FOR REGISTRATION
Sharon A. Davis
REGISTER OF DEEDS
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DECLARATION
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DECLARATION

OF

COVENANTS, RESTRICTIONS AND EASEMENTS

FOR

CREEKSIDE COMMONS

DURHAM, NORTH CAROLINA

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

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

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

Prepared by and return to:
William J. Armstrong, Esq.
Exeter Development Company LLC
3716 National Drive, Suite 105
Raleigh, North Carolina 27612

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DECLARATION
OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
CREEKSIDE COMMONS

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR CREEKSIDE COMMONS ("Declaration") is made as of November 21, 2018, by Creekside Commons Developers, LLC, a North Carolina limited liability company ("Declarant").

RECITALS

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

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

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

NOW, THEREFORE, Declarant declares that the Property, together with such additions thereto as are hereafter made pursuant to Article 2 of this Declaration, shall be held, transferred, sold, conveyed, leased, mortgaged, used, occupied and improved subject to the easements, covenants, conditions, restrictions, servitudes, charges and liens created or provided for by this Declaration.

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

1.1. "Act" means the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time.

1.2. "Architectural Review Board" or "ARB" means the committee created pursuant to Article 14 hereof.

1.3. "Articles" means the Articles of Incorporation of the Association which have been filed in the office of the Secretary of the State of North Carolina, as amended from time to time.

1.4. "Assessment" means any of the types of assessments defined below in this Section.

1.4.1. "Attached Townhome Assessment" means the amounts charged to each Attached Townhome subject to assessment by the Association representing its proportionate share of the Attached Townhome Expenses as determined in accordance with Sections 11.5 and 11.8.

1.4.2. "Common Assessment" means the amounts charged to each Lot subject to assessment by the Association under Article 11, representing the Lot's share of the Common Expenses as determined in accordance with Sections 11.5 and 11.6.

1.4.3. "Individual Assessment" means the amounts charged to one or more Lots by the Association in connection with (.1) the enforcement of the Governing Documents as a result of the acts or omissions of the Owner or Permitted Users of a Lot, their respective agents, contractors, subcontractors, employees, licensees or invitees for their failure to duly perform their obligations under the Governing Documents, (.2) reimbursing the Association for expenses incurred by the Association due to that Owner's failure to Maintain his Lot or Unit pursuant to the standards set forth in this Declaration, (.3) reimbursing the Association for injury, loss or damage to the Association or to any Common Area, Association Property or other Lot caused by the Owner or Permitted Uses, or their respective agents, contractors, subcontractors, employees, licensees or invitees, and not covered by insurance, (.4) reimbursing the Association for, or payments to the Association for the collection of, charges attributable to a Lot or group of Lots for water usage if such usage is not individually metered and/or paid individually by and to the applicable provider; or (.4) for any other purpose expressly authorized by this Declaration.

1.4.4. "Special Assessment" means and includes the following: the amounts charged to each Lot subject to assessment by the Association for any of the following purposes: (.1) unbudgeted expenses or expenses in excess of the amounts budgeted; (.2) expenses incurred by the Association for repair, replacement or reconstruction of any Improvements on any portion of the Common Areas or Association Property; (.3) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement on any portion of the Common Areas or Association Property; (.4) expenses incurred by the Association for Restoration of portions of the Property in the event the insurance proceeds are insufficient to pay the Restoration Costs or in the event the injury, loss or damage resulted from an uninsured loss; or (.5) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement to the Attached Townhomes in connection with Attached Townhome Services.

If Special Assessments are assessed for Common Expenses or for any purpose identified in clause (.2) or (.3) above, they shall be assessed against all Lots to the extent that each Lot is subject to assessment under Article 11. If Special Assessments are assessed for Attached Townhome Expenses, they shall be assessed against all Attached Townhomes to the extent that

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

1.5. "Association Property" means all personal property owned by the Association. Association Property shall also include all personal property in which the Association holds possessory or use rights.

1.6. "Attached Townhome" means a three (3) story Unit which has no Units located above or below it and which shares one or more Party Walls with adjacent Unit(s).

1.7. "Attached Townhome Building" means an Improvement consisting of two or more Attached Townhomes notwithstanding that each Attached Townhome therein is located on a separate Lot.

1.8. "Attached Townhome Expenses" means all actual and estimated expenses which the Association incurs or expects to incur to provide Attached Townhome Services for the benefit of Owners of Attached Townhomes, including any of the following in connection therewith: Maintaining (including reasonable reserves for capital improvements, repairs and replacements) and providing labor, materials, goods, services, or benefits in connection with Attached Townhome Services, all as may be determined from time to time by the Board of Directors of the Association in accordance with this Declaration.

1.9. "Attached Townhome Owner" means the Owner of an Attached Townhome.

1.10. "Attached Townhome Services" means those goods, services, items or benefits provided by the Association for the benefit of the Attached Townhomes pursuant to this Declaration, any Supplemental Declaration or agreement approved by a majority of the voting interests of the Attached Townhome Owners present in person or by proxy at a meeting of the Attached Townhome Owners. Attached Townhome Services include the following:

1.10.1. Exterior Maintenance for Attached Townhomes;

1.10.2. Procurement and Maintenance of the insurance coverage described in Section 8.2 and Section 8.3 of this Declaration; and

1.10.3. Restoration of those portions of the Attached Townhomes when damaged by casualty or loss as provided in Article 9 of this Declaration.

1.10.4. Termite and wood-infestation treatment and bond;

1.10.5. Annual inspections of the vapor barrier and mitigation systems on the Lots and Units and repairs recommended by the inspector; and

1.10.6. Obligations under the Stormwater Covenant.

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

1.11. "Board" or "Board of Directors" means the board of directors of the Association, and is the executive board as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

1.12. "Builder" means any Person who purchases one (1) or more Lots from Declarant for the purpose of constructing Units thereon for later sale to consumers in said Builder's ordinary course of business. Any Person shall cease to be considered a Builder with respect to a Unit immediately upon occupancy of and residing in the Unit for residential purposes, notwithstanding that such person originally was recognized as a Builder. For purposes of this Declaration, a Builder is not an affiliate of Declarant.

1.13. "Bylaws" means the Bylaws of the Association adopted by the Board, as amended from time to time.

1.14. "Class A Member" shall have the meaning set forth in Section 4.2.1.

1.15. "Class B Member" shall have the meaning set forth in Section 4.2.2.

1.16. "Code" means the Code of Ordinances for the City of Durham, as amended and supplemented from time to time, and/or the Durham City-County Uniform Development Ordinance, as amended and supplemented from time to time, as applicable.

1.17. "Collection" means a group of Units having similar features or characteristics which are designated as such by an amendment hereto or in a Supplemental Declaration. A group of Units may be designated as a separate Collection for purposes of receiving goods, services or benefits that are not provided to all of the Units, or are provided at a different level or frequency. A Collection may be comprised of more than one group of Units or type of Improvement within the Property and the Lots within the Collection need not be contiguous or adjacent. For so long as the Declarant or its affiliates own any portion of the Community, the Lots within any Collection shall be determined by the Declarant in its reasonable discretion and thereafter by the Association.

1.18. "Common Areas" means all real property and interests in real property, together with any Improvements situated thereon, intended for the common use and benefit of the Association, the Owners, and/or the Permitted Users of the Property, and designated as a Common Area in this Declaration, on a Subdivision Plat or other document recorded in the Registry. For avoidance of any doubt, the Common Areas shall include any private streets or alleys within the Community. Common Areas may be owned or leased by the Association or dedicated to the Association on a Subdivision Plat or may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Property and that serves more than one (1) Lot

or a right of the Association to use of a portion of a public street right of way pursuant to an encroachment agreement with the City).

1.19. "Common Expenses" means all of the actual and estimated expenses of the Association for owning, leasing, administering, Maintaining, managing, operating, insuring, repairing, and replacing the Common Areas and Association Property (including unpaid Common Assessments and Special Assessments not paid by the Owner responsible for payment), and performing its rights and responsibilities under the Act and the Governing Documents, together with any other expenses incurred by the Association as are specifically provided for elsewhere in this Declaration or are otherwise reasonably incurred by the Association in connection with the Association, Common Areas or Association Property or for the benefit of the Owners and their Permitted Users.

1.20. "Community" means that planned community known as Creekside Commons and depicted on the Site Plan.

1.21. "County" means Durham County, North Carolina.

1.22. "Declarant" means Creekside Commons Developers, LLC, a North Carolina limited liability company, its successors and those assigns to which the Declarant may assign all or a portion of its rights hereunder in a written assignment recorded in the Registry. In the event of a partial assignment, the assignee shall not be deemed the Declarant, but may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a nonexclusive basis.

1.23. "Declarant Control Period" means as any period of Declarant control of the Association, as provided in 3-103(d) of the Act and established in this Declaration. For purposes of this Declaration and other Governing Documents, "Declarant Control Period" refers to the period during which the Declarant shall have the right to control the Association and appoint all of the Board of Directors. The Declarant Control Period shall expire on first to occur of the following events:

1.23.1. December 31, 2038;

1.23.2. The later of (x) 240 days or (y) the first annual meeting, in each case, after the date on which one hundred (100%) percent of the Units in all phases of the Community that may ultimately be subject to this Declaration have been conveyed to Class A Members.

1.24. "Declarant's Permittees" means the Declarant's officers, directors, partners, joint venturers, managing members (and the officers, directors and employees of any such corporation, partnership, joint venture or limited liability company), employees, beneficiaries, agents, independent contractors (including both general contractors and subcontractors), suppliers, visitors, licensees and invitees and those of any affiliate of the Declarant.

1.25. "Declaration" and "this Declaration" "herein", "hereto", "hereof", "hereunder" and words of similar import shall mean and refer to this document together with all exhibits and amendments to the document and Supplemental Declarations thereto regardless when recorded.

1.26. "Eligible Mortgagee" means a First Mortgagee which owns, services, insures or guarantees a First Mortgage encumbering a Unit which has notified the Association in writing of its name and address and status as a holder, insurer or guarantor of a First Mortgage. Such notice will be deemed to include a request that the Eligible Mortgage Holder be given the notices and other rights described in Article 17.

1.27. "Exterior Maintenance" means all labor, materials, goods and services necessary or desirable to Maintain in good repair and condition, operate, inspect, test, repair, preserve, perform minor alterations, clean, and/or any other action or activity commonly or customarily regarded as Maintenance of the following the standard original exterior portions of an Attached Townhome:

1.27.1. the roof of each Attached Townhome, including roof shingles, flashing, fascia, soffit, decking, gutters and downspouts, and boots around vents and fresh air returns, but excluding roof trusses, joists, or any other structural element of the roof;

1.27.2. exterior finish, façade and trim materials, shutters, painting, caulking and exterior lighting;

1.27.3. sidewalks, walkways, driveways; and

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

The cost of Exterior Maintenance for Attached Townhomes shall be an Attached Townhome Expense. Exterior Maintenance shall not include repair, replacement or reconstruction of any of the following parts or components of an Attached Townhome: windows or interior doors, rebar, mortar, tie beams, roof trusses or joists, or any structural element of the exterior walls or roof; all or any portion of the plumbing, electrical or mechanical systems whether located inside or outside of the Attached Townhome; all patios, terraces, decks and stairs; all exterior lighting fixtures and bulbs; and front porches (except for the roof and decorative columns of a porch which are the Maintenance responsibility of the Association to the extent described in this Section).

All portions of an Attached Townhome other than those which are Maintained by the Association as part of Exterior Maintenance shall be the Owner's responsibility. Notwithstanding the above, the Association shall maintain the pipe from the public water main to the primary service shut off valve inside the Townhome, except when a meter is inside, in which case the Association shall only maintain to the curb stop, i.e. the water service shutoff valve located in the water service pipe near the curb between the water main and the townhome building. Further thereto, the Association shall have the right, but not the obligation, to perform other repair, replacement or reconstruction of any portion of the exterior of a Townhome if the Association's Board determines that such Maintenance is necessary or desirable to cause compliance with this Declaration or to enhance the security, appearance, or value of the Property (for example only, dryer vents).

1.28. "Fiscal Year" means the calendar year until such time as the Board, by appropriate

resolution, establishes a different Fiscal Year for the Association.

1.29. "Future Development Property" means the real property more particularly described in Exhibit B attached hereto, as amended from time to time, which may be developed as Lots, Units or Common Areas; however, the boundaries, location, size, configuration, and uses of any such Lots, Units, and Common Areas have not been determined as of this Declaration. The Declarant has no obligation to declare all or any portion of the Future Development Property to be Lots, Units or Common Areas.

1.30. "Governing Documents" means collectively this Declaration (including any Supplemental Declaration), Articles, Bylaws, architectural guidelines and the rules and regulations of the Association and all exhibits to any of the foregoing, all as they may be amended, restated or supplemented from time to time.

1.31. "Guest" means any Person who is physically present in or occupies a Unit on a permanent or temporary basis at the invitation of the Owner or Tenant without the payment of consideration. Any Person who is physically present in or occupies a Unit at the invitation of the Owner or Tenant for consideration shall be deemed a "Tenant."

1.32. "Improvement" means any structure or artificially created condition or appurtenance located on the Property, including any building constructed on any Lot, any additions and structural alterations to any Unit or Lot, any walkway, sprinkler pipe, road, driveway, parking area, fence, screening wall, retaining wall, stairway, deck, landscaping, hedge, fountain, tree, planting, shrub, windbreak, pole, swimming pool, pool deck, sign, screen enclosure, sewer, drain, disposal system, grading, paving, or exterior heating, ventilating or air-conditioning equipment or water softener fixture or equipment.

1.33. "Include," "includes," or "including" is intended to include of the particular matter described and to be interpreted as if it were followed by either the phrase "without limitation" or "but not limited to," unless otherwise clearly obvious from the context.

1.34. "Lot" means that portion of the Property (.1) which is developed or intended for development, use and occupancy as a Unit and is shown as a numbered or letter parcel on any Subdivision Plat of any part or all of the Property and is declared to be a Lot in this Declaration or a Supplemental Declaration and (.2) which is not a Common Area, dedicated street or transit right of way, or greenway or park lands owned in fee simple by the City or County. The Declarant may declare a portion of the Property to be a "Lot" subject to the Governing Documents on a Subdivision Plat, replat, or by this Declaration, any Supplemental Declaration or any other recorded instrument. The term "Lot" shall include any Unit constructed thereon. No portion of the Future Development Property shall be deemed to be a Lot unless and until it is expressly declared to be a Lot in a Supplemental Declaration.

1.35. "Lot Landscaping" means the following portions of a Lot which are Maintained by the Association, if any, but only to the extent as determined from time to time by the Board: (.1) the grass, shrubs, trees and other landscaping materials located in the front, side or back yards, and (.2) those irrigation lines and facilities, if any, installed on a Lot by the Declarant or Association. Neither the Declarant, nor the Association shall have any obligation to install any irrigation lines or facilities. Lot Landscaping does not include any spa, pool, fountain, patio, courtyard paving,

screening, landscaping within an enclosed or gated area or similar Improvement located on a Lot.

