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FOR ADDISON PARK**

Prepared By and Hold For: **Kenneth L. Eagle (ROD Box 215)**

**DECLARATION
OF
PROTECTIVE COVENANTS

FOR

ADDISON PARK**

**TABLE OF CONTENTS
OF
DECLARATION
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FOR
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ARTICLE I	
DEFINITIONS	1
ARTICLE II	
THE PROPERTIES; ANNEXATION; WITHDRAWAL; SUBDIVISION DECLARATION	10
Section 1. Existing Property	10
Section 2. Annexation of Additional Property	11
Section 3. Order of Development and Annexation	12
Section 4. Withdrawal of Properties from the Declaration	12
Section 5. Effect of Annexation or Withdrawal	13
Section 6. Subdivision Declaration	13
ARTICLE III	
ASSOCIATION	13
Section 1. Board Acts for Association	13
Section 2. Minimum List of Functions and Services	14
Section 3. Other Functions and Services	15
Section 4. Stormwater Management	18
Section 5. Dedication, Conveyance or Exchange of Common Property	20
Section 6. Mortgage and Pledge of Common Property	21
Section 7. Liability Limitations	22
Section 8. Merger or Consolidation	23
ARTICLE IV	
RIGHTS IN AND TO COMMON PROPERTY	23
Section 1. Owners' Easements of Enjoyment and Access	23
Section 2. Delegation of Use	25
Section 3. Conveyance of Title to the Association	25
Section 4. Rights and Responsibilities as to Common Property Easements	26
Section 5. Leases	26
Section 6. Ingress and Egress; Utilities	26
ARTICLE V	
MEMBERSHIP AND VOTING RIGHTS	27
Section 1. Membership	27
Section 2. Classes of Voting Members	27
Section 3. Exercise of Voting Rights	28

Table Of Contents

ARTICLE VI

ASSESSMENTS AND OTHER CHARGES 28

Section 1. **Creation of the Lien and Personal Obligation for Assessments** 28

Section 2. **Liability for Assessments After Change in Membership Status** 29

Section 3. **Nature, Purpose and Use of Assessments** 29

Section 4. **Commencement of Assessments** 29

Section 5. **Annual Assessments** 30

Section 6. **Special Assessments** 32

Section 7. **Annual Operating Budget** 32

Section 8. **Collection of Assessments; Penalties for Late Payment** 33

Section 9. **Assessment Deficit; Assessment Credit.** 34

Section 10. **Stormwater Assessment** 35

Section 11. **Certification of Assessments Paid** 35

Section 12. **Assessment Lien and Foreclosure** 36

Section 13. **Lien Priority** 36

Section 14. **Exempt Property** 37

Section 15. **Reserve Funds** 37

Section 16. **Working Capital Assessment** 37

Section 17. **Assessments for Limited Common Property** 37

Section 18. **No Default Under Insured Mortgage** 38

ARTICLE VII

INSURANCE 38

Section 1. **General Provisions** 38

Section 2. **Property Insurance** 39

Section 3. **Liability Insurance** 40

Section 4. **Other Insurance or Bonds** 40

Section 5. **Owners' Insurance** 41

ARTICLE VIII

REPAIR AND RESTORATION OF THE PROPERTIES 41

Section 1. **When Required** 41

Section 2. **Eminent Domain** 42

ARTICLE IX

USE OF THE PROPERTIES; PROTECTION OF COMMON PROPERTY 42

Section 1. **Use of the Properties.** 42

Section 2. **Owner Liability.** 43

Section 3. **Legal Requirements.** 43

Section 4. **New Construction** 43

Section 5. **Rules of the Association.** 43

Section 6. **Temporary Structures Prohibited.** 44

Section 7. **Wetlands; Neuse River Buffers.** 44

Section 8. **Animals.** 44

Section 9. **Antennas and Other Attachments.** 45

Table Of Contents

Section 10. Boats, etc. 45
Section 11. Building Setback Distances. 45
Section 12. Dwelling Square Footage. 46
Section 13. Fences, Walls and Hedges. 46
Section 14. Harmful Discharges 46
Section 15. Home Businesses 46
Section 16. Hunting; Discharge of Firearms 47
Section 17. Landscaping; Utility Lines 47
Section 18. Lighting. 47
Section 19. Mailboxes and Newspaper Tubes. 48
Section 20. Motorized Vehicles; On-Street Parking. 48
Section 21. Noises 48
Section 22. Nuisance and Other Matters. 49
Section 23. Obstructions, etc. 49
Section 24. Prohibition on Use for Streets. 50
Section 25. Recreational Areas, Equipment, and Facilities. 50
Section 26. Restricted Actions by Owners. 50
Section 27. Sewer Systems. 50
Section 28. Signs. 50
Section 29. Soil Erosion Control. 51
Section 30. Tree Cutting 51
Section 31. Utility Yards. 51
Section 32. Water Systems 51
Section 33. Exclusion for Declarant 52

ARTICLE X

ARCHITECTURAL APPROVAL 52
Section 1. Architectural Review Committee - Jurisdiction and Purpose 52
Section 2. Composition and Duration. 53
Section 3. Procedure. 53
Section 4. Commencement and Completion of Construction. 55
Section 5. Compensation. 56
Section 6. Limitation of Liability. 56
Section 7. Violation; Enforcement. 56

ARTICLE XI

EASEMENTS 56
Section 1. Easements Reserved by Declarant 56
Section 2. Easements Reserved for the Association 57
Section 3. Easement Reserved for the City and Public Utilities 58
Section 4. Easements Shown On Recorded Plats 58
Section 5. Easement for Encroachments 58
Section 6. Restriction on Easements 59

Table Of Contents

ARTICLE XII
OWNER MAINTENANCE RESPONSIBILITIES 59
Section 1. Duty to Maintain 59
Section 2. Enforcement 60
Section 3. Unimproved Portions of the Properties. 60

ARTICLE XIII
INSTITUTIONAL LENDERS; MORTGAGEES 60
Section 1. Notice to Board 60
Section 2. Requirements of Institutional Lender 60
Section 3. Obligation of Association to Institutional Lenders 61
Section 4. Institutional Lenders Not Obligated to Collect Assessments 62

ARTICLE XIV
AMENDMENT OF DECLARATION 62
Section 1. Amendment by Declarant 62
Section 2. Amendment by the Members 62
Section 3. Consent of Mortgagees 63
Section 4. Prohibited Effects of Amendment 63

ARTICLE XV
DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION 64
Section 1. Duration 64
Section 2. Dissolution of the Association 64
Section 3. Termination or Dissolution During Declarant Control Period 65

ARTICLE XVI
RECREATIONAL AMENITIES 65

ARTICLE XVII
DISCLOSURES AND WAIVERS 66
Section 1. View Impairment 66
Section 2. Construction Activities 67
Section 3. Water Management 67
Section 4. Liability for Association Operations 67
Section 5. Conveyance of Common Property 68

ARTICLE XVIII
GENERAL PROVISIONS 68
Section 1. Enforcement 68
Section 2. Severability of Provisions 68
Section 3. Notice 69
Section 4. Titles 69
Section 5. Number and Gender 69
Section 6. No Exemption 69

Table Of Contents

Section 7. Consent	69
Section 8. Subdivision, Combination of Lots; Plat Re-recording	70
Section 9. Association Contracts and Leases During Declarant Control Period	70
Section 10. Conflicts	71
Section 11. Assignment.	71
Section 12. Costs and Reasonable Attorneys' Fees	72
Section 13. FHA and/or VA Approvals	72
Section 14. Rule Against Perpetuities	72
Section 15. Reserved Rights.	73
Section 16. Legal Requirements.	73
Section 17. Marketable Title Act.	73
EXHIBIT A	
EXISTING PROPERTY	75
EXHIBIT B	
OTHER REAL PROPERTY	
APPROVED AS PART OF SUBDIVISION	76

THIS **DECLARATION OF PROTECTIVE COVENANTS FOR ADDISON PARK** is made on the date hereinafter set forth by **MCR DEVELOPERS 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 Morrisville, Wake 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 this Declaration, into a residential subdivision to be known as "Addison Park" (which also may be referred to herein as the "Community" or the "Subdivision"), 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; greenways; open space; recreational facilities; and other uses consistent with the zoning of the Properties and the Town of Morrisville approvals for the Subdivision;

AND WHEREAS, Declarant desires, among other things, to provide for the maintenance and upkeep of certain common areas within the Subdivision, to provide for enforcement of this 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 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 the **ADDISON PARK COMMUNITY ASSOCIATION, INC.**, to own, maintain and 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 such Additional Property as may be subjected to the Declaration from time to time pursuant to Article II hereof, 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 such real property and, as provided herein, be binding on and inure to the benefit of all owners of any right, title or interest in said real property 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). 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:

Section 1. "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 as enacted from time to time.

Section 2. "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 this Declaration until it has been annexed or subjected to the Declaration in one of the ways allowed herein.

Section 3. "Articles" is defined as the Articles of Incorporation of the Association, including all duly adopted amendments thereto.

Section 4. "Association" is defined as the **ADDISON PARK COMMUNITY ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 5. "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.

Section 6. "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.

Section 7. "Bylaws" is defined as the Bylaws of the Association as they may now or hereafter exist, including all duly adopted amendments thereto.

Section 8. "City" or "Town" or "governmental entity" is defined as the Town of Morrisville, North Carolina (also referred to herein separately as the "Town of Morrisville"), the County of Wake, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, whichever governmental entity or entities is/are applicable.

Section 9. "Code" is defined as the Town of Morrisville ordinances, as they exist from time to time, including all rules, regulations and policies lawfully adopted pursuant thereto, and including all amendments, supplements and replacements thereof as enacted from time to time.

Section 10. "Common Expenses" is defined as: (i) expenses of maintenance of Common Property and Common Property Easements, including repair, restoration and replacement thereof, and including monies allocated to reserve funds; (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 or 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 or the Code; (vi) expenses declared to be or described as Common Expenses by the provisions of the Declaration, including all expenses for Stormwater Control Measures; (vii) expenses determined by the Board or by the Members to be Common Expenses; and (viii) all other expenses incurred by the Association in performing its functions and providing services under the Governing Documents and Legal Requirements, including operating, management and administrative expenses.

Section 11. "Common Property" and "Common Area" (the terms being used interchangeably herein) are defined as (i) all real property and improvements thereon owned in fee or leased or used by the Association for the common use, enjoyment or benefit of the Members of the Association or the Properties, (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 Members of the Association or the Properties, and (iii) all rights and easements of the Association in, on, under, over, through and to any real property not owned in fee by the Association, together with all improvements on such real property that are owned or maintained by the Association, each such easement or right also being referred to herein as a "Common Property Easement" or a "Common Area Easement". Common Property Easements are included within the definition of Common Property, even though Common Property Easements may be referred to separately from Common Property from time to time herein. Common Property and Common Property Easements 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 (typically, an instrument 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 Members of the Association or the Properties) and labeled or described thereon or therein as "Common Area", "Common Property", "Open Space", "Common Open Space", "Private Open Space", "Private Street", "Landscape Easement", "Sign Easement", "Greenway", "Greenway Easement", "Street Island", "Median", "Encroachment", "Buffer", "Stormwater Drainage Easement", "Drainage Easement", "Stormwater Control Facility", or some other similarly descriptive term. Stormwater Control Measures may be on Common Property or in Common Property Easements. Common Property Easements may include all 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 Area 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. (Note: The definition of Common Property in the Declaration is broader than the definition of "common elements" in the Act.)

Common Property also includes all other property and improvements, if any, required to be included as such by the Code or other Legal Requirements, and all other property and improvements, if any, declared to be Common Property by the Declaration.

