approval of the Association, any Member, or any other Person and without the necessity of a meeting of the Association, amend the Declaration for any purpose, and may record any such amendment or may record an amended and restated version of the Declaration that incorporates any such amendment. Following the end of the Declarant Control Period, during the existence of the Development Period Declarant may unilaterally, and in its sole discretion, without the approval or joinder of the Association, any Member, or any other Person and without the necessity of a meeting of the Association, amend any provision of the Declaration or any Subdivision Declaration or Supplemental Declaration to: (i) make non-material, clarifying or corrective changes not materially affecting any Owner's rights or obligations hereunder; or (ii) satisfy the requirements of FHA, VA, FNMA, FHLMC, OILSR or other governmental agency, Secondary Mortgage Market Agency or Institutional Lender; or (iii) establish or maintain the tax exempt status of the Association under the laws of the United States or the State of North Carolina; or (iv) amend the Declaration as may be necessary to prevent it from being declared invalid under any Legal Requirement or by any court of competent jurisdiction, or to add or delete provisions to or from the Declaration as may be necessary to prevent it from being declared invalid under any Legal Requirement or by any court of competent jurisdiction. 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.

**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, to whom are allocated 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 nor 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 Properties 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 Institutional Lender to notify the Association in the Article of the Declaration dealing with Institutional Lenders. If the amendment is adopted by the required percentage of Members exclusive of the Member or Members who own portions of the Properties 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.** 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) increase the financial obligations of an Owner in a discriminatory manner.
- (b) further restrict development on any portion of the Properties in a discriminatory manner.
- (c) diminish, impair, or in any way affect the rights of Declarant without the written consent of Declarant.
- (d) impose additional obligations upon Declarant without the written consent of Declarant.
- (e) diminish or impair the express rights of Institutional Lenders under the Declaration without the prior written approval of a majority of the Institutional Lenders who have requested the exercise of such rights as provided herein.
- (f) 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 Properties benefitted (and/or, with respect to a revision, burdened) by the easement, whichever is applicable.
- (g) without the consent of the City, terminate, reduce, amend, revise, or alter any obligation of the Association or the Members of the Association under the Code or under any Stormwater Agreement, encroachment agreement, or other agreement entered into with the City by the Association or, as allowed by the Declaration, by the Declarant on behalf of the Association.
- (h) alter or remove or attempt to alter or remove any Legal Requirement.

ARTICLE XVI      BOOK 1567 PAGE 1096  
**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 Properties and each Owner, and shall inure to the benefit of the Association and each Owner of any portion of the Properties, and their respective heirs, successors, and assigns, from and after the recording of the Declaration in the Registry 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 to whom eighty percent (80%) or more of the total number of votes in the Association are allocated, 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 Properties 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. 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 of Cary (or, if the Town of Cary 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 of Cary 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 of Cary 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 Owner's 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 of Cary 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 XVII RECREATIONAL AMENITIES

**Section 1. Recreational Amenities Contemplated.** On the date of execution of the Declaration by Declarant, there are no Recreational Amenities contemplated for construction in the Properties, and Declarant has no obligation to construct, furnish, or provide for any Recreational Amenities for the Subdivision, either within or without the Properties.

**Section 2. Risks Associated With Use.** Declarant hereby informs all Persons who use any part or all of any Amenities in the Properties that there are certain risks associated with the use thereof. Each Owner, by acceptance of a deed to such Owner's Lot, and each other Person who uses any part or all of the Amenities in the Properties, specifically acknowledges the existence and acceptance of the foregoing risks, and agrees to comply with the rules and regulations established by the Association for use of the Amenities in the Properties.

**Section 3. Limitation of Liability.** Neither the Declarant, nor any of its members, managers, employees, agents, contractors, affiliates, subsidiaries, predecessors or successors (for the purposes of this paragraph, referred to as a "Named Person") shall be responsible or liable in any way to any Owner or to any other Person for any claims, causes of action, damages, judgments, liens, losses, injuries, demands, interference, liabilities, or obligations whatsoever, that may result from property damage or personal injury in connection with such Owner or other Person's use of the Amenities in the Properties, unless the same arises out of or results from the gross negligence or intentional act or omission of such Named Person, or unless the same arises out of or results from the act or omission of any such named Person while such Named Person is using such Amenities.

## ARTICLE XVIII SHARED DRIVEWAYS

In accordance with Legal Requirements, certain Lots in the Properties may be required to share a driveway that provides access to a publicly dedicated street (referred to as the "Street" in this Article). This Article governs a driveway that is shared by two Lots. Declarant, during the Development Period, and thereafter, the Board, has the right by Supplemental Declaration to establish provisions applicable to driveways that are shared by more than two Lots.