1.36. "Maintain," "Maintenance," "Maintaining," or any similar term used in this Declaration includes any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

1.37. "Member" means each Person who or which holds membership in the Association by virtue of his ownership of a Lot.

1.38. "Mortgage" means any mortgage or deed of trust or deed to secure debt encumbering a portion of the Property, including a Lot. "First Mortgage" means any recorded Mortgage with first priority or seniority over other Mortgages on a particular portion of the Property.

1.39. "Mortgagee" means any beneficiary, payee or holder of any Mortgage, and the term Mortgage is deemed to refer to and include mortgages, deeds of trust or deeds to secure debt, as applicable. "First Mortgagee" means any beneficiary, payee of holder of a First Mortgage.

1.40. "Operating Deficit" means the difference between the total amount of the Assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (.1) amounts levied against a Lot, but which are not paid, and (.2) Special Assessments for capital improvements.

1.41. "Owner" means the record Owner, whether one or more Persons, of fee simple title to any Lot or Future Development Property, and shall include Declarant as to any Lot or Future Development Property owned by Declarant. "Owner" shall not include any Person who holds an interest in a Lot or Future Development Property merely as security for the performance of an obligation or as a Tenant or as a purchaser under an executory contract of sale.

1.42. "Party Wall" shall have the meaning set forth in Section 10.3.1.

1.43. "Party Wall Co-Owner" shall have the meaning set forth in Section 10.3.1.

1.44. "Permitted Users" means the Tenants or Guests of an Owner.

1.45. "Person" includes any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental entity (including the City), or other entity.

1.46. "Property" means, collectively, all of the real property and interests in real property subject to any part or all of the terms of this Declaration. The Property is legally described in Exhibit A hereto (including all Improvements thereon), plus whatever additional real property (together with all Improvements thereon) is declared to be Property in any Supplemental Declaration, less whatever portions of the Property (together with all Improvements thereon) are declared to be withdrawn from the provision of this Declaration in any Supplemental

Declaration.

1.47. "Registry" means the office of the Durham County Register of Deeds (or any successor office under applicable law). All references herein to recording or to any requirement to record a document or Subdivision Plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Property is situated.

1.48. "Restore," "Restoration," Restoring" or any similar term used in this Declaration includes any one or more of the following, as the context requires: debris removal, alteration, re-construction, installation, inspection, examination, repair, replacement, repainting, restoration of an Improvement lost or damaged by fire or other casualty, deterioration or obsolescence, or any taking by condemnation or eminent domain proceedings.

1.49. "Restoration Costs" shall have the meaning set forth in Section 9.4.

1.50. "Site Plan" means the graphic representation of the proposed plan for development of the Community depicted on Site Plan Submittal, Case # D1700237, approved by The Durham City-County Planning Department on February 2, 2018, as amended from time to time. The Declarant reserves the right to alter or modify the Site Plan as it deems desirable in its sole discretion.

1.51. "Special Declarant Rights" shall mean the rights reserved for the benefit of Declarant in the Governing Documents, as more particularly described in Article 15 of this Declaration.

1.52. "Stormwater Covenant" means that certain Stormwater Facilities Agreement and Covenants among Creekside Commons Developers, LLC, as Permittee therein, Creekside Commons Durham Homeowners Association, Inc., as Association therein, and the City of Durham, as City therein, recorded in Deed Book 8550, Pages * the Registry just ahead of the recordation of this Declaration as required by the Code relating to Stormwater Facilities for the Property or any part thereof, and includes all amendments and supplements to such agreement. Pursuant to the Stormwater Covenant, the City requires that certain mandatory provisions (the "City Mandated Stormwater Provisions") be included in this Declaration so that the Property, together with such additions thereto as are hereafter made pursuant to Article 2 of this Declaration, shall be held, transferred, sold, conveyed, leased, mortgaged, used, occupied and improved subject the City Mandated Stormwater Provisions. The City Mandated Stormwater Provisions are attached hereto as Exhibit "C" and by this referenced incorporated fully into this Declaration as though set forth completely herein. As stated in Paragraph 12 of the City Mandated Stormwater Provisions, the Stormwater Covenant and the City Mandated Stormwater Provisions supersede any other provision of this Declaration or other Governing Documents; provided, however, such other provisions of this Declaration or other Governing Documents may supplement the Stormwater Covenant and the City Mandated Stormwater Provisions.

1.53. "Stormwater Facilities" shall have the meaning ascribed to "Facility/ies" set forth in the Stormwater Covenant, together with any one or more of the following devices, areas and measures that serve the Property: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices, areas and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property, and which are located outside public

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street rights-of-way and drainage easements. All Stormwater Facilities are Common Area.

1.54. "Stormwater Facilities Manual" means that manual, however named, referenced in the Stormwater Covenant as establishing the requirements for maintenance of Stormwater Facilities.

1.55. "Subdivision Plat" means any recorded graphic representation drawn to scale showing the showing the location and geographic boundaries of individual lots, tracts, parcels, blocks, subdivisions, open spaces, rights of way, easements and, if applicable, common areas for all or portions of the Community, as approved by the City or County, as amended from time to time and recorded in the Registry. The Declarant reserves the right to alter, modify or replat all or any portion of a Subdivision Plat as it deems desirable in its sole discretion.

1.56. "Subcontractor" means any first tier or further tier subcontractor of a Builder. Any Person shall cease to be considered a Subcontractor with respect to a Unit immediately upon occupancy of and residing in the Unit for residential purposes, notwithstanding that such person originally was recognized as a Subcontractor.

1.57. "Supplemental Declaration" means any instrument recorded by the Declarant or the Association in the office of the Registry for the purpose of: adding additional property to the Property; declaring Future Development Property or other property to be Lots, Units, Attached Townhomes, Collections or Common Areas; requiring the Association to perform Lot Landscaping for portions of the Property; requiring the Association to perform Exterior Maintenance for portions of the Property; withdrawing property from the Property; or changing the designation of certain property as Lots, Units, Attached Townhomes, Collections, Common Areas or Future Development Property.

1.58. "Tenant" means any Person who is physically present in or is entitled to occupy a Unit in exchange for consideration. Tenants shall not be Members of the Association, but shall, through the Owner, be entitled to certain rights and undertake certain obligations with respect to the Unit.

1.59. "Unit" means a Lot on which has been constructed an Improvement intended for use as a single residential dwelling unit and as used in this Declaration refers to an Attached Townhome.

1.60. "Working Capital Contribution" shall have the meaning set forth in Section 11.23.

1.61. Interpretation and Flexibility. In the event of any ambiguity or question as to whether any Person, property or Improvement falls within any of the definitions set forth in this Article 1, the determination made by Declarant during the Declarant Control Period in such regard (as evidenced by a recorded Supplemental Declaration stating same) shall be binding and conclusive. No provision of this Declaration, including any immunity, exculpation, or indemnification provision, shall relieve Declarant of its contractual obligations.

2. GENERAL PLAN OF DEVELOPMENT; PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO.

2.1. General Plan. Declarant is the owner of the Property. Declarant presently plans to develop all or a portion of the Property as a planned community comprised of residential, recreational and related uses.

2.2. Legal Description. The legal description of the Property is provided on Exhibit "A" attached hereto. Declarant hereby subjects the Property to this Declaration. The real property and Improvements thereto described in Exhibit "B" attached hereto are designated as "Future Development Property."

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

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

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

All Owners by acceptance of their deeds to or other conveyances of their Lots thereby

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

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

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

2.5. Withdrawal. Declarant reserves the right to amend this Declaration unilaterally at any time, without the consent of any Owner, for the purpose of removing any portion of the Property then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration for any reason. Any withdrawal of land not owned by Declarant shall not be effective without the written consent or joinder of the then-owner(s) of the withdrawn land.

2.6. Disclaimer of Implication. Only the Property described in Exhibit A hereto is submitted to the Governing Documents by this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required by Section 2.4 with respect to it, no other portion of the Community, if any, shall be in any way affected by the Governing Documents, and every such portion may be freely sold, conveyed or otherwise disposed of by their owner or owners free and clear of the Governing Documents.

2.7. Amendment. This Article 2 shall not be amended without the prior written consent of the Declarant, so long as Declarant (or any of its affiliates) owns any portion of the Community.

3. COMMON AREA PROVISIONS.

3.1. Common Areas. Certain portions of the Property are designated as Common Areas and are designed and intended for the common, non-exclusive use of the Declarant, Owners of all Lots, and all of the respective Permitted Users and invitees of the Declarant and the Owners, all as provided and regulated herein or otherwise by the Association. Declarant shall have the right, subject to obtaining all required governmental approvals and permits, to construct on the Common Areas such facilities as Declarant deems appropriate. The timing and phasing of all such construction shall be solely within the discretion of Declarant.

In the event that during the Declarant Control Period, Declarant determines that a particular portion of the Property is or is not a Common Area hereunder, such determination shall be binding and conclusive. It is specifically contemplated that the Common Areas may change from time to time in connection with changes in development plans and other factors not now known (including by increase, decrease or transfer to a governmental entity). Accordingly, references in this Declaration to the Common Areas shall be deemed to refer to the Common Areas as they may exist as of the relevant time.

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

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

3.2. Prior to Conveyance. The Owners shall have no right in or to any portion of the Community unless and until same is declared to be a Common Area in this Declaration or any Supplemental Declaration and actually constructed, completed, and conveyed to, leased by, dedicated to, and/or Maintained by the Association. The Declarant has no obligation or responsibility to construct or supply any such Common Area of the Association, and no party shall be entitled to rely upon any statement contained in this Declaration as a representation or warranty as to the extent of the Common Areas to be owned, leased by, or dedicated to the Association. So long as Declarant (or any of its affiliates) owns any portion of the Community, the Declarant shall retain the right to add to, delete from, and modify any of the Common Areas.

3.3. Conveyance or Dedication of Common Areas. Except for those areas which the Code requires be conveyed to the City or County, the Common Areas shall be conveyed to the Association, subject to this Declaration, drainage, greenway, utility, conservation and other easements, restrictions, reservations, conditions, limitations, and declarations of record at the time of conveyance, zoning, land use regulations and survey matters and the lien of real property taxes not yet due and payable. Title to Common Areas shall be conveyed to the Association at such time as may be determined by Declarant in its sole discretion, or when required by the Code or Act. The Association shall accept all Common Areas deeded to it and/or dedicated to it on any recorded Subdivision Plat of the Property, including any Improvements installed thereon by Declarant, whether or not the conveyance or dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Property. The Association shall be responsible for the Maintenance of all Common Areas (whether or not conveyed or to be conveyed to the Association) in a continuous and satisfactory manner provided, however, Declarant, in its sole discretion may elect, but shall not be obligated, to maintain such Common Areas in such manner as Declarant deems reasonable prior to its conveyance of such Common Area(s) to the Association.

The conveyance or transfer of Common Areas shall be "As Is." The Association shall be deemed to have assumed and agreed to pay all continuing obligations and services and similar contracts relating to the ownership, Maintenance and operation of the Common Area and other obligations relating to the Common Area imposed herein. The Association hereby agrees to indemnify and hold the Declarant harmless on account thereof. The Association hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature.

THE ASSOCIATION AGREES TO ACCEPT "AS IS" THE CONVEYANCE OF THE COMMON AREA AND THE PERSONAL PROPERTY AND IMPROVEMENTS APPURTENANT THERETO, WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION OR FITNESS OF THE COMMON AREA, OR PORTIONS THEREOF AND THE PERSONAL PROPERTY AND IMPROVEMENTS THEREON.

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

3.5. Taxes. It is intended that all real estate taxes assessed against the Common Areas owned or to be owned by the Association shall be (or have been, because the purchase prices of the Units have already taken into account their proportionate shares of values of the Common Area) proportionally assessed against and payable as part of the taxes of the Units within the Property. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment (subject to protest or appeal before or after payment) of the same, including taxes on any Improvements and any personal property thereon accruing from and after the date this Declaration or Supplemental Declaration designating the portion of the Property as Common Areas was recorded. Such taxes shall be prorated between Declarant (or the then Declarant-affiliated Owner thereof) and the Association as of the date of such recordation. Any taxes on the Common Areas shall be Common Expenses of the Association.

3.6. Assumption of Risk. Without limiting any other provision herein, each Person using any portion of the Common Areas accepts and assumes all risk and responsibility for liability, injury, loss or damage connected with use of such Common Areas. The Person also expressly indemnifies and agrees to hold harmless the Declarant, the Association and all employees, directors, representatives, officers, agents, members and partners of the foregoing, from any and all damages, whether direct or consequential, arising from or related to the Person's use of the Common Areas, including attorneys' fees and costs at trial, upon appeal or otherwise.

3.7. Negligence. The expense of any Maintenance, repair or construction of any portion of the Common Areas necessitated by the negligent or willful acts of an Owner, its Permitted User or other Person utilizing the Common Areas, through or under such Owner, shall be borne solely by such Owner and the portions of the Property owned by that Owner shall be subject to an Individual Assessment for that expense.

3.8. Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Areas or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition of the Common Areas or any part

thereof, unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

4. MEMBERSHIP, GOVERNANCE AND VOTING RIGHTS IN THE ASSOCIATION

4.1. Membership. Declarant and every Owner within the Property shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. The foregoing is not intended to include any Person that holds an interest merely as security for the performance of an obligation. Upon termination of ownership, an Owner's membership with respect to the transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot. The Owner of the Future Development Property shall be a Member of the Association but no votes shall be allocated to any portion of the Future Development Property unless and until such portion is declared to be Lots by the Declarant and Owner of the Future Development Property, if other than the Declarant.

4.2. Voting Rights. During the Declarant Control Period, Declarant shall have the power to appoint and remove the officers and members of the executive board without a vote of the Members. As to other matters, each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. The Association shall have two (2) classes of Members:

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

4.2.2. Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot owned by the Class B Member. The Class B membership shall cease and be converted to Class A membership on the expiration of the Declarant Control Period.

4.2.3. Eighty Percent Threshold. Notwithstanding anything herein to the contrary, for the sole purpose of exercising the rights specified in Section 5.3, below, Declarant shall, at all times during the Declarant Control Period, be deemed to have no less than an eighty percent (80%) voting interest in the Association.