Section 12. "Declarant" is defined as **MCR DEVELOPERS 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 Wake County Registry. The term "Declarant" also includes any Person designated by Declarant as its "affiliate".

Section 13. "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:

- (a) the date on which the total number of votes entitled to be cast by the Class A Members other than Builders equals the total number of votes entitled to be cast by the Class B Member and the 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 Class B membership shall be reinstated automatically from time to time as Declarant acquires sufficient additional votes by annexation of additional real property to the Declaration or otherwise such that the total number of votes entitled to be cast by Declarant and the Builders exceeds the total number of votes entitled to be cast by the Class A members other than Builders; or
- (b) voluntary termination of the Declarant Control Period by a written instrument executed by Declarant and recorded in the Registry; or
- (c) termination of the Declarant Control Period required by any Legal Requirement.

Section 14. "Declaration" is defined as this "Declaration Of Protective Covenants For Addison Park", and including all duly adopted amendments hereto.

Section 15. "Development Period" is defined as the period of time from the date of recording of the Declaration in the Registry through and including the later of:

- (a) the later of 5:00 p.m. on: (i) the date that is twenty (20) years after the date on which the Declaration is recorded, or (ii) 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. Notwithstanding the foregoing, if Declarant is delayed in the development of the Community 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 applicable time period shall be extended by the amount of time of the delay, up to a maximum total extension time of three (3) years; or
- (b) the last day on which Declarant owns any portion of the Properties, or

- (c) 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
- (d) the date on which a certificate of occupancy is issued for initial construction of a Dwelling on the last Lot or Development Parcel on which a Dwelling has not been constructed and received a certificate of occupancy previously.

Provided, however, at any time Declarant may terminate the Development Period by recording a termination instrument in the Registry. The Development Period also shall include any periods of time after the all of the foregoing matters have occurred or been completed during which Declarant is conducting any activity within the Properties that is required by Legal Requirements 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. Any approvals granted by the Declarant under the Declaration shall be binding upon all successors to Declarant's approval authority. If the Development Period ends at any time because Declarant no longer owns any portion of the Properties, and thereafter Declarant annexes to the Declaration Additional Property owned by Declarant, the Development Period is reinstated and thereafter shall continue until terminated in accordance with the events of termination set out in this definition.

Section 16. "Dwelling" or "Dwelling Unit", the terms being used interchangeably herein, is defined as any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residential unit by an individual or by one family unit, whether by the Owner thereof or by tenants of the Owner (a utility apartment as defined herein is part of, and not separate from, the Dwelling Unit in which it is located, although it may be occupied by a Person or family unit different from the Person or family unit that occupies the main part of the Dwelling).

Section 17. "Exempt Property" is defined as all portions of the Properties included within any of the following categories:

- (a) Common Property;
- (b) property owned by, or dedicated to and accepted by, the City or a utility, including property within the right-of-way of publicly-dedicated streets and roads, unless it has a Dwelling thereon; and
- (c) property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, unless it 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 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.

Section 18. "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.

Section 19. "Governing Documents" is defined as the Declaration, the Articles of Incorporation, the Bylaws, and all applicable Supplemental Declarations and Subdivision Declarations, and all duly adopted amendments to any of the foregoing documents.

Section 20. "Improvement" is defined as any improvement of or on any Lot, including Dwellings and other structures (specifically including exterior materials, colors, size, location and architectural style of same), 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, landscaping (including planted areas, grassed areas, natural areas and the plant and other materials therein), poles, flags, decorative features and items on the exterior of a Dwelling or in the yard, ponds, lakes, clearing, grading and other site preparation, swimming pools, exterior lights, signs located outside of a Dwelling or visible inside a Dwelling from a street or adjoining portion of the Properties, and all other exterior improvements. 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 on any Lot in accordance with 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 improvements are subject to the architectural approval provisions of the Declaration.

Section 21. "include" or "including" is defined as being inclusive of, but not limited to, the particular matter described, unless otherwise clearly obvious from the context.

Section 22. "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"), the Federal National Mortgage Association ("FNMA"), the Department of Veterans Affairs ("VA"), the Government National Mortgage Association ("GNMA") 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.

Section 23. "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 Morrisville, the County of Wake, 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.

Section 24. "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 of the Subdivision for or on 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.

Section 25. "Limited Common Property" and "Limited Common Area" (the terms being used interchangeably herein) 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 Measures that serve more than one, but less than all, of the Lots in the Properties.

Section 26. "Lot" is defined as any portion of the Properties with delineated boundary lines, as shown on a plat recorded in the Registry, that is intended for construction of a Dwelling thereon, or on which a Dwelling has been constructed. A "proposed Lot" is defined as any portion of the Properties with delineated boundary lines, as shown on a Subdivision Plan, that is intended for construction of a Dwelling thereon. A proposed Lot on which a Dwelling is to be constructed becomes a Lot upon the recording in the Registry of a plat showing the Lot. 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.

Section 27. "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, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

Section 28. "Member" is defined as each Person who or which holds membership in the Association.

Section 29. "mortgage" or "deed of trust" (the terms being used interchangeably herein) are 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.

Section 30. "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust.

Section 31. "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 as enacted from time to time.

Section 32. "Owner" is defined as the current owner of record in the Registry, whether one or more Persons, of fee simple title to any Lot, including contract sellers and owners of an equity of redemption, but excluding those having an interest as a purchaser under a contract to purchase or option to purchase, or as a trustee or secured party under an instrument securing the performance of an obligation.

Section 33. "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.

Section 34. "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 from time to time 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 Architectural Review Committee (or by the Board, on appeal from the Architectural Review Committee).

Section 35. "Properties" 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 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. "Proposed Properties" is defined as all real property shown on any Subdivision Plan which has not been subjected or annexed to the Declaration, but is proposed by Declarant to become part of the

Properties at a future time. Provided, however, except as required by Legal Requirements, Declarant is not obligated to subject or annex any Proposed Properties to the Declaration.

Section 36. “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.

Section 37. “Registry” is defined as the office of the Register of Deeds for Wake 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.

Section 38. “residential unit” includes any of the following that is used or proposed to be used for residential purposes: single-family detached residential lot, patio home lot, townhome lot, condominium unit, apartment unit, or any other type of residential lot or unit, either as shown on a plat recorded in the Registry, on a condominium plat or plans recorded in the Registry, or on a Subdivision Plan. A Lot and a proposed Lot are included in the definition of residential unit for the purposes of the Declaration.

Section 39. “Special Declarant Rights” is defined as all 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. 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 upon the recording of the document in the Registry or any later date specified therein.

Section 40. “Stormwater Agreement” or “Stormwater Replacement Agreement” (which terms include any other agreement under Legal Requirements, by whatever name denominated therein, relating to Stormwater Control Measures) is defined as any agreement required by the Code or other Legal Requirement between the City and the Declarant or between the City and the Association, or among the City, Declarant and Association, or between or among any combination of the City and the Declarant, the Association and one or more Owners, relating to maintenance of Stormwater Control Measures.

Section 41. “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, drains, pipes, conduits, inlets, channels, dams, ditches, filter, buffers, bio-retention areas, and other equipment, facilities and stormwater management measures used for inspecting, monitoring, measuring, collecting, controlling, transporting, conveying, handling, storing, discharging and managing stormwater. Except as otherwise provided herein (particularly, Article

III, Section 4), Stormwater Control Measures are part of the Common Property or Limited Common Property, as applicable, and maintenance of Stormwater Control Measures is a Common Expense or Limited Common Expense, as applicable. References in the Declaration to stormwater management include all applicable Stormwater Control Measures, Stormwater Agreements and Stormwater Maintenance Manuals.

Section 42. "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.

Section 43. "Subdivision Plan" is defined as the most current development plan approved by the City for the Properties and/or Proposed 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, at any time and from time to time, in its sole discretion but subject to Legal Requirements, to modify any Subdivision Plan in whole or in part. At the time of the recording of the Declaration in the Registry, the Subdivision Plan for the Properties and Proposed Properties includes the Existing Property, together with the real property described on **Exhibit B** attached hereto and incorporated by reference.

Section 44. "utility" or "public utility" (the terms being used interchangeably herein) are 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; 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" (the terms being used interchangeably herein) is defined as the Person who provides a utility to any part or all of the Properties.

Section 45. "utility apartment" is defined as a portion of a Dwelling Unit that complies with all of the following requirements: (i) it physically is part of the Dwelling Unit or part of a garage attached to or detached from the Dwelling Unit; (ii) it is occupied by a Person or family unit other than the Person or family unit that occupies the Dwelling Unit in which it is located; (iii) the utility apartment contains a floor area not in excess of 1/4 of the gross floor area of the Dwelling Unit, exclusive of the utility apartment (for example, if the Dwelling Unit contains 2,000 square feet, the utility apartment may contain a maximum of 500 square feet); and (iv) the utility apartment complies with all Legal Requirements.

ARTICLE II THE PROPERTIES; ANNEXATION; WITHDRAWAL; 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. At any time before 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. 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. In addition to the foregoing, and whether or not the Development Period has ended, Declarant at any time may annex to the Declaration as Additional Property any part or all of the real property described on **Exhibit B**.

(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 duly called meeting of the Association and the recording in the Registry of a Supplemental Declaration signed by the owner of such Additional Property, 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, such annexation may be done only with the consent of Declarant, as evidenced by Declarant's execution of the Supplemental Declaration or another instrument specifically consenting to such annexation.

(c) Approval by Governmental Entities. All annexations of Additional Property to the Declaration must be approved (i) by the Town of Morrisville, if required by Legal Requirements, and (ii) by FHA and/or VA, if at the time of such annexation FHA and/or VA regulations require such approval. Provided, however, the real property described on **Exhibit B** is part of the real property approved as the Subdivision by the Town of Morrisville in the most current Subdivision Plan approved on the date of execution of the Declaration by Declarant, and such real property described on **Exhibit B** may be annexed to the Declaration at any time by Declarant without further approval of any Person, legal entity or governmental entity, except for any additional approval required by the Town of Morrisville.

(d) Supplemental Declaration. Each Supplemental Declaration shall be effective to annex 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 subjected or annexed to the Declaration. A Supplemental Declaration need not be in any specific form and need not be titled Supplemental Declaration (for example, the required subjecting language may be contained in a deed from the Declarant conveying the Additional Property being annexed), but it shall indicate clearly the intention to subject or 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, not in conflict or inconsistent with the Declaration, as the Person annexing such Additional Property to the Declaration may determine, and the Declaration shall control over any provision of any Supplemental Declaration that conflicts or is inconsistent with the Declaration.

(e) Votes Allocated to Additional Property. Class A Member votes and Class B Member votes in the Association shall be allocated to Additional Property in the same manner that Class A Member votes and Class B Member 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 Section 3 of Article IV of the Declaration.

Section 3. Order of Development and Annexation. Declarant contemplates that it may develop the portions of the Properties it owns in accordance with any Subdivision Plan, as modified from time to time. 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 real 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, at any time and from time to time 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. 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 (i) by the Town of Morrisville, if required by Legal Requirements, and (ii) by FHA and/or VA, if at the time of such withdrawal FHA and/or VA regulations require such approval.

(b) After the end of the Development Period, and subject to Legal Requirements, at any time and from time to time 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 duly-called meeting of the Members for which the notice of the meeting includes notice of the proposal to withdraw such portion of the Properties from the Declaration. All such withdrawals also must be approved (i) by the Town of Morrisville, if required by Legal Requirements, and (ii) by FHA and/or VA, if at the time of such withdrawal FHA and/or VA regulations require such approval.