**Section 1. General Provisions.** Unless the Owners of the Lots that share a driveway otherwise agree in a written instrument recorded in the Registry, or unless Legal Requirements otherwise require, the following provisions are applicable to all shared driveways.

- (a) The shared driveway shall be centered on the boundary line between the Lots.
- (b) The shared driveway shall exist on the Lots only for the minimum distance reasonably necessary to enable a motor vehicle safely to enter the shared driveway from the Street and then exit the shared driveway onto the Lots, it being the intent of this provision that each Lot have as much of its driveway solely on that Lot as reasonably possible.
- (c) The Owner of each Lot, and such Owner's family members, tenants, sub-tenants guests, invitees, and licensees, and the family members, guests, invitees, and licensees of tenants and sub-tenants, shall have a non-exclusive, perpetual easement for vehicular and pedestrian ingress, egress, and regress over and upon the shared driveway from such Owner's Lot to and from the publicly dedicated street to which the shared driveway provides access. All of the foregoing Persons other than the Owner are referred to in this Article as "permittees".
- (d) The shared driveway shall remain open and unobstructed at all times, unless the Owners of the Lots otherwise agree.

- (e) No Owner shall acquire any ownership rights in the Lot of the other Owner by adverse possession resulting from use of the shared driveway.
- (f) Unless otherwise agreed by the Owners of the Lots, the shared driveway shall be constructed in connection with the construction of the Dwelling on the first of the Lots on which a Dwelling is constructed. As a condition of any Approved Plans for construction of a Dwelling on the second Lot, whether or not stated in the approval, the Owner of the second Lot shall reimburse the Owner of the first Lot for one-half (½) of the reasonable costs of construction of the shared driveway, such reimbursement to be paid to the Owner of the first Lot prior to commencement of construction of the Dwelling on the second Lot.
- (g) The Owner of each Lot shall be obligated for the one-half (½) of the reasonable costs of maintenance of the shared driveway. Either Owner may have such maintenance performed as it becomes necessary, and the other Owner shall pay for such Owner's one-half (½) share within thirty (30) days following demand from the Owner who has the maintenance performed. The demand shall include a copy of the invoice for the maintenance or evidence of payment having been made if the demand is for reimbursement rather than for payment.
- (h) Notwithstanding the shared maintenance obligation of the Owners, if the shared driveway is damaged as a result of any act or omission of an Owner or such Owner's permittees, such Owner shall have the damage repaired as soon as reasonably practicable such that the damaged portion of the shared driveway is restored to substantially the same condition as it was in immediately prior to the occurrence of the damage.
- (i) Subject to the provisions of this Section, the Owner of each Lot that shares a driveway with another Lot may use the portion of such Owner's Lot affected by the shared driveway for all uses allowed by Legal Requirements and not otherwise prohibited or restricted by the Governing Documents.

**Section 2. Enforcement of Obligations.** Obligations of an Owner under this Article may be enforced by the Owner of the other Lot that shares the driveway by all remedies available at law or in equity, and including by all remedies available to the Association under the Declaration for collection of an assessment and the filing of a lien on the Lot of the Owner who has not satisfied such Owner's financial obligation within thirty (30) days after written demand for payment has been made by the Owner seeking payment.

**Section 3. Resolution of Disputes.** The Board has the authority (but not the obligation) to resolve any dispute between the Owners regarding a shared driveway, including the reasonable costs of construction of the shared driveway and the reasonable costs of maintenance of the shared driveway.

## ARTICLE XIX DISCLOSURES AND WAIVERS

The following are in addition to any other disclosures and waivers in the Declaration.

**Section 1. Construction Activities.** All Owners and other Persons who use the Properties are notified that Declarant and/or its agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, conduct blasting, excavation, construction, and other activities within the Properties. 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 Properties 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 Properties 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 and its 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

Properties 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 Properties.

**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 Properties 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 spots 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 Subdivision. The Association may, but shall not be obligated to, maintain or support certain activities within the Subdivision designed to enhance the level of safety or security which each Person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Subdivision, 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 Subdivision, cannot be compromised or circumvented, nor 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 Subdivision 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.** Neither Declarant nor the Association guarantee or represent that any view from, over, or across any portion of the Properties will be preserved without impairment or change. Neither Declarant nor 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 Properties acknowledges and agrees that any or all bodies of water (including lakes, ponds, creeks, streams, and wetlands in the Properties), together with any dams or other facilities or devices that contain, control, or direct such waters, may be designed as water management areas (including stormwater management) 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 or adjoining the Properties 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 50 feet of bodies of water within or adjoining the Properties, 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 Properties; (ii) alter in any manner and generally maintain the bodies of water within and adjoining the Properties; 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 Properties shall not alter, modify, expand, or fill any lakes, ponds, or wetlands located in the Properties without the prior written approval of the local permitting authority, the City, 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.