4.2.4. Co-Owners. When more than one Person holds an interest in any portion of the Property, all such Persons shall be Members of the Association and may attend any meeting of the Association. The vote or votes for such portion of the Property shall be exercised as such Persons may determine among themselves, but in no event shall more votes be cast with respect to any portion of the Property than the number provided in this Declaration. If a Lot is owned by two or more co-owners and only one of the co-owners is present at a meeting of the Owners, the co-owner who is present is entitled to cast all the votes allocated to that Lot. If more

than one of the co-owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple co-owners. Majority agreement is conclusively presumed if any one of the co-owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other co-owners of the Lot. The President of the Association shall have the authority to require that such multiple Owners of a Lot file a certificate with the Secretary of the Association, signed by all of the Owners, designating the person entitled to cast the vote or votes for such Lot. Such certificate shall be valid until revoked by a subsequent certificate. If such certificate is not filed when required, the vote of such Owners shall not be considered in determining the requirements for a quorum or for any other purpose.

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

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

5. CERTAIN EASEMENTS AND RIGHTS

5.1. Owners' Rights of Use. Each Owner and Permitted User on the Property shall have a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right of ingress and egress to and from all Common Areas throughout the Property, subject to such rules and regulations as are allowed under the Governing Documents to be imposed by the Association and subject to suspension of use rights allowed in the Governing Documents; provided that no suspension of rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by §3-107.1 of the Act. But the right of access and support, the right to drain stormwater and the right to use Stormwater Facilities, private streets, private utility services provided to the Lot or Future Development Property through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

5.2. Limitations on Use of Common Areas. All rights of use and enjoyment in the Common Areas are subject to the following:

5.2.1. Easements over and upon the Common Areas in favor of the Association and its Members shall not be deemed to grant any easements or use rights which are not specifically granted elsewhere herein or in any other documents to which the Property (or any applicable portion(s) thereof) are now or hereafter made subject.

5.2.2. The right of the Association to:

5.2.2.1. Suspend the rights of an Owner and his Permitted Users to use the Common Areas (except legal access and drainage easements) as set forth in Subsection 11.16.6 for any period during which any applicable Assessment remains unpaid subject to the requirements of the Act, Article 13 and Subsection 11.16.6 of this Declaration.

5.2.2.2. Adopt and enforce rules and regulations governing the use of the Common Areas. Any rule and/or regulation so adopted by the Association shall apply until rescinded or modified.

5.2.3. The Declarant, Declarant's Permittees, any Builder and any Subcontractor shall have the right to construct, erect and build Improvements over such streets, drives, roadways, sidewalks, paths, walks and parking areas within or upon the Common Area. Notwithstanding the foregoing, as long as the Declarant or any of its affiliates owns any property in the Community, the Declarant, by Supplemental Declaration or other written instrument, may limit or restrict access to certain private streets, drives, roadways, walkways, paths and parking areas within or upon the Common Area.

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

5.2.5. Declarant shall have the right to convert Common Areas to Lots or Lots to Common Areas, in which event Declarant shall record an amendment to this Declaration in the Registry, together with such plats showing the boundaries of any such Lots or Common Areas so converted.

5.2.6. Association shall have the right to use funds of the Association to purchase, lease, finance, and otherwise acquire interests in real property and improvements for addition to the Community as Common Area and related amenities. Declarant and the Association shall further have the right to borrow funds in the name of the Association for such purposes, on such terms as may be determined by Declarant or the Board.

5.2.7. Association shall have the right to enter into agreements with other communities, neighborhoods, municipalities or other third parties for the use of amenities and facilities owned or operated by such third parties. Any cost to the Association with respect to such agreements may be included as a part of Common Assessments.

5.3. Right to Grant or Relocate Easements. The Declarant (as long as the Declarant or any of its affiliates owns any property in the Community) and thereafter the Association shall have the right to grant, convey and relocate easements, licenses or rights of way in, on, over or under the Common Areas for purposes consistent with the terms of this Declaration, including constructing, installing, erecting, operating or Maintaining thereon, therein and thereunder: (.1) streets, walks, trails, driveways, parkways, landscaping, parks and open space areas; (.2) lines;

cables, wires, conduits, facilities and other devices for the transmission of electricity, heating, cooling, water, sanitary sewerage, gas, television, telephone, voice or electronic data and other similar purposes; (.3) Stormwater Facilities; (.4) irrigation systems; (.5) any Improvements or uses for the general health or welfare of the Owners, for the Maintenance of the Property, or any portion thereof, or for the purpose of carrying out any provision of this Declaration; and (.6) any similar Improvements or uses not inconsistent with the use of such property pursuant to this Declaration as the Declarant shall deem necessary or desirable. Notwithstanding the foregoing, such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use and enjoyment of the Common Areas or the use of or ingress and egress to the Lots and Future Development Property for their intended purposes.

5.4. Association Easements over Lots and Units. The Association and its duly authorized agents, employees or independent contractors shall have an easement over each Lot and Unit as may be reasonably necessary to carry out any provision of this Declaration, including the Maintenance of Common Areas, performance of Lot Landscaping, Exterior Maintenance, Restoration of portions of the Property, enforcement of this Declaration, inspection (in a reasonable manner) in order to determine whether any Maintenance is necessary, performance of remedial work, and to the extent that the Association is obligated or authorized to perform any Lot Landscaping, Exterior Maintenance, or Restoration, to perform such Lot Landscaping, Exterior Maintenance, or Restoration provided that any such entry is during reasonable hours. Nothing contained in this Section shall be construed or interpreted to impose upon the Association the obligation to Maintain any of the Property except as expressly set forth in this Declaration. Neither the Declarant, the Association, nor any of their respective directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any portion of the Property or failure to Maintain the same. The Declarant, the Association, any Builder, any Subcontractor or any other authorized Person undertaking such Maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the Maintenance of any portion of the Lots, Units, Common Areas or Improvements thereon or portion thereof. In addition, the Association may, without notice, perform such emergency Maintenance as it may determine is necessary for the safety of any Person or to prevent damage to any property. The provisions of this Section shall not be deemed to create any right of the Association to enter upon the property of the Declarant.

5.5. Utility Easements. Utilities in the Common Areas for the service of the Property shall be installed underground except as otherwise permitted by Declarant.

5.6. Access for Governmental Agencies; Service and Emergency Easements. A non-exclusive, perpetual right of access over all Lots, and Future Development Property and Common Areas (including private streets, if any) on the Property is established for the benefit of governmental entities for installing, removing and reading utility meters, Maintaining and replacing utility facilities and lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and public or private mail and package delivery.

5.7. Easements for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Common Area reserved herein, there shall be, and the Declarant hereby reserves and grants for itself and all future Owners and the members of their household, Permitted Users, Builders, Subcontractors, invitees, contractors, Mortgagees and the Association,

a perpetual, non-exclusive easement for: (.1) vehicular traffic over all streets dedicated to the public use, if any, and private streets, roadways and alleys within or upon the Common Area; (.2) pedestrian traffic over, upon and across all sidewalks, walkways, walking trails and paths within or upon the Common Area; and (.3) vehicular parking on such portions of the Common Area as from time to time may be intended and designated for general parking purposes by the Board of Directors.

5.8. Encroachments; Easements. If (.1) any Improvement on the Common Area encroaches upon any Lot; (.2) any Improvement on any Lot encroaches upon the Common Area or another Lot; or (.3) any encroachment shall hereafter occur as a result of (a) construction of a Unit or Improvement to a Common Area; (b) settling or shifting of a Unit, Attached Townhome Building or Improvement to Common Area; (c) any alteration or repair to a Unit, Attached Townhome Building or Improvement to Common Area made by or with the consent of the Owner, Association or the Declarant, as appropriate, or (d) any Restoration of the Improvements to a Unit, Lot, Attached Townhome Building or Common Area (or any portion thereof) damaged by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit, Lot or Common Area, then, in such event, a valid easement is granted and shall exist for such encroachment and for the maintenance of the same so long as the Improvements causing the encroachment shall stand. This provision shall not entitle any Owner to intentionally construct Improvements which encroach upon any other portion of the Property and no easement for encroachment shall exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, Permitted User or the Association.

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

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

No Owner shall do anything within or outside its Unit that interferes with or impairs, or

may interfere with or impair, the provision of such utilities, telecommunications and security systems, and other services and systems and/or Stormwater Facilities or the use of easements for the foregoing purposes. The Association or its agent shall have a right of access to each Lot and Unit thereon to Maintain the pipes, wires, ducts, vents, cables, conduits and other facilities for utilities, telecommunications and security systems, and other services and systems and for Stormwater Facilities located on the Lot or elsewhere in the Property and serving an Attached Townhome Building, and to remove any improvements interfering with or impairing such facilities or easements reserved herein. Such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit. Except in the event of an emergency (which shall not require prior notice), entry shall be made on not less than one (1) day's notice (which notice shall not, however, be required if the Owner is absent when the giving of such notice is attempted).

5.11. Easements of Support. Whenever any structure included in the Common Areas adjoins any structure included in any other portion of the Property, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure.

5.12. Easements Appurtenant. The easements provided in Article 5 shall be appurtenant to and shall pass with the title to each Lot and, if applicable, title to Future Development Property.

6. FUNCTIONS OF THE ASSOCIATION.

6.1. Powers and Duties. Subject only to such limitations expressly set forth in the Governing Documents, the Association (.1) shall have all of the powers of a North Carolina not-for-profit corporation; (.2) shall have and may exercise any right or privilege given to it expressly in the Governing Documents; (.3) shall have and may exercise any right or privilege given to it by the Act or other law and (.4) shall have and may exercise every other right, privilege, power or authority necessary or desirable to fulfill its obligations under the Governing Documents.

6.2. Assessments. The Association shall have the power and duty to impose Assessments on the Owners of Lots with respect to which Assessments have commenced and to collect and enforce payment of such Assessments in accordance with the provisions of Article 11.

6.3. Maintenance of Other Property. The Association may Maintain other property which it does not own, including property dedicated to the public, (.1) if such Maintenance is required by this Declaration, any covenants binding the Property or any governmental order, (.2) if the Board of Directors determines that such Maintenance is necessary or desirable to cause compliance with this Declaration or to enhance the appearance or value of the Property, or (.3) if the Maintenance is requested by the Person responsible for such Maintenance and the cost of it is charged to such Person with security or other assurances for payment acceptable to the Board. As to any Maintenance performed by the Association pursuant to the Governing Documents as to property it does not own, the Association shall have the right to file, amend, release and terminate claims of lien pursuant to N.C. Gen. Stat. §44A.

6.4. Rules. The Association shall have the power to adopt, amend and enforce rules and regulations applicable within the Property with respect to any Common Areas and those portions of a Lot or Unit Maintained by the Association, and to implement the provisions of the Governing Documents. All rules and regulations adopted by the Association shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of the Property and Owners, Permitted Users, invitees and contractors. Notwithstanding the foregoing provisions of this Section, the Association shall not have the right or power to amend this Declaration or impose rules and regulations which limit or interfere with the rights of the Declarant under this Declaration. A copy of the rules, as they may from time to time be adopted, amended or repealed, shall be posted in a conspicuous place in the Association's office or may be mailed or otherwise made available to each Owner. Thereafter, the rules and regulations shall have the same force and effect as if they were set forth herein; provided, however, that the rules and regulations shall be enforceable only to the extent that they are consistent with the Governing Documents, and may not be used to amend any of such documents. If any Owner has actual knowledge of any rules and regulations, such rules and regulations shall be enforceable against such Owner as though notice had been given.

6.5. Borrowing. The Association has the right with the consent of the Declarant, as long as the Declarant or any of its affiliates owns any property in the Community, to borrow money for any purpose, subject to any limitation in this Declaration, to execute promissory notes, other documents evidencing or securing the indebtedness; provided that in the event the aggregate amount of principal indebtedness incurred by the Association in any Fiscal Year exceeds the greater of $250,000, as adjusted by the CPI, or forty (40%) percent of the Association's budget for the previous year, then such actions must be approved by Owners holding a majority of the voting interests present in person or by proxy at a duly called meeting of the Association at which a quorum is attained. In the event that the Association desires to mortgage, pledge or encumber any or all of its Common Area as security for money borrowed or debts incurred, then the Association must obtain the approval of eighty (80%) percent of the total voting interests of the Owners.

6.6. Marketing. The Association may provide a suitable and continuing program to promote the Community as a desirable residential community, including advertising, organizing and coordinating major events, advertising, placing articles in news media, and establishing uniform standards for promotional events.

6.7. Special Events. The Declarant and the Board of Directors shall have the right, but not the obligation, to grant special use rights, permits and privileges in the Common Area and Improvements thereon for special events, festivals, street fairs, valet parking and other usage. In addition, the Association shall have the right to enter into agreements with others for purposes relating to, the joint or cooperative marketing, advertising and promoting of the Community, regulating and providing parking within the Community, including special event parking, and other areas of interest to the Association and its Members.

6.8. Indemnification. The Association shall be obligated to and shall indemnify the Declarant and hold it harmless from all liability, loss, cost, injury, damage and expense, including attorneys' fees, arising with respect to any operations of or services provided by the Association hereunder.

6.9. Management. The Association shall have the power to hire a management company to operate the day to day affairs of the Association, and the fees, costs and expenses of the management company shall be a Common Expense. During the Declarant Control period, the Declarant shall have the authority to hire a management company on behalf of the Association.

7. MAINTENANCE OF UNITS, LOTS AND COMMON AREAS

7.1. Exterior of Improvements.

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

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

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

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

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

7.3. Remedies for Noncompliance.

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

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

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

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

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

7.5.2. In addition to the assessment and lien rights created hereby, the Association shall have, pursuant to N.C. Gen. Stat. §44A, the right to file notices of lien rights, claims of lien, amendments thereto, notices of termination and satisfactions as to any Lot for which it has the obligation to perform Lot Landscaping, Attached Townhome Services, or any

other Maintenance, or for which the Association is otherwise permitted or required to perform the Maintenance.

7.6. Standards for Maintenance; Restoration. All Maintenance and Restoration of Property, Units, Lots and the performance of Lot Landscaping and Attached Townhome Services shall be performed in a manner consistent with the general appearance of the developed portions of the Property and, as to Units, the portion of the Property in which the Unit is located, except a Builder Owner is excepted from the requirements of this Section. The minimum (though not sole) standard for the landscaping shall be the more stringent of the following: the Community standard or the general appearance of the Property (and the applicable portion thereof as aforesaid) as initially landscaped (such standard being subject to being automatically raised by virtue of the natural and orderly growth and maturation of applicable landscaping, as properly Maintained). The minimum (though not sole) standard for Maintenance and Restoration of Property, Units and Lots shall be the more stringent of the following: the Community standard or the prevailing standard for the portion of the Property in which the Unit is located taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness, in the judgment of Declarant or the ARB (as hereinafter defined). The Person responsible for Maintenance (the Association or Owner, as applicable) shall repaint, re-stain, or refinish, as appropriate, the exterior portions of his Improvements (with the same colors and materials as initially used or as approved by Declarant or the ARB) as often as is necessary to comply with the foregoing standards.