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, 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 impose additional and different covenants and restrictions on such phases, sections or subdivisions which are applicable solely to such phase, section or subdivision (the foregoing being referred to herein as a "Subdivision Declaration"). 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, may from time to time determine. 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 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; and (iii) may specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with the Declaration, as the Person subjecting such real property to the Subdivision Declaration may determine (provided, however, the provisions of the Declaration control over any conflicting provisions of any Subdivision Declaration). 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 or is inconsistent with the Declaration.

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 or directed 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 Bylaws and/or as directed by the Board.

Section 2. Minimum List of Functions and Services. Maintenance of Common Property, Common Property Easements, and any other property or thing to be maintained by the Association pursuant to the Declaration shall be in such manner and to such extent as reasonably determined from time to time by the Board, giving due consideration to the level of maintenance that also may be provided by the City or any other Person. The following are the "Minimum List of Functions and Services" which the Association shall do, provide, perform, accept, or be responsible for, as the case may be, the expenses for which are Common Expenses:

(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. Provided, however, with respect to Common Property Easements, the Association's maintenance responsibility is only what is reasonably required in connection with the Association's use thereof (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 has the power and authority to enter into such Stormwater Agreements, encroachment agreements and other agreements with the City as are reasonably necessary to enable the Association to maintain Common Property, including Common Property Easements, 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 as Declarant, in its sole discretion, determines from time to time, each of which agreements may be binding on the Association and all Owners. The Association shall accept assignment from the Declarant of all rights and obligations for maintenance of Common Property, including Common Property Easements, as described in any such encroachment or other agreements.

(d) The Association shall accept transfer of ownership from Declarant of any and all Common Property and/or rights therein.

(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, or any other agreement with the City 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, 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) The Association shall operate the Architectural Review Committee(s) as and when provided in the Declaration.

(h) 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.

(i) The Association shall provide an annual financial report to each Member making written request therefor and paying the reasonable charge for same established from time to time by the Board and, upon either the (i) the affirmative vote of majority of the votes cast by the Members present at a duly called meeting of the Association, or (ii) the written request of the Members possessing twenty-five percent (25%) or more of the total 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.

(j) 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, the rules and regulations of the Association, and the books, records and financial statements of the Association.

(k) 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.

(l) The Association shall hold meetings and give proper notice thereof, as required by the Governing Documents and Legal Requirements.

(m) 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 assets owned by the Association.

(n) The Association shall obtain and maintain insurance and fidelity bonds as required in the Governing Documents.

(o) 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.

Section 3. Other Functions and Services. The Association is authorized, but not required (except as specified in the immediately preceding Section or as the Association is obligated to do under any Legal Requirement or pursuant to a written agreement with the City or other Person entered into as allowed under the Declaration), to

do, provide, perform, accept, or be responsible for any or all of the following, the expenses for which are Common Expenses.

(a) The Association may take all actions its deems necessary to enforce and implement the provisions of Legal Requirements, the Governing Documents, and Association rules and regulations, and to perform the functions or services delegated to the Association by the Governing Documents and Legal Requirements, and in connection therewith, except as specifically limited by the Declaration, the Association shall have all of the rights and powers described in Section 47F-3-102 of the Act as it from time to time exists.

(b) Subject to the rights of Members of the Association to the use and enjoyment of the Common Property, the Association may grant easements, leases, licenses and concessions through or over the Common Property, as the Board determines from time to time to be in the best interests of the Association.

(c) Subject to the terms of any encroachment agreement between the Declarant or the Association and the City, 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. The Association may enter into encroachment and other agreements with the City with respect to such maintenance.

(d) 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.

(e) In addition to any specific provisions of the Declaration authorizing the Association to adopt rules and regulations, the Association may adopt 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, and amend them from time to time. Provided, however, any such rule or regulation adopted by the Board may be amended or repealed by the affirmative vote of a sixty-seven percent (67%) or more of the votes cast by the Members present at a duly called meeting of the Association.

(f) 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.

(g) The Association, (i) upon complying with the minimum required voting percentage under applicable provisions of the Act for conveyance of common elements (at the time of recording of the Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) of the votes in the Association), and (ii) prior to the end of the Development Period, upon obtaining the written consent of Declarant, may enter into contracts with utility providers for exclusive or non-exclusive provision of utility services to the Properties. 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).

(h) 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 other Association assets, as determined by the Board, subject to the Governing Documents and Legal Requirements.

(i) The Association may enter into contracts to maintain one or more bank accounts.

(j) 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.

(k) 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.

(l) The Association may provide insect and pest control and other services for the Properties to the extent that it is deemed necessary or desirable, in the sole discretion of the Board;.

(m) The Association may employ a property manager and may employ or contract with independent contractors or other Persons as the Board deems necessary.

(n) The Association may retain the services of legal and accounting firms and such other professionals and/or tradesmen as it deems necessary and appropriate.

(o) The Association may contract with Declarant or any other Person for performance of services which the Association is required to perform pursuant to the terms hereof, 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.

(p) The Association may establish from time to time 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.

(q) 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.

(r) The Association may impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Lots and rights of access to easements in Common Property that provide 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.

(s) After notice and an opportunity to be heard, 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 Common Property that provide public utility services to Lots) for reasonable periods for violations of the Declaration or other Governing Documents.

(t) 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 from time to time.

(u) In addition to the foregoing, the Association may exercise all powers and rights authorized under the Act and take all other actions reasonably required for the Association to exercise its rights and perform its obligations under the Governing Documents.

Section 4. Stormwater Management. Except for maintenance responsibilities (i) placed on Owners by the Declaration 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 with the Association which may require monetary payments to such Person by the Association). 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. The Owner of any Lot on, over or through which any Stormwater Control Measures or portion thereof, is located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable, unless the Association assumes such responsibility; and (ii) removal of debris and other materials to the best of the Owner’s ability, where such debris or materials has impeded or threatens to impede the free flow of stormwater on, over or through the Stormwater Control Measures located on the Lot. Such Owner’s responsibility shall include notification of the Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter which the Owner reasonably believes is beyond the Owner’s ability to remove, and any excessive erosion within any such Stormwater Control Measures. The Owner of a Lot on which a Stormwater Control Measures is located shall not obstruct it or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all stormwater 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.

Declarant, during the Development Period, and thereafter, the Association, subject to any approval required by the City, may at any time and from time to time 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 and agreements, including Stormwater Agreements, 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 agreements, including Stormwater Agreements, 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, collecting, controlling, transporting, handling, storing, discharging, operating and managing any part or all of the stormwater on, to, or from 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 agreements, including Stormwater 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, collecting, controlling, transporting, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such agreements, including Stormwater 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 agreement shall be valid unless the same shall have been consented to in writing by the Declarant.

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the 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 agreements, including Stormwater Agreements, for different portions of the Properties, 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 agreements, including Stormwater Agreements, are determined to be necessary or desirable, that the costs of maintaining such Stormwater Control Measures and/or funding such agreements, including Stormwater Agreements, may be different for different portions of the Properties, some Stormwater Control Measures may be classified as Limited Common Property, and annual assessments and/or stormwater assessments (as defined herein) may be different for Lots in different portions of the Properties, and such differences may be classified as Limited Common Expenses under the Declaration.

Declarant hereby informs all Owners and other Persons who may from time to time 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, at any time and from time to time, may assign to the Association, and the Association shall accept from Declarant the assignment of, all obligations of the Declarant under all agreements, including Stormwater 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 agreement, including Stormwater Agreements, 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 agreements, including Stormwater 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%) of the 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.

In addition to the foregoing requirements, during the Declarant Control Period any conveyance or dedication to public use of Common Property also shall require approval by the FHA and/or VA if, at the time of such conveyance or dedication, applicable FHA or VA regulations require such approval.

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%) of the 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.

In addition to the foregoing requirements, during the Declarant Control Period any mortgage or pledge of Common Property also shall require approval by the FHA or its designee and/or by the VA or its designee if, at the time of such mortgage or pledge, applicable FHA or VA regulations require such approval.

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. 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.

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, 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.

In addition to the foregoing requirements, during the Declarant Control Period any merger or consolidation also shall require approval by the FHA or its designee and/or by the VA or its designee if, at the time of such merger or consolidation, applicable FHA or VA regulations require such approval.

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 1, or by other provisions of the Declaration, any Supplemental Declaration, or any Subdivision Declaration relating to Limited Common Property, or by the rules and regulations adopted by the Members and/or the Board, every Owner shall have a 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) subject to the provisions of the Code and the Declaration, the right of the Association to charge reasonable admission and other fees for the use of any Common Area and to limit the use thereof by Owners and other Persons as provided in Section 2 of this Article IV.

(b) the right of the Association to regulate or limit use and access by Owners to Common Property Easements 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 Property Easements to which no Owners, or only a limited number of Owners, will have any right of use or access.

(c) subject to any applicable notice and hearing requirements 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, the Act or the Association's published rules and regulations 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 easement that provides access for ingress and egress from a public street to such Owner's Lot, or over which a sanitary sewer, water or other utility easement is located that provides such utility services to such 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.

(d) 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.

(e) the right of the Declarant, during the Development Period, and the right of the Association, to grant easements over and across 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 when, in the opinion of the Declarant or Board, as applicable, such easements are necessary for the convenient use and enjoyment of the Properties or any part thereof or when any of the foregoing is required by a Legal Requirement.

(f) 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.

(g) 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.

(h) 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.

(i) the right of the Association to adopt and enforce rules and regulations governing the use of the Common Property.

(j) the rights of the Declarant reserved in the Declaration.

Section 2. Delegation of Use.

(a) Family. Subject to all provisions of the Declaration and rules of the Association for use of the Common Property applicable to Owners, the right and easement of enjoyment and access in and to the Common Property granted to every Owner may be exercised by members of the Owner's immediate family who occupy the Dwelling of the Owner within the Properties as their principal residence in Wake County, North Carolina. Provided, however, the Association may impose fees for use of the Common Area by occupants of a utility apartment.

(b) Tenants. Subject to all provisions of the Declaration and rules of the Association for use of the Common Property applicable to Owners, the right and easement of enjoyment and access in and to the Common Property granted to every Owner may be delegated by such Owner to the Owner's tenants who occupy the Owner's Dwelling within the Properties leased by the tenant as such Person's principal residence in Wake County, North Carolina. Provided, except as allowed by any applicable rules and regulations of the Association, such rights may not be delegated by an Owner to the tenants or occupants of any utility apartment who are not either a child or parent of an Owner or tenant of the Dwelling in which the utility apartment is located.

(c) Guests. The right and easement of enjoyment and access in and to the Common Property granted to every Owner by this Article may be exercised from time to time by the authorized guests of such Owners, subject to all rules and regulations of the Association for use of the Common Property by guests.

(d) Suspension of Rights. The rights of any Person under this Section who is authorized to exercise, or to whom an Owner has delegated or authorized the use of, any right and easement of enjoyment and access in and to the Common Property, may be suspended in the same manner as the rights of an Owner, and shall be suspended upon and during suspension of such Owner's rights.

Section 3. Conveyance of Title to the Association. Declarant covenants, for itself, its successors and assigns, that it will convey title to the Common Property as required by Legal Requirements. 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 such 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 may be by special warranty deed and shall be free and clear of all encumbrances and liens, except for all Legal Requirements, 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 permanent improvements constructed or placed on the Common Property by Declarant shall become the property of the Association upon the later of conveyance of such Common Property to the Association or completion of such improvements.

Section 4. Rights and Responsibilities as to Common Property Easements.

