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RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR EVERLY SUBDIVISION

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.

STATEOF NORTH CAROLINA
COUNTY OF FRANKLIN

RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR EVERLY SUBDIVISION

THIS **"DECLARATION OF PROTECTIVE COVENANTS FOR EVERLY SUBDIVISION"**, referred to herein as the "Declaration", is made on the date hereinafter set forth by **CAPITAL COMPANIES GROUP, LLC**, a North Carolina limited liability company, also referred to herein as "Declarant".

RECITALS:

WHEREAS, Declarant is the owner of the real property located in Franklin County, North Carolina described on **Exhibit A** attached hereto and incorporated by reference, such real property also being referred to herein as the "Existing Property;"

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

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

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

NOW, THEREFORE, Declarant hereby declares that the Existing Property, together with all Additional Property, if any, subjected to the Declaration pursuant to Article II hereof, and less any real property withdrawn from this Declaration, all of which together is referred to as the "Properties" as defined herein, is and shall be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed subject to the Declaration, including the covenants, conditions, restrictions,

easements, charges and liens set forth herein, all of which shall run with the Properties and, as provided herein, be binding on and inure to the benefit of all Persons owning any right, title or interest in said Properties or any part thereof, and their heirs, personal representatives, successors and assigns.

DECLARATION

ARTICLE I
DEFINITIONS

The following words and terms, when used in the Declaration (including the Recitals) or any amendment hereto, or in any Supplemental Declaration, unless amended or unless the context clearly indicates otherwise, are defined as follows and are subject to the provisions contained in such definitions (when these and other defined words or terms herein have an initial capital letter or letters, however, it is not required that their use in the Declaration have initial capital letters in order to have the defined meaning). Terms and words used herein without definition shall have the meanings, if any, specified therefor in the "Definitions" section of the Act or, if not defined in the Act, in the "Definitions" section of the Nonprofit Corporation Act, or if not defined in either the Act or Nonprofit Corporation Act, any applicable definitions section of the Code, and, in the event of any conflict between the definitions contained herein and the definitions contained in the Act, the Nonprofit Corporation Act or the Code, then the Act, Nonprofit Corporation Act, Code and this Declaration, in that order and as appropriate, shall control. It should be noted that one or more definitions contain provisions in addition to the defined word or terms, and such additional provisions are part of the Declaration in the same manner and to the same extent as if they had been set out in an Article or Section of the Declaration other than this Article I. Definitions of words and terms in other portions of this Declaration also are subject to the foregoing provisions of this paragraph. Declarant has the authority to resolve any dispute over any definition of a word or term defined in this Declaration.

(a) "Act" is defined as the North Carolina Planned Community Act, currently contained in Chapter 47F of the North Carolina General Statutes, and including all amendments, supplements and replacements thereof.

(b) "Additional Property" is defined as all real property allowed by the Declaration to be annexed or subjected to the Declaration subsequent to the recording of the Declaration (the words "annex" and "subject" being used interchangeably in the context of adding Additional Property to the Declaration). As the context allows or requires, the term also can apply to such real property after it has been annexed to the Declaration. No such Additional Property shall be subject to the terms of the Declaration until it has been annexed or subjected to the Declaration in one of the ways allowed herein, and, except as required by Legal Requirements, neither the Declarant nor any other Person is required to annex any Additional Property to the Declaration.

(c) "Allocated Interests" is defined as the Common Expense liability and votes in the association allocated to each Lot.

(d) "Approved Plans" is defined as Plans that have been approved by the Architectural Review Committee (or by the Board, on appeal from the Architectural Review Committee).

(e) "Architectural Committee" or "Architectural Review Committee" is defined as a committee of one or more individuals appointed by the Declarant or the Board to review Plans, as more particularly provided herein, for improvements to be constructed, placed, altered, or maintained on any part of the Property.

(f) "Architectural Guidelines" is defined as the guidelines and standards adopted from time to time with respect to Dwellings and other improvements in the Properties.

(g) "Articles" is defined as the Articles of Incorporation of the Association, including all duly adopted amendments thereto.

(h) "Association" is defined as **EVERLY HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns, which may be created as a legal entity by the filing of its Articles either before or after the recording of the Declaration.

(i) "Board" is defined as the Board of directors of the Association, and is the "Executive board" as defined in the Act. The Board is responsible for the management and administration of the Association as provided for herein and in the Act.

(j) "Builder" is defined as a Person, other than the Declarant, who regularly is in the business of constructing Dwellings for resale to other Persons, and who purchases or becomes the Owner of one or more Lots within the Community for the purpose of constructing thereon one or more Dwellings for resale to other Persons. "Builders" refers to all such persons or entities collectively. Nothing herein shall prevent Declarant from constructing Dwellings on Lots in the Properties for resale to other Persons.

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

(i) "Code" is defined as the Franklin County, North Carolina Code of Ordinances and also subject to Town of Wake Forest Ordinances whichever is applicable, including all rules, regulations and policies lawfully adopted pursuant thereto, and including all amendments, supplements and replacements thereof.

(m) "Common Elements", or "Common Property", or "Common Area" is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Properties, regardless of how such real property is described in a Governing Document. Common Elements may consist of real property or rights in real property owned or leased by the Association or owned by or dedicated to 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 Properties and that serves more than one (1) Lot in the Properties). Common Elements may include all of the following:

(1) All of the items included in the definition of common areas (or other word or term used to describe common areas - for example, common open space) in the applicable section of the Code; and

(2) All other items included in the definition of Common Elements, Common Area or Common Property in any Governing Document;

(3) Any private roads the Owners are wholly or partially responsible for maintaining whether within the Existing Property or servicing any portion thereof; and

(4) All Common Areas shown on any map or plat of the Properties or any part thereof recorded by Declarant in the Registry.

(5) Common Elements also shall consist of all retaining walls designated as Common Elements as provided herein and any Impervious Surface lying and being situated in whole or in part in the Common Elements.

All Common Elements shall be maintained by the Association as provided herein and the costs of such maintenance are Common Expenses. The foregoing definition of Common Elements in the Declaration is broader than the definition of "common elements" in the Act.

(n) "Common Expense" (also "Common Expenses") is defined as all expenditures made by the Association and all financial liabilities of the Association, including allocation to reserves, and including expenditures for all Association liabilities and obligations imposed by the Code and other Legal Requirements and by the Declaration and other Governing Documents.

(o) "Community Wide Standard" is defined as the standard of conduct, maintenance, or other activity generally prevailing in the Properties, or the minimum standards established pursuant to the Governing Documents, whichever is a higher standard. At any time during the Development Period the Declarant, in its sole discretion, may establish the Community Wide Standard, and any Community Wide Standard established by Declarant will control over any other Community Wide Standard applicable to the Properties or any part thereof. The Community Wide Standard may contain both objective and subjective elements. The Community Wide Standard may change as development of the Properties progresses and as the needs and desires within the Properties change.

(p) "contiguous" or "adjoining" is defined as having any common boundary with the subject property, or separated from a boundary of the subject property by a public or private street right of way or a greenway easement or by property owned by a Governmental Authority.

(q) "Declarant" is defined as EVERLY DEVELOPMENT LLC, a North Carolina limited liability company. The term "Declarant" also includes any Person to whom or which Declarant assigns or delegates the rights and/or obligations of Declarant under the Declaration by an assignment of Declarant's rights recorded in the Registry. The term "Declarant" also includes any Person designated by Declarant as its "affiliate".

(r) "Declaration" is defined as this "Declaration of Protective Covenants for Everly Subdivision," including all duly adopted amendments hereto.

(s) "Development Period" is defined as the period of time beginning on the date of recording of the Declaration in the Registry through and including 5:00 p.m. local time on the **last** of the following dates to occur: December 31, 2018; or the date that is five (5) years after the date of recording of the most recent Supplemental Declaration executed by the Declarant subjecting real property to the Declaration; or the date on which a certificate of occupancy is issued for the Dwelling constructed on the last Lot in the Properties for which a certificate of occupancy has not been issued previously (for example, if there are 16 Lots in the Properties and certificates of occupancy have been issued for Dwellings on 15 of the 16 Lots, the date that the certificate of occupancy is issued for the Dwelling on the 16th Lot). Provided, however, Declarant may terminate the Development Period at any time by recording a termination instrument in the Registry. Except in the case of voluntary termination by the Declarant, the Development Period also shall include any periods of time after the applicable termination event during which Declarant is conducting any activity within the Properties that is required by Legal Requirements or for Declarant to fulfill any obligation to a governmental entity, the Association, any Builder, or any Owner. In the event of any assignment of Declarant rights, with respect to the rights assigned the

Development Period shall remain in full force and effect through the applicable periods of time unless otherwise provided in the assignment document or earlier terminated by the assignee. Declarant has the sole authority to resolve any issues or disputes regarding the date on which the Development Period ends.

(t) "Development Plan" is defined as the most current land use or development plan approved by a Governmental Authority for the Properties or any part thereof, whether the approval is preliminary or final, and regardless of any name other than Development Plan under which it is approved by a Governmental Authority (for example, site plan, subdivision plan, cluster unit development plan, or master plan). Declarant reserves the right, in its sole discretion but subject to Legal Requirements, to amend or modify any Development Plan in any manner and in whole or in part, including re-zoning of any portion of the Properties subject to a Development Plan, or the addition or deletion of property to or from a Development Plan, or the reconfiguration of any portion of the Properties subject to a Development Plan.

(u) "Dwelling" or "Dwelling Unit" is defined as any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one housekeeping unit, whether by the Owner thereof or by tenants or sub-tenants of the Owner. Provided, however, a utility dwelling may be part of a Dwelling as allowed herein.

(v) "Exempt Property" is defined as all portions of the Properties other than Lots, except that each Lot owned by the Association also is Exempt Property. Exempt Property includes: (i) the Water Utility System and all components of the Water Utility System; and (ii) any portion of the Properties other than the Lots owned by, conveyed to, dedicated to, or subject to an easement in favor of, a utility provider. Exempt Property is not subject to assessments under the Declaration and, except with respect to any Exempt Property owned by Declarant, owners of Exempt Property have no membership or voting rights in the Association with respect to such Exempt Property. Exempt Property owned by, dedicated to, or subject to an easement in favor of, a Governmental Authority or a utility provider, including all Exempt Property within publicly-dedicated street rights-of-way, is exempt from all of the provisions of the Declaration, except for the provisions of the Declaration with respect to any easements over such Exempt Property reserved in the Declaration by or for the Declarant, the Association, a Governmental Authority or any other Person, and except for provisions of the Declaration requiring Approved Plans for Dwellings, other buildings, and associated improvements.

(w) "Existing Property" is defined as the real property described on **Exhibit A**.

(x) "fiscal year" of the Association is defined as the calendar year until such time as the Board establishes a different fiscal year for the Association.

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

(z) "Governing Documents" is defined as all of the following, as the same may be amended, restated, or supplemented from time to time: agreements with Governmental Authorities; the Declaration; the

Articles of Incorporation and Bylaws of the Association; Restrictions and Rules; rules and regulations of the Association; Board resolutions; Architectural Guidelines; all applicable Supplemental Declarations; plats (or maps, those terms being used interchangeably herein) of the Properties or any portions thereof recorded in the Registry; declarations of restrictive or protective covenants applicable to the Properties or any portion thereof; documents withdrawing portions of the Properties from the Declaration; and all duly adopted amendments and revisions to any of the foregoing documents or plats.

(aa) "Governmental Authority" or "Governmental Authorities" or "Governmental Entity" or Governmental Entities" is defined as the County of Wake, North Carolina, the State of North Carolina, the United States of America, and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments, divisions, sections, branches, agencies, and other subdivisions of such Governmental Authorities, whichever governmental entity or entities is/are applicable.

(bb) "Impervious Surface" is defined as an area that releases as runoff all or a majority of the precipitation that falls on it, including but not limited to rooftops, sidewalks, driveways, parking lots and streets, unless specifically designed, constructed and maintained to be pervious.

(cc) "Improvement" is defined as any structure and all appurtenances thereto of every kind and type and any other physical change, including any Impervious Surface, upon, over, across, above or under any part of the Properties, including any clearing of trees or other vegetation and including grading and any other site preparation, and including any other improvement of, to, or on any portion of the Properties, including Dwellings and other structures (specifically including exterior materials, colors, size, location and architectural style of same). Improvements also include decks, patios, porches, driveways, motor vehicle and other parking areas, storage areas located outside of a Dwelling, recreational areas, equipment and facilities located outside of a Dwelling, mailboxes, exterior antennae, dishes and other apparatus to receive or transmit radio, television, or microwave or other signals, fences, walls, hedges, other landscaping (including planted areas, grassed areas, natural areas and the plant and other materials therein), poles, flags, decorative features and items attached to or on the exterior of a Dwelling or in the yard, ponds, lakes, swimming pools, exterior lights, signs located outside of a Dwelling or visible inside a Dwelling from a street or adjoining portion of the Properties, and all other exterior improvements and items used or maintained on a Lot outside of the Dwelling. The definition of Improvements includes both initial improvements and all subsequent alterations, changes and additions to same. The term "initial improvements" is defined as all of the improvements constructed or placed or located on any Lot in accordance with Approved Plans or Architectural Guidelines not requiring Approved Plans at the time of issuance of a certificate of occupancy for the Dwelling on the Lot (or the time of issuance of the certificate of occupancy for the last Dwelling on a Lot on which more than one Dwelling is to be located). The examples of improvements stated for the purposes of this definition do not imply that all such improvements will be allowed in the Properties, and all improvements are subject to the architectural approval provisions of the Declaration.

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

(ee) "Institutional Lender" is defined as a Mortgagee who is a commercial bank, savings bank, savings and loan association, trust company, credit union, industrial loan association, insurance company, pension fund or business trust, including real estate investment trust, any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lender, or any combination of any of the foregoing entities and who holds a first lien deed of trust encumbering a Lot ("first lien" meaning that it has priority over all other security interests in the Lot).

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

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

(gg) "Legal Requirement" is defined as any or all of the following: any duly adopted and applicable law, ordinance, regulation or requirement, including the Code, of any Governmental Authority or quasi governmental authority or agency having jurisdiction over the Properties or any portion thereof, including any branch, department, division, section, branch, or agency of any of the foregoing Governmental Authorities or quasi-governmental authorities agencies. Legal Requirements apply to the exercise of all rights or the taking of all actions under the Declaration by Declarant, the Association, or any other Person, whether or not the Declaration states that a specific right or action is subject to Legal Requirements or must be exercised or taken in accordance with Legal Requirements.

(hh) "Limited Common Elements", or "Limited Common Property", or "Limited Common Area" is defined as any Common Elements that are established by the Declarant or the Association for the benefit of the Owners of less than all of the Lots in the Properties, and which have been designated (or allocated) as Limited Common Elements for certain Lots by the Declarant or the Association. Limited Common Elements may include, for example, private streets, private alleys or landscaped medians in streets, and private alleys adjacent to Lots in particular sections of the Subdivision.

(ii) "Limited Common Expenses" is defined as all expenses of the type included within the term Common Expenses, but that are related solely and specifically to Limited Common Elements. Limited Common Expenses shall be paid out of assessments against Members who own Lots for which the Limited Common Elements have been designated. All references in the Declaration to Common Expenses in the context of Limited Common Elements are deemed to refer to Limited Common Expenses for the applicable Limited Common Elements.

(jj) "Lot" is defined as any numbered or lettered portion of the Properties, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and on which there is a completed or under construction Dwelling or on which it is intended that a Dwelling be constructed. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new or revised plat, the newly platted lot thereafter shall

constitute a Lot under the Declaration, except as otherwise may be provided herein with respect to allocation of votes and assessments applicable to the newly platted Lot. With respect to the Class B membership in the Association, Unsubdivided Land also constitutes one (1) Lot.

(kk) "Maintain", "Maintaining", "Maintenance", or any similar term used herein, is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation. In addition, maintenance also includes any action necessary for real or personal property to be maintained so that it functions for the purposes for which it is intended and so that it complies with the Community Wide Standard.

(ll) "Member" is defined as each Person who owns a Lot in the Properties.

(mm) "Mortgage" or "Deed of Trust" is defined as any mortgage, deed of trust or other instrument that creates a security interest in real property, and includes all acts required to create such security interest.

(nn) "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust, and the terms mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

(oo) "Nonprofit Corporation Act" is defined as the "North Carolina Nonprofit Corporation Act", currently contained in Chapter 55A of the North Carolina General Statutes, and including all amendments, supplements and replacements thereof as enacted from time to time.

(pp) "Notice" required or desired to be given under this Declaration shall be in writing and either: (a) hand-delivered, (b) sent by certified mail, return receipt requested or (c) sent by regular mail in a postpaid properly addressed wrapper and deposited in a post office or official depository under the exclusive care and custody of the United States Postal Service. All notices shall be addressed to the party being noticed, and shall be deemed to have been given (w) when delivered, if by hand delivery or (x) the earlier of (i) three business days after deposit in a U.S. Post Office or official letter box or (ii) upon confirmation of receipt by the recipient, if sent by certified mail or regular mail.

(qq) "Operating Deficit" is defined as the difference between the total amount of the annual 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 (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements and other assessments allowed in the Declaration that are not annual assessments.

(rr) "Owner" is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any Person who holds an interest in a Lot solely as security for the performance of an obligation or as a tenant.

(ss) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Authority, or other entity.

(tt) "Plans" is defined as the plans and specifications for a proposed improvement, showing (where applicable) the size, shape, dimensions, materials, exterior finishes and colors, location on the applicable portion of the Properties, driveway, parking areas, provisions for handling stormwater, decorative

landscape planting and other decorative landscaping features, floor plans and elevations, and other items specified in any applicable Architectural Guidelines or required by the Architectural Review Committee or the Board. "Approved Plans" is defined as Plans that have been approved by the Declarant or by the Architectural Review Committee (or by the Board, on appeal from the Architectural Review Committee).

(uu) "present" at a meeting of the Association is defined as being present in person or by a proxy that has been executed and is effective under Legal Requirements and the Governing Documents.

(vv) "Properties", or "Community", or "Subdivision" is defined as the Existing Property, together with all Additional Property annexed to the Declaration pursuant to Article II hereof, less and except all real property that is withdrawn from the Declaration as allowed herein. References to the Properties includes any part or all of the Properties, as applicable, in accordance with the context of such reference herein, whether or not the reference specifically states that it is referring to any part or all of the Properties.

(ww) "property manager" or "management company" is defined as a Person employed by the Association to manage or assist in the management of the business and property of the Association.

(xx) "Recreational Amenities" is defined as those portions of the Common Elements, if any, on which active or passive recreational equipment, facilities, or areas, including associated parking and other improvements, have been constructed, placed, or designated for use, subject to the Governing Documents, by the Declarant, by Lot Owners and their family members, tenants and guests. Provided, however, nothing herein shall be construed as imposing any obligation on the Declarant or any other Person to construct or provide for any Recreational Amenities, except to the extent, if any, that Declarant or such other Person is so obligated under Legal Requirements.

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

(zz) "Registry" is defined as the office of the Register of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Properties are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Properties is situated.

(aaa) "Restrictions and Rules" or "Rules and Regulations" is defined as rules, regulations, requirements, prohibitions, and/or conditions for any one or more of the following as are adopted, amended, or repealed by the Declarant or the Association: (i) matters governing use of the Properties or any part thereof, including the Common Elements, or (ii) matters governing conduct of Persons while in or on the Properties or any part thereof, including the Common Elements, or (iii) providing for the implementation and enforcement of the Governing Documents, or (iv) any other matters that the Declarant or Board, as applicable, determines to adopt as part of the Association's Restrictions and Rules.

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

(bbb) "Service Line" is defined as the portion of the individual household water line for which the Lot Owner assumes responsibility for maintaining and for which the utility provider assumes no maintenance responsibility. The Service Line is that portion of the individual household water line that extends from the utility provider's water meter to the Dwelling. The portion of the line extending from the water meter to the water main at or near the publicly dedicated street right of way or private street right of way adjacent to any boundary of such Lot shall not be included in the term "Service Line."

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

(ddd) "Stormwater Agreement" is defined as any agreement required by Legal Requirements with respect to the Stormwater Control Facilities and any other agreement entered into by Declarant, on behalf of the Association, or by the Association, with respect to Stormwater Control Facilities.

(eee) "Stormwater Control Measures" or "Stormwater Control Facilities" is defined as one or more of the following devices and measures, together with associated private drainage easements utilized for conveying, collecting, storing, filtering, treating, and/or discharging stormwater (however identified on a plat, map, in this Declaration or in a recorded document) that serves more than one (1) Lot or parts of more than one (1) Lot in the Properties and which are located outside of public street rights-of-way and drainage easements accepted into public use by the applicable Governmental Authority (but including the Stormwater Control Facilities in public street rights-of-way if the applicable Governmental Authority has not accepted the maintenance obligation for such Stormwater Control Facilities or the applicable Governmental Authority is not maintaining), including, but not limited to, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff, nitrogen and pollutants for or from more than one (1) Lot in the Properties. Private drainage easements, however identified on a recorded plat or recorded map or in a recorded document, that serve more than one (1) Lot in the Properties are deemed to be dedicated to the Association for the benefit of the Properties or applicable portions thereof. Stormwater Control Facilities may be located in the Properties or on real property that is not part of the Properties. Except as otherwise provided herein, Stormwater Control Facilities are part of the Common Elements or Limited Common Elements, as applicable, and maintenance of Stormwater Control Facilities is a Common Expense or Limited Common Expense, as applicable. References in this Declaration to stormwater management include all applicable Stormwater Control Facilities.