7.7. Other Maintenance Services. The Association may also assume Maintenance responsibilities with respect to any other Lots in addition to those that may be designated in this Declaration or in any Supplemental Declaration, except Lots owned by a Builder. This assumption of responsibility may take place by agreement with Owners of Lots or because, in the opinion of the Board of Directors, the level and quality of service then being provided is not consistent with the standards set forth in Section 7.6. All costs of Maintenance pursuant to this Section 7.7 shall be assessed as a Special Assessment or Individual Assessments only against the Lots to which the services are provided, unless specifically provided otherwise in a Supplemental Declaration. The provision of services in accordance with this Section shall not constitute discrimination within a class.

7.8. Common Area Maintenance. The Association shall at all times Maintain in good repair, operate, manage, insure, and replace as often as necessary the Common Areas and all Improvements situated on the Common Areas (upon completion of construction by Declarant or its affiliates, if applicable) in a neat, orderly and attractive manner consistent with the standards set forth in Section 7.6. Without limiting the generality of the foregoing, the Association shall assume all of Declarant's, its affiliates' (and its and their predecessors') responsibility to the City or County, its respective governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas, including roads and entry features, and shall indemnify Declarant and its affiliates and hold Declarant and its affiliates harmless with respect thereto.

7.9. Maintenance of Stormwater Facilities. If the Stormwater Facilities are not owned or Maintained by the City or County, the Association shall Maintain, operate, repair and replace the Stormwater Facilities in accordance with the Stormwater Facilities Manual (as defined in the Stormwater Covenant) as a Common Expense in order to provide drainage, water storage,

conveyance, or other stormwater management capabilities as required by the City or County.

7.10. Street Lighting. If the street lighting is not Maintained by the City or County, the Association shall Maintain street lighting (the term "street lighting" shall include light poles and appurtenances thereto, the light bulbs and wiring therefor) located within the Property and on nearby property and the cost of electricity therefor, and the cost and expense for the foregoing in such a case shall be a Common Expense, notwithstanding that such street lighting may be located on portions of the Property which are not owned by the Association or are not Common Areas. Without limiting the foregoing, Declarant shall also have the right to require that the Association enter into any lease agreement(s) for street lighting located within the Property and/or on nearby property with the applicable utility provider, and any such lease payments shall be a Common Expense.

7.11. Trash Collection. The Association may, but shall not be required to, provide solid waste removal services for disposal or collection of waste for the Community, which may include the placement of equipment for the storage or disposal of such material on Common Areas. Any costs related thereto shall be included as a Common Expense.

8. INSURANCE.

8.1. Insurance by Owners.

8.1.1. Each Owner of a Lot other than a Builder shall Maintain: (.1) property insurance on all Excluded Property (as defined herein) on its Lot insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, wind and hail, and flood; and the total amount of such insurance after application of any deductibles shall be not less than one hundred percent (100%) of the Restoration Costs of the insured property at the time the insurance is purchased and at each renewal date; (.2) 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 the Lot; and (3) insurance insuring personal property, additional living expense, and any other coverage obtainable to the extent and in the amount such Owner deems necessary to protect his own interest.

8.1.2. If the insurance described in subsection 8.1.1 is not reasonably available, the Owner promptly shall cause notice of that fact to be hand-delivered or sent by United States certified mail, return receipt requested, to the Association.

8.1.3. Insurance policies carried pursuant to subsection 8.1.1 shall provide that: (.1) the Association is an additional insured under the policy to the extent of the Association's insurable interest; (.2) the insurer waives its right to subrogation under the policy against the Association; (.3) no act or omission by the Association, unless acting within the scope of the Association's authority on behalf of the Owner, 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 the Association covering the same risk covered by the policy, the Owner's policy provides primary insurance.

8.1.4. An insurer that has issued an insurance policy under this section shall, upon written request, issue a certificate or memoranda of insurance to the Association, and any

such policy shall provide the issuing insurer may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association.

8.1.5. Any improvement on a Lot for which insurance is required under subsection 8.1.1 which is damaged or destroyed shall be Restored promptly by the Owner of such Lot unless: (.1) Restoration would be illegal under any State or local health or safety statute or ordinance; or (.2) the Owners of all Lots decide not to Restore by an eighty percent (80%) vote. The Owner of a Lot shall be responsible for the cost of Restoration of any Improvement on such Lot in excess of insurance proceeds received by such Owner. If an Owner fails to insure as required pursuant to the provisions of Section 8.1 and such insurance would have covered a loss had such insurance been purchased and obtained, the Association may undertake the Restoration of any Improvement on the Lot and assess the Owner the cost of all such repairs as an Individual Assessment.

8.2. Insurance by the Association. The Association shall, to the extent required by the Act, obtain and Maintain insurance covering the following, the cost of which will be a Common Expense:

8.2.1. Property insurance on the Common Areas insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and the total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property 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;

8.2.2. A blanket property insurance policy providing "special perils" coverage for the "Building Shell" of each Townhome Building located on the Property from time to time, in an amount not less than one hundred percent (100%) of the full insurable replacement value thereof (before application of reasonable deductibles). If "special perils" coverage is not available, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. Subject to the provisions of this Article 8, the Association may additionally obtain such other property insurance for the Townhomes as the Association may determine to be necessary or desirable.

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

8.2.2.2. Notwithstanding the foregoing, the Insured Townhome Property shall not include, and shall specifically exclude, the following ("Excluded Property"): all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by any Owner, Tenant, Guest or predecessor in interest; all paint, coating, covering, finish, millwork or other item applied to, attached to or suspended from the ceiling; all carpeting, tile, slate, wood, parquet, marble, flooring, paint, coating, covering, finish, millwork or other item of flooring; and all paint, tile, wallpaper, finishes, coatings, coverings, millwork or other item applied to, attached to or suspended from the walls or surfaces of a Townhome; all additions, alterations, betterments or improvements owned, supplied or installed by any Owner, Tenant, Guest or predecessor in interest; and all ventilation, air conditioner and heating equipment and duct work for ventilation, heating and air conditioning systems; all plumbing and electrical fixtures, all appliances; all water heaters and built-in cabinets and countertops, and window treatments within any Townhome; all electrical, plumbing and mechanical lines, chutes, flues, ducts, conduits, wires, pipes, chases, equipment or other apparatus serving only one Townhome; all mechanical, electrical or plumbing equipment located outside the exterior walls of a Townhome but located on a Lot; all Lot Landscaping; and all replacements of any of the foregoing.

8.2.3. Flood insurance covering loss or damaged to the Insured Townhome Property in the event it is located in Flood Zone A or V as defined by the Federal Emergency Management Agency ("FEMA"). The Association may obtain such insurance through any available governmental programs providing for such coverage.

8.2.4. General liability insurance covering loss or damage to Persons or property arising out of or in connection with the use, ownership or Maintenance of the Common Areas. Such insurance shall cover the acts or omissions of the Association, its officers, directors, employees, contractors, agents or invitees on or about or in connection with the Townhomes or adjoining driveways and walkways, and with a cross liability endorsement to cover liability of Townhome Owners as a group to any Townhome Owner, and vice versa. The coverage amount for such insurance shall be required by the Board, but with a minimum combined single limit liability of not less than $2,000,000 for each accident or occurrence.

8.2.5. If the insurance described in subsection 8.2 is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners. The Association may carry any other insurance it deems appropriate to protect the Association or the Owners.

8.2.6. Insurance policies carried pursuant to subsection 8.2 shall provide that: (.1) each Owner is an insured person under the policy to the extent of the Owner's insurable interest; (.2) the insurer waives its right to subrogation under the policy against any Owner or Permitted User; (.3) no act or omission by any Owner, unless acting within the scope of the 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 an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

8.2.7. Any loss covered by the property policy under subsection 8.2 shall be

adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Mortgagee. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the Restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely Restored, or the Association is dissolved.

8.2.8. An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for the Owner's own benefit.

8.2.9. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee or beneficiary under a deed of trust. Such policy shall provide the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and to each Owner, mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

8.2.10. Any portion of the Development for which insurance is required under subsection 8.2 which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (.1) the Association has been dissolved; (.2) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or (.3) the Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Common Areas is not repaired or replaced: (.1) the insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition compatible with the remainder of the Development; and (.2) the remainder of the proceeds shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Common Expense liabilities of all Owners. Notwithstanding the provisions of this subsection, §2-118 of the Act governs the distribution of insurance proceeds if the Community is terminated.

8.3. Other Insurance to be Maintained by the Association.

8.3.1. The Association shall maintain fidelity coverage against dishonest acts by the Association's officers, employees and others who are responsible for handling funds of the Association. If the Association contracts with another Person to receive and disburse the monies of the Association, then such Person shall have adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of this paragraph. Any such fidelity coverage shall name the Association as an obligee, shall be written in such amount as the Executive Board shall deem appropriate, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar term.

8.3.2. To the extent obtainable at reasonable cost, the Association shall maintain appropriate insurance to protect the Executive Board and officers of the Association from personal liability arising in connection with their duties and responsibilities in such capacities on behalf of the Association.

8.3.3. The Association shall maintain workers compensation with respect to its employees, if any, as required by law.

The Association may obtain insurance against such other risks as the Executive Board shall deem appropriate.

9. RESTORATION OF ATTACHED TOWNHOMES AFTER CASUALTY.

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

9.2. Restoration by Association. If an Owner fails to cause the removal of debris and Restoration of Improvements as required by Section 8.1.5, the Association shall provide written notice of such deficiency to such Owner. If the problem has not been remedied within a reasonable time (as determined by the Executive Board), the Association shall have authority to cause such Restoration to be performed, and any expenses incurred by the Association in connection therewith shall be charged to such Owner and shall be an Individual Assessment against such Owner's Lot.

9.3. Association's Rights. The rights granted to the Association in this Article in the event of any loss, damage or destruction of an Attached Townhome constitute reasonable protections of property values and aesthetic appearance of the Attached Townhomes, and each Attached Townhome Owner agrees to comply with such terms, conditions and procedures as Association may impose.

9.4. Restoration Costs. "Restoration Costs" means the cost of repairing, replacing, restoring or reconstructing all loss, damage or destruction to the applicable portion of the Property (including the deductible under any applicable insurance policies) or any part thereof, including all costs of adjusting the loss; inspections, investigations and reports as to the damage; permit and inspection fees, architectural and engineering fees; fees of the Association's Representative; demolition, removal and disposal fees; costs of securing and protecting the portions of the Property to be Restored; accounting fees and costs; and attorneys' fees and costs; construction costs, and the Association's fees and costs for reviewing the plans for the Restoration and holding and disbursing the insurance proceeds and other funds.

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

10.1. Attached Townhome Services. In order to maintain a uniform appearance and high standards of Maintenance, the Association shall perform the Attached Townhome Services for the Attached Townhomes owned by a non-Builder Owner, in a neat, orderly and attractive

manner consistent with the standards set forth in Section 7.6. The cost of performing the Attached Townhome Services shall be an Attached Townhome Expense, and the Owner of each such Townhome shall be obligated to pay the Attached Townhome Assessment for its proportionate share of the Attached Townhome Expenses allocated to the Collection in which its Unit is located. However, the Association shall be entitled to reimbursement from a non-Builder Owner of an Attached Townhome where the Attached Townhome Service is required as a result of the deliberate, negligent or intentional acts of the Owner or its Permitted Users.

10.2. Exterior Maintenance of Townhomes. The Association shall have the sole discretion to determine the time at which Exterior Maintenance for the Attached Townhomes shall take place, the manner, materials and color to be used, except as to Attached Townhomes owned by a Builder. If a non-Builder Owner materially modifies the exterior of his or her Attached Townhome, then the Association shall not be responsible for Maintenance of any modified portion of the Attached Townhome exterior however, the non-Builder Owner shall not be relieved of its obligation to pay the Attached Townhome Assessments.

10.3. Party Walls.

10.3.1. Repair and Maintenance Obligations. Wherever one Unit is separated from another Unit by a common, shared or party wall ("Party Wall"), the obligations of each Attached Townhome Owner with respect to its Party Walls shall be governed by this Section 10.3. Each Party Wall shall be the joint obligation of each of the Owners of the adjoining Attached Townhomes ("Party Wall Co-Owners"). Each Party Wall Co-Owner shall be responsible for the Maintenance of the surface portion of the Party Wall which is contained within its Attached Townhome. Any Maintenance and the like, including repairs to the paint, plaster or drywall or gypsum wall board on the surface portion of the Party Wall which is contained within an Attached Townhome, shall be the obligation of that Owner. Each Party Wall Co-Owner shall have the right to use the side of the Party Wall within the Owner's Lot and Attached Townhome in any lawful manner, including attaching structural or finishing materials to it; however, an Owner shall not create windows or doors or place heating or air conditioning equipment in the Party Wall without the consent of the other Party Wall Co-Owner. Any consent given to a Party Wall Co-Owner to create openings in the Party Wall shall be subject to the right of the other Party Wall Co-Owner to revoke its consent on sixty (60) days prior written notice and close up such openings and/or remove such heating or air conditioning equipment. The Party Wall Co-Owners shall be jointly responsible for the structure of the Party Wall; i.e., Maintenance and Restoration of concrete block, rebar, mortar, tie beam, and all other elements of the Party Wall.

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

10.3.3. Party Wall Damage. To the extent not inconsistent with the provisions hereof, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto. A Party Wall Co-Owner shall perform Restoration of its Party Wall whenever a condition exists which may result in damage or injury to Person or property if the Restoration work is not undertaken. The cost of reasonable

Repair or Maintenance of a Party Wall shall be shared by the Party Wall Co-Owners on each side of such Party Wall. If a Party Wall is destroyed or damaged by fire or other casualty, a Party Wall Co-Owner on either side of the Party Wall may restore it, and if the Party Wall Co-Owner on the other side thereafter makes use of the Party Wall, such other Party Wall Co-Owner shall contribute to the cost of restoration thereof in proportion to such use; provided that the forgoing provision shall not prejudice the right of any Party Wall Co-Owner to seek a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omission.

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

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

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

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

11. COVENANT FOR ASSESSMENTS AND OTHER AMOUNTS.

11.1. Obligation for Assessments. Each Owner, by execution of this Declaration or by

acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all Assessments and other charges required by this Declaration, including the following: (.1) Common Assessments; (.2) Attached Townhome Assessments; (.3) Special Assessments; (.4) Individual Assessments for any expense under the Code or this Declaration for which the Association becomes obligated to pay and pays on behalf of an Owner or otherwise is authorized by this Declaration; (.5) fines for violations of the provisions of this Declaration or other Governing Documents or Assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their household members, Tenants, Guests, agents or contractors; (.6) Working Capital Contributions; (.7) late payment charges, interest on unpaid Assessments, costs of collection, including court costs, service charges, and attorneys' fees as provided in the Act, and charges for dishonored checks, all as established by the Board from time to time; and (.8) all other Assessments and charges imposed or allowed to be imposed by this Declaration. No Unit shall be assessed separately from the Lot on which it is situated. Nothwithstanding the foregoing, Declarant or its predecessors or affiliates may exempt any Builder for all or any portion of any of the above Assessments and charges in its contract with such Builder or otherwise.