(a) Owners. Each Owner of a Lot upon which a Common Property Easement 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 Property Easement, and shall maintain the portion of such Owner's Lot subject to the Common Property Easement 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 Property Easement constructed or installed by or on behalf of the Association for use in connection with the Common Property Easement, and the Association shall reimburse the Owner for any additional *ad valorem* property taxes assessed against the Lot specifically for the improvements associated with the Common Property Easement. 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 Property Easement; (ii) maintain gates, fences, or other improvements in or on a Common Property Easement; (iii) place any garbage receptacles in or on a Common Property Easement; (iv) fill or excavate a Common Property Easement or any part thereof; or (v) plant trees or other vegetation in, or otherwise restrict or interfere with, the maintenance of a Common Property Easement.

(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 portion of the Properties reserved or designated as a Common Property Easement for the purposes of: (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 Property Easement as have been approved by the Declarant or the Association and, if required, by the City; and (iii) maintaining the Common Property Easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the Common Property Easement free from obstructions and impediments to its use.

Section 5. Leases. Every lease or sublease between an Owner and a tenant for the lease of a portion of the Properties shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and any applicable Subdivision Declaration, and that failure by the tenant to comply with the terms of such documents shall be a default under the terms of the lease. Provided, however, if an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included as a part of said lease or sublease notwithstanding such omission.

Section 6. 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) 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 rights of such Owner to ingress and egress over the applicable

portion of the Common Property from a public street to and from such Owner's Lot, nor shall it include suspension of such Owner's rights to the use of utility services provided to such Owner's Lot through any applicable easement located on the Common Property.

ARTICLE V MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Each and every Owner of a Lot, including the Declarant, 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 ownership, 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 and Development Parcels, except for the Declarant. 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 number of votes allocated to the portions of the Properties and Proposed Properties owned by the Class B Member shall be determined as follows: (i) for all portions of the Properties and Proposed Properties for which there are recorded plats, the number of residential units shown on the plats shall be multiplied by three (3); (ii) for all portions of the Properties and Proposed Properties for which there are not recorded plats but for which there are one or more Subdivision Plans, the number of residential units approved under the applicable Subdivision Plan shall be multiplied by three (3); (iii) for all portions of the Properties and Proposed Properties for which there are neither recorded plats nor Subdivision Plans, there shall be no Class B votes until a recorded plat or Subdivision Plan applicable thereto exists and, at that time, votes shall be determined in the same manner as provided in immediately preceding (i) or (ii) as applicable; and (iv) the number of votes allocated to the Class B Member shall be the total number of votes as determined in accordance with immediately preceding (i), (ii) and (iii), as applicable, reduced by three (3) votes for each vote allocated to the Class A Members (for example, if the Class A Members have a total of 50 votes, then the Class B votes shall be reduced by 150 votes, as $3 \times 50 = 150$).

At the time of the recording of the Declaration, the Class B Member is entitled to **213 votes** (the number of residential units on recorded plats and Subdivision Plans for the Properties and Proposed Properties in effect at the time of the recording of the Declaration is 71, and 71 multiplied by 3 is 213).

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 as described in Article III, Section 5 of the Declaration, Class B votes and Class A votes shall be allocated in accordance with the allocation described in the immediately preceding paragraph of the Declaration, except that at all times during the Development Period the then existing number of Class B votes shall constitute not less than the minimum percentage of votes in the Association required by the Declaration or the Act or any other Legal Requirement to effect any such dedication, conveyance, or exchange of Common Property.

The Class B Membership shall terminate at the end of the Development Period, subject to reinstatement from time to time as provided in the definition of Development Period.

Section 3. Exercise of Voting Rights. The exercise of voting rights shall be governed by the Bylaws of the Association.

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 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) special 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 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 Wake County, North Carolina, and shall be the personal and continuing obligation of the Person who was the Owner of such Lot at the time when the assessment or other charge first became due and payable. An Owner's personal obligation for payment of such assessments and other charges shall not become the

personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid. 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 reasonable 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 for any one or more of the following: (i) to pay the Common Expenses; (ii) to perform the functions or provide the services required or authorized of the Association pursuant to the Declaration and any applicable Subdivision Declaration or Supplemental Declaration or Legal Requirement; (iii) to implement, administer and enforce the terms and provisions of the Declaration and any applicable Subdivision Declaration or Supplemental Declaration, as the Board determines to be in the best interests of the Association or its Members; and (iv) for all other purposes required or authorized under the Governing Documents, the Act, and other Legal Requirements. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies set aside for reserves, for the calendar 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.

(a) All Lots are subject to all assessments under the Declaration from and after the date on which such Lots become part of the Properties or become Lots, either by the recording in the Registry of the Declaration or a Supplemental Declaration, or by the recording in the Registry of a plat establishing the Lot in those instances in

which the real property constituting the Lot has been subjected to the Declaration prior to the recording of the plat establishing the Lot. Provided, however, and notwithstanding the foregoing, during the Declarant Control Period all portions of the Properties owned by the Declarant are exempt from annual assessments, except that each Lot owned by Declarant on which a Dwelling is located for which a certificate of occupancy has been issued by the City is not exempt and is subject to the same assessments under the Declaration as if the Lot were owned by a Class A Member of the Association, each such Lot being referred to herein as a "Declarant Class A Lot". The annual assessment for a Declarant Class A Lot for the calendar year in which it first becomes a Declarant Class A Lot is determined by multiplying the applicable annual assessment amount by a fraction whose numerator is the number of days remaining in that calendar year from and after the day on which the Lot becomes a Declarant Class A Lot and whose denominator is the total number of days in that calendar year.

(b) With respect to Lots, other than Declarant Class A Lots, that are conveyed by Declarant during the Declarant Control Period to a Person who is not a Declarant, for the calendar year in which the conveyance occurs the amount of that calendar year's annual assessment for such Lot is determined by multiplying the applicable annual assessment amount by a fraction whose numerator is the number of days remaining in that calendar year from and after the day on which the conveyance occurs and whose denominator is the total number of days in that calendar year.

(c) When the Declarant Control Period ends, all Lots owned by the Declarant are subject to the same assessments under the Declaration as if such Lots were owned by Class A Members of the Association. During the calendar year when the Declarant Control Period ends, that calendar year's annual assessment for all Lots then owned by Declarant, other than Declarant Class A Lots, is determined by multiplying the applicable annual assessment amount by a fraction whose numerator is the number of days remaining in that calendar year from and after the day on which the Declarant Control Period ends and whose denominator is the total number of days in that calendar year. Provided, however, if at any time or from time to time the Declarant Control Period is reinstated on or before the date that is six (6) months following the date on which the Declarant Control Period has ended, all portions of the Properties owned by Declarant at the time the Declarant Control Period is reinstated will be treated for purposes of annual assessments as if the Declarant Control Period had not ended. Any deficit funding obligation for any calendar year in which the Declarant Control Period ends shall be reduced by the amount of annual assessments paid for that calendar year by Declarant on Lots owned by Declarant, other than Declarant Class A Lots.

Section 5. Annual Assessments.

(a) For calendar year 2005, the maximum annual assessment is \$300.00 per Lot.

(b) For calendar year 2005, the annual assessment is \$240.00 per Lot.

(c) Beginning with the annual assessment for calendar year 2006, the Board shall establish the annual assessment at any amount not in excess of the maximum annual assessment for the applicable calendar year. 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 January 1 of the applicable calendar 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 calendar year to which it is applicable, or a release of any Member from the obligation to pay the assessment or any installment thereof for that or any subsequent calendar year. Until the Board has established an annual assessment for a calendar year, the annual assessment for the immediately preceding calendar year shall continue in effect, but when the new annual assessment is established, it shall be retroactive to January 1 of the applicable calendar 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 calendar year has not been established by December 31 of the immediately preceding calendar year, the Board may send a notice of assessment to the Members for the amount of the immediately preceding calendar year's annual assessment, together with notice that a new assessment may be established for that calendar 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.

(d) Beginning with calendar year 2006, unless a lesser maximum annual assessment is established as allowed in this paragraph, the maximum annual assessment for each calendar year shall be equal to 110% of the maximum annual assessment for the immediately preceding calendar year (for example, if the maximum annual assessment for the immediately preceding calendar year was \$500.00, the maximum annual assessment for the current calendar year is \$550.00, as $\$500.00 \times 110\% = \550.00). If the Board at any time or from time to time determines that the maximum annual assessment as determined pursuant to this paragraph has become excessive, the Board may propose a lesser maximum annual assessment amount as part of the annual operating budget procedure and, if such lesser maximum annual assessment amount is approved by the Members in the same manner as the annual operating budget is approved, then the amount so adopted shall be the beginning amount for determination of future increases in the maximum annual assessment under this paragraph.

(e) The annual assessment for any calendar year may be established at an amount greater than the maximum annual assessment for that calendar year upon a determination by the Board that the total amount of the maximum annual assessments for that calendar year is not adequate to fund the Common Expenses of the Association to be funded out of such annual assessments, and the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a duly called meeting of the Association for which notice of the meeting includes the proposed new annual assessment amount and at least a summary explanation of the determination of the Board as to why it is necessary for the annual assessment to exceed the amount of the maximum annual assessment. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment or method of calculating the maximum annual assessment (including increases from calendar year to calendar year) resulting from a merger or consolidation in which the Association is authorized to participate under the Governing Documents or Legal Requirements.

(f) If the Board establishes the annual assessment at an amount less than the maximum annual assessment for any calendar year and, thereafter, during such calendar year, determines that such annual assessment is insufficient to pay the applicable Common Expenses and other financial obligations of the Association, the Board may levy one or more supplemental annual assessments until such time as the total of the annual assessment plus

all supplemental annual assessments assessed in any calendar year equals that calendar year's maximum annual assessment.

(g) 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 and stormwater assessments), all annual assessments shall be the same for all Lots.

Section 6. 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, at any time and from time to time the Association may levy a special assessment 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 imposed under this Section first shall be approved by the affirmative vote by sixty-seven percent (67%) or more of the votes cast by the Members present at a duly called meeting of the Association and, during the Development Period, the written consent of the Declarant. Notices for all meetings of the Association at which there is to be a vote on a special assessment shall include notice of the purpose and amount of the proposed special assessment. A special assessment is effective on the later of the date it is approved by the Members or Declarant (if such approval is required), or such later date adopted by the Members in the vote approving the special assessment, and is due and payable as established by the vote of the Members approving the special assessment, or, if not established by such vote of the Members, as established by the Board. Except as otherwise allowed by the Declaration, all special assessments shall be the same for the same for all Lots, including Lots owned by Declarant (there being no deficit funding obligation with respect to special assessments).

Section 7. Annual Operating Budget. Beginning with calendar year 2005, the Board shall adopt a proposed annual operating budget for the Association for each calendar year, containing an estimate of the total amount believed to be necessary to pay the Common Expenses for that calendar year, including such reasonable amounts as the Board deems necessary to pay for maintenance of Common Areas other than Stormwater Control

Measures, maintenance of Stormwater Control Measures, payment of any amounts required by a Stormwater Agreement to be paid by the Association, working capital (available for day-to-day operating expenses of the Association and otherwise uncommitted for specific expenses), reserves for contingencies, and reserves for replacement of Common Property, and the proposed annual budget shall contain separate line items for each of the foregoing (but no annual operating budget shall be invalid if any one or more of such items are not shown separately). The Board shall give due consideration to the annual operating budget and any assessment credit of Declarant in establishing the annual assessment for that calendar year. The proposed annual operating budget also shall contain a statement as to the maximum amount that could be collected and expended if each Lot in the Subdivision were assessed in the amount of the maximum annual assessment for that calendar year (however, any failure to include such statement on the proposed annual operating budget shall not void or invalidate the proposed annual operating budget or the actual annual operating budget approved as provided herein, nor shall it prohibit the Association from assessing and collecting the maximum annual assessment for that calendar year). Within thirty (30) days after adoption of same, 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 annual operating budget will be considered, including a statement that the proposed annual operating budget may be ratified without a quorum for the meeting. The annual or special meeting at which ratification of the proposed annual operating budget is to be considered shall be held not less than ten (10) days nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting at which ratification of the proposed annual operating budget is to be considered (although if other matters are to be considered at such meeting applicable quorum requirements are in effect with respect to those other matters). The proposed annual operating budget is ratified unless rejected at that meeting as follows: (i) if the proposed annual operating budget is not more than 115% of the immediately preceding calendar year's annual operating budget, it is ratified unless Members possessing ninety percent (90%) or more of the total number of votes in the Association reject it; (ii) with respect to any proposed annual operating budget that is more than 115% of the immediately preceding calendar year's annual operating budget, it is ratified unless Members possessing ninety six-seven percent (67%) or more of the total number of votes in the Association reject it. For the foregoing purposes, if the immediately preceding calendar year's annual operating budget was \$10,000.00, 115% of the immediately preceding calendar year's annual operating budget is \$11,500.00 ($\$10,000.00 \times 115\% = \$11,500.00$). In the event that the proposed annual operating budget is rejected, the annual operating budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent annual operating budget proposed by the Board.