(fff) "Supplemental Declaration" is defined as any document, recorded subsequent to the Declaration and as allowed by the Declaration, that annexes Additional Property to the Declaration, withdraws any portion of the Properties from the Declaration, or is recorded for any other purpose for which the Declaration allows a Supplemental Declaration to be recorded. A document that annexes Additional Property to the Declaration also may be referred to herein or in that document as an "Annexation Declaration" and a document that withdraws any portion of the Properties from the Declaration also may be referred to herein on in that document as a "Withdrawal Declaration".

(ggg) "Unsubdivided Land" is defined as all portions of the Properties owned by the Declarant, other than Lots and portions of the Properties that have been dedicated to a Governmental Authority. With respect to the Class B membership in the Association, all Unsubdivided Land owned by the Declarant together constitutes one (1) Lot. Unsubdivided Land owned by Declarant is not subject to assessment under this Declaration.

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

(jjj) "Utility Dwelling" is defined as that portion of a Dwelling that complies with all of the following requirements: (i) it physically is within or connected to the Dwelling, or is part of a garage attached to or detached from the Dwelling; (ii) it is occupied by one or more Persons who either are related to an Owner of the Dwelling by blood or marriage and within the third degree (such person also being referred to herein as a "related person"), or who are providing physical care for an Owner of the Dwelling or such related person who is residing in the Dwelling or in the utility dwelling; (iii) the utility dwelling contains a gross livable floor area not in excess of ½ of the gross livable floor area of the Dwelling, including the utility dwelling (for example, if the Dwelling contains 2,000 gross livable square feet including the utility dwelling, the utility dwelling may contain a maximum of 1000 gross livable square feet); and (iv) the utility dwelling complies with all Legal Requirements and with any Restrictions and Rules applicable thereto. Notwithstanding anything to the contrary in this Declaration, a utility dwelling that complies with all of the requirements of this Declaration is an allowed use under this Declaration. Subject to Legal Requirements and subject to the provisions of Article XI of this Declaration with respect to Architectural Approval, the Architectural Review Committee has the authority to determine what constitutes "gross livable floor area" of a Dwelling and of a utility dwelling and to determine all other issues with respect to whether or not a utility dwelling complies with the requirements of this Declaration.

(jjj) "Water Facilities" is defined as any water system consisting of water distribution mains, production facilities, treatment facilities, and storage system in which the Water Utility System shall be connected to and interconnected to.

(kkk) "Water Plans" is defined as all final plans and specifications for the Water Utility System approved by the applicable Governmental Authority.

(lll) "Water Utility System" is defined as the water wells, storage facilities (if required), treatment facilities, distribution system, interconnection to Water Facilities, and other land, fixtures, and equipment used in the pumping, storage, treatment, and distribution of the water service and, if constructed, any additional components of the Water Utility System necessary to provide service to the lots of the Subdivision, including but not limited to: wells, well lots, easements, Deeded Properties, treatment

facilities, storage tanks (if required), all water mains, hydrants, interconnections, services, meter boxes, meter yokes, backflow preventers, and other additional components of the Water Utility System necessary to serve water to the lots in the Subdivision. For purposes of this subsection, "Deeded Properties" is defined as the well lot(s), perpetual easement(s) and other real property that are designated on a recorded plat of the Subdivision or the Water Plans for the Water Utility System that are dedicated in connection with the Water Utility System, including but not limited to well sites, storage tank sites (if any), treatment facility sites, treatment disposal sites, private easements and other real property which are needed for the construction, operation, maintenance, repair, and replacement of the Water Utility System.

ARTICLE II
THE PROPERTIES; ANNEXATION; WITHDRAWAL

Section 1. **Existing Property**. The Properties shall be owned, held, transferred, sold, conveyed, leased, used, occupied, and mortgaged subject to the Declaration. The Existing Property constitutes the Properties at the time of the recording of the Declaration.

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

(a) **Annexation by the Declarant**. Prior to the end of the Development Period, Declarant, in its sole discretion and without the approval or joinder of the Association or any Owner or other Person except the Owner (if not Declarant) of the Additional Property being annexed, may annex Additional Property to the Declaration by recording an Annexation Declaration extending the operation and effect of the Declaration thereto. Subject to the requirements or restraints of Legal Requirements, nothing herein shall be deemed to require the Declarant to annex any Additional Property to the Declaration or to develop it in any manner whatsoever and nothing herein shall be deemed to prohibit the Declarant from annexing any Additional Property to the Declaration.

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

(c) **Approval by Governmental Entities**. Notwithstanding the foregoing subsections (a) and (b), if any Legal Requirement requires approval of annexation of Additional Property by a Governmental Authority, the annexation shall not be effective until the requisite approval of the Governmental Authority is obtained.

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

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

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

Section 3. **Development and Annexation**. Subject to Legal Requirements that provide otherwise, no Development Plan shall obligate the Declarant to develop any portion of the Properties now or in the future, whether for the purposes shown therein or for any other purpose, the Declarant shall not be required to follow any particular sequence or order of development of the Properties, and the Declarant may annex or consent to annex Additional Property to the Declaration whether or not development of all of the Properties previously subjected to the Declaration has been completed.

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

(a) **Withdrawal by the Declarant**. Prior to the end of the Development Period, Declarant, in its sole discretion and without the approval or joinder of the Association or any Owner or other Person except the Owner (if not Declarant) of the portion of the Properties being withdrawn, may withdraw portions of the Properties from the Declaration by recording a Withdrawal Declaration to withdraw the applicable portion of the Properties from the operation and effect of the Declaration. Provided, however, Declarant may not withdraw from the Declaration Lots on which there are Dwellings at the time of the withdrawal unless the conditions of subsection (b) of this Section 4 are satisfied with respect to such withdrawal. Except for the foregoing, and subject to the requirements or restraints of Legal Requirements, nothing herein shall be deemed to require the Declarant to withdraw any portion of the Properties from the Declaration and nothing herein shall be deemed to prohibit the Declarant from withdrawing any portion of the Properties from the Declaration.

If the Declarant desires to withdraw any portion of Properties from the Declaration other than as allowed in the immediately preceding subsection (a), or if a Person other than the Declarant desires at any time to withdraw any portion of the Properties from the Declaration, such portion of the Properties may be withdrawn from the Declaration only upon obtaining the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association for which the notice of the meeting includes notice of the proposal to withdraw such portion of the Properties, and the recording in the Registry of a Withdrawal Declaration signed by the owner of such portion of the Properties and by the appropriate officers of the Association certifying the required meeting and vote. Provided, however, the required percentage vote of the Members for withdrawal of any Lot on which there is a Dwelling at the time of the proposed withdrawal is eighty percent (80%) or more. In addition to the foregoing, at any time during the Development Period that a Person other than Declarant desires to withdraw a portion of the Properties from the Declaration, to be effective such withdrawal must have the written consent of Declarant, as evidenced by Declarant's execution of the withdrawal declaration or other document specifically consenting to the withdrawal.

(b) **Approval by Governmental Entities**. Notwithstanding the foregoing subsections (a) and (b), if any Legal Requirement requires approval of withdrawal of any portion of the Properties by a Governmental Authority, the withdrawal shall not be effective until the requisite approval of the Governmental Authority is obtained.

(c) **Withdrawal Declaration**. Each Withdrawal Declaration shall be effective to withdraw portions of the Properties from the Declaration only upon obtaining all approvals required by the Declaration and upon its recording in the Registry, and the effective date of such withdrawal shall be the later of the date specified therein, if any, or the date of recording. Each Withdrawal Declaration shall contain a description of the portion of the Properties withdrawn sufficient to determine its size and location, either by reference to a plat or deed recorded in the Registry or by a metes and bounds description, and shall indicate that the applicable portion of the Properties is being withdrawn from the Declaration. A Withdrawal Declaration need not be in any specific form and need not be titled Withdrawal Declaration or Supplemental Declaration (for example, the withdrawal language may be contained in a deed from the Declarant conveying the portion of the Properties being withdrawn), but it shall indicate clearly the intention to withdraw such portion of the Properties from the Declaration.

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

ARTICLE III
ASSOCIATION

Section 1. **Formation of the Association.** The Declarant shall cause the Association to be formed and file Articles of Incorporation with the office of the North Carolina Secretary of State on or before the transfer of the first Lot to a homeowner.

Section 2. **Board Acts for Association**. All obligations required or allowed to be performed by the Association shall be performed in accordance with Legal Requirements and applicable provisions of the Governing Documents. Unless reserved by or for the Declarant in the Declaration, other Governing Documents or Legal Requirements, or unless otherwise required by Legal Requirements, all rights, powers, easements, functions, services, obligations and duties of the Association may be performed, exercised, directed, or contracted for by the Board on behalf of the Association. There is no distinction intended in the Declaration between items that may be adopted, enforced, acted upon, or waived by the Board and items that may be adopted, enforced, acted upon, or waived by the Association, except where a vote of the Members of the Association is required therefor. The officers of the Association may act on behalf of the Association as authorized in the Governing Documents and/or as directed by the Board.

Section 3. **Powers and Obligations**. Subject to Legal Requirements and the Governing Documents, the Association has the following powers and obligations (the matters addressed in this Section may not constitute a complete list of the powers and obligations of the Association, as other powers and obligations may be addressed in other Sections of the Declaration, other provisions of Governing Documents, and in Legal Requirements):

(a) The Association shall satisfy or perform the obligations required of the Association by Legal Requirements and the Governing Documents, and the Association shall have all powers conferred upon the Association by the Governing Documents and Legal Requirements.

(b) The Association may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property.

(c) The Association has the sole and exclusive power and authority to regulate use of the Common Elements by Owners and other Persons, including establishment of rules and regulations for use and user fees or charges. The Association may also sell, transfer, convey or assign to any Builder or Owner rights related to any Impervious Surface lying and being situate in the Common Elements.

(d) The Association has the power and authority to enter into such encroachment agreements and other agreements with Governmental Authorities, utility providers, and other Persons as are reasonably necessary to enable the Association to maintain Common Elements, and to perform its obligations under the Declaration. During the Development Period, the Declarant has the power and authority to enter into encroachment agreements and other agreements with Governmental Authorities, utility providers, and other Persons as Declarant, in its sole discretion, determines, each of which agreements are binding on the Association and all Owners, unless otherwise provided therein.

(e) The Association shall accept transfer of ownership from Declarant of any and all Common Elements and any and all improvements thereon, including transfer or assignment of any and all associated rights, easements, permits, and obligations.

(f) The Association shall accept from Declarant any and all assignments of Declarant rights and obligations under any part or all of the Declaration, any Supplemental Declaration, any easements, any

encroachment agreement with a Governmental Authority, or any other agreement with, or permit, approval, or license issued by a Governmental Authority, a utility provider, or any other Person, and any document required to be executed with respect to the Properties by a Governmental Authority, including assumption of all Declarant or Association obligations which are contained in such documents and agreements or which are incident to such assignments, as they relate to any Common Elements, architectural approvals or other functions or services performed or provided by the Association.

(g) The Association shall accept from Declarant any and all appointments of the Association as the agent of Declarant for administration and enforcement of any of the provisions of the Declaration or any Supplemental Declaration, and shall assume all obligations which are incident to such appointments as they relate to any Common Elements, architectural approvals or other functions or services performed or provided by the Association.

(i) All rights and powers granted to, or reserved for, or established for the benefit of, the Association may be exercised by the Association (or, as the case may be, on behalf of the Association by the Board or a Committee of the Board), at any time and from time to time.

Section 5. **Functions and Services**. The Association shall or may, as indicated, do, provide, provide for, perform, accept, or be responsible for the following, the expenses for which are Common Expenses, and in carrying out these and other functions and providing services as required or allowed by the Governing Documents, the Association has all of the following described or referenced rights and powers:

(a) The Association shall carry out the Association's obligations and business under the terms of Legal Requirements and the Governing Documents, including legal, financial, accounting and communications services, and shall provide or procure the administrative services necessary in connection therewith.

(b) The Association shall maintain the Common Elements and any other real or personal property owned or leased by the Association, or subject to an easement granted to or reserved for the Association, in such manner and to such extent as reasonably determined by the Board, giving due consideration to the Community Wide Standard and to the level of maintenance, if any, that may be performed by a Governmental Authority or other Person (including Owners - for example, mowing of grass in a stormwater drainage easement on a Lot or in a general utility easement around the boundaries of a Lot typically would be the responsibility of the Owner of the Lot, unless the Association determines it is in the best interest of the Association to provide such maintenance).

(c) The Association shall operate the Architectural Review Committee(s) as and when provided in the Declaration.

(d) The Association shall keep records of all its acts and corporate business, and, in particular, the Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act.

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

of votes of all the Members of the Association, shall have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Member making written request therefor.

(f) The Association shall make available for inspection by the Members and Mortgagees, upon reasonable request, during normal business hours and upon payment of reasonable copying and administrative costs, current copies of the Governing Documents, and the books, records and financial statements of the Association.

(g) As required by the Governing Documents and Legal Requirements, the Association shall establish an annual operating budget, shall establish the amount of and collect assessments, and shall establish reserve funds.

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

(j) The Association shall pay all applicable *ad valorem* property taxes and Governmental Authority assessments, if any, on the Common Elements owned by the Association and on other property or assets owned by the Association.

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

(i) The Association shall be responsible for stormwater management and maintenance of Stormwater Control Measures as provided in the Declaration and in any other Governing Document or as required by Legal Requirements.

(m) The Association shall be responsible for all financial and other obligations of the Association pursuant to any agreement entered into by or on behalf of the Association as contemplated by the Declaration, including the following: encroachment agreement or other agreement with a Governmental Authority; agreement with a utility provider; agreement with any other Person.

(n) The Association may take all actions and do all things its deems necessary or desirable to enforce and implement the provisions of Legal Requirements and the Governing Documents, and to exercise the rights, satisfy the obligations, and perform the functions or services the Association is required or allowed to do by the Governing Documents, and in connection therewith, except as specifically limited by the Declaration, the Association shall have all of the rights and powers under the Act and the Nonprofit Corporation Act.

(o) The Association may grant easements, leases, licenses and concessions through or over the Common Elements, as the Board determines to be in the best interests of the Association.

(p) The Association may enter into contractual agreements or covenants to share costs with any neighboring property owner or association of property owners to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Elements maintenance.

(q) Subject to Legal Requirements, the Association may maintain grass, landscaping, decorative paving or other decorative features, and all equipment and facilities associated therewith, within street rights of way and on sidewalks in or adjacent to the Properties, with such frequency and in such manner

as determined by the Board. In determining the level of maintenance to be performed by the Association, the Board may give due consideration to the extent to which a Governmental Authority or any other Person is responsible for and performs such maintenance and to the terms of any encroachment agreement between the Declarant or the Association and a Governmental Authority. The Association may enter into encroachment and other agreements with a Governmental Authority or other Persons with respect to such maintenance.

(r) To the extent that such services are not, in the opinion of the Board, provided adequately by a Governmental Authority, the Association may provide services of a governmental nature for maintenance of portions of the Properties not owned by the Association.

(s) As provided in the Governing Documents, the Association may adopt, amend, and repeal Restrictions and Rules.

(t) The Association may enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Elements.

(u) The Association may provide, or provide for, services and facilities for Owners and their Lots and Dwellings (as distinguished from services and facilities relating to Common Elements), and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided to or for an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the annual assessment if provided to all Owners. By way of example, such services and facilities might include landscape maintenance, insect and pest control service, cable television service, security, caretaker, transportation, refuse and recycling collection, fire protection, utilities, and similar services and facilities. Provided, however, prior to providing any such service to all Owners that will be paid for as part of the annual assessment, (i) the Association first shall obtain a vote or consent of the Members that is equal to or greater than sixty-seven percent (67%) of the total number of votes in the Association (such vote is not required in connection with services that the Association is required to provide by the Governing Documents or Legal Requirements), and (ii) prior to the end of the Development Period, upon obtaining the written consent of Declarant. In addition, the Association shall accept assignment of all such contracts entered into by the Declarant when the Declarant is the owner of all of the Properties, or entered into at any time by all of the Owners (the execution of the contract by any one of multiple owners of a Lot being sufficient with respect to that Lot).

Nothing in this subsection shall be construed as a representation, promise, warranty, or guaranty by Declarant or the Association as to what, if any, services will be provided or the extent to which any service will be provided.

(v) The Association may borrow funds to pay costs of operation of the Association, which borrowing may be secured by assignment or pledge of Association rights to receive and collect assessments or by liens on Common Elements or other Association assets, as determined by the Board, subject to the Governing Documents and Legal Requirements.

(w) The Association may maintain one or more bank accounts and enter into contracts or other agreements reasonably necessary in connection therewith.

(x) The Association may sue or defend in any court of law on behalf of the Association, and may employ attorneys and other necessary professionals in connection therewith.

(y) The Association may adjust the amount, collect, and use insurance proceeds to repair damage to or replace Common Elements, and if proceeds are insufficient to repair damage to or replace same, levy special assessments (in the manner provided herein) to cover the deficiency.

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

(aa) The Association may retain the services of attorneys, accountants, and such other professionals and/or tradesmen as it deems necessary and appropriate.

(bb) The Association may contract with Declarant or any other Person for performance of services provided by the Association, such contracts to be at competitive rates and upon such terms and for such consideration as the Board deems proper, advisable and in the best interests of the Association.

(cc) The Association may establish and maintain the nonprofit corporation tax status of the Association for federal and State of North Carolina income tax purposes, as determined by the Board to be in the best interests of the Association.

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

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

(ff) Subject to any applicable notice and hearing requirements of the Act, the Association may impose reasonable fines or suspend privileges or services provided by the Association for reasonable periods for violations of the Declaration or other Governing Documents, except that the Association may not suspend rights of access to Lots over Common Elements or rights of access to easements and facilities in the Common Elements that provide stormwater drainage from or public utility services to Lots.

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

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

Section 4. **Stormwater Management**. Except for maintenance responsibilities (i) placed on Owners by the Governing Documents or Legal Requirements, or (ii) assumed or undertaken by other Persons (for example, a Governmental Authority), the Association shall maintain the Stormwater Control Measures and shall pay for the maintenance thereof as part of the Common Expenses. As used in the immediately preceding sentence, the word "maintain" includes provision for maintenance of, which may include financial contributions toward maintenance of Stormwater Control Measures located on and/or shared with other properties not subject to this Declaration. Provided, however, such maintenance obligations shall cease and terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time as other Persons are providing the necessary maintenance therefor (for example, pursuant to an agreement which requires monetary payments by the Association to the Person who is performing the maintenance). Following any such assumption of maintenance by another Person, the Association may, without obligation, continue to provide maintenance to the extent that the other Person fails to provide adequate maintenance, in the opinion of the Board, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which such other Person has not assumed maintenance responsibility, or following termination of such Person's maintenance responsibility. The Owner of a Lot on which a Stormwater Control Measure is located shall not obstruct it or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all stormwater drainage easements and stormwater management facilities located on and used exclusively in connection with such Owner's Lot or the improvements thereon, including guttering, and pipes and drains on the Lot used exclusively for transportation of stormwater from such Lot into any Stormwater Control Measures. All issues as to whether a stormwater drainage easement or stormwater management facility is part of the Stormwater Control Measures for which the Association is responsible or whether it is the responsibility of an Owner shall be determined by the Declarant during the Development Period (unless Declarant assigns such right to the Association), and thereafter by the Association.

Declarant, during the Development Period, and the Association, when the Development Period is not in effect, subject to any approval required by a Governmental Authority, may grant, relocate, modify, abandon and/or release one or more stormwater drainage easements in the Properties, subject to the following: (i) the grant of any such stormwater drainage easement also shall be consented to in writing by the Owners of all portions of the Properties on which such stormwater drainage easement is located, such consent not to be unreasonably withheld, delayed, or conditioned, unless the stormwater drainage easement is shown on a recorded plat of such portions of the Properties or is within any 10 foot wide easement area reserved by Declarant in Article XII, Section 2 of this Declaration, in which event the consent of the Owners is not required and the Declarant or the Association, as applicable, also may grant the stormwater drainage easement by written instrument; and (ii) no such grant, relocation, abandonment or release shall materially adversely affect the Stormwater Control Measures for the Properties. The provisions of this paragraph also are applicable to any access easement over any portion of the Properties that provides pedestrian or vehicular access from a public street right of way or other public easement or facility to and from any Stormwater Control Measures.

The Governmental Authority that has jurisdiction over the Stormwater Control Facilities shall have a perpetual, non-exclusive easement for ingress, egress and regress over and across the Common Elements and other portions of the Properties on which the Stormwater Control Facilities are located for the purpose of inspecting the Stormwater Control Facilities and for the purpose of exercising all rights of the applicable Governmental Authority that are provided for by any Stormwater Agreement.