11.2. Purpose of Assessments. The Common Assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which the Common Assessment applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such Assessments may be used for payment of any Common Expenses as determined by the Board. The Attached Townhome Assessment primarily is for the purpose of funding the Attached Townhome Expenses of the Association for the Attached Townhomes, including monies allocated for reserve funds, for the Fiscal Year to which the Attached Townhome Assessment applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such Assessments may be used for payment of any Attached Townhome Expenses as determined by the Board.

11.3. Classes of Membership. The Declarant has the authority to create different classes of membership in the Association and to impose different levels of Assessments and other Assessments for different classes of membership pursuant to a Supplemental Declaration.

11.4. Amount of Assessments. Subject to any exemptions or limitations stated in this Declaration or otherwise granted by the Declarant, the Association is at all times empowered to levy Common Assessments against the Lots and the Owners of Lots within the Property for the payment of Common Expenses; to levy Attached Townhome Assessments against the Attached Townhomes and the Attached Townhome Owners within the Property for the payment of Attached Townhome Expenses and to levy such other Assessments as are authorized by this Declaration.

11.5. Budgets. All budgets of the Association shall be prepared and proposed in good faith and with the intent to cover all reasonably necessary Common Expenses and Attached Townhome Expenses for the applicable Fiscal Year of the Association, including reasonable reserves for replacement and deferred Maintenance. Prior to the beginning of each Fiscal Year, the Board shall adopt budgets for such Fiscal Year which shall estimate all of the Common Expenses and Attached Townhome Expenses of the Association during the Fiscal Year, including reserves.

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

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

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

The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessments against each Lot or Attached Townhome for each Assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, except as to emergency Assessments. The Association shall at that time prepare a roster of the Lots, the Owners thereof and the Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner or First Mortgagee. In the event no such notice of a new Assessment is given, the Assessment amounts payable shall be equal to one hundred fifteen (115%) percent of the amount payable for the last quarter of the previous Fiscal Year, until changed in the manner provided for herein.

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

11.6. Common Assessments. The Board of Directors shall assess all Lots for the actual and estimated Common Expenses incurred by the Association, which may include a reasonable reserve for capital repairs and replacements, all as may be determined from time to time by the Board of Directors in accordance with this Declaration. Unless this Declaration, a Supplemental Declaration or any other recorded instrument shall provide otherwise, the Owner of a Lot shall become obligated to pay the full amount of the Common Assessment commencing on the day the Declarant conveys the Lot to an Owner other than the Declarant. At the time that the budget for the Common Expenses is prepared by the Board as required by Section 11.5 above, the Board shall determine the amount of the Common Assessments that are applicable to each Lot for such Fiscal Year. In determining the amount of each Lot's Common Assessment, the Board may also consider the estimated income from Common Assessments on any additional Lots reasonably anticipated to be added to the Property by the Declarant during the Fiscal Year to which the

budget relates. Notwithstanding anything in this Declaration to the contrary, (i) the Declarant shall have no obligation to pay Common Assessments on any Lots it owns, (ii) the Declarant shall have the express right, in its sole discretion, to allow any Builder to pay a one-time assessment per Lot or no assessment pursuant to a separate contractual agreement ("Builder Dues"), in order to satisfy such Builder's obligation to pay Common Assessments on any Lot it purchase, and thereafter no Common Assessments shall be due with respect to such Lot until such Lot is conveyed to a consumer.

11.7. Special Assessments for Common Expenses. In addition to the Common Assessments on the Lots, the Board of Directors may assess, from time to time, Special Assessments to defray, in whole or in part, (.1) unbudgeted expenses or expenses in excess of the amounts budgeted for Common Expenses; (.2) expenses incurred by the Association for repair, replacement or reconstruction of any Improvements on any portion of the Common Areas or Association Property; (.3) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement on any portion of the Common Areas or Association Property. In the event that the amount of the Special Assessments for Common Areas payable in any one Fiscal Year in the aggregate exceeds one hundred (100%) percent of the Common Assessments (including reserves) allocated to such Lot for the previous Fiscal Year, then such Special Assessments shall require the vote or written consent of a majority of the Board and the vote of a majority of the voting interests of the Owners present in person or by proxy at a duly called meeting of the Association. No action authorized in this Section 11.7 shall be taken without the prior written consent of the Declarant as long as the Declarant or any of its affiliates owns any property in the Community. Notwithstanding anything in this Declaration to the contrary, neither the Declarant nor any Builder shall have the obligation to pay Special Assessments.

11.8. Attached Townhome Assessments. The Board of Directors shall assess the Attached Townhomes for the actual and estimated Attached Townhome Expenses incurred by the Association for the benefit of Attached Townhomes or Owners within a particular Collection, which may include a reasonable reserve for capital repairs and replacements, all as may be determined from time to time by the Board of Directors in accordance with this Declaration. Unless this Declaration, a Supplemental Declaration or any other recorded instrument shall provide otherwise, each Attached Townhome shall become obligated to pay the full amount of the Attached Townhome Assessment commencing on the day the Declarant conveys the Unit to an Owner other than the Declarant. Notwithstanding anything in this Declaration to the contrary, no Builder shall have the obligation to pay Townhome Assessments.

At the time that the budgets for Attached Townhome Expenses for each Collection are prepared by the Board as required by Section 11.5 above, the Board shall determine the amount of the Attached Townhome Assessments that are applicable to the Lots in such Collection for such Fiscal Year. In determining the amount of a Lot's Attached Townhome Assessments, the Board may also consider the estimated income from Attached Townhome Assessments on any additional Lots designated for Attached Townhomes which are reasonably anticipated to be added to the Property by the Declarant during the Fiscal Year to which the budget relates.

11.9. Special Assessments for Attached Townhome Expenses. In addition to the Attached Townhome Assessments, the Board of Directors may assess, from time to time, Special Assessments on the Attached Townhomes to defray, in whole or in part, (.1) unbudgeted

expenses or expenses in excess of the amounts budgeted for Attached Townhome Expenses; or (.2) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement to the Attached Townhomes in connection with Attached Townhome Services. No action authorized in the preceding sentence shall be taken without the prior written consent of the Declarant as long as the Declarant or any of its affiliates owns any property in the Community. In the event of a casualty or loss and the insurance proceeds are insufficient to pay the Restoration Costs or in the event the damage or loss resulted from an uninsured loss, then the Association may assess a Special Assessment against the Owners of the damaged Attached Townhomes in the same proportion which the Restoration Costs attributable to their Attached Townhomes bears to all Restoration Costs of the damaged Attached Townhomes. Notwithstanding anything in this Declaration to the contrary, neither Declarant nor any Builder shall have the obligation to pay Special Assessments for Attached Townhome Expenses.

11.10. Individual Assessments. Each Owner shall be liable to the Association for all damage to any portion of the Common Areas, Association Property or other Lots resulting from misuse, negligence, failure to Maintain or otherwise caused by the Owner, its Permitted Users or the Tenants, contractors, subcontractors, licensees, invitees, employees, directors, officers, household members or guests of either. The Association shall have the right to levy an Individual Assessment therefor against such Owner or Owners. The Association may also levy an Individual Assessment against an Owner to reimburse the Association for costs incurred in any enforcement action or in bringing any Lot or Unit into compliance with the Governing Documents. To the extent permitted by law, such Individual Assessment shall be a lien against the Lot as provided in Article 11 hereof and shall be subject to the provisions of the Act relating to notice, filing of a claim of lien, collection and enforcement of delinquent Assessments. Notwithstanding anything in this Declaration to the contrary, neither Declarant nor any Builder shall have the obligation to pay Individual Assessments. Notwithstanding the foregoing, to the extent a group of Units' use of a utility, including, but not limited to, water, is administered and/or paid by the Association, the cost of such utility applicable to an individual Unit within such group, as reasonably determined by the Association, shall be imposed against the Owner of such Unit as an Individual Assessment.

11.11. Future Development Property. No Assessments shall be imposed against any portion of the Future Development Property unless and until such portion of the Future Development Property is declared to be a Lot in a Supplemental Declaration by the Declarant and Owner of the Future Development Property, if other than the Declarant.

11.12. Due Dates. The Common Assessments and Attached Townhome Assessments shall be payable in advance in monthly installments, or, if so determined by the Board of Directors, in quarterly, semi-annual or annual installments. The Board shall have the right to collect Attached Townhome Assessments at more frequent intervals than the Common Assessments are collected. The Assessment amount (and applicable installments) may be changed at any time by the Board from that originally stipulated or subsequently adopted. The original Common Assessments and Attached Townhome Assessments for any Fiscal Year shall be assessed for the Fiscal Year (but may be reconsidered and amended, if necessary, at any time), but the amount of any revised Assessments to be assessed during any period shorter than a full Fiscal Year shall be in proportion to the number of months (or other appropriate installments) remaining in such Fiscal Year. The due date of any Special Assessments (whether

relating to a Common Area or Attached Townhomes) shall be fixed in the Board resolution authorizing such Assessment.

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

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

11.14. Determination of Default Budget and Default Assessments. Upon the failure of the Board of Directors to adopt a budget, the default budgets and default Assessments will be increased to one hundred fifteen (115%) percent of the then-current budgets and Assessments.

11.15. Certificate of Payment. The Association shall, within ten (10) business days after receipt of a written request from an Owner, Mortgagee or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the Assessments and other charges against a specified Lot have been paid. If such certificate states that an Assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

11.16. Monetary Defaults and Collection of Assessments.

11.16.1. Late Fees and Interest. If any Assessment is not paid within thirty (30) days after the due date, the Association shall have the right to charge the defaulting Owner a late fee of ten (10%) percent of the amount of the Assessment or Twenty ($20.00) Dollars,

whichever is greater, plus interest at the rate of 18% per year or the highest rate of interest allowed by the Act (whichever is lower) from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due twenty (20) days after written demand by the Association.

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

11.16.3. Effect of Non-Payment; Lien Rights. No Owner shall be exempt from liability for any Assessment for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area. All Assessments and other charges shall be established and collected as provided in this Declaration. All Assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorneys' fees, shall be charged on the Owner's Lot as provided in §3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of Superior Court of the County in the manner provided in §3-116(g), shall be a continuing lien upon the Lot against which such Assessment is made until paid in full. The Association shall be obligated to comply with all conditions precedent set forth in the Act to filing a claim of lien for Assessments. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. In the event a holder of a First Mortgage or other purchaser of a Lot obtains title thereto as a result of a foreclosure of a First Mortgage pursuant to a power of sale or judicial foreclosure, or by deed in lieu of foreclosure, such purchaser and its successors and assigns shall not be liable for the Assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each Assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorneys' fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the Assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the Assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such Assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid. Upon payment in full of all sums secured by the lien, the Person making the payment is entitled to a satisfaction of the lien.

11.16.4. Collection and Foreclosure. The Association may bring an action in its name to foreclose its lien for Assessments in the manner a mortgage on real property is foreclosed pursuant to a power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. If the debt consists solely of fines imposed by the Association or of service, collection, consulting or administrative fees authorized in this Declaration, then the Association may bring an action in its name to foreclose its lien for such Assessments by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes. The Association

may also bring an action at law against the Owner(s) personally obligated to pay the Assessments due the Association to recover a money judgment for such unpaid Assessments without waiving any claim of lien. The Association shall have such other remedies for collection and enforcement of Assessments as may be permitted by applicable law. All remedies are intended to be and shall be cumulative. The Association may pursue one or more of such remedies at the same time or successively. The Owner shall be liable to the Association for all costs and expenses incurred by the Association in connection with the collection of the Assessments due the Association, and the filing, administration, enforcement, or foreclosure of the Association's lien, including reasonable attorneys' fees and costs and costs of the action, and all sums advanced and taxes paid and payments made on account of superior Mortgages, liens or encumbrances by the Association in order to preserve and protect the Association's lien. In the event a judgment is obtained, such judgment shall include all amounts provided above. The Association shall also be entitled to attorneys' fees and costs in connection with any alternative dispute resolution or appellate proceedings. The Board is authorized to settle and compromise the Association's lien if the Board deems a settlement or compromise to be in the best interest of the Association.

11.16.5. Rental and Receiver. The Association shall be entitled to the appointment of a receiver to collect the rent (.1) if the Unit is leased during the pendency of the foreclosure; or (.2) if an Owner, any household member or Permitted User remains in possession of a Unit after the claim of lien against a Unit is foreclosed, and the court in its discretion requires the Owner to pay a reasonable rental for the Unit.

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

11.17. Collection of Assessments. The Association shall have the legal duty and

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

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

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

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

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

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

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

11.19.2. The Association must deliver written notice to the Owner of the Association's demand that the Tenant make payments to the Association.

11.19.3. The Association shall, upon request, provide the Tenant with written receipts for payments made.

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

11.19.5. If the Tenant paid rent to the Owner/landlord for a given rental period before receiving the demand from the Association and provides written evidence to the Association of having paid the rent within fourteen (14) days after receiving the demand, the Tenant shall begin making rental payments to the Association for the following period and shall continue making rental payments to the Association to be credited against the monetary obligations of the Unit Owner until the Association releases the Tenant or the Tenant discontinues tenancy in the Unit.

11.20. Use of Common Areas. In addition to the rights of collection of Assessments stated in this Article, any Person acquiring title to or any interest in a Lot as to which the Assessments are delinquent, other than Persons acquiring title by foreclosure of a First Mortgage pursuant to a power of sale or judicial foreclosure or by or deed in lieu of foreclosure, shall not be entitled to use, occupy, or lease such Lot or enjoy the Common Areas until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid.

11.21. Common Areas and Certain Other Property. The following property shall be exempt from payment of Assessments: Common Areas, parks and similar open spaces, land owned by or dedicated to the County or any other governmental entity and any land owned by a publicly-regulated utility company as long as such land is used for or in connection with the provision of utilities (exclusive of business offices, retail outlets and the like). In the event of any ambiguity or doubt as to whether any particular open space or other land is subject to assessment, the determination of the Declarant (or, if there is no Class B Voting Member, the Board of Directors of the Association) shall be final and conclusive (and not subject to later change unless the use of the property in question changes).

11.22. Declarant's Right to Fund Deficits; Credit for Overpayments. During the Declarant Control Period, Declarant may, but, except as it may be required to under a contract with a third-party, shall not be required to, fund any Operating Deficit. In the event the Declarant elects to fund the Operating Deficit, the Declarant, at its option, may fund it by any one or more of the following means: (.1) payment to the Association; (.2) payment directly to a Person providing the services or materials to the Association, or (.3) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant). Declarant may change its election from time to time upon ninety (90) days prior written notice to the Association.