As the Declarant is the only Member of the Association at the time of the recording of the Declaration in the Registry, the Declarant has adopted an operating budget for 2005.

Section 8. Collection of Assessments; Penalties for Late Payment.

(a) Assessments may be collected on a monthly, quarterly, annual or other basis, as determined from time to time by the Board, with the payment due date to be specified in the notice of the applicable assessment. The billing schedule and payment due date shall be the same for all Owners. Provided, however, the Board shall have the power at any time and from time to time, 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 at any time and from time to time 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 at any time and from time to time 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 9. Assessment Deficit; Assessment Credit.

(a) Except as otherwise provided herein (for example, with respect to stormwater assessments and special assessments), for each calendar year during the Declarant Control Period that the Declarant does not pay annual assessments on all of the Lots owned by Declarant in the same amounts as the annual assessments applicable to Lots owned by Class A members of the Association, the Declarant shall fund all annual operating budget deficits for that calendar year, if any, to the extent necessary to keep the Association solvent - referred to herein as the "deficit funding obligation". The deficit funding obligation 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. 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 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 calendar year may not be imposed against Declarant unless the maximum annual assessment for that calendar year has been assessed.

(b) During any calendar year, on or before the payment due date Declarant voluntarily may pay annual assessments on all of the Lots it owns in the same amounts as the annual assessments against Lots owned by Class A Members of the Association. Such annual assessments may be paid 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 annual assessments. In any such year that Declarant voluntarily pays such annual assessments in the same amount as the annual assessments applicable to Lots owned by Class A Members, there shall be no deficit funding obligation for that calendar year.

(c) 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 amount paid or provided by Declarant to fund its deficit funding obligation plus

amounts voluntarily paid by Declarant when it elects to pay annual assessments in the same amount as annual assessments applicable to Lots owned by Class A Members of the Association, less the amount of annual assessments that Declarant would have been obligated to pay the Association during the Declarant Control Period had Lots owned by Declarant been assessed at the same rate as the rate applicable to Lots owned by Class A Members. 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 10. 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 calendar year to pay for the Association’s obligation for stormwater management, including 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 calendar year to exceed the amount that would be due and payable to the Association if all Lots (including those owned by Declarant) were assessed in the amount of the maximum annual assessment for that calendar year (such excess amount of total expenses for that calendar 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 an adequate amount of reserve funds, and (iii) the maximum annual assessment has been imposed for that calendar year on all Lots owned by Class A Members of the Association, and (iv) during the Declarant Control Period Declarant has paid to the Association (and/or paid Association expenses) for that calendar year an amount equal to the maximum annual assessment that would be applicable to all Lots owned by Declarant if the Declarant were a Class A Member, then the Board may assess, as an additional assessment for that calendar 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 as if the Declarant were a Class A Member of the Association at that time. 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 11. Certification of Assessments Paid. The Association (or any property manager or agent authorized by the Association), upon demand and payment of a reasonable charge or fee established or approved by the Association, shall furnish to any Owner or such Owner’s authorized agent, or to any holder of a first lien deed of trust on a Lot, or to an attorney who represents the Owner or a prospective purchaser of such Lot, or to any other Person approved by the Board, 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 the assessments and other charges owed by such Owner have been paid. The certificate shall be furnished within ten (10) business days after receipt of the request therefor and, except in the event of any willful misstatement made by the issuer of the certificate, it shall be binding on the Association, the Board and every Owner. If requested by the requesting party, the certificate also shall

indicate whether or not the Association has knowledge of any uncured default in, or violation of, any provision of the Declaration and other Governing Documents with respect to the Lot and the then Owners thereof and, if there is any uncured default or violation, the action required to cure it.

Section 12. Assessment Lien and Foreclosure. The assessments and other charges provided for herein shall be the personal and individual debt of each Person who, at the time of the assessment or other charge, is an Owner of the Lot against which they are assessed or charged. Any assessment or other charge not paid on or before the payment due date and remaining unpaid for a period of thirty (30) days or longer, together with the fines, penalty and interest charges as provided in the Declaration, plus the costs of collection (including reasonable attorneys' fees), shall be a charge and continuing lien on the Lot (and all Improvements thereon) 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 Wake 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 and Improvements thereon. 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 13. Lien Priority. The lien for unpaid assessments and other charges provided for herein is prior to all liens and encumbrances on a Lot except (i) liens 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 Wake 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 Wake 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 14. Exempt Property. All Exempt Property is exempt from the assessments, charges and liens established pursuant to the Declaration.

Section 15. 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, and acquisition and replacements of Common Property. 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. 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.

(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 16. Working Capital Assessment. At the first closing of the sale of a Lot by a Builder after a Dwelling has been constructed thereon, 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, 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 equal to one-sixth (1/6) of the amount of the annual assessment then applicable to the Lot (or that would be applicable to the Lot if it then were owned by a Class A Member of the Association), to be applied to payment of Common Expenses as determined by the Board. The working capital assessment shall be paid only once with respect to each such Lot, and is in addition to all other assessments. All working capital assessments may be enforced and collected in the same manner as all other assessments.

Section 17. 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 or subdivisions in the Properties to provisions requiring the Owners thereof to pay additional assessments to the Association for the maintenance of, and addition to, Limited Common Property, including any one or more of the following: (i) private streets; (ii) alleys; (iii) landscaping, signs and decorative features; (iv) Common Property Easements associated specifically with the Lots to which the Limited Common Property is allocated; (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 shall 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 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 portions of the Properties 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 associated with such group of Lots or phase, section or subdivision.

Section 18. 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 or VA, or any mortgage program administered by either 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 from time to time are reasonable or necessary, including such bonds as may be necessary to comply with Legal Requirements and to satisfy the 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 from time to time in the exercise of its reasonable discretion, or as may be requested from time to time by the affirmative vote of a majority of the Members present at a duly called 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 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 duly called 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.

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 practically or lawfully may not 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 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 payable 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 duly called 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 equally among the Owners of the Lots to which the Limited Common Property was allocated at the time of the Taking.

ARTICLE IX USE OF THE PROPERTIES; PROTECTION OF COMMON PROPERTY

Section 1. Use of the Properties. No portion of the Properties shall be used for other than detached single-family residential purposes (meaning one Dwelling per Lot and any associated utility apartment) and related purposes such as streets, utilities, greenways, open space, recreation, stormwater management, other purposes

substantially related to detached single-family 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 Declaration), and for all other purposes specifically required (as contrasted with allowed) by Legal Requirements. Provided, however, and notwithstanding the foregoing sentence, until such time as construction of initial improvements has been completed on all Lots subject to the Declaration, 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 business 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. 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 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 provisions of the Declaration 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 Declaration shall control (unless prohibited by a Legal Requirement).

Section 4. New Construction. Construction of new Dwellings only shall be permitted on Lots, it being the intent of this Section to prohibit 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 and other requirements of the Declaration.

The Architectural Control Committee has the right (but is not required) to implement and enforce rules and regulations 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. Rules of the Association. All Owners and occupants of Lots shall abide by all rules and regulations for the Common Property adopted by the Association. The Association shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and any Owner

determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and fines, including costs incurred in seeking and enforcing applicable legal remedies, including reasonable attorneys' fees.

Section 6. 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 7. 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 buffer (or other applicable river or stream) 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 8. Animals. No animals of any kind (including livestock, reptiles or poultry) shall be kept on any portion of the Properties or in any Dwelling except for dogs, cats or other household pets which are not used for breeding or other commercial purposes, and provided that they do not create a nuisance (in the judgment of the Board), by number or type of animals, noise, odor, damage or destruction of property, animal waste, or any other reason, and further provided that they are kept in compliance with all Legal Requirements and such rules and regulations pertaining thereto as the Association may adopt from time to time, which rules and regulations may include requirements that animals be kept on a leash or otherwise restrained whenever they are anywhere on the Properties other than on the Owner's Lot or other areas specifically designated for animals not on leashes. The Owner responsible for an animal being on the Properties promptly shall clean up or remove from any portion of the Properties not owned by such Owner all solid bodily wastes from that animal.

Each Owner who keeps any animal on any portion of the Properties shall be deemed to have indemnified and agreed to hold harmless the Association, Declarant and all other Owners, from and against any loss, claim for damages to person or property, cause of action, or liability of any kind, including all costs of defending against same (including reasonable attorneys' fees), arising out of or resulting from such animal, including any actions of the

animal. An easement over and upon the Properties hereby is reserved for the City to exercise and enforce all Legal Requirements relating to animal control.

Section 9. Antennas and Other Attachments. No permanent attachments of any kind or character whatsoever (including, but not limited to, television and radio antennas and satellite dishes or other device for reception of television or radio signals) shall be made to the roof or exterior walls of any Dwelling or other building on any portion of the Properties, nor shall the same be located on any portion of the Properties outside of any Dwelling or other building, unless such attachments first shall have been submitted to and approved by the Architectural Review Committee. Provided, however, the Association shall not prevent access to telecommunication services in violation of any Legal Requirement. Generally, satellite dishes greater than one meter (39 inches) in diameter, or satellite dishes or antennas or other reception devices located in or on the front of a Dwelling or other building, will not be allowed on the Properties. Provided, however, (i) an Owner may install an antenna permitted by any applicable architectural guideline upon prior written notice to the Architectural Review Committee; (ii) the Architectural Review Committee may approve other antennas in appropriate circumstances; and (iii) the Architectural Review Committee may amend existing guidelines and/or establish additional guidelines as technology changes. Further provided, the Association may, but shall not be required to, install and maintain antennas, satellite dishes or similar equipment in or on the Common Property to serve the Common Property and/or the Properties. No outdoor clotheslines shall be allowed on any portion of the Properties.

Section 10. Boats, etc. No motorboat, houseboat or other similar water-borne vehicle, airplane, travel trailer, other trailer, or "camper" vehicle shall be maintained, stored or kept on any portion of the Properties, except in enclosed garages or screened areas approved by the Architectural Review Committee, nor shall any of the foregoing at any time be parked on any street within the Properties.