With respect to its obligations under this Section, the Association shall pay, post, provide for or comply with all bonds and other financial obligations under Legal Requirements and Stormwater

Agreements related to Stormwater Control Measures that are executed by the Association (or, during the Development Period, by the Declarant on behalf of the Association or and subsequently assigned to the Association). The Association, and, during the Development Period, the Declarant on behalf of the Association and without the consent, approval, or joinder of the Association, has the authority and discretion, without the consent or approval of any Owner or other Person, to enter into one or more Stormwater Agreements, and amend, add to, supplement, or terminate existing Stormwater Agreements (and when such Stormwater Agreements are referred to in this Declaration, the reference includes amendments, additions, and supplements thereto), with a Governmental Authority, another property owners' association, or any other Person with respect to inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating, and managing any part or all of the stormwater on, to, or from any part or all of the Properties and/or any or all of the Stormwater Control Measures for the Properties, whether such Stormwater Control Measures are located within or outside of the Properties, and with respect to maintenance of the Stormwater Control Measures and access to Stormwater Control Measures. Such Stormwater Agreements shall be binding on all Owners (or, with respect to Limited Common Elements, all Owners to whose Lots such Limited Common Elements is allocated), and may require payments from the Association or the Owners for the services provided by a Governmental Authority, such other association or such other Person in inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such Stormwater Agreements may include all other terms and obligations required by Legal Requirements. In connection with the foregoing purposes expressed in this paragraph, the Association, subject to Declarant's written consent during the Development Period, and, during the Development Period, the Declarant on behalf of the Association, may grant rights over, in, under, upon and through any and all stormwater drainage easements and Stormwater Control Measures in the Properties, and may grant rights over, in, under, upon and through all easements in the Properties that provide pedestrian and/or vehicular access from a publicly dedicated street right of way to and from stormwater drainage easements and/or Stormwater Control Measures.

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the Properties or phases of the Subdivision (for example, because of the topography of the Properties it may be desirable for a portion of the Properties to have Stormwater Control Measures separate from and/or in addition to, other Stormwater Control Measures in or serving the Properties and it may be desirable for other portions of the Properties to utilize Stormwater Control Measures located outside of the Properties), and in further recognition of the desire of the Declarant for the provisions of this Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Properties of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by a Governmental Authority, in fulfilling its obligations under this Declaration the Association or, during the Development Period, the Declarant on behalf of the Association or for subsequent assignment to the Association, may enter into different agreements for different portions of the Properties, and/or may amend, add to, or supplement existing agreements, subject to all of the other terms of this Declaration. It further is recognized and contemplated by this Declaration that if such multiple Stormwater Control Measures and/or other agreements are determined to be necessary or desirable, that the costs of maintaining such Stormwater Control Measures and/or funding such agreements may be different for different portions of the Properties and annual assessments may be different for Lots in different portions of the Properties to the extent that one or more Stormwater Control Measures are Limited Common Elements. For example, there may be different portions of the Subdivision that have different Stormwater Control Measures or different portions of the Subdivision that share some of the same Stormwater Control Measures but also have one or more separate Stormwater Control Measures. During the Development Period Declarant has the right to designate any Stormwater Control Measures as Limited Common Elements, including existing and new Stormwater Control

Measures in the Properties as well as existing and new Stormwater Control Measures associated with Additional Property. Stormwater Control Measures not designated by the Declarant as Limited Common Elements are Common Elements.

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

Declarant reserves for itself and the Association a blanket easement across all Lots for maintaining satisfactory storm water drainage in the Properties; provided, however, such easement area shall not include any portion of a Dwelling on a Lot. It is anticipated that increased storm water run-off across downstream Lots may result from the construction of impervious surface within the Properties. Neither the Declarant nor the Association with respect to Improvements it constructs in accordance with Legal Requirements applicable at the time of construction, and neither any other Builder or Owner constructing Improvements according to Approved Plans and Legal Requirements applicable at the time of construction, shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from construction of such Improvements in compliance with Approved Plans and Legal Requirements.

Declarant may assign to the Association, and the Association shall accept from Declarant the assignment of, all obligations of the Declarant under agreements entered into by the Declarant with respect to Stormwater Control Measures for the Subdivision, provided the Declarant has performed, or made adequate provision for the performance of, all obligations, if any, specifically required of the Declarant under the applicable agreement prior to the time of the assignment. The provisions of this Section shall be construed liberally in order to allow the Declarant and the Association, on behalf of the Subdivision and all Owners, the necessary flexibility to comply with all Legal Requirements with respect to stormwater, including the execution of agreements with a Governmental Authority or other Persons and the granting of easements to a Governmental Authority or other Persons.

Section 6. **Dedication, Conveyance or Exchange of Common Elements**. The Association, (i) upon obtaining the minimum required voting percentage under applicable provisions of the Act for conveyance of Common Elements (at the time of recording of the Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) or more of the total number of votes in the Association), and (ii) upon compliance with any applicable provisions of the Code and other Legal Requirements, and (iii) prior to the end of the Development Period, upon obtaining the written consent of Declarant, may dedicate portions of the Common Elements to public use and/or convey or exchange portions of the Common Elements with the Declarant or any other Person, for any purpose approved by

any required vote of the Members, including any one or more of the following purposes: (t) to eliminate unintentional encroachments of improvements or easements; (u) to correct any building or other setback violations; (v) to adjust boundary lines of portions of the Properties; (w) to facilitate the orderly subdivision and development of the Properties; (x) to conform the configuration of the Properties to any applicable Development Plan; (y) to satisfy, or correct any violation of, any applicable Legal Requirements related to an Impervious Surface; or (z) to reallocate Impervious Surface to any portion of the Lots or the Common Elements. All conveyances and exchanges of Common Elements are subject to the following: (aa) no such conveyance or exchange (either alone, or in conjunction with other conveyances or exchanges) shall result in a reduction of the portion of the Common Elements that constitutes "open space" below the minimum amount of open space, if any, required by the applicable Governmental Authority; (bb) if required by Legal Requirements, the applicable Governmental Authority must approve any exchange or boundary line adjustment; (cc) any boundary line adjustment must be approved by the Owners of all portions of the Properties affected by the adjustment; (dd) properties received by the Association in an exchange must be of like value and utility as the Common Elements that are part of the exchange transaction; (ee) each Lot contiguous to Common Elements prior to the conveyance shall remain contiguous to Common Elements after the conveyance, unless otherwise approved by the Owner of the Lot that no longer will be contiguous; (ff) the conveyance shall not materially conflict with any applicable Development Plan; (gg) no conveyance of Common Elements shall deprive any Lot of its rights of access and support; and (hh) any conveyance of real property to the Association must be free and clear of all encumbrances except for the Declaration and any applicable Supplemental Declaration, or other agreement executed as allowed by the Declaration, Legal Requirements, street rights of way or access easements, greenway easements, easements for utilities, and stormwater drainage easements.

Section 7. **Mortgage and Pledge of Common Elements**. The Association, (i) upon complying with the minimum required voting percentage under applicable provisions of the Act for conveyance or dedication of Common Elements (at the time of recording of the Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) or more of the total number of votes in the Association), and (ii) prior to the end of the Development Period upon obtaining the written consent of Declarant, shall have the power and authority to mortgage the Common Elements and to pledge its assets as security for loans made to the Association, which loans shall be used by the Association in performing its functions and providing services under the Declaration. Declarant may, but shall not be required to, make loans to the Association, subject to the foregoing and further subject to approval by the Declarant of the use of such loan proceeds and the terms pursuant to which such loans will be repaid. Notwithstanding anything in the Declaration to the contrary, at any time that there is any unpaid amount owed to Declarant under any loan made by it to the Association, without Declarant's written consent the annual assessments shall not be reduced below the amounts in effect at the time such loan first was made.

Section 8. **Liability Limitations**. Except as required by Legal Requirements or the Declaration, or agreed to by any of the following Persons otherwise excluded from liability by the provisions of this sentence, neither Declarant, nor any Builder, nor any current or former Member of the Association, nor the Board, nor any director on the Board, nor any officer of the Association, nor any member of the Architectural Review Committee or any other Association committee, nor any shareholder, director, officer, partner, member, manager, agent or employee of any of the foregoing, shall be personally liable for debts contracted or incurred by the Association or for a tort of another current or former Member, whether or not such other current or former Member was acting on behalf of the Association, unless such Person specifically agrees in writing to be obligated for any such debt of the Association or any such tort (but the foregoing shall not relieve such Person from that Person's obligation, if any, under the Declaration, to pay assessments to the Association or other obligations as a Member of the Association). Neither Declarant, nor the Association, nor the Board, nor any director on the Board, nor any officer of

the Association, nor any member of the Architectural Review Committee or any other Association committee, nor any shareholder, director, officer, partner, member, manager, agent or employee of any of the foregoing, acting in those official capacities, shall be liable for any incidental or consequential damages for failure to inspect any Owner's Lot or improvements thereon, or for failure to maintain the same (provided, however, and notwithstanding the foregoing, as required by Legal Requirements and the Governing Documents, Declarant and the Association each shall maintain all portions of the Properties it owns, and, except as otherwise specifically provided herein, directors on the Board and officers of the Association and members of the Architectural Review Committee and other Association committees shall have all of the other obligations and liabilities of an Owner under the Declaration with respect to portions of the Properties owned by such Persons).

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

The Association shall indemnify all Association directors and officers, and members of the Architectural Review Committee and other Association committee members, as required by the Governing Documents.

Section 9. **Merger or Consolidation**. Upon a merger or consolidation of the Association with another association in accordance with all Legal Requirements, the properties, rights and obligations of the Association, by operation of law, may be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association, by operation of law, may be added to the properties, rights and obligations of the Association as the surviving corporation pursuant to a merger or consolidation. The surviving or consolidated association shall be considered the Association under the Declaration and may administer the terms and provisions of the Declaration and any applicable Supplemental Declaration, together with the terms and provisions of any declarations, covenants and restrictions applicable to other property under the jurisdiction of the surviving or consolidated Association, as a common plan. Other than as specifically stated in the plan of merger or consolidation approved pursuant to all Legal Requirements, no merger or consolidation shall effect any revocation of the provisions of the Declaration with respect to the Properties, including the limits on any assessment or any other matter substantially affecting the interests of the members of the Association. In addition to obtaining the minimum required voting percentage under applicable provisions of the Act for merger or consolidation with another association, during the Development Period such merger or consolidation must have the written consent of Declarant.

ARTICLE IV
RIGHTS IN AND TO COMMON ELEMENTS

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

(a) the provisions of this Declaration and the Governing Documents, including rights in or with respect to the Common Elements reserved for Declarant;

(b) restrictions, easements, and other matters applicable to the Common Elements;

(c) subject to the provisions of the Code and the Governing Documents, the right of the Association to charge reasonable admission and other fees for the use of any Common Elements and to regulate the use thereof by Owners and other Persons;

(d) the right of the Association to regulate or limit use and access by Owners to Common Elements to only such use or access as is reasonably necessary to the full use and enjoyment of the Lot owned by such Owner. In this regard, it is contemplated that there may be some Common Elements to which no Owners, or only a limited number of Owners, will have any right of use or access;

(e) limitation of use of Limited Common Elements to those Lots and Owners to whom such Limited Common Elements is allocated or with whom it is associated;

(f) subject to any applicable notice and hearing requirements of the Act and maximum fine limitations of the Act, the right of the Association to fine an Owner and/or suspend the voting rights of an Owner and/or suspend other rights and easements of enjoyment in and to the Common Elements of an Owner and such Owner's family members, tenants, contract purchasers, guests, or other Persons to whom the Owner has delegated such rights, for any period during which any assessment or other amount owed by the Owner to the Association remains unpaid, and for a reasonable period of time for any violation or infraction of the Governing Documents by an Owner or such Owner's family members, tenants, contract purchasers, guests, or other Persons to whom the Owner has delegated such rights or who are asserting any rights through such Owner. Provided, however, no such suspension shall constitute a waiver or discharge of the Owner's obligation to pay any assessment or other charge under the Declaration. Further provided, the Association shall not suspend the right of any Owner to any of the following: (i) ingress and egress over any portion of the Common Elements on which there is a private street or easement that provides access for ingress and egress from a public street to and from such Owner's Lot; (ii) drainage of storm water in, on, over, under, or through, as applicable, any portion of the Common Elements on which there is a stormwater drainage easement or Stormwater Control Measures that provides storm water drainage for such Owner's Lot; or (iii) sanitary sewer, water or other utility service in, on, over, under, or through, as applicable, any portion of the Common Elements on which there is an easement that provides such utility service to such Owner's Lot. Provided, however, such Owner shall remain subject to the rules and regulations, if any, established by the Association for use of such portion of the Common Elements;

(g) the right of the Association to dedicate, sell, transfer or exchange all or any part of the Common Elements, subject to the applicable voting requirements for such actions;

(h) the right of the Declarant, during the Development Period, and the right of the Association, to grant easements over, across, in, on, under, and through the Common Elements to any Governmental Authority or utility provider for the installation and maintenance therein of water and sanitary sewer, natural gas, internet, electric, telephone, cable television, Water Utility System and other utilities, and Stormwater Control Measures;

(i) the right of the Association to borrow money and, subject to the applicable voting requirements for such actions, to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Elements or its other assets as security for such indebtedness. Provided, however, that the rights of any such lender or Mortgagee shall be subordinate to the property rights of the Members and the Association as provided in this Declaration;

(j) the right of the Association, as provided by and consistent with the provisions of the Code, the Act and the Declaration, to exchange all or part of the Common Elements for other property or consideration;

(k) the right of the Association to close or limit the use of Common Elements for maintenance of improvements thereon or therein or to close or limit use of Common Elements temporarily in order to prevent or defeat any claims of adverse possession or unintentional dedication to public use;

(l) the right of the Association to adopt and enforce Rules and Regulations and Board Policies; and

(m) Special Declarant Rights and any other rights of the Declarant.

Section 2. <u>Delegation of Use</u>.

(a) Family. Subject to all provisions of the Governing Documents for use of the Common Elements applicable to Owners, members of the Owner's immediate family who occupy the Dwelling of the Owner within the Properties as their principal residence, may use the Common Elements in the same manner and to the same extent as the Owner. Provided, however, any use of the Common Elements by occupants of a utility dwelling is subject to such rules and user fees as the Board, in the exercise of its discretion, adopts or imposes.

(b) Tenants. Subject to all provisions of the Governing Documents applicable to Owners and tenants, tenants authorized by the Owner to use the Common Elements may use the Common Elements in the same manner and to the same extent as the Owner.

(c) Guests. Subject to all applicable provisions of the Governing Documents, guests of Owners and guests of tenants authorized by the Owner or tenant to use the Common Elements, may use the Common Elements in the same manner and to the same extent as the Owner.

(d) The Board has the authority to resolve any issue as to whether a Person is a family member, occupant of a utility dwelling, tenant, or guest of any Owner under this Section and the right of such Person to use the Common Elements.

(e) Suspension of Use Privilege. All uses of the Common Elements by an Owner's family members, tenants, and guests constitute a privilege and not a right. The privilege of any Person under this Section

to use the Common Elements may be suspended for violation of the Governing Documents and as otherwise provided in the Governing Documents, and such privilege shall be suspended during any period of time that the rights of the Owner through whom the Person derives his or her privilege to use the Common Elements are suspended.

Section 3. **Limitation of Liability**. Owners, occupants, tenants, and guests shall use the Common Elements and other property maintained by the Association at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners, occupants, tenants, and guests shall have an affirmative duty and responsibility to inspect such Common Elements and other property maintained by the Association for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof and to report any of the foregoing to the Association. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the Common Elements or other property maintained by the Association. The Association shall not be liable to any Owner, occupant, tenant, or guest for loss or damage, by theft or otherwise, of any property of Owner, occupant, tenant, or guest. The Association shall not be liable for injury or damage to any Person or property: (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, Stormwater Control Facilities, or utility line or facility, or from any portion of the Common Elements or other property maintained by the Association, unless resulting from the gross negligence of the Association, or (c) resulting from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, Stormwater Control Facilities, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair, unless resulting from the gross negligence of the Association.

Section 4. **Conveyance of Title to the Association**. The Association shall accept conveyance of Common Elements from the Declarant at any time. During the Development Period, the Declarant reserves the right to determine and designate what real property constitutes Common Elements. During the Development Period Declarant reserves an easement in, over, across, under and through the Common Elements for the purpose of constructing improvements in, on, over, under, and through the Common Elements or improvements for the benefit of the Subdivision as it deems necessary or advisable, provided that any such improvements must comply with Legal Requirements. Except as otherwise stated herein, all conveyances by Declarant to the Association of real property may be by special warranty deed.

All conveyances of Common Elements to the Association, whether or not stated in the instrument of conveyance, are subject to the right and easement of Declarant and its successors and assigns to construct, install, and maintain such improvements on, in, over, or under such Common Elements as Declarant determines are necessary or desirable for the development of the Properties, to grant utility and other easements in connection with the foregoing, and the exercise of any other rights or easements of the Declarant provided for in this Declaration or other Governing Documents or the special warranty deed by which the Declarant conveys the Common Elements to the Association. Declarant may convey or transfer to the Association personal property and rights and easements by written instrument, without warranty, and in an "as is, where is" condition, or may convey or transfer the same to the Association in any other manner determined by Declarant.

Section 5. Rights and Obligations of Owners, the Association, and Declarant as to Common Elements on a Lot.

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

(b) Declarant and Association. The Declarant and Association, and their respective employees, agents, contractors and subcontractors, have a nonexclusive right and easement at all times to enter upon any Common Elements located on a Lot or any other portion of the Properties not owned by the Declarant or the Association for any or all of the following purposes: (i) maintaining entrance signs, monuments and decorative features, and other signs, all of which shall have been approved by a Governmental Authority if such approval is required under Legal Requirements; (ii) maintaining landscaping, Stormwater Control Measures, and other improvements to or in the Common Elements that have been constructed or installed by the Declarant or the Association; (iii) otherwise maintaining the Common Elements or keeping the Common Elements free from obstructions and impediments to its use; and (iv) carrying out the Association's responsibilities for maintenance of the Common Elements.

(c) Use of Common Elements by Declarant. During the Development Period Declarant, for itself and other Persons authorized by Declarant, shall have the right to use any or all of the Common Elements for such purposes as Declarant determines, in its sole discretion.

Section 6. Ingress and Egress; Utilities. Notwithstanding anything to the contrary appearing in this Declaration, (i) if ingress and egress from a public street to and from any Lot is over any part of the Common Elements as shown on any plat or described in any instrument recorded in the Registry, or (ii) Stormwater Control Facilities, stormwater drainage, sanitary sewer, water or other utility services are provided to a Lot over or through an easement located on the Common Elements as shown on any plat or described in any instrument recorded in the Registry, any conveyance or encumbrance of the affected portion of the Common Elements shall be subject to those easements for ingress and egress and/or utilities, and no suspension of the rights of the Owner of said Lot in and to the use and enjoyment of the Common Elements as allowed herein shall include suspension of any such rights of the Owner to such ingress and egress or utilities.

ARTICLE V
MEMBERSHIP AND VOTING RIGHTS

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

Section 2. **Classes of Voting Members**. The Association shall have two (2) classes of voting Members as follows:

(a) **Class A**. Class A Members are all Owners of Lots, except for the Class B Member. With respect to Association matters on which Class A Members are eligible to vote, each Lot owned by a Class A Member or Members is allocated one (1) vote, regardless of the number of Class A Members who own the Lot.

(b) **Class B**. The Class B Member is the Declarant. During all times that the Class B membership exists, the Class B Member is the only Member eligible to vote on Association matters, unless a Legal Requirement requires that all Members have a right to vote. With respect to each Association matter on which the Class B Member is eligible to vote, the Class B Member is allocated 300 votes. Any one or more times that the Class B membership terminates because Declarant owns no Lots, and Declarant later acquires ownership of one or more Lots, the Class B membership shall be reinstated until such time as Declarant again owns no Lots.

Section 3. **Exercise of Voting Rights**. The exercise of voting rights shall be governed by the Articles and/or Bylaws of the Association, as applicable, including quorum requirements and exercise of voting rights by written consent or other method allowed in the Articles and/or Bylaws instead of a vote at a meeting of the Association, or by any combination of voting at a meeting and other method of voting as allowed in the Articles and/or Bylaws. Any provision of the Declaration or other Governing Documents that refers to a vote of the membership of the Association shall not preclude the exercise of voting rights by such other methods. When there is more than one Owner of any Lot, all such Owners shall be Members and the voting rights allocated to their Lot shall be exercised as they, among themselves, determine (subject to any applicable provisions of the Articles or Bylaws), but fractional voting of the votes allocated to such Lot shall not be allowed.

Section 4. **Period of Declarant Control**. During the Development Period, the Declarant shall be entitled to appoint, remove, and replace all of directors of the Board, and, with respect to quorum requirements at any meeting of the Association, Declarant's right to appoint directors is also Declarant's right to elect directors under the Act.

ARTICLE VI
ASSESSMENTS AND OTHER CHARGES

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION OR ANY OTHER PROVISISION OF THIS DECLARATION OF PROTECTIVE COVENANTS FOR EVERLY SUBDIVISION, A BUILDER SHALL NOT BE ASSESSED AND SHALL NOT PAY ANY ANNUAL OR SPECIAL ASSESSMENTS OR ANY OTHER CHARGES ASSESSED BY THE DURING THE BUILDER'S OWNERSHIP OF A LOT OR LOTS IN THE SUBDIVISION.