11.23. Association Working Capital Fund. The Declarant shall establish in the name of the Association a fund ("Association Working Capital Fund") for the purpose of having funds

available for initial and non-recurring items, capital expenses, permit fees, licenses, utility deposits, advance premiums for insurance policies and coverages and other expenses for operation of the Association pursuant to this Declaration. At the time of closing or settlement of the initial sale of the Unit to a purchaser other than a Builder or an affiliate of Declarant, each Unit's working capital contribution, in an amount equal to two hundred fifty and 00/100 Dollars ($250.00) ("Working Capital Contribution"), shall be collected from the purchasing Owner of such Unit and transferred to the Association within ten (10) days. The Board shall have the right, in its sole discretion, to increase the amount of the Working Capital Contribution from time-to-time. The Association shall have a lien against the Unit in the event the Working Capital Contribution for the Unit is not received by the Association within ten (10) days after closing or settlement of such Unit as provided in Article 11 and subject to the provisions of the Act relating to notice, filing of a claim of lien, collection and enforcement of delinquent amounts due the Association. A Unit's Working Capital Contribution shall not be considered as advance payment of Common Assessments and Attached Townhome Assessments. Notwithstanding the foregoing, the Declarant shall have the right to use the Association Working Capital Fund to pay for Common Expenses and Attached Townhome Expenses of the Association during the Declarant Control Period. In the event the Declarant or purchasing Owner fails to satisfy its obligations under this Section 11.23, the defaulting party shall indemnify the Association for the amount of the Unit's Working Capital Contribution which such purchasing Owner failed to pay or which the Declarant failed to collect and transfer to the Association hereunder.

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

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

11.26. Subordination and Mortgagee Protection. Notwithstanding any of the provisions hereof to the contrary, the lien of any Assessment levied pursuant to this Declaration (and any late charges, interest, costs and attorney fees) shall be subordinate to, and shall in no way affect the rights of the holder of a first mortgage made in good faith for value received; provided, however, that such subordination shall apply only to Assessments, or installments thereof, which have become due and payable prior to the date of sale of such Lot pursuant to a foreclosure or the date of a deed in lieu of foreclosure. Such sale or transfer shall not relieve the mortgagee or the purchaser of a Lot at such sale from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment. Mortgagees are not required to collect Assessments on behalf of the Association. Failure to pay Assessments shall not constitute a default under any mortgage insured by VA/HUD.

12. CERTAIN RESTRICTIONS, RULES AND REGULATION

12.1. Applicability. The provisions of this Article 12 shall apply to all of the Lots and Common Areas and the use thereof but shall not apply to the Declarant or its designees.

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

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

12.4. Nuisances. No noxious, offensive or unlawful activity shall be carried on upon the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Owners. Notwithstanding the foregoing, construction, development and marketing activities of Declarant, Builders or Subcontractors shall not be considered noxious or offensive, or an annoyance or nuisance.

12.5. Temporary Structures. No structure of a temporary character, trailer, mobile home or recreational vehicle shall be permitted on any Lots at any time or used at any time as a residence, either temporarily or permanently, except by the Declarant, its affiliates, Declarant's Permittees, and, to the extent authorized by Declarant, any Builder or its Subcontractors, during construction.

12.6. Signs. No sign, poster, display or billboard of any kind shall be displayed to the public view on any Lot, entryways or outside walls of any Unit, any fences on the Property, any Common Areas, dedicated areas, or any vehicles within the Property, except for the following signs: (.1) any signs regardless of size used by the Declarant and their respective affiliates or as authorized by Declarant or ARB (in locations and in accordance with applicable design standards); (.2) one sign per Lot not to exceed 144 square inches indicating that the Unit is monitored by an alarm or monitoring service; or (.3) not more than two (2) "political signs" per Lot as defined in §3-122 of the Act, the maximum dimensions of any such sign shall not exceed 24 inches by 24 inches. Political signs may not be displayed on a Lot earlier than 45 days before the applicable election and must be removed not later than 7 days after the election day. No sign of any kind which shall be visible outside the Unit shall be permitted inside a Unit or on a Lot, except as authorized by Declarant or ARB (in locations and in accordance with applicable design

standards). So long as Declarant (or any of its affiliates) owns any portion of the Community, Declarant may authorize Declarant, its affiliates, Declarant's Permittees, and, to the extent authorized by Declarant, any Builder or its Subcontractors, to place signs on the Property in connection with construction, sales, leasing, resales and other marketing activities.

12.7. Pets, Livestock and Poultry. Only household pets may be kept in any Unit and shall be allowed to remain in the Unit only if such pet is (.1) permitted to be so kept by applicable laws and regulations, (.2) not left unattended on patios or terraces, (.3) not kept or maintained for commercial purposes or breeding, and (.4) generally, not a nuisance to Owners or Permitted Users of other Units or Lots. No reptiles, wildlife, livestock or poultry of any kind shall be kept on any Lot or any Common Areas. Any exception to the pet restrictions set forth in this Declaration must be approved by the Board, shall apply only to the specific pet and the justification for the exception and the Owner to which it applies must be set forth in writing and become a part of the official records of the Association.

All pets must be kept on a leash of a length that affords reasonable control over the pet at all times when outside the Unit. No household pets shall be permitted to leave excretions on any Common Areas, except areas designated by the Association, and Owners shall be responsible to clean up any such improper excretions. For purposes hereof, "household pets" means dogs, cats and other animals expressly permitted by the Association, if any. Nothing contained herein shall prohibit the keeping of fish or domestic (household type) birds, as long as the latter are kept indoors and do not become a source of annoyance to neighbors. By acceptance of a deed, any Owner who keeps or maintains (or whose Permitted User keeps or maintains) a pet within the Property agrees to indemnify and hold harmless Declarant and all other Owners from and against any loss, claim or liability of any kind or character whatsoever arising by reason of keeping or maintaining such pet within the Property. Pets shall also be subject to all applicable rules.

12.8. Commercial Trucks, Trailers, Campers and Boats.

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

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

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

12.9. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority, trash collection company or the Association (which may, but shall not be required to, provide solid waste removal services) for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All solid waste containers shall comply with the standards adopted by the Association (or the ARB) for such containers (the later to control over the former in the event of conflict).

12.10. Alleys. All alleys shall be used for ingress and egress only to the garages which they serve and for the furnishing of services by the Association, its agents, vendors or contractors to the Units and Common Areas. The alleys shall at all times be free from obstructions. No parking, stopping, recreational activities, dumping or storage shall be permitted in any alley. The speed limit for all vehicles using the alleys shall be twelve (12) miles per hour.

12.11. Sight Triangles. The Subdivision Plat identifies or may identify certain Lots and Common Areas as being subject to "site triangles" ("Sight Triangles"). As to any Lot or Common Area subject to a Sight Triangle (except when owned by a Builder), no sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two (2') feet and eight (8') feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists shall be placed within any area designated on a Subdivision Plat as a Sight Triangle or other similar designation. An easement is reserved over all Sight Triangles for the benefit of the Declarant, Association, Community and their respective agents and contractors for the purpose of removing any such obstruction. A person entering onto a Lot or Common Area pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or Owner of the Lot with respect to the obstruction removed from the Sight Triangle. It shall be the responsibility of the Association as to Common Areas or Owner as to his or her Lot, as soon as reasonably practicable following removal of any obstruction from the Sight Triangle, to restore the portion

of the Property previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

12.12. Seasonal or Holiday Decorations. Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be removed from each Unit within thirty (30) days after such holiday passes. The Declarant during the Declarant Control Period and thereafter the Board has the sole discretion to determine what is a reasonable period of time for seasonal or holiday decorations to exist after the holiday passes and its determination shall be final. The Board shall have the right to require an Owner or Permitted User to remove seasonal or holiday decorations which create a nuisance in the reasonable judgment of the Board.

12.13. Exterior Antennas, etc. No exterior antenna satellite dishes or similar equipment shall be installed on any Lot, Common Area or Improvement thereon, unless such antennae, satellite dishes and similar equipment are approved by the ARB and conform to the conditions and requirements imposed by the ARB. Such conditions and restrictions shall be reasonable, and approval shall not be unreasonably denied or delayed. No radio or shortwave operations of any kind shall be permitted to operate on any Common Areas or any Unit. The Declarant may erect an antenna or a master antenna or a cable television antenna for the use of all the Owners, and Declarant grants and hereby reserves easements for such purposes as more particularly set forth in Article 15. Notwithstanding the foregoing, to facilitate compliance with The Telecommunications Act of 1996, the following provisions apply to installation of DBS, MDS, ITFS, and LMDC dishes less than one (1) meter in diameter, and TVBS antennas:

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

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

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

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

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

12.16. Fences and Walls. The composition, location, color and height of any fence or wall to be constructed on any Lot is subject to the approval of the ARB. The ARB shall, among other things, require that the composition of any fence or wall be consistent with the material used in the surrounding buildings and other fences, if any. No chain link fences shall be permitted on any Lot or portion thereof, unless installed by Declarant, its affiliates, Declarant's Permittees, and, to the extent authorized by Declarant, any Builder, during construction periods or as otherwise approved by Declarant or the ARB.

12.17. Utility Connections. Permanent building connections for all utilities installed after the date hereof, including water, electricity, gas, telecommunications and television, shall be run underground from the proper connecting points to the structure in such a manner to be acceptable to the County and applicable utility. The foregoing shall not apply, however, to transmission lines, transformers and other equipment installed by public utility companies.

12.18. Off-Street Motor Vehicles. No motorized vehicle may be operated off of paved roadways and drives except as specifically approved in writing by the Declarant or Association for the purpose of Maintenance or similar purposes and except as operated by the Association, Declarant or their respective contractors, subcontractors or designees.

12.19. Additional Use Restrictions. The Board of Directors of the Association may adopt such additional use restrictions, rules or regulations, applicable to all or any portion of the Property. The Association may waive or modify application of those use restrictions which it has authority to enforce with respect to any Lot(s) or Unit(s) as the Board deems appropriate.

12.20. Exemption for Declarant and Builders . To enable the development of the Property as a fully occupied residential community, neither the Association, nor any Owner shall do anything to interfere with the activities of the Declarant or any Builder or its Subcontractors. For so long as the Declarant owns any property within the Community, and for one year thereafter, nothing in the Governing Documents shall be understood or construed to:

12.20.1. Prevent Declarant, its successors or assigns, or its contractors or subcontractors or any Builder or its Subcontractors, from doing on any property owned or controlled by Declarant, or its successors or assigns or any Builder, whatever they determine to be necessary or advisable in connection with the completion of the development of the Property, including the alteration of its construction plans and designs as Declarant deems advisable in the course of development. (All models or sketches showing plans for future development of the Property may be modified by the Declarant at any time and from time to time, without notice);

12.20.2. Prevent Declarant, its successors or assigns, or their respective contractors, subcontractors or representatives or any Builder or its Subcontractors, from erecting, constructing and Maintaining on any property owned or controlled by Declarant, or its successors or assigns or any Builder, such structures as may be reasonably necessary for completing said development and establishing the Property as a community and disposing of the same by sale, lease or otherwise;

12.20.3. Prevent Declarant, its successors or assigns, or its contractors or subcontractors or any Builder or its Subcontractors, from conducting on any property owned or controlled by Declarant, or its successors or assigns or any Builder, the business of developing,

subdividing, grading and constructing Improvements in the Property, or of disposing of Lots and/or Units by sale, lease or otherwise;

12.20.4. Prevent Declarant, its successors or assigns or any Builder, from determining in their sole discretion the nature of any type of Improvements to be initially constructed as part of the Property;

12.20.5. Prevent Declarant, its successors or assigns or its or their contractors or subcontractors or any Builder or its Subcontractors, from Maintaining such sign or signs on any property owned or controlled by Declarant, or its successors or assigns or any Builder, as may be necessary in connection with the operation of any of the Property owned or controlled by Declarant, or its successors or assigns or any Builder, and the sale, resale, lease or other marketing of Lots and/or Units;

12.20.6. Prevent Declarant, or its successors or assigns from filing Supplemental Declarations which modify or amend this Declaration, or which add or withdraw additional property as otherwise provided in this Declaration; or

12.20.7. Prevent Declarant from modifying, changing, re-configuring, removing or otherwise altering any Improvements located on the Common Areas.

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

13. COMPLIANCE AND ENFORCEMENT

13.1. Compliance by Owners. Every Owner, and its Permitted User, Tenant, Guest, invitee, officer, employee, contractor, subcontractor and agent shall comply with the Governing Documents. No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from its liabilities as an Owner under this Declaration and other Governing Documents.

13.2. Enforcement. Failure to comply with any of the Governing Documents shall be grounds for immediate action which may include an action to recover sums for damages, injunctive relief or any combination thereof.

13.3. Individual Assessments; Suspension of Rights. In addition to all other remedies and to the maximum extent lawful, the Board of Directors of the Association shall have the right to (.1) impose Individual Assessments for fines on an Owner for failure of an Owner or any of the other parties described in Section 13.1 to comply with this Declaration or with any rule or regulation, or (.2) suspend the rights of an Owner whose Assessments are more than 30 days delinquent; provided that no suspension of rights shall occur or Individual Assessments for fines shall be imposed without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by §3-107.1 of the Act.

13.3.1. Payment of Individual Assessments. Individual Assessments shall be paid

not later than fifteen (15) days after notice of the imposition or assessment of the fines.

13.3.2. Collection of Individual Assessments. As to Owners, to the extent no prohibited by law, Individual Assessments shall be treated as a lien for Assessments subject to requirements of the Act for perfecting a lien and the provisions of Article 11 for the collection of Assessments.

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

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

14. DEVELOPMENT REVIEW; GENERAL POWERS

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

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

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

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

shall proceed in the manner set forth in this Article.

14.2. Review of Proposed Construction. Subject to Section 14.6 below, no Unit, fence, wall or other structure or Improvement (including landscaping, basketball hoops, birdhouses, other pet houses, asphalting or other improvements or changes thereto of any kind) shall be commenced, altered, removed, painted, erected or Maintained on any Lot or Common Area, nor shall any addition, removal, change or alteration (including paint or exterior finishing) visible from the exterior of any Unit be made, nor shall any awning, canopy or shutter be attached to or placed upon outside walls or roofs of Units or other Improvements, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to, and approved in writing by the ARB. The ARB shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alteration, removal or addition contemplated thereby in the location(s) indicated will not be detrimental to the appearance of the Community as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The ARB may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARB may also issue rules or guidelines setting forth procedures for the submission of plans for approval. The ARB may require such detail in plans and specifications submitted for its review as it deems proper, including floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARB of any required plans and specifications, the ARB may postpone review of any plans submitted for approval. Upon such receipt, the ARB shall have forty-five (45) days in which to accept, accept with conditions or reject any proposed plans. If the ARB does not reject the plans and specification within such period, they shall be deemed approved.

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

14.3. Meetings of the ARB. The ARB shall meet from time to time as necessary to perform its duties hereunder. The ARB may from time to time, by resolution unanimously adopted in writing, designate a ARB representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARB, except the granting of variances or exemptions from the requirements of this Article 14. In the absence of such designation, the vote of any two (2) members of the ARB shall constitute an act of the ARB.