Section 11. Building Setback Distances. Unless a variance or waiver is granted as provided for herein, the Dwelling and other improvements on a Lot shall not be located nearer to the Lot boundary lines than the greater of (i) the minimum building setback distances required by the Town of Morrisville or other Legal Requirements, or (ii) as shown on the Approved Plans. No Dwelling or other improvement on a Lot shall encroach upon another Lot. During the Development Period the Declarant (and the Board and/or the Architectural Review Committee, if authorized by the Declarant) has the authority at any time and from time to time to: (i) require in an Approved Plan greater building setback distances from one or more boundary lines of a Lot than the minimum building setback distances required by the Town of Morrisville or other Legal Requirements; (ii) grant variances from, and waive violations of, any Dwelling or other building setback distances; provided, however, the variance or waiver shall not reduce the applicable setback distance to less than what is required by the Town of Morrisville or other Legal Requirement (including any reduced distance allowed by a board of adjustment or other applicable governmental entity board or department), all such variances and waivers to be in writing; and (iii) to resolve any question or dispute as to whether a Lot boundary line is a front, rear or side boundary line. Following the end of the Development Period the Board (and/or the Architectural Review Committee, if authorized by the Board) shall have the authority to grant the foregoing variances and waivers and make the foregoing determinations. Notwithstanding any of the foregoing specified Dwelling setback distances or any variance or waiver granted as provided herein, the Owner of each Lot shall comply with all minimum Dwelling and other setback distances required by Legal Requirements.

Section 12. Dwelling Square Footage. Unless a variance or waiver is granted as provided for herein, the Dwelling constructed on each Lot shall have an enclosed floor area, exclusive of garages (but inclusive of finished living area on the second floor of a garage attached to the Dwelling), open and screened-in porches, basements, attics, decks, terraces, patios and chimneys, of not less than the following: (i) _____ square feet for any one-story Dwelling; (ii) not less than _____ square feet on the ground floor and not less than _____ square feet on the half floor of a 1.5 story Dwelling; and (iii) not less than _____ square feet on the ground floor and not less than _____ square feet on the second floor of a two-story Dwelling (the Declarant, or Architectural Review Committee, as applicable, having the authority to resolve any dispute as to the number of stories in a Dwelling, including how to treat any enclosed floor area in a basement or other below ground level space). During the Development Period the Declarant (and the Board and/or the Architectural Review Committee, if authorized by the Declarant) has the authority at any time and from time to time to grant variances from, and waive violations of, such minimum enclosed floor area square footage requirement in any amount not exceeding twenty percent (20%) thereof, such variances or waivers to be in writing; and (ii) the Declarant shall have the right to determine whether or not any improvement, other than those items specifically excluded by this Article, is part of the enclosed floor area of a Dwelling. Following the end of the Development Period, the Board (and/or the Architectural Review Committee, if authorized by the Board) shall have the authority to grant the foregoing variances and waivers and make the foregoing determinations.

Section 13. Fences, Walls and Hedges. Except as specifically approved in writing by the Architectural Review Committee in Approved Plans or in architectural guidelines that specifically do not require Approved Plans for certain fence, wall, or hedge styles, materials, sizes and locations: (i) no fence, wall, or hedge shall be maintained on any Lot; and (ii) fences, walls and hedges allowed to be maintained on Lots shall be not be located on the Lot nearer to any street adjoining the front of such Lot than the front corner of the Dwelling thereon, and shall not exceed four (4) feet in height. All fences, walls and hedges allowed on Lots shall be maintained at all times in a structurally sound and attractive manner and in a good state of repair, and shall consist of materials approved by the Architectural Review Committee.

Section 14. Harmful Discharges. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances from any portion of the Properties into the atmosphere (other than those resulting from cleaning or normal residential chimney or outdoor grill emissions), there shall be no production, storage or discharge of hazardous wastes from or on any portion of the Properties, and there shall be no discharges of liquid or solid wastes or other harmful matter into the ground or into any sewer, any Stormwater Control Measures, or any body of water within the Properties, if such emission, production, storage or discharge may adversely affect the use of any portion of the Properties, or may adversely affect the health, safety or comfort of the occupants of the Properties. Provided, however, the foregoing prohibitions shall not prevent or interfere with the reasonable development or maintenance of any portion of the Properties or improvements thereon by Declarant, any Builder or any other Person in accordance with Legal Requirements, nor shall they prevent, as incident to the residential use of the Properties, the reasonable use, handling, storage and disposal of medically related hazardous substances and wastes in compliance with all Legal Requirements.

Section 15. Home Businesses. An Owner may maintain an office or home business on such Owner's Lot or in any Dwelling or other improvement located on the Lot only if: (i) such office or home business is operated by the Owner or a member of the Owner's household residing on the Lot, or by Owner's residential tenant residing

on the Lot; (ii) there are no displays or signs indicating that the Lot or improvement is being used other than as a residence; (iii) such office or business does not generate significant traffic or parking usage by the business itself or by clients, customers or other Persons, it being in the discretion of the Board to determine compliance with this requirement; (iv) no vehicles, equipment or other items related to the office or business are stored, parked or otherwise kept on the streets in the Subdivision or on such Owner's Lot outside of the Dwelling or other enclosure approved by the Architectural Review Committee; (v) such Owner has obtained from the City, and maintains in effect, all required approvals for such use; (vi) the activity is consistent with the residential nature of the Properties and complies with all Legal Requirements and other provisions of the Declaration; (vii) no person is employed in such office or home business except for the Owner or the members of the Owner's household residing on the Lot or the Owner's tenant residing on the Lot; and (viii) the Owner has obtained prior written approval from the Board before commencing such business or office use and thereafter registers annually with the Association and obtains annual re-approval of such business or office use by the Board as long as the operation of the home business continues. As a condition to such use, the Association may require the Owner to pay any increase in the rate of insurance, trash removal, utilities or other costs for the Association or other Owners which result or reasonably may be anticipated to result from such use. Garage sales, yard sales and similar activities shall be conducted only in accordance with all Legal Requirements and the rules and regulations, if any, adopted by the Association.

Section 16. Hunting; Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows and/or other weapons within the Properties is prohibited, unless required for public or private safety or for the prevention of damage to any Dwelling or other improvements or personal property on any portion of the Properties.

Section 17. Landscaping; Utility Lines. No fence, wall, tree, hedge shrub or other planting 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, plants, trees and other landscape and decorative materials shall not be placed or permitted to remain on any portion of the Properties: (i) if such materials may damage or 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. 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 Declarant during the Development Period, or as approved by the Board following the end of the Development Period.

Section 18. Lighting. No exterior lighting on any portion of the Properties shall be directed outside the boundaries thereof, except for required street and parking area lighting and as otherwise approved by the Architectural Review Committee. Residential floodlights and decorative lights directed toward the Dwelling on a Lot shall be permitted when used in a reasonable manner. Unless otherwise allowed by rules adopted by the

Board, all holiday lighting and decorations (for example, lighting and decorations associated with Christmas) may be displayed/used/lighted for a period of time not to exceed three (3) weeks prior to the date of the holiday and two (2) weeks after the date of the holiday, except that Christmas lighting and decorations may be displayed/used/lighted beginning on Thanksgiving Day in the same calendar year. All exterior lighting that is not in conformity with applicable architectural guidelines, if any, first shall be approved in writing by the Architectural Review Committee.

Section 19. Mailboxes and Newspaper Tubes. All mailboxes, unless affixed to the Dwelling (which may occur only if approved by the Architectural Review Committee or if required by any Legal Requirement), shall conform to the architectural guidelines for same, if any, shall be affixed to a substantial pole or stand permanently placed in the ground, and shall not be located within a sidewalk. Newspaper tubes shall conform to the architectural guidelines for same, if any. Architectural guidelines with respect to mailboxes and newspaper tubes may require, prohibit, restrict or specify one or more of the following, including with respect to any numbering, lettering or decoration thereon or used in connection therewith: method and type of support; style; material; color; size; and height. There may be different mailbox and newspaper tube requirements for the various phases, sections or subdivisions within the Properties.

Section 20. Motorized Vehicles; On-Street Parking. All motorized vehicles operating within the Properties, including automobiles, motorcycles, trucks, lawn mowers, and golf carts, must have proper and adequate mufflers. Each Owner shall provide for adequate parking space on such Owner's Lot for all of the following "vehicles" that are regularly used in connection with the Lot by any Person or are used or kept on the Lot by any Person: motorized vehicles; bicycles; and other apparatus moved by use of wheels or otherwise designed or used for movement over and upon streets or highways (whether motorized or whether or not self-propelled), including trailers and carts. Except as reasonably necessary for maintenance of improvements or as otherwise allowed by Declarant during the Development Period (and thereafter, by the Board), no vehicles of any kind shall be parked or left in the Common Property (except in areas, if any, designated for parking) or regularly parked on the streets within or adjoining the Properties, and trucks with tonnage in excess of one (1) ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Properties. Provided, however, and notwithstanding the foregoing, and subject to Legal Requirements, until such time as construction of initial Improvements have been completed on all Lots subject to the Declaration (and thereafter, as allowed by the Board) vehicles may be parked temporarily on streets and driveways within the Properties as reasonably necessary in connection with construction of improvements within the Properties. In addition to and supplemental to, but not inconsistent with, the foregoing, the Association may adopt and enforce rules and regulations relating to the parking of vehicles on the streets within or adjoining the Properties, including allowing temporary on street parking for special events related to the Subdivision. In addition to and supplemental to, but not inconsistent with, the foregoing, the Association also may adopt and enforce rules and regulations relating to the parking of vehicles on Lots or any other portion of the Properties outside of garages or screened areas approved for such parking by the Architectural Control Committee.

Section 21. Noises. No Person shall cause any unreasonably loud noise anywhere on the Properties, except for security devices used in the manner intended therefor, nor shall any Person permit or engage in any activity, practice or behavior resulting in substantial and unjustified annoyance, discomfort or disturbance to any Person lawfully present on any portion of the Properties. Provided, however, the prohibition against noises contained in this Section shall not preclude or limit activities on Lots or Common Property conducted in accordance with the applicable rules and regulations of the Association, including social events. Further provided, the foregoing

prohibitions shall not prevent or interfere with the reasonable development, construction, use, or maintenance of any portion of the Properties or improvements thereon by the Association, Declarant, a Builder or any other Person in accordance with Legal Requirements or the Governing Documents.

Section 22. Nuisance and Other Matters. No noxious or offensive activity shall be conducted upon any portion of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Community or any part thereof, or to any person lawfully residing in the Subdivision. Provided, however, the usual, customary or reasonable use and maintenance of a Lot, a Dwelling, or any Common Property shall not constitute a nuisance. Further provided, the development of the Properties by Declarant and Builders, and the usual, customary or reasonable construction and maintenance of Dwellings and other improvements in the Properties shall not constitute a nuisance. Further provided, the operation and use of the Common Property in the manner required or allowed by the provisions of the Declaration shall not constitute a nuisance.

No trade materials or inventories (other than materials used for construction of Dwellings or other approved structures or improvements) shall be stored upon any portion of the Properties and no tractors, inoperable motor vehicles, rubbish, trash, or unsightly materials of any kind shall be stored, regularly placed, or allowed to remain on any portion of the Properties unless adequately screened or contained as approved by the Architectural Review Committee, except that trash, leaves, tree limbs, materials for trash or recycling pick-up and similar items may be kept or placed temporarily and only for such time as is reasonably necessary to enable the City or appropriate private entity to remove same, and inoperable motor vehicles may be stored only if the same are kept entirely in an enclosed garage or other building. Provided, however, as approved by Declarant during the Development Period, trucks and/or other construction vehicles, materials and equipment may be allowed to remain on the Properties temporarily during construction of roads, utilities, Dwellings and other improvements in the Properties, and such vehicles, materials and equipment also may be allowed to remain on the Properties during construction or maintenance on the Properties of Dwellings and/or other improvements which have been approved by the Architectural Review Committee. Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any Legal Requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or maintenance of streets, utilities or other improvements in the Properties, or as may be allowed by Declarant, during the Development Period, and thereafter, the Board, when reasonably required for the construction or maintenance of other improvements within the Properties.

Section 23. 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), 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 Declarant's, any Builder's, or the Association's use or maintenance of the Common Property.