Section 1. **Creation of the Lien and Personal Obligation for Assessments and Other Charges**. Each Owner, by execution of the Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies on behalf of the Association) all assessments for Common Expenses and other charges as required or allowed by the Declaration, including the following: (i) annual assessments; (ii) working capital assessment; (iii) stormwater assessments; (iv) special assessments for capital improvements or other matters as set forth herein; (v) special individual assessments levied against an Owner to reimburse the Association for maintenance expenses resulting from the failure of such Owner to maintain adequately that Owner's Lot, or for damages to Common Elements, or for such other purposes as stated herein; (vi) architectural review fees and costs as specified herein; (vii) fines for violations of Restrictions and Rules and/or Association rules and regulations with respect to use of the Common Elements; (viii) late payment penalties and interest on unpaid assessments and other charges; and (ix) other charges imposed under authority contained in the Act (specifically including all fees allowed under Section 47F-3-102 of the Act) or Governing Documents (architectural review fees, fines, penalties, interest and other fees and charges all being referred to herein collectively as "other charges"), and, in addition to such assessments and other charges, to pay all costs, fees and expenses, including reasonable attorneys' fees, incurred by the Association in enforcing or collecting any of the foregoing assessments or other charges against such Owner or the Lot of such Owner. All assessments and other charges shall be established and collected as hereinafter provided. All assessments levied against a Lot and other charges owed by the Owner of a Lot that remain unpaid for a period of thirty (30) days or longer, together with the costs of collection thereof, including reasonable attorneys' fees, shall constitute a charge and continuing lien on that Lot from and after the time of the filing of a claim of lien by the Association in the office of the Clerk of Superior Court of Franklin County, North Carolina, and shall be the personal and continuing obligation of such Owner at the time when the assessment or other charge first became due and payable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid. No Owner shall be exempt from liability for any assessment provided for herein by reason of non-use of the Common Elements or such Owner's Lot, or abandonment of a Lot, or temporary unavailability of the use or enjoyment of the Common Elements. If necessary to establish the right to collect reasonable attorneys' fees under the Declaration, any obligation of an Owner to pay assessments or other charges or monetary obligations under the Declaration shall constitute evidence of indebtedness for the purpose of establishing under Section 6-21.2 of the North Carolina General Statutes (or any successor statute) the right to collect reasonable attorneys' fees in any

action or proceeding to enforce or collect payment of such obligation. Provided, however, the foregoing sentence specifically is intended to supplement, and not to interfere, limit, invalidate or be in conflict with, any provisions of the Act or Legal Requirements with respect to reasonable attorneys' fees.

Section 2. **Liability for Assessments After Change in Membership Status**. No Owner shall be relieved of, or released from, the obligation to pay assessments and other charges under the Declaration because of any resignation or attempted resignation by such Owner of membership in the Association while such Owner owns a Lot, or because of any suspension of such Owner's membership or membership rights in the Association as allowed under Legal Requirements or the Governing Documents.

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

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

Section 4. **Commencement of Assessments**.

(a) Each Lot becomes subject to all assessments under the Declaration from and after the date on which it becomes a Lot.

(b) With respect to any Lot that is not a Lot on the first day of a fiscal year and first becomes a Lot during that fiscal year, the annual assessment due and payable for that Lot for that fiscal year is determined by multiplying the applicable annual assessment amount by a fraction whose numerator is the number of days remaining in that fiscal year from and after the day on which it becomes a Lot and whose denominator is the total number of days in that fiscal year. Such annual assessment is due and payable by the Owner of such Lot on or before the 30th day following the date on which it becomes a Lot.

(c) With respect to any Lot that is conveyed by Declarant to any other Owner during a fiscal year for which Declarant has elected to fund the Operating Deficit instead of paying annual assessments, for that fiscal year the annual assessment for such Lot due and payable by such Owner is determined by multiplying the applicable annual assessment amount by a fraction whose numerator is the number of days remaining in that fiscal year from and after the day on which the conveyance occurs and whose denominator is the total number of days in that fiscal year. Such annual assessment is due and payable by the Owner at the time of the conveyance by the Declarant to such Owner.

Section 5. **Annual Operating Budget and Annual Assessments.**

(a) For 2018 and subsequent years, the Board shall adopt for each fiscal year a proposed budget, containing an estimate of the total amount believed to be necessary to pay the Common Expenses for that fiscal year, including such reasonable amounts as the Board deems necessary to pay for: (i) maintenance of Stormwater Control Measures; (ii) payment of any amounts the Association is required to pay to a Governmental Authority by agreements with respect to Stormwater Control Measures; (iii) maintenance of Common Elements other than Stormwater Control Measures; (iv) working capital (available for day-to-day operating expenses of the Association and otherwise uncommitted for specific expenses); (v) reserves for contingencies, including replacement of Common Elements; and (vi) other items determined by the Board, and the budget shall contain separate line items for each of the foregoing (but no budget shall be invalid if any one or more of such items are not shown as separate line items). In adopting a budget and annual assessment, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the applicable fiscal year. The budget shall state the amount of the annual assessment per Lot proposed by the Board as necessary to pay for the budgeted Common Expenses, which is the annual assessment that will be assessed upon ratification of the budget. Unless a lower percentage is specified by the Board in the proposed budget, during the applicable fiscal year, and without any meeting of the Association to ratify an amended budget (it being deemed that the additional annual assessment is approved with the ratification of the original budget for that fiscal year), the Board may assess and collect from the Owners one or more additional annual assessments, not to exceed a total of 50% of the annual assessment for that fiscal year, determined by the Board to be necessary to cover actual Common Expenses that exceed the budgeted amount therefor and new or unexpected additional Common Expenses incurred during that fiscal year. The amount of the annual assessment resulting from budget ratification plus any additional amount of annual assessment permitted to be assessed by the Board is referred to herein as the "maximum annual assessment" (for example, if the annual assessment is $100.00 per Lot and the additional annual assessment amount that could be assessed and collected during the applicable fiscal year is $50.00 per Lot, then the maximum annual assessment for that fiscal year is $150.00 per Lot). The total amount of the annual assessment actually assessed against each Lot during a fiscal year is referred to herein as the "actual annual assessment" (for example, if the annual assessment proposed by the Board and ratified in connection with the budget is $100.00 per Lot and an additional $25.00 per Lot is assessed during the fiscal year, the actual annual assessment for that fiscal year is $125.00).

Within thirty (30) days after adoption of the proposed budget, the Board shall provide a copy or summary thereof to all Members (a copy or summary provided to any one (1) of multiple Owners of a Lot is deemed to be provided to all Owners of such Lot), together with a notice of the annual or special meeting of the Association at which ratification of such proposed budget will be considered, including a statement that the proposed budget may be ratified without a quorum for the meeting. The annual or special meeting at which ratification of the proposed budget is to be considered shall be held not less than ten (10) days nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting at which ratification of the proposed budget is to be considered (although if other matters are to be considered at such meeting applicable quorum requirements are in effect with respect to those other matters). The budget is ratified unless rejected at that meeting by Members who own eighty percent (80%) or more of the total number of Lots in the Properties. For the purposes of this paragraph, multiple Owners of a Lot shall be considered one Owner. In the event that the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

(b) The Association shall send notice of each annual assessment and each additional annual assessment to the Members of the Association (for purposes of notice of all assessments under the Declaration, notice sent to any one (1) of multiple Owners of a Lot is deemed to be notice sent to all of such Owners) not less than thirty (30) days in advance of the payment due date specified in the notice (which shall not be earlier than the first day of the applicable fiscal year), which notice may be in the form of an invoice for the annual assessment or additional annual assessment. The failure of the Board to establish the amount of any annual assessment or send timely notice as required herein shall not constitute a violation, waiver, or modification of the provisions of the Declaration, or a waiver of the Board's right to establish and collect the annual assessment or an additional annual assessment at any time during the fiscal year to which it is applicable, or a release of any Member from the obligation to pay the assessment or any installment thereof for that or any subsequent fiscal year. Until the Board has established an annual assessment for a fiscal year, the actual annual assessment for the immediately preceding fiscal year shall continue in effect, but when the new annual assessment is established, it shall be retroactive to the first day of the applicable fiscal year, and notice of same shall be sent to the Members not less than thirty (30) days in advance of the payment due date specified in the notice. If the annual assessment for any fiscal year has not been established by the last day of the immediately preceding fiscal year, the Board may send a notice of assessment to the Members for the amount of the immediately preceding fiscal year's annual assessment. Once the new annual assessment is established, any additional amount owed is due and payable by the payment due date specified in a supplemental notice to the Members sent not less than thirty (30) days in advance of the payment due date specified in the supplemental notice.

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

(d) Except as otherwise provided in the Declaration or by Legal Requirements (for example, additional or different assessments for Limited Common Elements and stormwater assessments), all annual assessments shall be the same for all Lots.

Section 6. <u>Declarant's Obligation to Pay Annual Assessments</u>.

(a) For any fiscal year of the Association during the Development Period, Declarant may satisfy its obligation for payment of annual assessments on Lots it owns either by paying annual assessments in the amount per Lot assessed for that fiscal year or by paying the Operating Deficit. Unless Declarant otherwise notifies the Board prior to the Board's adoption of a proposed annual operating budget for the next fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the current fiscal year. Declarant has elected to pay the Operating Deficit for the first fiscal year of the Association. Payment of the Operating Deficit may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners. At Declarant's option, the Operating Deficit for any fiscal year may not be assessed against Declarant unless the maximum annual assessment for that fiscal year has been assessed.

(b) Declarant's obligations with respect to payment of annual assessments or payment of the Operating Deficit may be satisfied by Declarant by any combination of the provision of services or materials toward satisfaction of Common Expenses, including (i) payment for such services or materials directly to the providers thereof, or (ii) payment of money to the Association, or (iii) 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).

Section 7. **Special Assessments**. In addition to all other assessments authorized herein, and subject to the other requirements of the Declaration, the Association may levy special assessments for the purpose of defraying, in whole or in part, the costs or expenses of any one or more of the following:

(a) Maintenance of a capital improvement in or on the Common Elements, including fixtures and personal property related thereto.

(b) Additions to the Common Elements.

(c) The necessary facilities and equipment to enable the Association to perform the functions and offer the services required or authorized herein.

(d) The Common Expenses of the Association, to the extent that such Common Expenses are not covered by annual assessments and applicable reserve funds.

(e) Repayment of any loan made to the Association to enable it to pay the Common Expenses or to perform the other functions and provide the other services required or authorized herein.

Each special assessment levied under this Section first shall be approved by the affirmative vote by sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association and, during the Development Period, by written consent of the Declarant. Provided, however, the Board may impose special assessments against Lots, without a vote of the Members, for the following:

(1) against the Lots in the Properties at the time the judgment was entered, a special assessment to pay for a judgment against the Association; and

(2) against all Lots in the Properties at the time the special assessment is levied, a special assessment to pay for part or all of any assessments against a Lot that remain unpaid after title to the Lot has been transferred to a new Owner in foreclosure of a first mortgage on such Lot or by a deed or other document or proceeding in lieu of foreclosure.

Notices for all meetings of the Association at which there is to be a vote on a special assessment shall include notice of the purpose and amount of the proposed special assessment. A special assessment is effective on the later of the date it is approved by the Members or Declarant (if such approval is required), or such later date adopted by the Members in the vote approving the special assessment, and is due and payable as established by the vote of the Members approving the special assessment, or, if not established by such vote of the Members, as established by the Board. Except as otherwise provided in the Declaration or required by Legal Requirements, special assessments shall be assessed equally against the Lots - for example, if there are 100 Lots subject to a special assessment, each Lot is assessed an amount equal to 1/100th of the total amount of that special assessment.

(f) Installation, maintenance, repair, replacement and any costs related to the Water Utility System.

Section 8. **Special Individual Assessment**. In addition to all other assessments, the Board (without any vote of the Members as required for other types of special assessments) may levy a special individual assessment against any Owner for (i) the repair of any damage to any portion of the Properties, including, without limitation, Common Elements and public road rights of way (other than normal wear and tear), caused by the Owner or any such Owner's family members, tenants, contractors, subcontractors, agents, or guests, or (ii) maintenance expenses resulting from the failure of such Owner to maintain adequately that Owner's Lot, or (iii) for any other purposes for which a special individual assessment may be assessed under Legal Requirements or Governing Documents. The notice of such special individual assessment shall describe the nature of the damage and the necessary repairs or maintenance, or any other purpose for the special individual assessment, and any such special individual assessment shall be due and payable to the Association on or before the tenth (10th) day following the giving of the notice by the Association. The Board may, in its discretion, levy any such special individual assessment prior to the commencement by the Association of the repairs or maintenance for which such special individual assessment is levied; provided that, if not already completed, upon the Association's receipt of payment of such special individual assessment the Association promptly shall undertake to have such repairs or maintenance performed and shall refund to such Owner any excess of the amount assessed and paid over the cost of such repairs or maintenance. In the event that the cost of such repairs exceeds the amount assessed and paid, the Board may assess such Owner for the excess costs.

Section 9. **Stormwater Assessment**. Notwithstanding anything to the contrary in the Declaration, and in keeping with the obligation of the Association under Section 47F-3-107(a) of the Act to be "responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement", (i) if the Board determines that the amount required in any fiscal year to pay for the Common Expenses, including the Association's obligation, if any, for stormwater management, maintenance of Stormwater Control Measures and payment of sums due from the Association under any Stormwater Agreement for any part or all of the Properties, would cause the Association's total expenses for that fiscal year to exceed the amount that would be due and payable to the Association if all Lots were assessed in the amount of the maximum annual assessment for that fiscal year (such excess amount of total expenses for that fiscal year being referred to in this Section as "excess expenses"), and (ii) the Board determines that there are not sufficient reserve funds available both to pay the excess expenses and continue to have adequate reserve funds, and (iii) the maximum annual assessment has been assessed for that fiscal year, and (iv) Declarant either has paid annual assessments to the Association or has funded the deficit for that fiscal year in an amount equal to or greater than the maximum annual assessment on all Lots owned by Declarant, then the Board may assess for that fiscal year, a "stormwater assessment" in an amount sufficient to pay for the excess expenses. The amount of such stormwater assessment shall be determined and assessed against all Lots in the Properties at the time the assessment is made, and no vote of the Members is required. The payment due dates for such stormwater assessment shall be as determined by the Board and shall be enforceable against Owners and their Lots in the same manner as annual assessments. Provided, however, during the Development Period no such stormwater assessment shall be assessed unless the same shall have been consented to in writing by the Declarant. Further provided, except as may be necessary to account for different Stormwater Control Measures, and/or Stormwater Agreements (or other agreements related to stormwater) applicable to different Lots as allowed in the Declaration, all stormwater assessments shall be the same for all Lots. Any stormwater assessment for excess expenses is in addition to all other assessments provided for herein.

Section 10. Assessment for Governmental Entity Agreements. Notwithstanding anything to the contrary in this Declaration, and in keeping with the obligation of the Association under Section 47F-3-107(a) of the Act to be "responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement", (i) if the Board determines for any fiscal year that the Association has insufficient funds to pay a Common Expense pursuant to any agreement with a Governmental Authority other than those related to Stormwater Control Facilities, and (ii) the Board determines that there are not sufficient reserve funds available both to pay that Common Expense and continue to have adequate reserve funds, and (iii) the maximum annual assessment has been assessed for the applicable fiscal year and the Board is unable to obtain ratification of an amended budget to increase the maximum annual assessment, and (iv) for that fiscal year the Declarant either has paid annual assessments to the Association on all Lots owned by Declarant or has funded the Operating Deficit in an amount equal to the maximum annual assessment on all Lots owned by Declarant (less any assessment credit applied by Declarant), then the Board, without any vote of the Members, may levy an additional assessment in an amount sufficient to pay for that Common Expense owed to the Governmental Authority.

If the applicable agreement with the Governmental Authority is with respect to a Limited Common Element, then the foregoing requirements for assessing the additional assessment shall be applied to the Lots to which the Limited Common Element has been allocated. The amount of such additional assessment shall be determined and assessed against all Lots or, if the applicable agreement with the Governmental Authority is with respect to a Limited Common Element, against the Lots to which that Limited Common Element is allocated, and each additional assessment shall be assessed equally against all of the Lot subject to that additional assessment. The payment due dates for such additional assessment shall be as determined by the Board and shall be enforceable against Owners and their Lots in the same manner as annual assessments. Provided, however, during the Development Period no such additional assessment shall be valid unless the same shall have been consented to in writing by the Declarant. An additional assessment pursuant to this Section is in addition to all other assessments provided for herein.

Section 11. <u>Collection of Assessments; Penalties for Late Payment</u>.

(a) Assessments may be collected on a monthly, quarterly, annual or other basis, as determined by the Board, with the payment due date to be specified in the notice of the applicable assessment. The billing schedule and payment due date shall be the same for all Owners. Provided, however, the Board has the power, in its sole discretion and upon such terms as the Board deems appropriate, to allow percentage discounts to Owners who pay assessments earlier than the payment due date therefor; provided, however, all such discounts shall be made available and applied uniformly to all Lots subject to the applicable assessment.

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

(c) The Board may authorize a management company or other billing agent, on behalf of the

Association, to bill and collect all assessments and other charges payable under the Declaration.

Section 12. **Certification of Assessments Paid**. The Association, or any property manager or agent authorized by the Association, upon written request and payment of a reasonable charge or fee established or approved by the Board, shall furnish to any Owner or such Owner's authorized agent, or to any holder of a first lien deed of trust on a Lot, or to an attorney who represents the Owner or a prospective purchaser of such Lot, or to any other Person approved by the Board, a certificate signed by an officer of the Association or other Person authorized by the Board to give such certificate setting forth whether or not there are any unpaid assessments or other charges against such Lot and the amount of any unpaid assessments or other charges. The certificate shall be furnished within ten (10) business days after receipt of the request therefor and, except in the event of any willful misstatement made by the issuer of the certificate, it shall be binding on the Association, the Board and every Owner. If requested by the requesting party, the certificate also shall indicate whether or not the Association has knowledge of any uncured default in, or violation of, any provision of the Declaration and other Governing Documents with respect to the Lot and the then Owners thereof and, if there is any uncured default or violation, the action required to cure it.

Section 13. **Assessment Lien and Foreclosure**. The assessments and other charges provided for herein shall be the personal and individual debt of each Person who, at the time of the assessment or other charge, is the Person against whom they are charged or is an Owner of the Lot against which they are assessed or charged. All assessments levied against a Lot and other charges owed by the Owner of a Lot that remain unpaid for a period of thirty (30) days or longer, together with the costs of collection thereof, including reasonable attorneys' fees, shall constitute a charge and continuing lien on that Lot from and after the time of the filing of a claim of lien by the Association in the office of the Clerk of Superior Court of Franklin County, North Carolina, and shall be the personal and continuing obligation of such Owner at the time when the assessment or other charge first became due and payable. Once filed, a claim of lien secures all sums due the Association through the date filed and any sums due to the Association thereafter. Fees, charges, late charges, and other charges imposed pursuant to this Declaration and/or pursuant to Sections 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 (all of which are included in the term "other charges" as used in this Declaration) are subject to the claim of lien under this Section as well as any other sums due and payable to the Association under this Declaration, the Act, or as the result of an arbitration, mediation, or judicial decision.

Prior to filing a claim of lien, the Association must make reasonable and diligent efforts to ensure that its records contain the current mailing address for the Owner of such Lot. No fewer than fifteen (15) days prior to filing the claim of lien, the Association shall mail a statement of the assessment amount due by first-class mail to the physical address of the Lot and to the Owner's address of record with the Association, and, if different, to the address for such Owner shown on the Franklin County property tax records and Franklin County real property records for the Lot. If the Owner of the Lot is a corporation or other legal entity that has a registered agent, the statement also shall be sent by first-class mail to the mailing address of the registered agent for the corporation or such other legal entity. Provided, however, and notwithstanding anything to the contrary in this Declaration, the Association is not required to mail a statement to an address known to be a vacant Lot on which no Dwelling has been constructed or to a Lot for which there is no United States postal address.

Except as otherwise provided in the Governing Documents or by Legal Requirements, such lien shall be superior to all other liens and charges against such Lot. The Board shall have the power, in its sole discretion, to subordinate the lien to any other lien. The claim of lien shall set forth the name and address of the Association, the name of the record Owner of the applicable Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed. In addition to the claim of lien, the Association may execute, issue or record such other evidence of the lien as the Board deems necessary. Except as otherwise provided in the Act, the Association may foreclose the claim of lien in like manner as a mortgage on real estate under a power of sale or in any other manner allowed or required by Legal Requirements if the assessment remains unpaid for ninety (90) days or more, and/or the Association may institute suit against the Owner personally obligated to pay the assessment or charge, and/or the Association may seek any other available remedy or relief. Provided, however, the Association shall not foreclose the claim of lien unless the Board votes to commence the proceeding against the specific Lot. In any foreclosure proceeding, the Association shall have the right to appoint a trustee or commissioner (or other appropriately named Person) to implement the foreclosure, and the defaulting Owner shall be required to pay the costs, expenses, trustee's (or commissioner or other) fees, and reasonable attorneys' fees incurred by the Association. The Association shall have the power to bid on and purchase the Lot at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal therewith. The remedies against a defaulting Owner and such Owner's Lot are cumulative and not mutually exclusive, and the Association may seek none, or any one or more of such remedies, separately or simultaneously, as deemed appropriate by the Board.