14.4. No Waiver of Future Approvals. The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval.

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

14.5.1. Upon the completion of any work for which approved plans are required

under this Article, the Owner shall give written notice of completion to the ARB.

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

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

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

14.6. Builder Exemption. As to any Builder, Declarant or its predecessors or affiliates may provide, in a contract with the Builder or otherwise, blanket exemption from the provisions of this Article 14 or blanket approval of construction activities, site plans, general housing styles or finishes which may then be constructed or performed on any Lot without the need for additional written approvals of, or the submission of, specifications, exterior color and finish, landscape plan, site development or any other matter otherwise required for submission or payment of any fees to the ARB or the Association. Once granted, such blanket approval shall be irrevocable and binding on the ARB and Association as to any Lots owned by Builder or subject to any contract to purchase or option to purchase of Builder. Once blanket approval is granted, a Builder shall not be obligated to provide any further submittals nor obtain any other approvals from, or pay any fees to, the Association, Declarant, Board or ARB.

15. ADDITIONAL SPECIAL DECLARANT RIGHTS

15.1. General. Notwithstanding any other provision in this Declaration to the contrary, the Declarant and each affiliate of the Declarant shall have, in addition to the other Special Declarant Rights set forth in the Act or the Governing Documents, the rights described below in Subsections 15.1.1 through 15.1.8 so long as the Declarant owns any portion of the Community:

15.1.1. Effectuation of General Plan of Development. The right to modify the Site Plan and Subdivision Plat, execute all documents and take all actions affecting any portion of the Property owned or controlled by it which, in its sole discretion, are desirable or necessary to

effectuate or facilitate the development of the Community.

15.1.2. Platting. The right to plat, re-plat, subdivide and re-subdivide any portion or portions of the Property owned or controlled by it.

15.1.3. Development Planning. The right to determine, in its sole discretion, the type of Improvements, if any, to be constructed on any portion of the Property owned or controlled by it and the Common Areas and the right to revise its plans concerning such Improvements. Declarant may exempt any Builder from all or any portion of the provisions of this Article 15 in its contract with such Builder or otherwise.

15.1.4. Construction. The right to construct and Maintain, on any portion of the Property owned or controlled by it or the Common Areas, any Improvements it considers desirable; and the right to construct and Maintain sales, marketing, leasing, management or other general business offices, temporary construction offices, and storage facilities. The rights shall include a right of ingress and egress by any and all types of vehicles and equipment to, through, over and about the Common Areas during whatever period of time the Declarant or Declarant's Permittees is engaged in any construction or improvement work on or within the Community as well as an easement for the parking and storage of materials, vehicles, tools, equipment and the like which are being utilized in such work.

15.1.5. Marketing. The right to sell, lease, resell, market, promote, operate, and manage existing and planned Units (and portions thereof), which right shall include the right to construct and Maintain marketing, sales and leasing offices and models and to be open for business seven (7) days per week on any portion of the Property owned or controlled by it and the Common Areas, to solicit and receive the visits of unlimited numbers of prospective purchasers and Tenants (all of whom shall have the right while visiting to use parking spaces on the Common Areas), and to place signs, lighting, flags, banners and other promotional devices on any portion or portions of the Property owned or controlled by it or the Common Areas without regard to the size or aesthetic appeal of such signs or devices.

15.1.6. Alteration of Common Areas. The right, without the vote or consent of the Association or Owners, to expand, alter or add to all or any part of the Common Areas or any Improvements thereon.

15.1.7. Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Governing Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Registry. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C.G.S. §47C-3-104

15.1.8. Use of Common Areas. Anything to the contrary in this Declaration notwithstanding, as long as the Declarant or any of its affiliates owns any property in the Community, the Declarant and the Declarant's Permittees shall have the right to non-exclusive use of the Common Areas, without charge, for sales, leasing, promotions, special events, signage, display, access, ingress, egress, construction and exhibit purposes during the period of construction, development, sale or lease of any land, Lots or Units owned by Declarant and its

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

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

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

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

16.1. Residential Use Only. Use and occupancy of the Units is restricted to residential uses only. These use restrictions shall not be construed in such a manner as to prohibit an Owner or Permitted User from maintaining his personal professional library, keeping his personal business or professional records or accounts or handling his personal, business or professional telephone calls, electronic transmissions or correspondence in and from his Unit to the extent permitted by applicable law; provided such activities do not interfere with the quiet enjoyment of other Units; and these use restrictions shall not be construed in such a manner as to prohibit the uses provided in Section 12.2. Notwithstanding the foregoing, the Declarant, its successors and assigns and Builders, shall be permitted to use Units which such entity owns or leases as model apartments, as sales, leasing, development, marketing, construction, management or other offices.

16.2. Leased Units. An Owner may lease his Unit, provided that any such lease must be for not less than twelve (12) months. Only entire Units may be leased. No subleases or assignments of leases of a Unit are allowed. All leases shall be in writing and shall contain the following provisions:

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

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

16.2.3. The Board of Directors shall have the power and authority to terminate the lease and/or bring proceedings to evict the Tenant in the name of the Owner if either the Tenant

defaults under the lease or the Association forecloses a lien for unpaid Assessments on the Unit.

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

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

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

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

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

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

17. ADDITIONAL RIGHTS OF ELIGIBLE MORTGAGEES.

17.1. Books and Records. Any Eligible Mortgagee shall have the right, during normal business hours, to examine copies of the Governing Documents, and the books and records of the Association and the financial statements of the Association. Furthermore, a copy of the annual financial statement and report of the Association shall be furnished to an Eligible Mortgagee upon reasonable written request. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

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

17.2.1. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

17.2.2. Association's meetings and attend such meetings;

17.2.3. Any alleged default by any Owner whose Lot is subject to a First Mortgage it holds or has insured or guaranteed, if the default is not cured within sixty (60) days after notice of the default to the Owner;

17.2.4. Any condemnation or casualty loss which affects a major portion of the Common Areas; and

17.2.5. Any proposed action by the Association which would require hereunder the consent or approval of a specified percentage of Eligible Mortgagees.

17.3. Other Mortgagee Rights. . Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted Common Expenses to other than monthly or quarterly in advance without the consent of any First Mortgagee, such consent not to be unreasonably withheld, conditioned, or delayed. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

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

17.4.1. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer Common Areas or any other real property which is owned, directly or indirectly, by the Association. The granting of easements or relocation of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this subsection.

17.4.2. Change the method of determining the obligations, Assessments, dues or other charges which *may* be levied against a Unit;

17.4.3. Fail to maintain property insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred (100%) percent of the full insurable replacement value;

17.4.4. Use the proceeds of any property insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged Improvements; or

17.4.5. Use the proceeds of any property insurance policy covering losses to any part of any Attached Townhomes in accordance with the terms and provisions of Article g of this

Declaration for other than the repair, replacement or reconstruction of the damaged Improvements, if so applicable.

17.5. Payment of Taxes and Insurance Premiums. Eligible Mortgagees, jointly or singularly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay delinquent premiums on property insurance policies or secure new property insurance coverage upon the lapse of a policy covering the Common Areas or Association Property. The Eligible Mortgagees making such payments shall be owed immediate reimbursement therefor by the Association.

17.6. Enforcement. The provisions of this Paragraph 17 are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

18. AMENDMENTS/TERMINATION. This Declaration, Articles and Bylaws shall be amended as follows:

18.1. By the Declarant. During the Declarant Control Period, this Declaration, the Articles and Bylaws may be amended, changed or added to at any time and from time to time by an instrument executed by Declarant and recorded in the Registry without the requirement of the consent of the Association or any of the Owners or their mortgagees; provided, however, the Association shall, forthwith upon request of the Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as the Declarant shall, from time to time, request.

18.2. By the Association. After the Declarant Control Period, this Declaration, the Articles and Bylaws may be amended, changed or added to at any time and from time to time by the affirmative vote or written consent of the Class A Members (through their respective Voting Members) having not less than sixty-seven (67%) percent of the voting interests of Class A Members and, to the extent not prohibited by law, the affirmative vote or written approval of the Declarant so long as the Declarant is a Member.

18.3. Scrivener's Errors. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by the Declarant alone so long as the Declarant owns any portion of the Community, and thereafter by the Board without the need for approval of the Owners.

18.4. Limitations on Amendments Affecting Declarant Rights. No amendment shall be permitted which changes the rights, privileges and obligations of the Declarant or any affiliate of the Declarant respectively without the prior written consent of whichever of them is affected. Nothing contained herein shall affect the right of the Declarant to make whatever amendments or Supplemental Declarations are otherwise expressly permitted hereby without the consent or approval of any Owner or Mortgagee, except as otherwise required by the Act.

18.5. Amendments Required by Secondary Mortgage Market. Notwithstanding anything herein to the contrary, the Declarant shall have an absolute right to make any amendments to this Declaration (without any other party's consent or joinder including the Association or any Owners) that are requested or required by or necessitated by a change in the guidelines of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan

Mortgage Corporation ("Freddie Mac"), U.S. Department of Housing and Urban Development ("HUD") and U.S. Department of Veterans Affairs ('VA"), the Government National Mortgage Association, or any other governmental, quasi-governmental or government-chartered entity which owns or expects to own one or more Mortgages on Lots or portions of the Property within the Community or to insure or guarantee the payment of one or more such Mortgages or that are requested or required by any institutional First Mortgagee to enhance the salability of its Mortgages on Lots or portions of the Property to one or more of the foregoing.

18.6. Mortgagee's Consent. In addition to and not in limitation of Section 17.3, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees or make any materially adverse change in the sections hereof entitled "Insurance for Common Areas and Attached Townhomes" or "Restoration of Attached Townhomes after Fire or Other Casualty" unless a majority of the Eligible Mortgagees whose Mortgages encumber Attached Townhomes (based on the original principal amount of the Mortgages held by the Eligible Mortgagees) shall join in the amendment. Except as specifically provided herein, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of any amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld or delayed. Whenever the consent or approval of an Eligible Mortgagee or other mortgagee is required by the Governing Documents, or any applicable statute or law to any action of the Association or to any other matter relating to the Association, the Board, or by the Governing Documents, the Association shall request such consent or approval of such Eligible Mortgagee or other mortgagee by written request sent by certified mail, return receipt requested. Any Eligible Mortgagee or other mortgagee receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested in writing within sixty (60) days after the Eligible Mortgagee or other mortgagee receives such request. The response of the Eligible Mortgagee or other mortgagee must be sent by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association) and the response must be received by the Association. If such response is not timely received by the Association, the Eligible Mortgagee or other mortgagee shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by a majority of the Directors, the President or Secretary of the Association, which affidavit, where necessary, may be recorded in the Register's Office for the County. Such affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained.

18.7. Effective Date. Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment.

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

18.9. Termination. The Community may be terminated and the Property removed from the provisions of the Act only by the vote of the Owners to which at least eighty percent (80%) of the votes in the Association have been allocated, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, and as evidenced by execution of a

termination agreement, or ratification thereof, by the requisite number of Owners. The termination shall comply with the requirements of N.C.G.S. §47C-2-118, and must be recorded in the Office of the Register of Deeds for Durham County before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Property shall be as provided in N.C.G.S. §47C-2-118.

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

20. GENERAL PROVISIONS

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

20.2. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the Person who appears as Member or Owner on the records of the Association at the time of such mailing. It shall be the duty of each Owner to keep the Association advised of his name and addresses and any changes therein.

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

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

20.5. Conflict. The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, any Supplemental Declaration or any other Governing Documents. In the event of a conflict between any of the Governing Documents, the following order of precedence shall apply: First, this Declaration (except as to matters of compliance with the North Carolina Nonprofit Corporation Act, and the Act, in which event the Act shall control),

Second, Articles of Incorporation of the Association; Third, Bylaws of the Association; Fourth, rules and regulations of the Association.

20.6. Effective Date. This Declaration shall become effective upon its recordation in the Registry.

20.7. Standards for Consent. Approval, Completion, Other Action and Interpretation. Whenever the Governing Documents shall require the consent, approval or other action by the Declarant or its affiliates, Association or Architectural Review Board, such consent, approval or action may be withheld in the sole and reasonable discretion of the party requested to give such consent or approval or take such action. All matters required to be completed or substantially completed by the Declarant or its affiliates, Association or ARB shall be deemed so completed or substantially completed when such matters have been completed or substantially completed in the reasonable opinion of the Declarant, Association or ARB, as appropriate. As to matters relating to the Common Areas or the Association, the Governing Documents shall be interpreted by the Board of Directors and an opinion of counsel of the Association rendered in good faith that a particular interpretation is not unreasonable shall establish the validity of such interpretation.

20.8. Easements. If any easement provided for in this Declaration fails because at the time of creation there may be no grantee having the capacity to take and hold such easement, then any such grant of easement shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original parties to whom the easements were originally to have the benefit of such easement. The Owners hereby designate the Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein.

20.9. CPI. Whenever a specific dollar amount is recited in Governing Documents, unless limited by law or by the specific text hereof or unless held to be unconscionable, such amounts shall be increased from time to time by application of a nationally recognized consumer price index using the date of recordation of this Declaration as the base year. The index used shall be that published by the United States Department of Labor, Bureau of Labor Statistics, designated as "Consumer Price Index, all urban consumers, United States, 1982-84 = 100, all items". If the Bureau of Labor Statistics shall change the method for determining the consumer price index or in the event the Bureau of Labor Statistics shall cease to publish said statistical information and it is not available from any other source, public or private, then the Board shall choose a reasonable alternative to compute such increases.

20.10. Attorneys' Fees; Enforcement Costs. Unless limited by the Act, in the event that any legal action or other proceeding is brought for the enforcement of the Governing Documents, including because of any Assessments, fines, or any alleged dispute, breach, default or misrepresentation in connection with any provisions of the Governing Documents, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

20.11. Intentionally Reserved. .

20.12. Intentionally Reserved. .

20.13. Intentionally Reserved. .

20.14. Principles of Interpretation and Definitions. In this Declaration, unless the context requires otherwise: (.1) the singular includes the plural, and the plural includes the singular; (.2) the pronouns "it", "its", "he", "his", "she", "her", "they" and "their" include the masculine and feminine; (.3) references to contracts and agreements shall be deemed to include all amendments thereto; (.4) references to an "Article", "Section", "section", or "paragraph" shall mean an article or section of this Declaration; (.5) headings and titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Declaration; (.6) the word "shall" is mandatory; and (.7) all exhibits, attachments, or documents attached or referred to in this Declaration are incorporated by reference as if fully set forth herein.