Section 24. 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 Common Property or to City greenways or greenway easements.

Section 25. Recreational Areas, Equipment, and Facilities. The Association may adopt and enforce reasonable rules and regulations relating to the location and use of recreational areas, equipment and facilities on Lots and other portions of the Properties.

Section 26. 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 rule or regulation 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 27. Sewer Systems. As long as reasonably adequate sanitary sewer service is available from the City to service a Lot, no private sewage system shall be permitted on that Lot (this Section does not prohibit temporary waste collection/disposal facilities used during construction or maintenance of improvements on the Properties).

Section 28. Signs. No sign of any kind shall be displayed to the public view on any portion of the Properties except for signs which are approved by Declarant, during the Development Period, and thereafter, by the Board (the Board shall act reasonably in reviewing and approving or not approving signs for sale of Lots and Dwellings), or (b) a Builder with respect to portions of the Properties owned by such Builder. Any such sign approved as provided herein shall be for one or more of the following purposes: (i) advertising a portion of the

Properties for sale or rent; (ii) advertising the Builder or other Person constructing Improvements on a Lot until the last Lot owned by a Builder in the Properties is sold to a third-party homeowner; (iii) identifying the subdivision name of the Properties or of a phase, section or subdivision of the Properties, or the number or street address of a Lot or Dwelling, or directing Persons as to the location of certain portions of the Properties; (iv) identifying any portion of the Common Property; (v) signs required by the City or a utility provider, whether or not approved by Declarant or the Board; and (vi) any other purpose approved by Declarant, during the Development Period, and thereafter, by the Board; provided however, the foregoing limitations shall not restrict or prohibit Declarant (or, at the appropriate time, the Board) or the City from maintaining on any portion of the Properties signs describing the identity, location, or "for sale" character of the Properties, or portions thereof, or signs identifying various phases, sections or subdivisions of the Properties, or regulatory, street and directional signs. All signs maintained on any portion of the Properties must comply with all Legal Requirements.

Section 29. 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.

Section 30. Tree Cutting. 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. Further, no trees planted by the Declarant or any Builder to comply with Legal Requirements shall be cut without the prior written approval of the Person who planted same or, following the end of the Development Period, by the Association. Consistent with the foregoing, the Association may adopt rules and regulations for the cutting or removal of trees.

Section 31. Utility Yards. One or more utility yards shall be provided for each Lot as required by the Architectural Review Committee. A "utility yard" is an area within which one or more of the following is wholly located: pens, yards and houses for pets; above ground garbage and trash cans or receptacles, above ground and exterior air conditioning, heating and other mechanical equipment, meters, transformers and other utility equipment; and all other structures and objects determined by the Architectural Review Committee to be of a similar nature to the foregoing items or determined by the Architectural Review Committee to be of an unsightly nature or appearance. Each utility yard shall be screened or fenced or otherwise enclosed as required by the Architectural Review Committee. Provided, however, nothing in the Declaration shall prohibit location of trash cans, meters, transformers or other equipment in such places as required by the City or applicable public utility provider.

Section 32. Water Systems. As long as reasonably adequate potable water service is available from the City to service a Lot, no private potable water system shall be permitted on that Lot. Provided, however, private wells for irrigation purposes may be allowed in accordance with Approved Plans or applicable architectural guidelines. With respect to private wells, the Owner on whose Lot any such private well is located shall indemnify, defend and hold harmless the Association, the Declarant and other Owners of and from any and all claims of damages for injury

to person or property, and all other causes of action and legal proceedings (including matters related to environmental hazards), and including the costs of defending against same (including reasonable attorney fees) that arise out of or result from the maintenance of any such private well on such Lot.

Section 33. 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 at any time, and from time to time, 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, and waivers or variances with respect to minimum building setbacks and minimum Dwelling square footage shall be as provided in those Sections dealing with such matters. Any such waiver granted by the Declarant to a Builder or other Person during the Development Period shall be binding on the Board once the Development Period has expired.

ARTICLE X 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 areas within a Dwelling or other building on a Lot visible from the exterior only because of the transparency of doors, walls or windows, 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 from time to time by the Architectural Review Committee): no site preparation of a Lot, no change in grade or slope, no construction or installation of any Dwelling or other Improvement on a Lot or exterior additions or exterior alterations to any Dwelling or other Improvement on a Lot, and no construction of, or alterations or additions to, the exterior of any other Improvement on a Lot 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. 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 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, all initial Improvements to be constructed by a Builder on a Lot within the Properties and approved by Declarant, 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. Furthermore, the Declarant shall have the authority to approve a Builder's plans for the initial construction of Improvements on a Lot without adhering to the requirements of this Article. The Architectural Review Committee also is established to exercise jurisdiction over other matters specifically assigned to it in the Declaration.

Section 2. Composition and Duration. During the Development Period, the Architectural Review Committee shall consist of Persons appointed thereto by Declarant, or Declarant may serve as the Architectural Review Committee. Declarant has the right at any time and from time to time 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) members, who shall be appointed by, and shall be subject to removal with or without cause by, the Board. 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 purely aesthetic reasons. 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 (in person or by proxy) at a duly called 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 from time to time 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 from time to time. 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) As authorized by the Declarant during the Development Period and, thereafter, by the Board, the Architectural Review Committee at any time and from time to time may establish, amend, revise and/or delete architectural guidelines for one or more types of Improvements to be constructed, altered, added or placed 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. With respect to Improvements other than initial construction of a Dwelling, the architectural guidelines may, but shall not be required to, allow construction, alteration, addition or placement 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. Although the Architectural Review Committee shall not have unbridled discretion with respect to taste, design and the standards specified herein or in such architectural guidelines, the Architectural Review Committee shall have broad discretion in establishing architectural guidelines and in considering and approving technological advances or general changes in architectural designs and materials in future years, and shall use its best efforts to balance the equities between matters of taste and design and the use of private property.

(d) The Declarant or the Board, as applicable, in its sole discretion, may at any time and from time to time appoint two separate Architectural Review Committees, one for the purpose of reviewing Plans for initial Improvements, and the other to review Plans for subsequent new Improvements and alterations or additions to existing Improvements, the specific division of authority between 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.

(e) Approval by the Architectural Review Committee of any Plans shall not relieve the applicant from any obligation to obtain all required City approvals and permits, and shall not relieve the applicant of the obligation and responsibility to comply with all Legal Requirements with respect to such Improvements.

(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.

(g) Notwithstanding anything to the contrary herein, architectural approvals given by the Architectural Review Committee prior to the end of the Development Period 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 installed on any portion of the Properties to monitor compliance with the provisions of this Article and compliance with the Approved Plans for such Improvements, 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.

(i) With the exception of decisions rendered by an Architectural Review Committee consisting solely of the Declarant, an applicant Owner who disagrees with a 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. 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.

Section 4. Commencement and Completion of Construction. Construction or installation of Dwellings and other improvements on Lots shall be commenced within twenty-four (24) months after the date on which there are Approved Plans therefor, and shall be completed not later than twelve (12) months immediately after construction is commenced, or shall commence and be completed by such later dates as specified in the Approved Plans. For the completion of Dwelling or other improvements purposes of this Section, construction is "commenced" when a building permit for the construction has been issued by the City (or if not building permit is required, when work commences or materials for the improvement are delivered to the applicable portion of the Properties), and construction is "completed" when the City has issued a certificate of occupancy or completion for the Improvement (or if no certificate of occupancy is required, when work on the improvements has ceased for a period of 30 consecutive days). The Architectural Review Committee, in its sole discretion, may grant waivers or extensions of the foregoing time period for completion of construction, 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 within the foregoing time periods. Notwithstanding anything to the contrary in the Declaration, if construction of a Dwelling or other improvement is not commenced within the

required time period, including all extensions thereof, the Approved Plans therefor are void unless the Architectural Review Committee, in its sole discretion, grants additional time for the existence of the Approved Plans.

Section 5. Compensation. No member of the Architectural Review Committee shall be compensated for service on 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 6. 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 any Improvements constructed on any portion of the Properties.

Section 7. Violation; Enforcement. Each failure of an Owner or any other Person to construct or alter any Improvement in accordance with the Approved Plans as required herein therefor 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 Section 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 Section 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 Section 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 XI EASEMENTS

Section 1. 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, without any obligation to exercise any of same. These easements specifically include the right of access to and from each part of the Properties subject to the easement (the "easement area"), the right to maintain equipment, structures, facilities and soil and water impoundments therein, during the Development Period the right (without obligation) to exercise all of the easements reserved for the Association in this Article, and the right to remove any obstruction within the easement area that, in the sole discretion of Declarant or its successors or assigns, interferes with the use of the easement or with the maintenance of any equipment or structures or facilities or soil or water impoundments located therein:

(a) Perpetual, non-exclusive and alienable easements for completion of any development obligation of Declarant under Legal Requirements or pursuant to any contract between Declarant and another Person, and for the maintenance of streets (both publicly dedicated and private streets), water, sanitary sewer and other utilities and related appurtenances and equipment (including wires, poles, pipes, transformer boxes and conduits), Stormwater Control Measures, and soil and water impoundments over, under and across all of the following: (i) portions of the Properties identified as easements on plats or in documents that have been executed by the then 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 an area on each Lot that is ten (10) feet in width adjacent to each front and rear boundary line thereof; and (iv) the Common Property, including Common Property Easements. 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, utility, equipment, facility, structure or soil or water impoundment. Declarant's rights under this Section include the right at any time and from time to time 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) and (iv) in this sub-section.

(b) The right to subject the Properties to a contract with Progress Energy (or other, appropriate utility provider) for the installation of above ground or underground electric cables and lines and/or the installation 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.

Section 2. 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 of access to and from the easement area, the right to maintain equipment, structures, facilities and soil and water impoundments therein, and the right to remove any obstruction within the easement area that, in the Association's sole discretion, 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:

(a) A perpetual, non-exclusive and alienable easement over and upon 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, this easement does not include a right to enter any Dwelling or other building on a Lot without the consent of an Owner of that portion of the Properties, 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, 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) The Association has the right at any time and from time to time to assign its rights under its easements as it deems reasonable in the best interests of the Subdivision.

Section 3. 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 purpose 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 and delivery of mail. Except in an emergency, these easements shall be exercised in a reasonable manner and at reasonable times. This easement does not include a right to enter any Dwelling or other building on any portion of the Properties without the consent of the Owner of such portion of the Properties (but Owners hereby are given notice that Legal Requirements may allow such entry). 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 Town of Morrisville, its employees 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 4. Easements Shown On Recorded Plats. Declarant, for itself and its successors and assigns (which may include 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 of ingress, egress and regress over and upon such easement areas, and 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. The Persons who have the foregoing easement rights shall have no obligation to exercise any part or all of same.

Section 5. 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 from time to time 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, 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 6. Restriction on Easements. 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 Lot, except as otherwise specifically stated in the provision of the Declaration relating to the particular right or easement. Provided, however, each Owner hereby is given notice that Legal Requirements may allow such entry by the City, even though the particular easement granted, reserved or established in the Declaration does not allow such entry.

ARTICLE XII OWNER MAINTENANCE RESPONSIBILITIES

Section 1. Duty to Maintain. Subject to any other applicable terms of the Declaration, 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, 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 and not maintained by the Association or the City.
- (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 drainage easements 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 provisions of this Section 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 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 XIII 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 Declaration and receive notices from the Association, 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 and 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. 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. Any Institutional Lender who has notified the Association as required in the immediately preceding Section of this Article, 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 Properties 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 FNMA rules and regulations or other governmental entity rules or regulations require the Association to give notice to Institutional Lenders.