Notwithstanding the foregoing provisions allowing the Association to foreclose a claim of lien by nonjudicial foreclosure, a claim of lien securing a debt consisting solely of fines imposed by the Association, interest on unpaid fines, or attorneys' fees incurred by the Association solely associated with fines imposed by the Association may only be enforced by judicial foreclosure, as provided in Article 29A, Chapter 1, of the North Carolina General Statutes. The Association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any Lot Owner unless the fee is expressly allowed in this Declaration, and any claim of lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure, as provided in Article 29A, Chapter 1, of the North Carolina General Statutes.

The Association shall be entitled to recover the reasonable attorneys' fees and costs it incurs in connection with the collection of any sums due for assessments and other charges. A Lot Owner may not be required to pay attorneys' fees and court costs until the Lot Owner is notified in writing of the Association's intent to seek payment of attorneys' fees, costs, and expenses. The notice must be sent by first-class mail to the physical address of the Lot and the Lot Owner's address of record with the Association and, if different, to the address for the Lot Owner shown on the records of the Franklin County Revenue Department. The Association must make reasonable and diligent efforts to ensure that its records contain the Lot Owner's current mailing address. Notwithstanding anything to the contrary herein, there shall be no requirement that notice under this subsection be mailed to an address which is known to be a vacant Lot on which no Dwelling has been constructed or a Lot for which there is no United States postal address. The notice shall set out the outstanding balance due as of the date of the notice and state that the Lot Owner has fifteen (15) days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the Lot Owner pays the outstanding balance within this period, then the Lot Owner shall have no obligation to pay attorneys' fees, costs, or expenses. The notice also shall inform the Lot Owner of the opportunity to contact a representative of the Association to discuss a payment schedule for the outstanding balance, as provided in the next succeeding paragraph on installment payments, and shall provide the name and telephone number of the representative.

The Association, acting through the Board and in the Board's sole discretion, may agree to allow payment of an outstanding balance of assessments and other charges in installments. Neither the Association nor the Lot Owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule after the Lot Owner has been given notice as required in the immediately preceding paragraph on collection of reasonable attorneys' fees. Attorneys' fees incurred in connection with any request that the Association agrees to accept payment of all or any part of sums due in installments shall not be included or considered in the calculation of fees chargeable in connection with a nonjudicial foreclosure of a claim of lien.

Section 14. **Lien Priority**. The lien for unpaid assessments and other charges provided for herein is prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including a first lien mortgage or deed of trust on a Lot) recorded before the docketing of the claim of lien in the office of the Franklin County Clerk of Court, and (ii) liens for real estate taxes and other Governmental Authority assessments and charges against the Lot. Provided, however, this Section does not affect the priority of mechanic's or materialmen's liens. A lien for unpaid assessments and other charges is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing of the claim of lien in the office of the Franklin County Clerk of Court. Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust or deed or other proceeding in lieu of foreclosure, such new Owner of the Lot and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which became due prior to the acquisition of title to such Lot by such new Owner. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Owners, including such new Owner, its heirs, successors, and assigns in the event that the Association is unable to collect, or chooses not to pursue collection, from the Person who was the Owner of the Lot during the time the assessments were assessed against the Lot.

Section 15. **Exempt Property**. To the extent provided herein, Exempt Property is exempt from the assessments, charges and liens established pursuant to the Declaration.

Section 16. **Reserve Funds**. From the annual assessments and working capital assessments the Board, in the exercise of its reasonable discretion, shall establish and maintain reserve funds for contingencies, acquisition and replacements of Common Elements, and other financial obligations of the Association. Reserve funds are subject to the following:

(a) Extraordinary or contingency expenditures not originally included in the annual operating budget shall be paid for out of appropriate reserve funds, including (i) major rehabilitation or repair of the Common Elements (including but not limited to the private roads), (ii) emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss, (iii) as determined by the Board, the initial costs of any new service to be performed by the Association, and (iv) any other items allowed by the Governing Documents or Legal Requirements to be paid out of reserve funds. Except for expenses of normal and routine maintenance included in the annual operating budget, all expenses for repair or replacement of the Common Elements first shall be charged against appropriate reserves in such amount as determined by the Board.

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

Section 17. **Working Capital Assessment**. Except in those instances in which a working capital assessment for the Lot has been paid previously, at the closing of the sale by Declarant of a Lot on which a Dwelling exists, or at the closing of the sale of a Lot by the Declarant to any Person other than a Builder or a successor or assignee Declarant, or at the closing of the sale of a Lot by a Builder to any Person, whether or not there is a Dwelling on the Lot, the purchaser of the Lot or the Lot and Dwelling shall pay to the Association at the time of the closing of the purchase a "working capital assessment" in the amount of $750.00. The working capital assessment shall be paid only once with respect to each Lot, and is in addition to all other assessments. All working capital assessments may be enforced and collected in the same manner as all other assessments.

Section 18. **Assessments for Limited Common Elements**. During the Development Period Declarant reserves the right, without the consent, approval or joinder of the Association or any Owner or other Person, to allocate Limited Common Elements to Lots, including any one or more of the following: (i) private streets; (ii) alleys; (iii) landscaping, signs and decorative features; and (iv) Stormwater Control Measures. Such allocation of Limited Common Elements may be evidenced by the recording of a Supplemental Declaration or other document, by written notice given by Declarant to the Association, or in such other manner as determined by Declarant.

All of the provisions of this Declaration relating to assessments with respect to Common Expenses shall apply to assessments with respect to Limited Common Expenses, with the following exceptions: (i) assessments with respect to any particular Limited Common Elements are assessed only against those Owners of the Lots to which such Limited Common Elements are allocated; (ii) budget ratification with respect to Limited Common Expenses is subject to voting only by Owners of those Lots subject to assessment for such Limited Common Expenses; (iii) the initial additional maximum annual assessment and additional annual assessment for each Limited Common Elements may be established in the Supplemental Declaration or other document that allocates the Limited Common Elements; (iv) assessments for Limited Common Expenses may vary with respect to different groups of Lots or from phase to phase, section to section, or subdivision to subdivision within the Properties; and (v) the assessments for Limited Common Elements with respect to any particular Lots or in any particular phase, section or subdivision of the Properties shall be used exclusively in connection with the Limited Common Elements allocated to or associated with such group of Lots or phase, section or subdivision.

Section 19. **No Default Under Insured Mortgage**. Nothing contained in the Declaration shall be construed as stating or implying that any failure of an Owner to pay assessments constitutes a default under any mortgage on such Owner's Lot that is insured by the FHA, VA, FNMA, FHLMC, or any Secondary Mortgage Market Agency, or any mortgage program administered by any of said agencies.

ARTICLE VII
INSURANCE

Section 1. General Provisions.

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

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

(c) The deductible or retained limit (if any) on any insurance policy obtained by the Association shall be in a reasonable amount as determined by the Board and shall be a Common Expense.

(d) To the extent such policy provisions are reasonably available, as determined by the Board, Association policies shall provide for the following:

(1) policies shall be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Elements shall be for the benefit of the Association and its Members.

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

(3) policies shall not be brought into contribution with insurance purchased by Owners, occupants, tenants, or their Mortgagees individually.

(4) an inflation guard endorsement.

(5) an agreed amount endorsement, if the policy contains a co-insurance clause.

(6) each Owner is an insured person under the policy to the extent of such Owner's insurable interest;

(7) the insurer waives its right to subrogation under the policy against any Owner or member of that Owner's household;

(8) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(9) 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 Association's policy, the Association's policy provides primary insurance coverage.

(10) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause.

(11) any other provisions determined by the Board to be necessary or desirable.

(e) To the extent reasonably possible, the Association shall require that an insurer who has issued an insurance policy to the Association for property insurance on the Common Elements or for liability insurance issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or Mortgagee. If such agreement is reasonably available from the insurer, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and each Owner and Mortgagee to whom certificates or memoranda of insurance have been issued, to their respective last known addresses.

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

(g) During the Development Period (i) Declarant shall be named as an additional insured party under any one or more policies of insurance maintained by the Association, and (ii) any one or more Builders, as requested by Declarant, shall be named as additional insured parties under any one or more policies of insurance maintained by the Association; provided, however, any Builder named as an additional insured under any policy of insurance maintained by the Association shall pay to the Association any additional premium charged by the insurer for including the Builder as an additional insured, and the Association shall not be required to have any such Builder who does not timely pay such additional premium named as an additional insured.

Section 2. **Property Insurance**.

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

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

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

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

(a) adequate fidelity coverage to protect against dishonest acts on the part of directors, officers, trustees, agents and employees of the Association and all others who handle or are responsible for handling funds of the Association, including any property manager and volunteers. If the Association has delegated some or all of the responsibility for handling funds to a property manager, such property manager shall be covered by its own fidelity insurance in such amounts as required by the Board; however, the Association may purchase additional fidelity coverage for the property manager as well. Such fidelity insurance (except for fidelity insurance obtained by the property manager for its own personnel) shall: (i) name the Association as an obligee; (ii) be written in an amount not less than one-fourth of the total annual assessment for Common Expenses or the amount required by the Institutional Lenders, the FNMA or the FHLMC, whichever is greatest; and (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(b) if required by a majority of the Institutional Lenders or any applicable Legal Requirement, flood insurance on the real property owned by the Association in accordance with the then applicable regulations for such coverage.

(c) workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement).

(d) directors and officers liability insurance.

(e) such other insurance or bonds as the Board may determine in the exercise of its reasonable discretion, or as may be requested by the affirmative vote of a majority of the Members present at a meeting of the Association.

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

Each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of Lots or any Improvements thereon (other than any such Improvements owned or maintained by the Association) or for the personal property of any Owner, occupant, tenant, or guest. Each Owner covenants and agrees with all other Owners and the Association that each Owner at all times shall carry all-risk casualty insurance (including fire and other hazards commonly insured) on all Improvements located on such Owner's Lot (except for any Improvements owned or maintained by the Association) sufficient to cover the full replacement cost of any repair or replacement of such Improvements, and a liability policy covering damage or injury occurring on the Owner's Lot.

ARTICLE VIII
REPAIR AND RESTORATION OF THE PROPERTIES

Section 1. **When Required**.

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

If the damage is not repaired or replaced, then (i) the Association, first using the insurance proceeds attributable to the damaged property, shall remove all remnants of the damaged improvements and restore the damaged area to a condition compatible with the remainder of the Properties, (ii) the insurance proceeds attributable to Limited Common Elements which are not repaired or replaced shall be distributed to the Owners of the Lots to which such Limited Common Elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the insurance proceeds shall be distributed to all Owners or lienholders, as their interests may appear, in proportion to the Common Expense Liabilities of all of the Lots. Provided, however, and notwithstanding the foregoing, if this Declaration is terminated, the distribution of insurance proceeds shall be in compliance with the applicable requirements of the Act upon such termination. Further provided, the Association may deduct and retain from any distribution owed to a Member, the amount of any unpaid liability of such Member to the Association at the time of the distribution.

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

If the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the work and that the Association should undertake to perform the work, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to perform the work at the Owner's sole cost and expense if the work is not completed by the Owner within the time period specified in the notice. If any Owner does not complete the work as required in this subsection, or there is an emergency situation that in the sole discretion of the Board requires immediate action, the Association may perform the work and all costs thereof shall be assessed against the Owner and the Owner's Lot as a special individual assessment.

Section 2. <u>Eminent Domain</u>.

(a) Definitions. For the purposes of this Section, "Taking" means an acquisition of all or any part of the affected portion of the Properties or of any interest therein or right accruing thereto as a result of, in lieu of, or in anticipation of, the exercise of the right of condemnation or eminent domain, or any other action by a Governmental Authority or other Person having the power of eminent domain that affects the value of the applicable portion of the Properties or any part thereof so severely as to amount to a taking.

(b) Taking of Lot. If there is a Taking of all of a Lot, or a Taking of part of a Lot leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted under this Declaration, the award shall compensate the Owner for the Lot and the Owner's interest in the Common Elements. Upon such Taking, unless the decree of a court of competent jurisdiction otherwise provides, there shall be no votes in the Association allocated to such Lot, or remnant thereof, nor shall such Lot or remnant thereof, be subject to any further assessments under this Declaration, the Lot's Allocated Interests automatically are to be reallocated as provided in the Act, and the remaining remnant of the Lot becomes part of the Common Elements.

If there is a Taking of part of a Lot that leaves the Owner with a portion of the Lot which practically and lawfully may be used for any purpose permitted under this Declaration: (i) the award shall compensate the Owner for the reduction in value of the Lot; and (ii) with respect to determining the award and the Allocated Interests of the Lot in the Association following the Taking, the Lot shall be treated as if no Allocated Interests have been divested therefrom and there shall be no reduction in the vote allocated to that Lot or in the assessments assessed against such Lot.

(c) Taking of Common Elements. If there is a Taking of all or any part of the Common Elements, the Board shall act on behalf of the Association in connection with the Taking and no Owner shall have any right to participate in the proceedings incident thereto as an Owner. The award made for such Taking shall be paid to the Association. If the Taking involves a portion of the Common Elements on which improvements have been constructed, then the Association, to the extent reasonably practicable and in accordance with plans reasonably adopted by the Board, shall restore or replace such Common Elements improvements, unless a contrary determination is made by Declarant, during the Development Period, or, when the Development Period is not in effect, by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association.

If any portion of any award for a Taking of the Common Elements is attributable to any Limited Common Elements, such portion of the award shall be apportioned among the Owners of the Lots to which the Limited Common Elements was allocated at the time of the Taking based on the Allocated Interests of such Owners in such Limited Common Elements at the time of the Taking.

ARTICLE IX
USE OF THE PROPERTIES

Section 1. **Use of the Properties**. Except as otherwise allowed by the Declaration, no portion of the Properties shall be used for other than residential purposes, streets, utilities, greenways, open space, Common Elements, recreational purposes, or other purposes substantially related to residential use which are allowed under applicable Governmental Authority zoning ordinances for such portions of the Properties (unless such substantially related purposes are prohibited by other provisions of the Declaration), or any other uses allowed under applicable Governmental Authority zoning ordinances for such portions of the Properties and approved by the Declarant during the Development Period or thereafter, by the Board. Provided, however, and notwithstanding the foregoing sentence, during the Development Period: (i) Declarant, and any Builder or other Person with Declarant's consent, may maintain model homes, sales offices and temporary construction trailers and other facilities within the Properties for the purpose of conducting business related to the development, improvement, and/or sale or marketing of any part or all of the Properties, including a reasonable time within which to remove such items following completion of such construction of initial improvements; and (ii) Declarant, and any Builder or other Person with Declarant's consent, may conduct such business and other activities within the Properties as may be necessary or desirable in connection with the development, improvement, and/or sale or marketing of any part or all of the Properties.

Section 2. **Provisions Affecting Occupancy**.

(a) Occupants Bound. The Governing Documents apply to all occupants of and visitors to any Lot. Every Owner shall cause anyone occupying or visiting such Owner's Lot to comply with the Governing Documents and shall be responsible for all violations and losses to the Common Elements caused by such Persons, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

(b) Household Composition. The Association shall not interfere with the freedom of Owners and occupants of Dwellings to determine the number of occupants within a household, except that it may limit the total number of Persons entitled to occupy a Dwelling based upon the size of the Dwelling (including, without limitation, such factors as the number of bedrooms), not to exceed the number of occupants permitted under applicable zoning ordinances, and it may limit the number of occupants per household who have full or partial privileges to use the Common Elements.

(d) Activities Within Dwellings. The Association shall not interfere with activities carried on within a Dwelling, except it may prohibit activities not normally associated with residential property uses or home business that are allowed under this Declaration, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside a Dwelling, or that create an unreasonable source of annoyance.

Section 3. **Animals**. No animals of any kind (including livestock, reptiles or poultry) shall be kept on any portion of the Properties or in any Dwelling except for dogs, cats or other domestic household pets which are not used for breeding or other commercial purposes, and provided that they do not create a nuisance (in the judgment of the Board), by number or type of animals, noise, odor, damage or destruction of property, animal waste, or any other reason, and further provided that they are kept in compliance with all Legal Requirements and such Restrictions and Rules and other rules and regulations pertaining thereto as the Association may adopt, which rules and regulations may include requirements that animals be kept on a leash or otherwise restrained or confined whenever they are anywhere on the Properties other than on the Owner's Lot or other areas specifically designated for animals not on leashes, that animals be restrained or confined inside a fence or other restraint when on a Lot outside of the Dwelling, and which may prohibit the keeping of animals on the Properties that are excluded from coverage or subject to reduced coverage under liability insurance policies generally available for the Properties. The Board may require any Owner to furnish the Board with evidence that a particular animal is not excluded or subject to reduced coverage under the liability insurance policy maintained by such Owner for that Owner's portion of the Properties, and the Owner shall furnish the Board with the required evidence (in the form of a copy of the applicable policy or such other evidence reasonably satisfactory to the Board) within ten (10) days following the date on which the Board gives a notice that it is requiring same. Provided, however, no Board member shall have any liability for any failure of the Board to adopt a Restriction or Rule or other rule or regulation that prohibits the keeping of a particular type or breed of animal. The Owner responsible for an animal being on the Properties promptly shall clean up or remove from any portion of the Properties not owned by such Owner all solid bodily wastes from that animal.

Each Owner who keeps any animal on any portion of the Properties shall be deemed to have indemnified and agreed to hold harmless the Association, Declarant and all other Owners, from and against any loss, claim for damages to person or property, cause of action, or liability of any kind,

including all costs of defending against same (including reasonable attorneys' fees), arising out of or resulting from such animal, including any actions of the animal. An easement over and upon the Properties hereby is reserved for the applicable Governmental Authority to exercise and enforce Legal Requirements relating to animal control.

Section 4. **Harmful Discharges**. There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances from any portion of the Properties into the atmosphere (other than those resulting from cleaning or reasonable residential chimney or outdoor grill emissions), there shall be no production, storage or discharge of hazardous wastes from or on any portion of the Properties, and there shall be no discharges of liquid or solid wastes or other harmful matter into the ground, sewer or any body of water within the Properties, if such emission, production, storage or discharge may adversely affect the use of any portion of the Properties, or may adversely affect the health, safety or comfort of the occupants of the Properties, or violates any Legal Requirement. Provided, however, the foregoing prohibitions shall not prevent or interfere with the reasonable development or maintenance of any portion of the Properties or improvements thereon by Declarant, any Builder, a Governmental Authority, a utility provider, or any other Person in accordance with Legal Requirements, nor shall they prevent, as incident to the residential use of the Properties, the reasonable use, handling, storage and disposal of medically related hazardous substances and wastes in compliance with all Legal Requirements.

Section 5. **Home Businesses**. An Owner may maintain an office or home business on such Owner's Dwelling or other improvement in the Properties only if: (i) such office or home business is operated by the Owner or a member of the Owner's household residing in the Dwelling, or by the Owner's residential tenant residing in the Dwelling; (ii) there are no displays or signs indicating that the Dwelling or improvement or portion of the Properties on which it is located is being used other than as a residence; (iii) such office or business does not generate significant traffic or parking usage by the business itself or by clients, customers or other Persons, it being in the discretion of the Board to determine compliance with this requirement; (iv) no vehicles, equipment or other items related to the office or business are stored, parked or otherwise kept on the streets in the Subdivision or on the portion of the Properties on which such Dwelling is located outside of the Dwelling or other enclosure approved by the Architectural Review Committee; (v) such Owner has obtained from the applicable Governmental Authority, and maintains in effect, all required approvals for such use; (vi) the activity is consistent with the residential nature of the Properties and complies with all Legal Requirements and other provisions of the Declaration; (vii) no person is employed in such office or home business except for the Owner or the members of the Owner's household residing in the Dwelling or the Owner's tenant residing in the Dwelling; and (viii) the Owner has obtained prior written approval from the Board before commencing such business or office use and thereafter registers annually with the Association and obtains annual re-approval of such business or office use by the Board as long as the operation of the home business continues. As a condition to such use, the Association may require the Owner to pay any increase in the rate of insurance, trash removal, utilities or other costs for the Association or other Owners which result or reasonably may be anticipated to result from such use. Garage sales, yard sales and similar activities shall be conducted only in accordance with all Legal Requirements and the rules and regulations, if any, adopted by the Association.

Section 6. **Hunting; Discharge of Firearms**. Hunting and trapping of wild animals, fowl and game and the discharge of firearms and/or bows and arrows and/or other weapons within the Properties is prohibited, unless required for safety or personal protection reasons.

Section 7. **Leases**. Every lease for any Dwelling or other portion of the Properties shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and other Governing Documents, and that each lessee shall comply with the terms of such documents. Provided, however, the Declaration and other Governing Documents apply to all such leases, whether or not so stated therein.