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

DECLARANT:

CREEKSIDE COMMONS DEVELOPERS, LLC,
a North Carolina limited liability company,

By: _____
Jeffrey R. Smerko,
Vice President

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that the following person personally appeared before me this day, and acknowledged to me that he voluntarily signed the foregoing Declaration for the purpose stated therein and in the capacity indicated: Jeffrey R. Smerko, Vice President of Creekside Commons Developers, LLC, a North Carolina limited liability company.

Date: 11-21-, 2018

Laura B. Glasgow
Official Signature of Notary

(Official Seal)

Laura B. Glasgow, Notary Public
Printed or typed name

My Commission Expires: 4-18-20

Exhibit "A"

Legal Description of Property

ALL THAT TRACT OR PARCEL OF LAND lying and being in Triangle Township, Durham County, North Carolina, and being more particularly described as follows:

Beginning at a point in the northern right-of-way of Ephesus Church Road (SR1114) and being the southwest corner of the Bobby V. Hunt parcel (PIN 0709-03-13-6421); thence along the north right-of-way of Ephesus Church Road, North 88 degrees, 26 minutes, 45 seconds West, 63.18 feet to a point; thence North 51 degrees, 06 minutes,44 seconds West, 8.24 feet to a point in the east right-of-way of Weston Down Drive; thence with said right-of-way, North 51 degrees, 06 minutes,44 seconds West, 26.39 feet to a point; thence North 01 degrees, 33 minutes, 15 seconds East, 135.59 feet to a point; thence along an arc to the left with a radius of 225.00, feet an arc distance of 153.82 feet (with a long chord of North 18 degrees, 01 minutes, 50 seconds West, 150.84 feet) to a point; thence North 37 degrees, 36 minutes, 55 seconds West, 118.50 feet to a point in the west right-of-way of a 30' City of Durham Sanitary Sewer Easement as per Plat Book 160 Page 381; thence with the west right-of-way of the sanitary sewer easement the following courses and distances: North 44 degrees, 16 minutes, 17 seconds East, 196.37 feet; North 28 degrees, 17 minutes, 48 seconds East, 380.90 feet; North 20 degrees, 28 minutes, 02 seconds East 249.45 feet; North 27 degrees, 42 minutes, 37 seconds East, 401.03 feet; North 28 degrees, 18 minutes, 35 seconds East, 22.53 feet; thence, crossing the sanitary sewer easement, North 89 degrees, 56 minutes, 29 seconds East, 192.50 feet to a point; thence North 31 degrees, 41 minutes, 02 seconds East, 233.87 feet; thence North 02 degrees, 05 minutes, 42 seconds West, 49.62 feet to a point in the southwest right-of-way intersection of Randall Road, a 60' public right-of-way and Davenport Road, an un-opened 60' public right-of-way; thence with the south right-of-way of Davenport Road, North 79 degrees, 58 minutes, 12 seconds East, 88.99 feet to a point; thence along an arc to the right with a radius of 1477.66 feet an arc distance of 136.46 feet (with a long chord of North 82 degrees, 36 minutes, 57 seconds East, 136.41 feet) to a point; thence North 85 degrees, 15 minutes, 41 seconds East, 2.03 feet to a point; thence leaving the right-of-way of Davenport Road, South 18 degrees, 12 minutes, 54 seconds West, 1108.66 feet to a point, the northwest corner of Tract 3 and the northeast corner of Tract 2; thence with the north line of Tract 3, South 88 degrees, 34 minutes, 46 seconds East, 381.64 feet to a point, the northwest corner of the Ella Woods Parcel (PIN 0709-03-23-5685); thence with the west lot line of the Ella Woods parcel South 03 degrees, 37 minutes, 06 seconds West, 695.89 feet to a point in the northern right-of-way of Ephesus Church Road (SR 1114) said point being South 32 degrees, 19 minutes, 34 seconds West, 1636.67 feet from the NCGS monument "FARR", said point being the southwest corner of the Ella Woods parcel; thence with the north right-of-way of Ephesus Church Road, along an arc to the right with a radius of 4147.15 feet an arc distance of 401.38 feet (with a long chord of South 87 degrees, 19 minutes, 39 seconds West, 401.23 feet) to a point, the southeast corner of Tract 2; thence continuing with the northern right-of-way of Ephesus Church Road , along an arc to the right with a radius of 4147.15 feet an, arc distance 105.23 feet (with a long chord of North 89 degrees, 10 minutes, 22 seconds West, 105.22 feet) to a point; thence continuing along the north right-of-way of Ephesus Church Road , North 88 degrees, 26 minutes,45 seconds West, 319.29 feet to a point, the southeast corner of the Bobby V

Hunt parcel; thence with the east lot line of the Hunt parcel North 04 degrees, 56 minutes, 53 seconds East, 274.33 feet to a point, the northeast corner of the Hunt parcel; thence with the north lot line of the Hunt Parcel, North 88 degrees, 38 minutes, 29 seconds West, 100.98 feet to a point, the northwest corner of the Hunt Parcel; thence with the west lot line of the Hunt parcel, South 04 degrees, 56 minutes, 53 seconds West, 273.98 feet to a point, the point and place of beginning and containing 26.821 acres, more of less and being Parcels K , L, and M on a plat recorded in Plat Book 170, Page 34, Durham County Registry.

Said tract or parcel containing 26.821 acres, more or less, being more particularly shown on that certain ALTA/NSPS Land Title Survey for Creekside Commons Developers, LLC, prepared by Holland Land Surveying, bearing the seal and certification of James H. Holland, Jr., PLS, License No. L-2680, dated July 16, 2018, which is incorporated herein by this reference.

Exhibit "B"

Future Development Property

Any real property located within 5,000 feet of any boundary of the Property.

Exhibit "C"

City of Durham Mandated Stormwater Provisions.

Obligations Regarding Stormwater Facilities

The Property includes one or more stormwater management facilities (hereafter "Facility/ies") that is/are the perpetual responsibility of the Association. Such Facilities are the subject of a Stormwater Facility Agreement and Covenants ("Stormwater Agreement") between Declarant, the Association, and the City of Durham ("the City") that is binding on the Association. The Stormwater Agreement is recorded at DB____Page____, Durham County Register of Deeds. The Property subject to that Stormwater Agreement is the "Property" referred to in this Article. The Stormwater Facilities must be maintained in accordance with City Requirements, which include all ordinances, policies, standards, and maintenance protocols and in accordance with the recorded Stormwater Agreement. In particular the City's current "Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham" (available at the time of recording this document at http://durhamnc.gov/DocumentCenter/View/2239 and the operation and maintenance manual prepared specifically for the Facility/ies contain requirements that apply to the Association's Facilities.

Nothing in the remaining Articles of these Restrictive Covenants filed by Declarant as part of this Declaration or any subsequent modifications of this Declaration may reduce the Association's or Lot Owners' obligations with regard to the Facility/ies. Such additional covenants may increase the obligations or provide for additional enforcement options.

The Stormwater Facility/ies and their location are as follows:

i. One wet detention pond (WP1) designed to have a drainage area of 6.45 acres, a design storm surface area of 11,293 square feet and a design storm storage volume of 9,736 cubic feet; and

ii. One wet detention pond (WP2) designed to have a drainage area of 8.73 acres, a design storm surface area of 18,241 square feet and a design storm storage volume of 22,204 cubic feet.

In addition to the above obligations, the Association's obligations with regard to the Facilities are:

1. **Inspections/Routine Maintenance**. In accordance with City Requirements, the Association shall cause the Facility/ies to be inspected i) annually; and, ii) after major storm events that cause visual damage to the Facility; and iii) upon notification from the City to inspect. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect certified by the City who shall document those things mandated under City Requirements. The inspection shall occur annually during the month in which the Facility/ies as-built certification was accepted by the City, which month may be determined through contact with the City of Durham Department of Public Works, Stormwater Division. The inspection shall be reported to the City as further described below.

2. **Repair and Reconstruction.** The Association shall repair and/or reconstruct the Facility/ies as it determines is necessary, and, at a minimum, as set forth in City Requirements or as directed by the City to allow the Facility/ies to function for its intended purpose, and to its design capacity. The Association shall provide written reports regarding major repair or reconstruction to the City in accordance with City Requirements.

3. **Stormwater Budget Line Items & Funding.** The dues of the Association shall include amounts for upkeep and reconstruction of the Facilities which shall be included in dues charged to Lots or members from the point that Lots or members are charged dues for other common purposes. The Association shall maintain two (2) separate funds in its budget for the Facility/ies. The first, the "Inspection and Maintenance Fund," shall be for routine inspection and maintenance expenditures and shall be used for annual inspections, maintenance, and minor repairs. The funds for this purpose may be maintained as part of the Association's general account. The second fund, the "Major Reconstruction Fund," shall be a separate, increasing reserve fund that will build over time and provide money for major repairs to and eventual reconstruction of the Facility/ies. The Major Reconstruction Fund shall be maintained in an account that is separate account from the Association's general account as described below. At a minimum, the Association shall, annually, earmark **$5,733.00** [WP1: $2,841.00; WP2: $2,892.00] from its collected dues for the Inspection and Maintenance Fund and **$1,355.00** [WP1: $671.00; WP2: $684.00] for the Major Reconstruction Fund. These minimum amounts shall be increased annually by 3% per year over the prior year's amount. The Association may set a higher amount in its discretion, or if directed by Durham Director of Public Works after an examination of the Facility/ies. The Association shall set dues at a sufficient amount to fund each of the two line items in addition to the Association's other obligations. The Association may compel payment of dues through all remedies provided in these Covenants or otherwise available under law.

4. **Assessments/Liens**. In addition to payment of dues, each Lot shall be subject to assessments by the Association for the purpose of fulfilling the Association's obligations under this Article and under the Stormwater Agreement. Such assessments shall be collected in the manner set forth in these Covenants. As allowed under NCGS §47F, or successor statutes, or, for condominiums, as allowed under NCGS 47C, or successor statutes, all assessment remaining unpaid for 30 days or longer shall constitute a lien on the Lot. Such lien and costs of collection may be filed and foreclosed on by the Association. In addition, the Association's rights may, in the discretion of the City, be exercised by the City, as a third party beneficiary of the recorded Stormwater Agreement and/or as Attorney in Fact for the Association, as provided in Section 7 of the recorded Stormwater Agreement.

5. **Stormwater Expenditures Receive Highest Priority**. Notwithstanding any contrary provisions of the covenants of which this Article is a part, to the extent not prohibited by law, the inspection, maintenance, repair, and replacement/reconstruction of the Facility/ies shall receive the highest priority (excluding taxes and assessments and other statutorily required expenditures) of all Association expenditures.

6. **Separate Account for Major Reconstruction Fund**. **Engineer's Report.** The Association shall maintain the Major Reconstruction Fund for the Facility/ies in an account separate from the Association's general account. The Association shall use the Fund only for major repairs and reconstruction of the Facility/ies. No withdrawal shall be made from this fund unless the withdrawal is approved by two Association officials who shall execute any documents allowing such withdrawal. Prior to withdrawing funds from this account, the Association shall (i) obtain a written report from an engineer approved in accordance with City Requirements regarding repairs or reconstruction needed and approximate cost of such repair or reconstruction; and (ii) submit such report to the Director of the City's Department of Public Works, and notify the Director of the repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Major Reconstruction Fund. In the event of an emergency, withdrawal and expenditure of funds may be made after telephone notification to the Stormwater Services Division of the Department.

7. **Annual Reports to City.** The Association shall provide to the City annual reports in substance and form as set forth in City Requirements. This annual report shall be signed by an officer of the Association, who shall attest as to the accuracy of the information in such report. If prepared by a professional management company hired to manage the Association's affairs, the report shall so indicate. The Officer's signature and attestation shall be notarized. At a minimum each report shall include:

i. the annual Facilities inspections report described in section (1) above;

ii. a bank or account statement showing the existence of the separate Major Reconstruction Fund described in Section (6) above and the balance in such fund as of the time of submission of the report;

iii. a description of repairs exceeding normal maintenance that have been performed on the Facility/ies in the past year, and the cost of such repairs;

iv. the amount of Association dues being set aside for the current year for each of the two stormwater funds - the Inspection and Maintenance Fund and the Major Reconstruction Fund.

8. **Facility/ies to Remain with Association; Lot Owners' Liability.** To the extent not prohibited by law, the Facility/ies shall remain the property of the Association and may not be conveyed by the Association. In the event the Association ceases to exist or is unable to perform its obligations under this Agreement, all Lot Owners as defined in the Stormwater Agreement referenced above, excluding the Lots owned by the Association, shall be jointly and severally liable to fulfill the Association's obligations under this Agreement. Such Lot Owners shall have the right of contribution from other owners with each Lot's pro rata share being calculated as Lot Owner's proportional obligations are otherwise defined in these Covenants. The City may also exercise the rights described in Section 7 of the recorded Stormwater Agreement and other remedies provided by law.

9. **City Rights; Liens Against Owners.** In addition to rights granted to the City by ordinance or otherwise, the City shall have the following rights, generally summarized below, and more explicitly set forth in the Stormwater Agreement referenced above:

a. Direct the Association in matters regarding the inspection, maintenance, repair, and /or reconstruction of the Facility/ies.

b. If the Association does not perform the work required by ordinance, by these covenants, and by the Stormwater Agreement referenced above, do such work itself, upon 30 days' written notice to the Association.

c. Access the Facility/ies for inspection, maintenance, and repair, crossing as necessary the lot(s) on which the Facility/ies are located and all other private and public easements that exist within the Property subject to these covenants.

d. Require reimbursement by the Association of the City's costs in inspecting, maintaining, repairing, or reconstructing the Facility/ies, as provided in the Stormwater Agreement referenced above.

e. Enforce any debts owed by the Association as described in the Stormwater Agreement referenced above against Lot Owners if such debts are not fully paid by the Association. The debt may be allocated to Lot Owners as provided in the other sections of these Covenants, and may be made a lien on each owner's property, may be added to each owner's utility bills, and may result in foreclosure, as provided in Section 7 of the Stormwater Agreement referenced above.

10. **No Dissolution**. To the extent not prohibited by law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a person who has been approved by the City and has executed a Stormwater Agreement with the City assuming the obligations of the Association. Under the Stormwater Agreement referenced above, individual Lots and Lot Owners continue to be liable for the Facility/ies in the event the Association is dissolved without a new Stormwater Agreement between the City and a responsible party that is assuming the Association's obligations.

11. **No Amendment**. Without the prior written consent of the City, which may be given by the Durham City Manager, and notwithstanding any other provisions of these Restrictive Covenants, the Association may not amend or delete this Article with the exception of supplementing its provisions in a more detailed manner to better describe members' or Lot Owners' obligations regarding each other.

12. **Stormwater Agreement Supersedes.** The Stormwater Agreement referenced above supersedes any limiting provisions contained elsewhere in other Articles of these Covenants. However, such Articles may supplement the obligations of the Association as set forth in that Agreement, and/or the obligations of and remedies against individual Lot Owners or members bound by these Covenants.

[End of City of Durham Mandated Stormwater Provisions]