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

ARTICLE XIV AMENDMENT OF DECLARATION

Section 1. Amendment by Declarant. During the Development Period Declarant may, without the approval or joinder of the Association, or any Member of the Association, Institutional Lender, Mortgagee, or Secondary Mortgage Market Agency, amend any provision of the Declaration or any Subdivision Declaration or Supplemental Declaration from time to time 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, 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 such amendment shall be effective upon the later of the date of its recording in the Registry or the effective date specified therein. Provided, however, during the Development Period any such amendment of the Declaration also shall require approval by the FHA or its designee and/or by the VA or its designee if, at the time of such amendment, applicable FHA or VA regulations require such approval.

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 duly called 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. Provided, however, any amendment of this Declaration with respect to Recreational Amenities as described in Article XVI requires (i) the affirmative vote at a duly called meeting of the Association of those Members to whom are allocated eighty percent (80%) 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) Subject to the terms of Section 1 of this Article, 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.

(e) In addition to the foregoing requirements, during the Declarant Control Period any such amendment to the Declaration also shall require approval by the FHA or its designee and/or by the VA or its designee if, at the time of such amendment, applicable FHA or VA regulations require such approval.

Section 3. Consent of Mortgagees. No consent of any Mortgagee to any amendment of the Declaration is required unless (i) the amendment affects the rights of Mortgagees under the Declaration, or (ii) 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 (i) or (ii) 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 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 or impair 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) alter or remove or attempt to alter or remove any applicable Legal Requirement.

ARTICLE XV 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 other 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 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 Morrisville (or, if the Town of Morrisville 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 Morrisville 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 Morrisville 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 Morrisville 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.

Section 3. Termination or Dissolution During Declarant Control Period.

In addition to the foregoing requirements, during the Declarant Control Period any termination of the Declaration or dissolution of the Association also shall require approval by the FHA or its designee and/or by the VA or its designee if, at the time of such termination or dissolution, applicable FHA or VA regulations require such approval.

ARTICLE XVI RECREATIONAL AMENITIES

There are no "Recreational Amenities" planned for the Subdivision on the Date of Execution of the Declaration (for example, no swimming pool, tennis courts, exercise lots, etc., although walking, jogging and other activities may occur in Common Area, Common Area Easements and City owned or controlled greenway and other easements in or adjoining the Properties). However, during the Development Period Declarant reserves the right,

without any obligation, to provide one or more Recreational Amenities on Common Property or in Common Property Easements in the Subdivision, which Recreational Amenities, if provided by Declarant, will become part of the Common Property owned by the Association and/or part of the personal property assets owned by the Association. Additionally, Declarant may in the future develop other properties near the Property that may not be part of the Subdivision but that may have Recreational Amenities that are available for use to Owners of Lots in the Subdivision in accordance with the rules and regulations applicable to those Recreational Amenities. Provided, however, nothing herein shall be construed as a commitment from Declarant or the owners of such other properties, or as a requirement of Declarant or such owners, to develop such other properties or to provide for such Recreational Amenities on such other properties that are available for use by the Owners of Lots in the Subdivision. With respect to any such Recreational Amenities that are on such other properties, one of the requirements for the use of those Recreational Amenities by Owners of Lots in the Subdivision may be that all of the Owners of Lots in the Subdivision pay assessments or membership fees or use fees for the use and/or maintenance of such Recreational Amenities, or that the Association pay such assessments or fees on behalf of the Owners of Lots in the Subdivision. In the event that the applicable rules and regulations for use of such Recreational Amenities by the Owners of Lots in the Subdivision require all of the Owners of Lots in the Subdivision to pay assessments or membership fees or use fees for the use and/or maintenance of such Recreational Amenities or that the Association pay such assessments or fees on behalf of the Owners of Lots in the Subdivision, then the Declaration may be amended to require all of the Owners of Lots in the Subdivision, either individually or through assessments paid to the Association, to participate in such Recreational Amenities, subject to the following: (i) any such amendment to the Declaration must be approved by the affirmative vote at a duly called meeting of the Association of those Members to whom are allocated eighty percent (80%) or more of the total number of votes in the Association, and during the Development Period, with the written consent of Declarant, and (ii) the per Lot amount to be paid is the same for each Lot in the Subdivision.

The foregoing provisions for amendment of the Declaration with respect to Recreational Amenities on properties that are not part of the Subdivision are applicable to other properties that are developed by Declarant and to other properties that are not developed by Declarant (for example, there may be another residential development that offers to allow Owners of Lots in the Subdivision to use its Recreational Amenities). Also, the foregoing provisions for amendment of the Declaration with respect to Recreational Amenities are in addition to matters dealing with merger of the Association with another association that results in the members of each having rights to use Recreational Amenities that are owned by the other association.

ARTICLE XVII DISCLOSURES AND WAIVERS

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

Section 1. 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. 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 at any time and from

time to time, 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 2. Construction Activities. All Owners and other Persons who use the Properties hereby are placed on notice that Declarant and/or its agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, 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 3. Water Management. Each Owner and any other Person who uses any portion of the Properties acknowledges and agrees that any or all 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.

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.

Section 4. 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 5. 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.

ARTICLE XVIII GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association, each Owner, and, when enforcement rights are granted by the Declaration, an Institutional Lender, the VA or FHA, 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 an Owner is required hereunder, such notice may be hand delivered to such Owner, 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 Owner appearing on the records of the Association or to the address for such Owner appearing in the records of the Wake 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 Owner or an adult residing with the Owner, as evidenced by a receipt signed by the Owner 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 Owner or other adult residing with such Owner, or (vi) upon execution of a written waiver of such notice by the Owner. Notice to the Association may be given and shall be deemed to have been given in the same manner as notice to an Owner, 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 to keep the Association informed of such Owner's current mailing address and telephone number. If an Owner has not provided the Association with the Owner's current mailing address the Association may use as the mailing address the street address of the Lot owned by such Owner or the address for such Owner in the records of the Wake County Revenue Department. If no address for an Owner is reasonably available to the Association, the Association shall not be required to give notice to such Owner. 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.

One or more Lots may be combined into a single Lot with the written consent of the Owner thereof and the Declarant, during the Development Period (and thereafter, the Board). 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 such 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 this 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 subdivide, combine, re-subdivide or recombine, or to record or re-record maps relating to, any portion of the Properties owned by Declarant, nor to prohibit or restrict the right of Declarant 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. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period, including contracts with property managers, must be terminable by the Association, with or without cause, and without penalty, upon ninety (90) days written notice to the other parties to the contract or lease.

Section 10. 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 Governing Documents shall control over any conflicting provisions of the rules and regulations of the Association. 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 provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted by the Association. The Governing Documents and rules and regulations of the Association 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 11. Assignment. Declarant specifically reserves the right, in Declarant's sole discretion, at any time and from time to time, 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.

With respect to assignments to the Association, the Association is not required to execute the Assignment, but Declarant may not assign to the Association any obligation to complete initial capital improvements 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.

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 (and recording of an assignment in the Registry shall not be required).

Notwithstanding anything to the contrary in this Section, with respect to Common Property, Stormwater Control Measures and utilities in the Subdivision, Declarant, at any time and from time to time, may assign to the Association, and the Association shall accept assignment of, 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 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 improvements for the initial installation of Common Property, Stormwater Control Measures and/or utilities and/or publicly dedicated street 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 12. Costs and Reasonable Attorneys' Fees. In an 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 13. FHA and/or VA Approvals. Whenever the Declaration refers to FHA and/or VA regulations requiring an approval, such approval is defined as: (i) approval given by the FHA or its designee and/or by the VA or its designee (which in connection with any approvals by FHA or VA referenced herein include the United States Department of Housing and Urban Development or its designee); and (ii) approval with respect to which, at the time of the action taken, FHA and/or VA regulations, as applicable, require approval in order for Dwellings in the Subdivision to be eligible for FHA and/or VA (insured) loans, and the FHA and/or VA, as applicable, then is reviewing subdivision homeowner association documents for compliance with its applicable regulations (the Declaration being an example of such homeowner association documents).

Section 14. 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 15. 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 16. 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 from time to time to comply therewith. Provided, however, it also is the intention of the Governing Documents that, unless its provisions violate the Act, such provisions shall control, and, insofar as reasonably possible, the provisions of the Governing Documents shall be construed in such manner as to be consistent with, and not in violation of, the Act.

Section 17. 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 at any time and from time to time, 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.

(execution page follows)

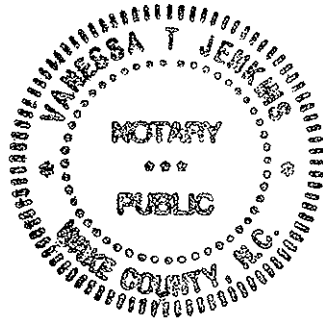
IN WITNESS WHEREOF, Declarant has caused the Declaration to be executed in legal and binding form, on the date indicated in the acknowledgment of such signature.

MCR DEVELOPERS LLC,
a North Carolina Limited Liability Company

By: Timothy R. Smith
Manager

State of North Carolina, County of Wake

I, Vanessa T. Jenkins, Notary Public of the County or City and State aforesaid, certify that Timothy R. Smith, Manager of MCR Developers LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged that he is a Manager of said company and that he executed the Declaration on behalf of and as the act of the company by authority duly given. Witness my hand and official stamp or seal, this 25 day of February, 2005.



Vanessa T. Jenkins
Notary Public
My commission expires: 1-21-2008

**EXHIBIT A
EXISTING PROPERTY**

LYING AND BEING in or near the Town of Morrisville, Wake County, North Carolina, in the Addison Park Subdivision, and being more particularly described as follows:

ALL OF THE FOLLOWING REAL PROPERTY shown on a plat of a portion of Addison Park Subdivision recorded in the Wake County, North Carolina Registry in Book of Maps 2005, Pages 45, 46 and 47:

1. Lots Nos. 10 through 31, inclusive.
2. Lots Nos. 33 through 46, inclusive.
3. Three areas of Private Open Space ("POS") as follows:

(a) 0.02 acre (985 square feet) adjoining the eastern margin of the right of way of Leafycreek Drive near its intersection with Morrisville Carpenter Road (NCSR 3014);

(b) 0.32 acre (13,800 square feet) adjoining the eastern margin of the right of way of Leafycreek Drive, adjoining the southern boundary of Lot No. 34, and adjoining the western boundary of Lot No. 46 and a portion of the western boundary of Lot No. 45; and

(c) 0.05 acre (2,176 square feet) adjoining the western margin of the right of way of Leafycreek Drive, adjoining the southern boundary of Lot No. 25, and adjoining the northern boundary of Lot No. 24.

4. The real property within the rights of way of Leafycreek Drive, Leacroft Way, and Bayless Ridge Court.

5. 0.71 acre (30,956 square feet) constituting the "Stormwater Management Easement" adjoining the southern margin of the right of way of Leacroft Way.

**EXHIBIT B
OTHER REAL PROPERTY
APPROVED AS PART OF SUBDIVISION**

The following real property has been approved as part of the Subdivision by the Town of Morrisville:

LYING AND BEING in or near the Town of Morrisville, Wake County, North Carolina, and being more particularly described as follows:

All of the real property described in that certain deed to MCR Investors LLC recorded in the Wake County, North Carolina Registry in Book 10513, Page 1776, said deed being incorporated by reference as if fully set out herein, less and except the portions thereof described on **Exhibit A** herein.



BOOK:011249 PAGE:01049 - 01131

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



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

North Carolina – Wake County

The foregoing certificate of Vanessa T Jenkins

Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: Vernice S. Spaw
Assistant/Deputy Register of Deeds

This Customer Group _____ # of Time Stamps Needed

This Document New Time Stamp
83 # of Pages