Section 8. **Legal Requirements**. Nothing herein contained shall be deemed to constitute a waiver of any Legal Requirement applicable to any portion of the Properties, and all Legal Requirements relative to the construction of improvements on, and/or use and utilization of, any portion of the Properties shall be complied with by the Owners and occupants of such portions of the Properties, whether or not the Approved Plans for same are in compliance with such Legal Requirements. Provided, that in any instance in which the provisions of the Declaration contain a provision that requires something more than or in addition to, or prohibits something otherwise allowed under, a Legal Requirement (for example, prohibition of a use allowed under a Legal Requirement or requirement of a greater distance or size than required under a Legal Requirement), the provisions of the Declaration shall control, unless prohibited by a Legal Requirement.

Section 9. **New Construction**. Construction of new Dwellings only shall be permitted on Lots, it being the intent of this Section to prohibit the moving of any existing building or structure onto any Lot and remodeling or converting same into a Dwelling. Provided, however, the foregoing shall not be construed as prohibiting maintenance of, remodeling of, or construction of additions to, existing Dwellings that previously have been constructed in compliance with this Declaration, provided that such maintenance, remodeling or addition is performed in accordance with the Approved Plans therefor (or Architectural Guidelines not requiring Approved Plans) and other requirements of this Declaration.

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

Section 10. **Noises**. No Person shall cause any unreasonably loud noise anywhere on the Properties, except for security devices used in the manner intended therefor, nor shall any Person permit or engage in any activity, practice or behavior resulting in substantial and unjustified annoyance, discomfort or disturbance to any Person lawfully present on any portion of the Properties. Provided, however, the prohibition against noises contained in this Section shall not preclude or limit activities in the Properties conducted in accordance with the applicable Restrictions and Rules or other rules and regulations of the Association, including recreational events and social events. Further provided, the foregoing prohibitions shall not prevent or interfere with the reasonable development, construction, use, or maintenance of any portion of the Properties or improvements thereon by the Association, Declarant, a Builder, a Governmental Authority, a utility provider, or any other Person in accordance with Legal Requirements or the Governing Documents.

Section 11. **Nuisance and Other Matters**. No noxious or offensive activity shall be conducted upon any portion of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Community or any part thereof, or to any person lawfully residing in the Subdivision. Provided, however, the usual, customary or reasonable use and maintenance of a Lot, a Dwelling, or any Common Elements shall not constitute a nuisance. Further provided, the development of the Properties by Declarant and Builders, and the usual, customary or reasonable construction and maintenance of Dwellings and other improvements in the Properties shall not constitute a nuisance. Further provided, the operation and use of the Common Elements in the manner required or allowed by the provisions of the Declaration shall not constitute a nuisance.

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

Section 12. **Obstructions, etc.** No Owner shall obstruct any of the Common Elements, Governmental Authority greenways or greenway easements or any pedestrian access easements providing access to Common Elements or Governmental Authority greenways or greenway easements, nor shall anything be kept, stored, altered, constructed or planted in or on the Common Elements or removed therefrom (except as necessary to prevent injury to person or property), without the prior consent of Declarant, during the Development Period, and, thereafter, the Board, or except in the exercise of any valid easement over any portion of the Common Elements. Provided, however, the Association, and, during the Development Period, Declarant and Builders (with Declarant's consent), shall have the right to maintain signs in and on the Common Elements, and to maintain in the Common Elements such materials, equipment and other apparatus, as may be reasonably necessary to enable the Association to perform its functions and provide the services under this Declaration, or to enable Declarant or such Builders to market, develop, and sell the Properties. When the Development Period is not in effect each Builder shall have the right, subject to the reasonable review and approval of the Board (or Architectural Control Committee if directed by the Board), to maintain signs in the Common Elements as such Builder determines is reasonably necessary or desirable for marketing and selling all portions of the Properties owned by such Builder. The rights of

use and enjoyment of the Common Elements conferred upon Owners by this Declaration do not include the right to interfere with use or maintenance of the Common Elements by Declarant, any Builder, or the Association.

Section 13. **Owner Liability**. If any Owner or such Owner's family members, tenants, guest, employees, contractors, subcontractors, or agents is legally responsible for damage inflicted on any Common Elements, the Association may direct such Owner to repair such damage, or the Association itself may cause the repairs to be made and recover damages from the responsible Owner, including costs incurred in seeking and enforcing such recovery or other applicable legal remedies, including reasonable attorneys' fees. In addition to or as an alternative to the foregoing, the Association may impose a special individual assessment against any such Owner.

Section 14. **Prohibition on Use for Streets**. Without the written consent of Declarant during the Development Period (and, thereafter, by the Board), which consent may be given or denied in the sole discretion of the party having the right to give the consent, and which consent may be given and evidenced only by the execution by the consenting party of a plat or document recorded in the Registry, unless required by a Legal Requirement no Lot or portion thereof may be used, established or dedicated as a public street right of way or a private street right of way or driveway, where one of the purposes therefor or results thereof is to provide pedestrian or vehicular access to any property that is not part of the Properties.

Section 15. **Recreational Areas, Equipment, and Facilities**. The Association may adopt and enforce Rules and Regulations relating to the type, location, and use of recreational areas, equipment and facilities on Lots and other portions of the Properties.

Section 16. **Restricted Actions by Owners**. No Owner shall do or permit anything to be done or kept within the Properties or on the Common Elements which will result in the cancellation of or increase in the cost of any insurance carried by the Association, or which would be in violation of any Legal Requirement or any rule or regulation established by the Association. No waste shall be committed on the Common Elements, except as may be necessary to enable Declarant, a Builder, the Association, an Owner, or the holder of an easement to construct or maintain improvements (in accordance with Approved Plans or Architectural Guidelines, when applicable), or to maintain the Properties, or to exercise any rights reserved to them hereunder or provided in an applicable easement, or except as may be necessary to enable the Association to perform its functions and provide services under this Declaration. Each Owner shall comply with all Legal Requirements applicable to any part or all of the Properties, including applicable zoning ordinances and building codes.

Section 17. **Soil Erosion Control**. During all periods of construction on any portion of the Properties, the Owner thereof, or the Person exercising easement rights thereon, shall maintain proper and adequate soil erosion control to protect other portions of the Properties from accumulated silt and other soil erosion.

Section 18. **Temporary Structures Prohibited**. No structure of a temporary character shall be used on any portion of the Properties at any time as a Dwelling.

Section 19. **Wetlands; Conservation Areas; Buffers**.

(a) Wetlands. Legal Requirements of the United States of America may result in portions of the Properties being designated as "wetlands". Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, and whether or

not the Approved Plans for any improvements on the portion of the Properties on which such wetlands are located are in compliance with Legal Requirements applicable to wetlands, any subsequent fill or alteration of any such wetlands shall conform to the Legal Requirements in force at the time of the proposed fill or alteration. The intent of this subsection (a) is to prevent filling or alteration of such wetlands except as allowed under Legal Requirements; accordingly, the Owner of any such portion of the Properties should not assume that any application for fill or alteration of wetlands will be approved. The Owner of the applicable portion of the Properties shall report the name of the Subdivision, together with the name of the particular phase, section or subdivision within the Properties, if any, in any application pertaining to filling or alteration of wetlands. These provisions are intended to ensure continued compliance with wetlands rules under Legal Requirements and these provisions may be enforced by the United States of America or any other Governmental Authority having jurisdiction over wetlands. Notwithstanding anything to the contrary herein, the provisions of this paragraph may not be amended without the written consent of the U. S. Army Corps of Engineers.

(a) Conservation Areas. Legal Requirements may result in portions of the Properties being designated as "conservation areas". Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, and whether or not the Approved Plans for any improvements on the portion of the Properties on which such conservation areas are located are in compliance with Legal Requirements applicable to conservation areas, all such conservation areas shall be maintained in perpetuity in their natural or mitigated condition. No Person shall perform any of the following activities on any such conservation areas:

(1) fill, grade, excavate, or perform any other land disturbing activities.

(2) cut, mow, burn, remove, or harm any vegetation.

(3) construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures.

(4) drain or otherwise disrupt or alter the hydrology or drainage ways of any conservation area.

(5) dump or store soil, trash, or other waste.

(6) graze or water animals, or use for any agricultural or horticultural purpose.

The intent of this subsection (b) is to ensure continued compliance with the mitigation condition of any Clean Water Act authorization for the Properties or any part thereof issued by the United States of America, U. S. Army Corps of Engineers, for the district in which the Properties is located, and may be enforced by the United States of America or any other Governmental Authority having jurisdiction over conservation areas. Notwithstanding anything to the contrary herein, the provisions of this paragraph may not be amended without the written consent of the U. S. Army Corps of Engineers.

(b) Buffers. Portions of the Properties may be subject to river basin or stream buffers or other buffers designated or required by the State of North Carolina or other applicable Governmental Authority. Owners of all portions of the Properties subject to applicable buffer requirements shall at all times comply with same, whether or not the Approved Plans for any improvements are in compliance therewith.

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

Section 20. **Exclusion for Declarant**. Notwithstanding any other provision of the Declaration or any other Governing Documents, Declarant, during the Development Period (and thereafter, the Board) has the right, permanently or temporarily (as determined in the discretion of Declarant or the Board, as applicable) to waive any one or more of the provisions of this Article with respect to construction or maintenance of any improvements in the Properties, except that there shall be no waivers with respect to soil erosion controls and Legal Requirements. Any such waiver granted by the Declarant to a Builder or other Person during the Development Period shall be binding on the Board after the Development Period has ended.

ARTICLE X
RESTRICTIONS AND RULES

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

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

Section 3. **Rule Making Authority**.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt, amend, modify, cancel, limit, create exceptions to, add to, or expand the Restrictions and Rules. The Board shall give notice to each Owner concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. During the Development Period, no action taken by the Board pursuant to this subsection shall be effective unless approved in writing by the Declarant.

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

(b) Alternatively, when they have a right to vote under the Declaration, Class A Members representing more than 50% of the total number of votes in the Association, at an Association meeting called for such purpose, may vote to adopt rules that modify, cancel, limit, create exceptions to, add to, or expand the Restrictions and Rules then in effect. Provided, however, during the Development Period no such action shall be effective without the written approval of the Declarant. Upon such action being taken by the Class A Members, the Board shall notify each Owner of the new rule or explanation of any changes to the Restrictions and Rules, and the action taken by the Members shall become effective on the later of the 31st day after the action is taken by the Members or such later effective date specified in the notice.

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

(d) Notwithstanding the foregoing procedures for amending the Restrictions and Rules, and notwithstanding anything to the contrary elsewhere in this Article or the Declaration, during the Development Period the Declarant, in its sole discretion and without any prior notice to any Person, may adopt, amend, modify, cancel, limit, create exceptions to, add to, or expand the Restrictions and Rules. Prior to any action taken by the Declarant hereunder becoming effective, the Declarant, or the Board at the direction of the Declarant, shall give notice of the new rule or explanation of any changes to the Restrictions and Rules to each Owner (notice sent to any one Owner of a Lot being sufficient notice), which notice shall state action taken and the effective date of the action, which date may be any time on or after the date on which the action is taken by Declarant.

Section 4. **Owners' Acknowledgment and Notice to Purchasers**. All Owners are given notice that use of their Lots and Dwellings is subject to the Restrictions and Rules as modified from time to time. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of such Owner's Lot and Dwelling can be affected by this provision and that the

Restrictions and Rules may change from time to time. All Owners hereby are notified that, as provided for herein, the Declarant or the Board or the Members may adopt Restrictions and Rules or changes to any Restrictions and Rules in effect at any particular time.

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

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

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

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

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

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

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

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various portions of the Properties or rights to use the Common Elements to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Elements available, from adopting

generally applicable rules for use of Common Elements, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Elements, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided herein.

(f) Alienation. No rule shall prohibit leasing or transfer of any Dwelling, or require consent of the Association or Board for leasing or transfer of any Dwelling; provided, however, rules may require a minimum lease term not to exceed 12 months and such other rules with respect to leases as are reasonably adopted by the Declarant or the Board.

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

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

The limitations in subsections (a) through (h) of this Section shall only limit the rule making authority exercised under this Section; they shall not apply to other Sections and provisions of the Declaration.

ARTICLE XI
ARCHITECTURAL APPROVAL

Section 1. **Architectural Review Committee - Jurisdiction and Purpose**. Except for ordinary and routine maintenance to an existing Dwelling or other improvement on a Lot (changes in exterior colors, architectural style, or materials being examples of items that are not ordinary and routine), and excluding planting and maintenance of flowers, plants, shrubs, grass and trees that do not result in any material change in the landscaping for a Lot approved as part of the Approved Plans ("material" being as determined by the Architectural Review Committee) or allowed by Architectural Guidelines, and except as otherwise provided herein: no site preparation of a Lot, no change in grade or slope, no construction of, alteration of, additions to, or changes to any improvement on a Lot (including a Dwelling or other building or improvement on a Lot, and including any conversion of a garage or carport into living space) shall be commenced, nor shall any of the same be placed, altered or allowed to remain, until the "Architectural Review Committee" has approved in writing the Plans therefor or the Architectural Guidelines allow the improvement without obtaining Approved Plans. The Architectural Review Committee is established to assure, insofar as is reasonable and practicable, that improvements are constructed and maintained in a manner that provides for harmony of external design and location in relation to Dwellings and other improvements in the Properties and to natural features and topography, that avoids improvements deleterious to the aesthetic or property values of any portion of the Properties, and that promotes the general welfare of the Owners. Notwithstanding anything to the contrary expressed or implied herein: (i) all Plans and other architectural approvals given by the Declarant during the Development Period, all improvements constructed or maintained by Declarant or the Association within the Properties, all portions of the Properties owned by Declarant or the Association, all Common Elements and improvements therein maintained by the Association, and all portions of the Properties owned by or subject to easements in favor of a Governmental Authority or public utility providers (except for any such portions of the Properties that contain or are proposed to contain Dwellings or other buildings and associated improvements), are specifically excluded from the requirements of this Article;

and (ii) during the Development Period, (a) the Declarant has the right to exercise all rights of the Architectural Review Committee and the Board that are described in this Article as it determines in its sole discretion, including whether to utilize an Architectural Review Committee or to serve as the Architectural Review Committee itself, or any combination thereof, (b) the Declarant determines the matters, if any, to be reviewed by the Architectural Review Committee, and (c) any decision of the Declarant made during the Development Period with respect to any matter subject to this Article controls over any contrary decision of the Architectural Review Committee or the Board. Declarant, in its sole discretion, may require applicants for approvals being considered by Declarant to follow the procedural requirements of this Article, or may impose procedural requirements that are different from those contained in this Article.

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

Section 3. **Procedure for Review by Architectural Review Committee**.

(a) Unless otherwise permitted by the Architectural Review Committee in its sole discretion, prior to the commencement of any construction, alteration, addition, or placement of any improvement requiring approval by the Architectural Review Committee, Plans for the proposed improvement shall be submitted to the Architectural Review Committee, in such format and in such numbers or sets (not to exceed three) as the Architectural Review Committee may require. The Architectural Review Committee shall have the right to refuse to approve any Plans for improvements which are not, in its sole discretion, suitable or desirable for the Properties, including for any of the following: (i) lack of harmony of external design with surrounding structures and environment; and (ii) aesthetic reasons. Provided, however, the Architectural Committee (and the Board) shall be responsive to technological advances and changes in architectural designs and materials and related conditions that occur from time to time and shall use best efforts to balance the equities between matters of taste and design and use of private property. Each Owner acknowledges that determinations as to such matters may be subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. Unless a written response is given by the Architectural Review Committee within sixty (60) days following its receipt of the required number of complete sets of Plans and payment by the applicant of any applicable processing fee and consulting fees due and payable at the time request for approval of Plans is submitted by the applicant, the Plans shall be deemed approved. At any time that the Architectural Review Committee consists of more than one individual, decisions of the Architectural Review Committee shall be by majority vote of its members present at a meeting thereof (or by the written consent of a majority of all the members of the Architectural Review Committee). The written response of the Architectural Review Committee may be an approval, a denial of approval, a conditional approval, or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was incomplete or inadequate, and the sixty (60) day time period for further

Architectural Review Committee response shall commence only upon receipt of the requested additional information. If conditional approval is granted, the conditions are part of the Approved Plans. Any material modification or change in the Approved Plans must again be submitted to the Architectural Review Committee for its review in accordance with the foregoing requirements or such other procedures as adopted by the Architectural Review Committee. If the Plans are approved, or conditional approval is given, at least one set of Approved Plans shall be retained by the Association for not less than three (3) years and at least one set of Approved Plans shall be returned to the applicant. The Architectural Review Committee shall keep such other records of its activities as it is instructed to keep by either the Declarant or the Board, whichever is applicable.

(b) The Declarant or the Board, as applicable, may adopt procedures for the Architectural Review Committee to conduct the architectural reviews and its other duties, provided that such procedures adopted by the Board do not conflict with the specific requirements of the Declaration. Subject to the rights of Declarant with respect to architectural review and approval, as determined by the Board in its sole discretion the Board may adopt a procedure for architectural review that utilizes the Architectural Review Committee as a committee to review requests for architectural approval and to recommend to the Board whether a request for architectural approval should be approved, denied, or approved subject to conditions, with the Board determining whether or not the request for architectural is approved, denied, or approved subject to conditions. If the Board adopts such a procedure, or if the Board elects to serve as the Architectural Review Committee, then the provisions herein for appeal of an Architectural Review Committee decision to the Board are not applicable. Such procedures may include reasonable fees for processing requests for approval, and also may include fees for the services of an architect or other consultant to assist the Architectural Review Committee in its review of any Plans, the costs of all such fees being the responsibility of the applicant. Processing fees shall be due and payable to the Association at the time the Plans are submitted to the Architectural Review Committee, and the fees of the architect or consultant shall be due and payable to the Association either at the time the Plans are submitted to it or immediately upon its receipt of an invoice therefor, as determined by the Architectural Review Committee. Prior to incurring any architect or consultant fees not due and payable at the time Plans are submitted, the Architectural Review Committee shall afford the applicant a reasonable opportunity either to agree to pay such fees or to withdraw the request for approval. The sixty (60) day time period within which the Architectural Review Committee is required to respond to a request for approval does not commence until all processing fees and architect or consultant fees due and payable at the time of submission of the request for approval have been paid. Notwithstanding anything to the contrary in this Article, in no event shall approval of Plans by the Architectural Review Committee be deemed to have been given until all such processing fees and architect or consultant fees have been paid by the applicant. The payment of such fees and costs, as well as other expenses of the Architectural Review Committee required to be paid, whether or not the applicant's Plans are approved, is deemed to be a special individual assessment.

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

Architectural Guidelines may be enforced in the same manner and to the same extent as the provisions of the Declaration may be enforced. If there is any conflict between Approved Plans and Architectural Guidelines, the Approved Plans control, it being within the discretion of the Architectural Review Committee to approve Plans that differ in one or more respects from the then existing

Architectural Guidelines. Compliance with Architectural Guidelines does not guarantee approval by the Architectural Review Committee of Plans for improvements that must be submitted for approval. With respect to improvements other than initial construction of a Dwelling, the Architectural Guidelines may, but shall not be required to, allow construction or maintenance of one or more types of improvements in accordance with the Architectural Guidelines without submitting the Plans therefor to the Architectural Review Committee and going through the formal approval process provided for herein, and subject to such conditions and requirements as specified in the Architectural Guidelines. Provided, however, this shall not prohibit the Declarant, Board, or Architectural Review Committee from taking action against any Owner with respect to an improvement on that Owner's Lot that does not comply with the applicable Architectural Guidelines. Architectural Guidelines may include any or all of the following: types of improvements allowed; types of materials allowed; permitted colors; architectural styles; minimum and/or maximum square footage for Dwellings, garages, and other buildings or structures; minimum distances that Dwellings and other improvements must be located from Lot boundary lines; landscaping requirements; and screening requirements.

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

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

(f) Approval of any particular Plans does not waive the right of the Architectural Review Committee to disapprove the same or substantially similar Plans subsequently submitted, nor does such approval relieve an applicant of the requirement to resubmit such Plans for approval in connection with any portion of the Properties other than the portion for which the Plans were approved. Each Owner acknowledges that the Persons reviewing Plans, as well as compliance with Approved Plans and Architectural Guidelines, may change at any time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Architectural Review Committee may refuse to approve similar proposals in the future and may revise Architectural Guidelines with respect to such improvements.

(g) Notwithstanding anything to the contrary herein, architectural approvals given prior to the end of the Development Period by the Declarant or by an Architectural Review Committee appointed by the Declarant shall remain in effect following the end of the Development Period, but subject to expiration if the construction or installation of the approved improvements is not completed within any applicable time limits required by any Governing Documents or the Approved Plans. In addition, with respect to each Lot for which there are no Approved Plans that include a Dwelling in effect at the end of the Development Period, Declarant shall continue to have all of the Declarant rights under this Article for a period of one (1) year following the end of the Development Period. Approved Plans may not be

revoked or withdrawn by the Architectural Review Committee without the written consent of the Person who owns the portion of the Properties to which the Approved Plans are applicable.

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

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

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

adequately screened, as determined by the Architectural Review Committee, or the same are approved by Approved Plans or allowed by Architectural Guidelines.