## ARTICLE XX ALTERNATIVE DISPUTE RESOLUTION

### **Section 1. Agreement to Encourage Resolution of Disputes Without Litigation.**

(a) Declarant, the Association and its officers, directors, and committee members, all Owners and other Persons subject to the Declaration, and any other Person not subject to the Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in this Article in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to any of the following:

- (1) the interpretation, application, or enforcement of the Governing Documents;
- (2) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (3) the design or construction of improvements within the Community, other than matters of aesthetic judgment, which shall not be subject to review.

(c) Provided, however, that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in this Article (the word "action" includes any legal or equitable action or procedure filed in any court, as well as any other procedure):

- (1) any action by the Association to collect assessments or other amounts due from any Owner;
- (2) any action to enforce any financial or monetary obligation of any Person under the Governing Documents;
- (3) any action involving shared driveways;
- (4) any action by the Declarant or the Association to obtain a temporary restraining order or other emergency equitable relief and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Declarant's or the Association's ability to enforce the provisions the Declaration relating to creation and maintenance of the Community Wide Standard;
- (5) any action between Owners, which does not include Declarant or the Association as a party, if such action or matter asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (6) any action in which any indispensable party is not a Bound Party; and
- (7) any action as to which any applicable statute of limitations or statute of repose would expire within 180 days of date of the filing of the action, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

**Section 2. Dispute Resolution Procedures.**

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice (the "Notice") to each Respondent and to the Board stating plainly and concisely:

- (1) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (2) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (3) the Claimant's proposed resolution or remedy; and
- (4) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

Within 30 days of receipt of the Notice, the Respondent, subject to all of the foregoing requirements for the giving of the Notice, shall give the Claimant a Notice of any Claim the Respondent has against the Claimant.



(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of settling the Claim by good faith negotiation. If requested in writing by either the Claimant or the Respondent, the Board may appoint a representative to assist the parties in negotiating a settlement of the Claim.

(c) **Mediation.** If the Bound Parties have not settled the Claim through negotiation within 30 days of the date of the Notice, or within such other period as the Bound Parties may agree upon, they may agree to submit the matter to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Chatham County, North Carolina area.

If a Claim is submitted to mediation and is not settled within 30 days after submission of the Claim to mediation, or within such longer time, not to exceed 90 days after submission of the Claim to mediation, as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. Any Bound Party thereafter shall be entitled to file an action with respect to the Claim.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Bound Party shall share equally all fees charged by the mediator.

(d) **Right to File Action.** Notwithstanding anything to the contrary herein, a Bound Party may file an action with respect to any matter subject to a pending negotiation or a pending mediation, if the applicable statute of limitations or statute of repose would expire within 90 days or less of the date of the filing of the action.

(e) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Claimant and Respondent. If either of such Bound Parties thereafter fails to abide by the terms of any negotiated or mediated settlement, then the other Bound Party may an action to enforce the settlement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce any settlement, upon prevailing, is entitled to recover from the non-complying Bound Party (or if more than one non-complying Bound Party, from all such Bound Parties in equal proportions) all costs incurred in enforcing such settlement, including, without limitation, attorneys' fees and court costs.

## **ARTICLE XXI GENERAL PROVISIONS**

**Section 1. Enforcement.** The Declarant, the Association, each Owner, and, when enforcement rights are granted by the Declaration, an Institutional Lender or other Secondary Mortgage Market Agency, 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 Chatham County Revenue Department. 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 Chatham County Revenue Department. 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 Properties 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 City. 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 City or a public utility provider, provided that the number of then existing Lots in the Properties is not changed by any such action.

Two or more Lots may be combined into a single Lot, and one Lot may be subdivided into two or more Lots, only with the written consent of the Owner thereof and the Declarant during the Development Period and, when the Development Period is not in existence, only with the written consent of such Owner and the Board. Unless consented to in writing by the Declarant or the Board, as applicable, when two or more such Lots are combined into one Lot, the resulting Lot shall continue to be assessed and have voting rights in the Association based on the number of Lots that existed prior to the combination into one Lot. When one Lot is subdivided into two 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 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 or more such Lots are combined into one Lot, the easements reserved by the Declaration 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 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 re-record maps relating to, any portion of the Properties owned by Declarant, or (ii) to approve or disapprove such activities with respect to portions of the Properties 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. No Timesharing.** No Dwelling shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to use or occupancy of the Dwelling rotates among participants in the program on a fixed or floating time schedule over any period of time.

**Section 10. Exclusive Rights to Use Name of Subdivision.** During the Development Period, no Person shall use the name "Weycroft Reserve" or any derivative of such name in any logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Weycroft Reserve" in printed or promotional matter where such term is used solely to specify that a particular Lot is located within the Subdivision and the Association shall be entitled to use the words "Weycroft Reserve" in its name.