Section 5. **Tree Cutting**. Architectural Guidelines also may address the cutting or removal of trees and other vegetation. No trees planted by Declarant or any other Person to comply with Legal Requirements shall be cut without the prior written approval of the applicable Governmental Authority and Declarant, during the Development Period, and thereafter, the Architectural Review Committee.

Section 6. **Commencement and Completion of Construction**. Unless the time period is extended by the Architectural Review Committee, Approved Plans for a Dwelling or other improvement expire unless construction or installation of the Dwelling or other improvement commences within twenty-four (24) months after the date of the approval. Provided, however, and notwithstanding the foregoing, the Declarant may allow Approved Plans that have been approved by Declarant to continue in effect for longer than twenty-four (24) months after the date of approval. Construction or installation of all such improvements shall be completed not later than twelve (12) months immediately after construction or installation is commenced, or shall commence and be completed by such later dates as specified in the Approved Plans. For the purposes of this Section, construction or installation is "commenced" when a building permit has been issued by the applicable Governmental Authority (or if no building permit is required, when work commences or materials for the improvement are delivered to the applicable portion of the Properties), and construction or installation is "completed" when it has been completed in compliance with Approved Plans or Architectural Guidelines and the applicable Governmental Authority has issued a certificate of occupancy or completion for the improvement (or if no certificate of occupancy is required, when the improvement has been substantially completed as determined by the Architectural Review Committee). The Architectural Review Committee, in its sole discretion, may grant waivers or extensions of the foregoing time periods for commencement and completion of construction or installation of improvements, and, when requested and upon reasonable evidence of the existence thereof, shall grant reasonable waivers or extensions for events of Force Majeure that delay or prevent a Person from commencing or completing construction or installation within the foregoing time periods. Each Owner is responsible for providing that maintenance of improvements not addressed in the foregoing provisions of this Section (for example, repainting of a Dwelling) is diligently pursued until completion.

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

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

Section 9. **Violation; Enforcement**. Each failure of an Owner or any other Person to construct or maintain any improvement in accordance with the Approved Plans or applicable Architectural Guidelines shall be a violation of the Declaration. Declarant, each Owner and the Association each shall have the

right, but not the obligation, to enforce the provisions of this Article against an Owner or any other Person who violates or attempts to violate same, either to restrain the violation, recover damages, or seek other available legal or equitable remedies. Any failure to enforce this Article of the Declaration or seek any applicable remedy with respect to any specific violation hereof shall not constitute a waiver of the right to do so thereafter, nor shall it constitute a waiver of the right to enforce this Article of the Declaration at any other time with respect to the same or substantially similar matter. All such rights, remedies and privileges granted in this Section are cumulative, and the exercise of any one or more of such rights, remedies or privileges shall not constitute an election of remedies or preclude subsequent exercise of other rights, remedies and privileges.

ARTICLE XII
EASEMENTS AND OTHER RIGHTS

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

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

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

(a) Perpetual, non-exclusive and alienable easements for commencement and completion of development of any portion of the Properties or any Additional Property, for the exercise of any Special Declarant Right or other right granted to or reserved by Declarant under the Declaration or any other Governing Documents, and for Declarant to conduct any activity necessary to fulfill any obligation to any Governmental Authority, the Association, a Builder or any Owner with respect to any portion of the Properties. Such easement rights include the right to maintain streets (both publicly dedicated and private streets), water, sanitary sewer and other utilities and related appurtenances and equipment, greenways, retaining walls, and soil and water impoundments and other Stormwater Control Measures, including wires, poles, lines, pipes, conduits, meters, equipment, structures, and facilities related thereto, in, over, under, across, and through all of the following: (i) easement areas that have been identified as easements on plats or in documents that have been executed by the Declarant or other Owner of such portions of the Properties and recorded in the Registry; (ii) all streets in the Properties, including both publicly dedicated and private streets; (iii) an area on each Lot that is five (5) feet in width and adjacent to each side boundary line thereof (and ten (10) feet in width adjacent to each side boundary line of a Lot that does not adjoin another Lot or Common Elements) and an area on each Lot that is ten (10) feet in width adjacent to each front and rear boundary line thereof; (iv) portions of Lots and Common Elements on which retaining walls are located and a fifteen (15) foot wide area immediately adjacent to each side of each retaining wall, (v) any other portion of a Lot, subject to the written approval of an Owner of the Lot (the written approval of any one of multiple Owners of a Lot is sufficient), which approval shall not be unreasonably withheld, delayed, or conditioned; and (vi) the Common Elements. Provided, however, neither the foregoing reservation of easement rights nor any similar reservation of easement rights contained in the Declaration shall create or impose any obligation upon Declarant, or its successors and assigns, to provide or maintain any such street, wire, pole, line, pipe, conduit, meter, equipment, structure, facilities, or soil and water impoundment or other Stormwater Control Measures. Declarant's rights under this Section include the right to assign its rights under the easements and/or to grant easements to other Persons in, over, under, across and through those portions of the Properties described in items nos. (i), (ii), (iii), (iv), (v) and (vi) in this subsection.

(b) The non-exclusive right and power, with respect to any portion of the Properties, to grant and record in the Registry such specific easements as may be necessary, in Declarant's sole discretion, for the complete and orderly development of the Properties or any Additional Property. The Owner of any portion of the Properties to be burdened by any such easement granted by Declarant shall be given written notice in advance of the grant. The location of any such easement on the Lot of an Owner, except for those portions along the boundaries of such Lot as described in the immediately preceding subsection (a), shall be subject to the written approval of the Owner of the Lot to be burdened by the easement (written consent of any one of multiple Owners of the Lot being deemed sufficient), which approval shall not be unreasonably withheld, delayed, or conditioned.

(c) The right to subject the Properties and/or the Association to a contract with Duke Energy (or other utility provider) for the installation and maintenance of above ground or underground electric cables and lines and/or the installation and maintenance of street lighting (including poles and light fixtures), either or both of which may require an initial payment and/or a continuing monthly payment by each Owner and/or by the Association as part of the Common Expenses. The Association shall accept assignment from Declarant of contracts entered into by the Declarant with Duke Energy (or other utility provider) for such electrical and/or lighting services.

(d) The right to subject the Properties and/or the Association to a contract with Old North State Water Company, LLC, a North Carolina limited liability company (or other utility provider) for (i) the installation, operation, repair, replacement and maintenance of water and sewer infrastructure and lines and the Water Utility System, and/or (ii) the installation, operation, repair, replacement and maintenance

of community water and septic systems, and/or (iii) a perpetual, non-exclusive, and alienable easement for unobstructed ingress, egress, regress, and access to operate, maintain, repair and replace the Water Utility System and appurtenant equipment located within the Subdivision, and/or (iv) the right to unilaterally and immediately remove any structure or contaminant from easements for the Water Utility System if a Lot Owner or other Person introducing the source of contamination or erecting the structure fails to immediately remove it; provided, such Lot Owner or other Person shall reimburse Old North State Water Company, LLC (or other utility provider) for all expenses associated with the removal of the structure or contaminant from easements provided for the Water Utility System, as well as any remediation which Old North State Water Company, LLC (or other utility provider) deems prudent in its discretion, and/or (v) a perpetual, exclusive and alienable easement for the necessary well lots that comprise a part of the Water Utility System, such well lots containing a minimum size of 100 feet in all directions from the well heads, unless Declarant otherwise conveys fee simple title to the well lots to Old North State Water Company, LLC (or other utility provider), and/or (vi) a perpetual, non-exclusive, and alienable twenty (20) foot wide access easement as shown on the plat recorded in Book of Maps 2018, Pages 249 through 251 in the Franklin County Registry to provide ingress, egress, regress, and access, across any property between the well lot and a publicly dedicated right of way, for the installation, operation, maintenance, repair and replacement of the well and any Water Utility System assets located upon the well lot sites, and/or (vii) a perpetual, non-exclusive, and alienable easement centered ten (10) feet on each side of the water mains within the Water Utility System for ingress, egress, regress, and access for the installation, operation, maintenance, repair and replacement of the Water Utility System, and/or (viii) the execution and delivery of instruments and documents of conveyance and transfer necessary to effectuate the matters described in this Article XII, Section 2(d) and/or (ix) such other matters related to the installation, operation, repair, replacement and maintenance of water and/or septic and/or sewer infrastructure and lines and/or the Water Utility System as the Declarant deems necessary in its sole discretion, any or all of which may require an initial payment and/or a continuing monthly payment by each Owner and/or by the Association as part of the Common Expenses. The Association shall accept assignment from Declarant of contracts entered into by the Declarant with Old North State Water Company, LLC (or other utility provider) for such water and sewer services.

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

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

Section 4. **Easements Reserved for the Association**. Easements are reserved for the Association as follows, which may be exercised by the Association in its sole discretion, without any obligation to exercise any of same, but subject to any restraints on the exercise of such easements contained in any other Sections of the Declaration. These easements specifically include the right to connect to and use and maintain new and existing wires, poles, lines, pipes, conduits, meters, equipment, structures,

facilities, and soil and water impoundments and other Stormwater Control Measures in the easement areas, without payment of any charge or fee to any Owner of any part or all of the Properties:

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

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

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

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

Section 5. **Easement Reserved for the Governmental Entities and Public Utilities**. Perpetual, non-exclusive and alienable easements are hereby reserved and established over all portions of the Properties for governmental entities and for all public utility providers serving the Properties, and their agents, employees and contractors, for the purposes, as applicable to the Governmental Authority or utility provider, of setting, removing and reading utility meters, maintaining Stormwater Control Measures, maintaining utility equipment, facilities and connections, and acting for other purposes consistent with the public safety and welfare, including garbage removal, police protection, fire protection (including access to any and all fire hydrants located outside of public street rights of way or easements dedicated to a Governmental Authority) and delivery of mail. Except in an emergency, these easements shall be exercised in a reasonable manner and at reasonable times. Any pedestrian access easement established by Declarant or the Association over any portion of the Properties for the purpose of

providing pedestrian access to and from Governmental Authority greenways or Governmental Authority greenway easements are established for the benefit of the applicable Governmental Authority and the public in general.

Section 6. **Easements Shown On Recorded Plats**. Declarant, for itself and its successors and assigns (which may include the Association, the applicable Governmental Authority, and public utility providers), and in addition to all other easements reserved in the Declaration, hereby reserves perpetual, non-exclusive and alienable easements in the locations and for the purposes shown and indicated on all plats of the Properties recorded in the Registry. These easements specifically include the right to maintain in the easement areas identified on such plats all improvements deemed necessary, in the reasonable discretion of the Person who exercises the easement rights, for the full exercise of such easements. Except as otherwise required by the Governing Documents or Legal Requirements, the Persons who have the foregoing easement rights shall have no obligation to exercise any part or all of same.

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

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

Section 9. **Dedication and Transfer of Easements for Roadways**. Declarant shall have the right and power (i) to convey or dedicate all or any part of any of the easements reserved and established by this Declaration, to public use and benefit, (ii) to grant easements over and across any of the private roads, streets and drives that are developed, constructed and installed by Declarant for access, ingress and egress to and from any portion of the Subdivision, (iii) to grant easements on, in, under, over, through and across any of the private roads, streets and drives that are developed, constructed and installed by Declarant for

the purpose of installing, replacing, repairing, maintaining and using master television antenna systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and electrical, cablevision, gas, telephone, water and sanitary sewer lines, and (iv) to permit any Governmental Authority or utility to exercise any of the rights and easements reserved and established in this Declaration. Prior to their acceptance for public maintenance, any roads, streets, entranceways and cul-de-sacs in the Subdivision shall be maintained by the Association. Such maintenance shall include repair and reconstruction, when necessary, and shall conform to the standard of maintenance (if one is ascertainable) which would be required by the North Carolina Department of Transportation or other Governmental Entity before it would accept such roads, streets, entranceways and cul-de-sacs for maintenance. Declarant shall dedicate all roads, streets, entranceways and cul-de-sacs for public maintenance upon issuance of certificates of occupancy for seventy five percent (75%) of the Lots on each road, street, entranceway and cul-de-sac.

ARTICLE XIII
OWNER MAINTENANCE RESPONSIBILITIES

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

(a) Prompt removal of all litter, trash, refuse and wastes.

(b) Lawn mowing and maintenance on a regular basis, including, subject to any Legal Requirements, any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such Lot that are not maintained in accordance with the Community Wide Standard by either the Association or a Governmental Authority.

(c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material.

(d) Maintenance of flower and plant gardens.

(e) Maintenance of exterior lighting and mechanical facilities.

(f) Maintenance of parking areas and driveways.

(g) Complying with all Legal Requirements.

(h) Soil erosion control as required by the Declaration.

(i) Maintenance of drainage easements and Stormwater Control Measures as required by the Declaration.

(j) Maintenance of Service Lines serving the Lots.

(k) Portions of the potable water system serving the Owner's Lot that are not maintained by the applicable utility provider.

(h) Refraining from erecting any structure within the utility and access easements provided to Old North State Water Company, LLC (or other utility provider) for the Water Utility System.

(i) Refraining from placing any contaminant within any well site easement provided to Old North State Water Company, LLC (or other utility provider) for the Water Utility System.

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

Section 2. **Enforcement**. If any Owner fails to perform any of the foregoing maintenance responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required maintenance. Provided, however, if the Association has given the required notice previously for the same or substantially similar failure of the Owner to perform the required maintenance, the time period for the Owner to perform the required maintenance shall be five (5) days instead of ten (10) days. Further provided, for the third and subsequent failures of the Owner, the Association may, but shall not be required, to give notice to the Owner before the Association performs the maintenance and, if the Association gives notice, it can specify whatever time period it determines for the Owner to complete the required maintenance. Notice given by the Association to an Owner pursuant to this Section shall be deemed to have been given by the Association and received by the Owner as provided in the "Notice" Section of this Agreement, except that, notice given by United States mail, first class postage prepaid, addressed to the Owner at the Owner's notice address, shall be deemed to have been given by the Association and received by the Owner on the next business day following the date such notice was deposited in the United States mail. If any such Owner fails to perform the required maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's Lot and perform such maintenance without any liability for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Person an invoice therefor. If any Owner fails to reimburse the Association as required, the Association may impose a special individual assessment against the Owner and such Owner's Lot for the amount owed.

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

ARTICLE XIV
INSTITUTIONAL LENDERS; MORTGAGEES

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

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

Upon assignment or other transfer, or payment in full, of the indebtedness secured by the lien of the mortgage subject to the notice given to the Association by the Institutional Lender, the Institutional Lender promptly shall notify the Association that it no longer wishes to exercise the rights requested in the previously given written notice, such new notice to be given in the same manner as the previously given notice. To avail itself of the rights of Institutional Lenders under the Governing Documents, any such assignee or transferee must first notify the Association in the manner provided for in this Article of the Declaration.

Section 3. **Obligation of Association to Institutional Lenders**. Any Institutional Lender who has notified the Association as required in the immediately preceding Section of this Article, shall have each of the following rights that are specifically requested in the notice to the Association, until the earlier of such time as the indebtedness secured by the lien of the mortgage subject to the notice given to the Association has been paid in full or the Institutional Lender has transferred or assigned ownership thereof to another Person.

(a) To inspect and receive copies of Governing Documents and other Association documents and records on the same terms as the Members of the Association. The Association has the right to charge a reasonable amount to Members and Institutional Lenders for production and delivery of copies of such Governing Documents and other Association documents and records.

(b) To receive a financial statement of the Association for the immediately preceding fiscal year of the Association.

(c) To be notified of any proposed amendments to the Declaration and any meetings of the Association at which such proposed amendments are to be voted on.

(d) To be notified of any proposed action of the Association that requires the consent of a specified percentage of Institutional Lenders.

(e) To be notified of any condemnation or casualty loss affecting either a material portion of the Common Elements or the Lot securing its Mortgage.

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

(g) With respect to the Lot that secures its mortgage, to be notified of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days), and to be notified of any other default of the provisions of the Declaration by the Owner of such Lot. Provided, however, any failure of the Association to notify the Institutional Lender of the delinquency or default shall not affect the validity of any Association lien, or any other Association rights and remedies, against the defaulting Owner or such Owner's Lot.

(h) To be notified of any other matters for which applicable Institutional Lender rules and regulations or other Governmental Authority rules or regulations require the Association to give notice to Institutional Lenders, and the Institutional Lender desiring to be notified of such matters shall described the matters and applicable rules and regulations in the notice it gives to the Association.

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

ARTICLE XV
AMENDMENT OF DECLARATION

Section 1. **Amendment by Declarant**. In addition to specific amendment rights, if any, granted elsewhere in the Declaration, during the Development Period Declarant may unilaterally, and in its sole discretion, without the consent, approval, or joinder of any Owner, the Association, or any other Person (except to the extent that Legal Requirements require the consent or joinder of a Governmental Authority or a vote of the Members), and without any meeting of the Association, amend the Declaration for any purpose that is not prohibited by the Act or other Legal Requirement. Any amendment of the Declaration by the Declarant shall be effective upon the later of the date of its recording in the Registry or the effective date specified therein.

Section 2. **Amendment by the Members**. Unless amended as allowed under Section 1 of this Article, the Declaration may be amended only as follows:

(a) Unless a higher percentage or different voting requirement is specified herein or by Legal Requirements, the Declaration may be amended only by the written agreement or consent of those Members, or the affirmative vote at a meeting of the Association of those Members, to whom are allocated sixty-seven percent (67%) or more of the total number of votes in the Association, and with the consent or joinder of any applicable Governmental Authority if Legal Requirements require the consent or joinder of a Governmental Authority and, during the Development Period, with the written consent or joinder of Declarant.

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to the Declaration is to be voted on, together with at least a summary description of the proposed amendment, shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of the date of such meeting.

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

Section 3. **Consent of Mortgagees**. Unless required by a Legal Requirement, no consent, joinder, or approval of any Mortgagee to any amendment of the Declaration by Declarant during the Development Period is required. No consent, joinder, or approval of any Mortgagee to any other amendment of the Declaration is required unless (i) the amendment materially, adversely affects the rights of Mortgagees under the Declaration, or (ii) a Legal Requirement requires the consent of Mortgagees or a percentage of Mortgagees, or (iii) the mortgage held by such Mortgagee specifically requires the Mortgagee's consent with respect to the Member's Lot subject to the mortgage, and if either (ii) or (iii) is applicable, the Mortgagee has notified the Association of its rights regarding consent to amendments in the same manner required for an Institutional Lender to notify the Association in the Article of the Declaration dealing with Institutional Lenders. If the amendment is adopted by the required percentage of Members exclusive of the Member or Members who own Lots for which consent of a Mortgagee is required under this Section, then the amendment is valid whether or not the necessary Mortgagees have consented to the amendment.

Section 4. **Prohibited Effects of Amendment**. No amendment to the Declaration, whether adopted by the Declarant, by the Association, or by the Members or any applicable group of Members of the Association, shall do or result in any of the following:

(a) increase the financial obligations of an Owner in a discriminatory manner.

(b) further restrict development on any portion of the Properties in a discriminatory manner.

(c) restrict, prohibit, diminish or impair, or in any way adversely affect the rights or protections of Declarant without the written consent of Declarant.

(d) impose additional obligations upon Declarant without the written consent of Declarant.

(e) diminish or impair the express rights of Institutional Lenders under the Declaration without the prior written approval of a majority of the Institutional Lenders who have requested the exercise of such rights as provided herein.

(f) terminate or revise any easement established by the Declaration, without the written consent of the Persons whose Lots or other real property is benefitted by the easement and, with respect to a revision, the written consent of the Persons whose Lots or other real property is burdened by the easement.

(g) without the consent of the applicable Governmental Authority, terminate, reduce, amend, revise, or alter any obligation of the Association or the Members of the Association under any Legal Requirement or under any encroachment agreement, or other agreement entered into with a Governmental Authority by the Association or, as allowed by the Declaration, by the Declarant on behalf of the Association.

(h) alter or remove or attempt to alter or remove any Legal Requirement.

ARTICLE XVI
DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION

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

The Declaration shall be deemed incorporated in all deeds and conveyances hereinafter made by Declarant or any other Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Properties shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of the Properties, such Person shall be deemed to have assented to this Declaration and all of the terms and provisions hereof.

Section 2. **Dissolution of the Association**. The Association shall be dissolved upon the termination of the Declaration. Provided, however, until any sale of the Common Elements authorized by the termination agreement or approved by the Owners in the same manner as required for approval of the termination agreement is completed and the sale proceeds distributed, the Association shall continue in existence with all of the powers it had before termination. The Association, on behalf of the Owners, may contract for the sale of the Common Elements, but the contract is not binding unless such sale has

been authorized in the termination agreement or it has been approved by the Owners in the same manner as required for approval of the termination agreement. Proceeds of the sale of Common Elements shall be distributed to the Owners and lienholders as their interests may appear, as provided in the termination agreement or other agreement approved by the Owners in the same manner as required for approval of the termination agreement. If the Common Elements are not to be sold following termination of the Declaration, title to the Common Elements vest in the Owners upon termination, as tenants in common in proportion to their respective interests as provided in the termination agreement.