**Section 11. Association Contracts and Leases During Declarant Control Period.** All Association contracts and leases which affect or relate to the Properties 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 contracts and leases are terminable as provided in this Section, whether or not the right of the Association to terminate is stated therein.

**Section 12. 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 Restrictions and Rules, 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. 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.

The provisions of the Code control over any conflicting provisions of the Declaration and any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, the Declaration is deemed to be amended so as to conform to the current provisions of the Code that are applicable to the Properties or any part thereof.

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 - for example, where one provision allows a certain action and the other provision prohibits the same action. 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 - for example, where Legal Requirements or the Declaration requires a certain minimum Dwelling setback distance and the Subdivision Declaration requires a greater distance for the same Dwelling setback distance. In this different Dwelling setback distance example, there is no conflict and the Subdivision Declaration would control.

**Section 13. 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 (such as streets, water lines, sanitary sewer lines, Stormwater Control Measures) within the Subdivision 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.

If Declarant has not assigned all of its rights, privileges and powers under the Declaration by the end of the Development Period, such rights, privileges and powers then possessed by the Declarant shall be deemed to have been assigned to the Association, whether or not an assignment thereof is recorded in the Registry.

Notwithstanding anything to the contrary in this Section, with respect to Common Property, Stormwater Control Measures and utilities in the Subdivision, 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 City or any provider of utilities to any part or all of the Subdivision, and/or under all agreements between the Declarant and the City or any provider of utilities to any part or all of the Subdivision, with respect to maintenance of Common Property, Stormwater Control Measures, private streets, and/or utilities in the Subdivision. 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 initial installation of improvements for the Common Property, Stormwater Control Measures and/or utilities and/or private streets or publicly dedicated streets in the Subdivision as required by the City or a utility provider for development of the Properties 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 14. 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 constitute the allowance of the award of reasonable attorneys' fees as required under Section 47F-3-120 of the Act.

**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 Properties or any part thereof; or (ii) assert a claim against Declarant or sue Declarant 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 Architectural Review Committee.

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 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. 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.

**Section 20. Effective Date.** The Declaration is effective as of the date and time of its recording in the Registry.

IN WITNESS WHEREOF, Declarant has caused the Declaration to be executed in legal and binding form, on the date indicated in the acknowledgment of such signature, the later date of which is the date of execution of the Declaration.

SEE FOLLOWING PAGE FOR SIGNATURES

By: Glenn Futrell  
Glenn Futrell, Manager

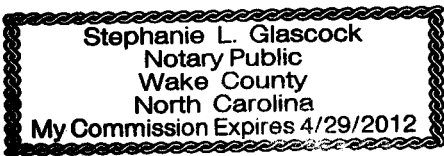
By: Colen E. Davidson, Jr.  
Colen E. Davidson, Jr. Manager

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:  
Glenn Futrell

Date: 5/24/11



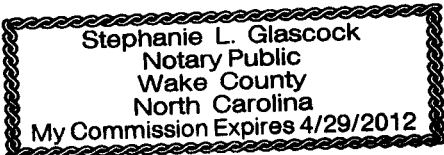
Stephanie L. Glascock  
Signature of Notary Public  
Printed Name: Stephanie L. Glascock  
Commission Expiration Date: 4/29/2012

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:  
Colen E. Davidson, Jr.

Date: 5/24/11



Stephanie L. Glascock  
Signature of Notary Public  
Printed Name: Stephanie L. Glascock  
Commission Expiration Date: 4/29/2012

**EXHIBIT A  
EXISTING PROPERTY**

Tract 1:

All that tract or parcel of land lying and being in Chatham County, North Carolina and being known as designated as Parcel 7A (containing 39.068 acres, more or less) as shown on that plat entitled "Boundary Survey for Chatham Holdings, LLC," prepared by Absolute Land Surveying and Mapping, P.C. dated January 14, 2004, and recorded in Plat Book 2004, Page 31, Chatham County Registry.

TOGETHER with all right, title and interest in and to any public rights of way (SR 1732) or private drives adjacent thereto as further described in that certain deed recorded in Book 353, Page 94, and recorded in Book 356, Page 322, Chatham County Registry.

Tract 2:

BEING all of Tract B as shown on plat entitled "Survey for Lee-Moore Oil Co." prepared by Smith and Smith Surveyors and recorded in Plat Book 88, Page 77, Chatham County Registry.



**EXHIBIT B  
ADDITIONAL PROPERTY  
THAT DECLARANT MAY SUBJECT TO DECLARATION  
WHETHER OR NOT DEVELOPMENT PERIOD HAS ENDED**

Any real property contiguous to any boundary of the Properties or located within one (1) mile of any boundary of the Properties. For this purpose, the word “contiguous” includes across a public or private street, road, or highway right of way from, or separated from only by a greenway, open space area, or other property owned by or dedicated to a governmental entity.