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

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

ARTICLE XVII
RECREATIONAL AMENITIES

Nothing in the Declaration or other Governing Documents shall be construed as imposing any obligation on the Declarant or any other Person to construct or provide for any Recreational Amenities on or for any part or all of the Properties or any Owner, occupant, or user thereof, except to the extent, if any, that Declarant or such other Person is so obligated under Legal Requirements.

ARTICLE XVIII
DISCLOSURES AND WAIVERS

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

Section 1. **Construction Activities**. All Owners and other Persons who use the Properties hereby are notified that Declarant and/or its agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, conduct blasting, excavation, construction, and other activities within the Properties. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Properties generally, such Owners and such other Persons acknowledge, stipulate, and agree: (i) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (ii) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the portion of the Properties where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (iii) that Declarant and its agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shareholders, directors, officers, partners, members, managers, agents and employees shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (iv) that any purchase or use of any portion of the Properties has been and will be made with full knowledge of the foregoing; and (v) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of the Properties.

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

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

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

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

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

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Subdivision, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing such Owner's tenants and all other occupants of the Dwelling that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Subdivision assumes all risks of personal injury and loss or damage to property, including Dwellings and the contents of Dwellings, resulting from acts of third parties.

Section 6. **View Impairment**. Neither Declarant nor the Association guarantee or represent that any view from, over, or across any portion of the Properties will be preserved without impairment or change. Neither Declarant nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement, if any. The Association (with respect to the Common Elements) has the right to add or remove trees and other landscaping to and from the Common Elements, subject to Legal Requirements. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 7. **Water Management**. Each Owner and any other Person who uses any portion of the Properties acknowledges and agrees that any or all bodies of water (including lakes, ponds, creeks, streams, and wetlands in the Properties), together with any dams or other facilities or devices that contain, control, or direct such waters, may be designed as water management areas (including stormwater

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

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

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

Owners and other Persons who use any portions of the Properties shall not alter, modify, expand, or fill any lakes, ponds, or wetlands located in the Properties without the prior written approval of the governmental entities having jurisdiction over such matters, including the U. S. Army Corps of Engineers if applicable, and the Declarant, during the Development Period, and the Association thereafter.

Section 8. **Future Development**. The Owner or prospective purchaser of a Lot may have seen proposed or contemplated residential and other developments which may have been illustrated in a Development Plan or sales literature in or from Declarant's sales office, and/or may have been advised of the same in discussions with sales personnel; however, notwithstanding such Development Plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no obligation to construct, and has made no representations or warranties that it will construct, such future or planned developments or Lots, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same. An Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the foregoing provisions.

Section 9. **Wild Animals**. The Properties or portions thereof may be located adjacent or nearby to certain undeveloped areas which may contain various species of wild animals or insects that may from time to time stray onto the Property and that may otherwise pose a nuisance or hazard.

Section 10. **Model Homes**. Model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant to deliver any Dwelling in conformity with any model home, and any representation or inference to the contrary by any Person is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded carpet, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to a purchaser unless an authorized officer of Declarant has specifically agreed in a written addendum to the purchase agreement to make specific items a part of the purchase agreement.

Section 11. **Right to Notice of Design or Construction Claims**. No Person shall retain for the purpose of inspecting the design or construction of any structures or improvements within the Properties in connection with or in anticipation of any potential or pending claim, demand or litigation involving that design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing and given a reasonable opportunity to meet with the applicable Owner to discuss the Owner's concerns and conduct their own inspection.

Section 12. **Easement to Inspect and Right to Correct**. Declarant reserves for itself, any applicable Builders and others it may designate, the right to inspect, monitor, test, redesign and correct any structure, improvement or condition that may exist on any portion of the Properties, including on the Lots, and a perpetual, nonexclusive easement of access throughout the Properties to the extent reasonably necessary to exercise that right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner, and no entry into a Dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at that Person's own expense, any damage resulting from such exercise.

ARTICLE XIX
ALTERNATIVE DISPUTE RESOLUTION

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

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

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

(1) the interpretation, application, or enforcement of the Governing Documents;

(2) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(3) the design or construction of improvements within the Community, other than matters of aesthetic judgment, which shall not be subject to review.

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

(1) any action by the Association to collect assessments or other amounts due from any Owner, or to enforce any financial or monetary obligation of any Person under the Governing Documents.

(2) any action by the Association to obtain a temporary restraining order or other emergency equitable relief and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions the Declaration relating to creation and maintenance of the Community Wide Standard;

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

(4) any action in which any indispensable party is not a Bound Party; and

(5) any action as to which any applicable statute of limitations or statute of repose would expire within one hundred eight (180) days of date of the filing of the action, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and

(6) any action to enforce any financial or monetary obligation of any Person under the Governing Documents;

Section 2. <u>Dispute Resolution Procedures</u>.

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

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

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

(3) the Claimant's proposed resolution or remedy; and

(4) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

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

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in

person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing by either the Claimant or the Respondent, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

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

If the Claim is not submitted to mediation within such time, or if the Bound Party who submitted the Claim to mediation does not appear for the mediation when scheduled, that Bound Party shall be deemed to have waived the Claim, and the other Bound Party shall be relieved of any and all liability to the Bound Party who submitted the Claim to mediation (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. Either the Claimant or Respondent thereafter shall be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

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

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

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

ARTICLE XX
RETAINING WALLS

All retaining walls installed in the Properties by or on behalf of Declarant that are located on more than one (1) Lot or that are located partially on a Lot and partially on Common Elements, are Common Elements and are the property of the Association. With respect to initial construction or installation and subsequent maintenance of retaining walls, Declarant and the Association shall have all of the easements reserved for Declarant and the Association in Article XII of the Declaration. Declarant, during the Development Period, and thereafter the Association, has the right to determine what constitutes a retaining wall and to resolve all issues and other matters related to retaining walls. Any retaining wall

located on a Lot that is not physically connected to a retaining wall located on an adjoining Lot or adjoining Common Elements are the maintenance responsibility of the Owner of that Lot.

ARTICLE XXI
GENERAL PROVISIONS

Section 1. **Assignment**. Declarant specifically reserves the right, in Declarant's sole discretion, to assign temporarily or permanently any or all of its rights, privileges, powers and/or obligations under the Declaration or under any Supplemental Declaration, including assignment of any or all of same as security for any obligation of Declarant to one or more Persons. Except as otherwise provided in this Section, no such assignment shall be effective unless (i) it is in writing, (ii) it is executed by the assignee (unless, with respect to an assignment to the Association of a Governmental Authority permit, execution of the assignment by the assignee is not required by the applicable Governmental Authority or Legal Requirement), (iii) it is recorded in the Registry or other Governmental Authority office required under Legal Requirements, with the date of recording or such later effective date stated in the assignment being the effective date thereof (and the terms of the recorded assignment shall be conclusive and binding as to the matters assigned), and (iv) if it purports to assign any obligations of the Declarant to complete initial capital improvements within the Subdivision required by a Development Plan or other Legal Requirements, it describes the specific obligations assigned.

Upon Declarant's request, the Association shall execute any such assignment by Declarant to the Association, and Declarant is designated by the Declaration as the Association's agent and/or attorney-in-fact to execute any such assignment on behalf of the Association, which agency and power of attorney shall be effective until the end of the Development Period, unless sooner terminated in writing by Declarant. Provided, however, and notwithstanding anything herein to the contrary, Declarant may not assign to the Association any obligation to complete initial capital improvements within the Subdivision required by a Development Plan or other Legal Requirements to be completed by Declarant. With respect to assignments described in any instrument under which Declarant rights specifically or impliedly are given as security for an obligation of Declarant, the terms of such instrument shall control over the provisions of this Section, including execution and recording requirements and the matters assigned thereby. Upon any completed foreclosure sale pursuant to any instrument under which the Declarant rights become security for an obligation, or the recording or filing of a deed or other instrument in lieu of foreclosure, the purchaser at the foreclosure sale, or the grantee under any deed or other instrument in lieu of foreclosure, shall receive the rights, privileges, powers and/or obligations that were assigned as security for the Declarant's obligation, unless the foreclosure documents or conveying document specifically exclude such rights, privileges, powers and/or obligations.

Notwithstanding anything to the contrary in this Section, with respect to Common Elements, Stormwater Control Measures and utilities in the Subdivision, Declarant may assign to the Association, and the Association shall accept assignment of and execute the assignment document with respect to, any or all of the following in whole or in part, including the costs thereof: all rights, duties, liabilities, obligations and indemnities of the Declarant under all permits issued by a Governmental Authority (but execution of the assignment by the Association is not required unless required by the applicable Governmental Authority or Legal Requirement); and all easements and agreements with any provider of utilities to any part or all of the Subdivision and/or under all agreements between the Declarant and a Governmental Authority or any provider of utilities to any part or all of the Subdivision, with respect to maintenance of Common Elements, Stormwater Control Measures and/or utilities in the Subdivision.

Provided, however, and notwithstanding the foregoing, Declarant may not assign to the Association any of its obligations or liabilities or indemnities directly related to the initial construction or installation of improvements for Common Elements, Stormwater Control Measures, utilities, and/or publicly dedicated streets in the Subdivision as required by a Governmental Authority or a utility provider for development of the Properties in accordance with a Development Plan. Declarant shall have the authority to resolve any dispute as to what rights, duties, liabilities, obligations and/or indemnities can be assigned to the Association pursuant to this Section.

Any approvals, waivers, or variances granted by the Declarant under the Governing Documents shall be binding upon all assignees and successors to Declarant's approval, waiver, or variance authority.

Section 2. **Duration of Special Declarant Rights**. Unless otherwise specifically provided in the Governing Documents, or unless waived or released by the Declarant or other Person possessing such rights, all Special Declarant Rights under this Declaration shall exist and continue through the end of the Development Period.

Section 3. **Association Contracts and Leases**. All Association contracts and leases which affect or relate to the Properties or any part thereof and which (i) are entered into prior to the time that the first Board whose majority of directors is elected by the Members takes office, and (ii) are not bona fide or were unconscionable to the Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after such first Board whose majority of directors is elected by the Members takes office, upon not less than ninety (90) days written notice to the other parties to the contract or lease (or any different minimum time period provided for in the Act), and all such contracts and leases are terminable as provided in this Section, whether or not the right of the Association to terminate is stated therein.

Section 4. **Conflicts**. Whenever there exists a conflict among the Governing Documents of the Association, the order in which Governing Documents control is as follows: agreements with Governmental Authorities; the Declaration; other Governing Documents, except that as to matters of compliance with the Nonprofit Corporation Act, the Articles shall control. Whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control. The provisions of the Bylaws shall control over any conflicting provision of any Restrictions and Rules, Board resolutions or rules and regulations, or Architectural Guidelines. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act, the Nonprofit Corporation Act and the Code shall in all cases control over any construction inconsistent therewith.

The provisions of the Code and other Legal Requirements control over any conflicting provisions of the Declaration and any other Governing Documents.

Whenever the Act, the Nonprofit Corporation Act, or the Code provides for limitations on any amount of assessments, fines, late payment fees, charges, or attorney fees that may be assessed, fined, charged, imposed, or collected by the Association, and the amount of any such assessment, fine, late payment fee, charge, or attorney fee allowed or authorized by the Declaration or other Governing Documents (including any assessment, fine, late payment fee, charge, or attorney fee amount established by the Board as allowed by the Declaration or other Governing Documents) exceeds the applicable limitation of the Act, the Nonprofit Corporation Act, or the Code, unless the applicable limitation

specified by the Act, the Nonprofit Corporation Act, or the Code is a mandatory limitation that cannot be exceeded by provisions in the Declaration or other Governing Documents allowing or providing for the possibility of a greater amount than the applicable limitation otherwise allows, the provisions of the Declaration or other Governing Documents control and are deemed to constitute an express provision contrary to the limitation contained in the Act, the Nonprofit Corporation Act, or the Code. The provisions of the Act and Nonprofit Corporation Act shall in all cases control over any conflicting provisions of the Code. The Governing Documents shall be construed together with the construction that avoids, insofar as possible, conflicts among them.

For the purposes of this Article and any other references in the Declaration to similar conflicts, a 'conflict' is a situation in which the provisions in question cannot be reconciled or where enforcement of one provision necessarily would prohibit enforcement of another provision - for example, where one provision allows a certain action and the other provision prohibits the same action. Two provisions that are different, but not mutually exclusive or prohibitive of each other do not constitute a conflict for the purposes of this Article.

Section 5. **Consent and Notice**. Except as otherwise may be specifically required by the Governing Documents or Legal Requirements, when a Lot is owned by more than one Person: (i) with respect to any matter under the Declaration requiring the consent of an Owner, the consent of any one of such Owners is sufficient; and (ii) the notice provisions of the Declaration are deemed satisfied if notice is given to an one of such Owners.

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

Section 6. **Costs and Reasonable Attorneys' Fees**. In any action to enforce the provisions of any Governing Documents, the court may award reasonable attorneys' fees to the prevailing party, even if such action is settled prior to any trial, judgment or appeal. It also is the specific intent of this Section that it constitute the allowance of the award of reasonable attorneys' fees as required under Section 47F-3-120 of the Act.

Section 7. **Determination of Class of Membership**. If at any time during the Development Period there is a question or dispute as to what class of membership is applicable to the Owner of a particular portion of the Properties, the Declarant has the right and authority to resolve such question or dispute. Following the end of the Development Period, the Board has the right to resolve any such question or dispute.

Section 8. **Enforcement**. Subject to applicable alternative dispute resolution provisions of the Declaration, and subject to any rights of enforcement provided for any Governmental Authority by the Declaration or any Legal Requirement, (i) the Declarant and the Association shall have the right, but not the obligation, to enforce the provisions of the Declaration and other Governing Documents relating to the collection of assessments and other charges payable to the Association, and (ii) the Declarant, the Association, each Owner, and, when enforcement rights are granted by the Declaration, an Institutional Lender or other Secondary Mortgage Market Agency, shall have the right, but not the obligation, to

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

Section 9. **Exclusive Rights to Use Name of Subdivision**. During the Development Period, no Person shall use the name "EverlySubdivision" or any derivative of such name in any logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "EverlySubdivision" in printed or promotional matter where such term is used solely to specify that a particular Lot is located within the Subdivision and the Association shall be entitled to use the words "EverlySubdivision" in its name and for other purposes related to the functions of the Association under the Declaration.

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Section 10. **Legal Actions Against Declarant**. The affirmative vote or consent of the Members that is equal to or greater than sixty-seven percent (67%) of the total number of votes in the Association first shall be required prior to the Association doing any or all of the following with respect to the Declarant or any successor Declarant, regardless of whether such Person is the Declarant at the time the Association takes the action or obtains the necessary vote or consent required to take such action: (i) file a complaint, on account of any act or omission of Declarant, with any Governmental Authority which has regulatory or judicial authority over the Properties or any part thereof; or (ii) assert a claim against Declarant or sue Declarant or request legal or equitable relief against Declarant in any court, before any Governmental Authority board, or otherwise.

Section 11. **Legal Requirements**. All Governing Documents shall be subject to and construed in accordance with all Legal Requirements, including all applicable provisions of the Code. It shall be the responsibility of each Owner to comply with all Legal Requirements, whether or not any approval, disapproval, waiver or variance of the terms of any Governing Documents has been given by Declarant, the Association or the Architectural Review Committee. It is the express intention of the Governing Documents to comply with the Act, and any provisions of the Governing Documents that are not in compliance with the Act shall be deemed reformed to comply therewith. Provided, however, it also is the intention of the Governing Documents that, unless its provisions violate the Act, such provisions shall control, and, insofar as reasonably possible, the provisions of the Governing Documents shall be construed in such manner as to be consistent with, and not in violation of, the Act.

Section 12. **Marketable Title Act**. It is the intention of the Declarant that the Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or

replacement statute or any other Legal Requirement that would or could terminate the Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may re-record in the Registry the Declaration or some memorandum or other notice hereof in order to continue the Declaration in full force and effect and/or to qualify the Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other Legal Requirement.

Section 13. **No Exemption**. No Owner may become exempt from any obligations imposed hereby by non-use or abandonment of the Common Elements or any portion of the Properties owned by such Owner.

Section 14. **No Timesharing**. No Dwelling shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to use or occupancy of the Dwelling rotates among participants in the program on a fixed or floating time schedule over any period of time.

Section 15. **Notice**. Except as otherwise provided herein, whenever written notice to any Person is required hereunder, such notice may be hand delivered to such Person, or given by first class United States mail, postage prepaid, or given in such other manner specifically allowed or required by Legal Requirements, or given in such other manner determined by the Board to be proper and which does not violate any Legal Requirements, addressed to the address of such Person appearing on the records of the Association or to the address for such Person appearing in the records of the Franklin County Revenue Department. Properly addressed notice shall be deemed to have been given by the Association as follows: (i) in the absence of any delays in delivery by the United States Postal Service resulting from acts of war or terrorism, on the third day following the date the notice was deposited in the United States mail, first class postage prepaid; or (ii) on the date of personal delivery to the Person or an adult residing with the Person, as evidenced by a receipt signed by the Person or such other Person; or (iii) on the delivery date indicated on a return certified or registered mail receipt, or (iv) on the date indicated by the records of a national, regional or local same day or overnight courier service, or (v) on the date acknowledged in writing by the recipient Person or other adult residing with such Person, or (vi) upon execution of a written waiver of such notice by the Person. Notice to the Association may be given and shall be deemed to have been given in the same manner as notice to a Person, when addressed to the principal business office of the Association or the property manager employed by the Association. It shall be the duty of each Owner and other Person entitled to receive a notice from the Association to keep the Association informed of such Owner's or other Person's current mailing address and telephone number. If an Owner or other Person has not provided the Association with such current mailing address, the Association may use as the mailing address the street address of the portion of the Properties owned by such Owner or other Person or the address for such Owner or other Person in the records of the Franklin County Revenue Department. If no address for an Owner or other Person is reasonably available to the Association, the Association shall not be required to give notice to that Owner or other Person. Notice given to any one of multiple Owners of any portion of the Properties shall be deemed to have been given to all of such Owners. When an Owner requests that communications from the Association be given by electronic mail, then notices under the Declaration also may be given to that Owner by electronic mail by an officer, director, or agent of the Association (which may include a property manager) and shall be deemed to have been given on the date that it is sent by the sending Person to the Owner to the electronic mail address of the Owner most recently given to the Association.

Section 16. **Number and Gender**. Whenever the context of the Declaration requires, the singular shall include the plural and one gender shall include all.

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

All rights of Declarant and the Association under the Declaration, unless otherwise specifically provided or limited, may be exercised at any time and from time to time.

Section 18. **Rule Against Perpetuities**. As provided in Section 47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, or the Bylaws, rules, or regulations adopted pursuant to Section 47F-3-102(1) of the Act. In the event of the absence of the protection of Section 47F-2-103(b) of the Act, if the Declaration or any provision thereof violates any applicable Rule Against Perpetuities, the Declaration or such provisions shall be deemed reformed to continue in effect for the maximum period of time that the Declaration or such provision could exist without violating such applicable Rule Against Perpetuities.

Section 19. **Severability of Provisions**. If any paragraph, section, sentence, clause or phrase of the Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent and final jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases of the Declaration shall continue in full force and effect and shall not be affected thereby. To the extent that any provision of the Governing Documents is determined to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision without destroying its intent, then the narrower or partially enforceable provision shall be applied and, to the extent lawful, shall be enforced. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 20. **Subdivision, Combination of Lots; Plat Re-recording**. Any portion of the Properties may be subdivided, and the boundaries of any portion of the Properties may be altered, only with the written consent of the Owner thereof and the Declarant, during the Development Period (and, thereafter, the Board), and with any prior approval required by a Governmental Authority. Provided, however, and notwithstanding the foregoing sentence, such written consent of the Declarant is not required for leases, deeds of correction, deeds to resolve boundary line disputes or similar corrective instruments, or deeds or other instruments granting any easement, right-of-way or license to Declarant, the Association, a Governmental Authority, or a public utility provider, provided that the number of then existing Lots in the Properties is not changed by any such action.

Two or more Lots may be combined into a single Lot, and a Lot may be subdivided into two or more Lots, only with the written consent of the Owner thereof and the Declarant during the Development Period and, when the Development Period is not in existence, only with the written consent of such

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

Nothing contained herein shall prohibit or restrict the right of Declarant, during the Development Period to (i) subdivide, combine, re-subdivide or recombine, or to record or re-record maps relating to, any portion of the Properties owned by Declarant, or (ii) to approve or disapprove such activities with respect to portions of the Properties owned by other Owners or (iii) sell or assign to a third party builder any right related to an Impervious Surface on any portion of the Properties owned by Declarant or the Common Elements or (iv) sell or assign to the Association any right related to an Impervious Surface on any portion of the Properties owned by Declarant or the Common Elements. The provisions of the immediately preceding paragraph with respect to the effects of subdivision or combination of Lots are applicable to subdivision or combination of Lots owned by the Declarant unless the Declarant otherwise indicates on the plat of such subdivision or combination recorded in the Registry or in an instrument recorded in the Registry prior to the end of the Development Period.

Section 21. **Titles**. The titles, headings and captions which have been used throughout the Declaration are for convenience only and are not to be used in construing the Declaration or any part thereof, except as necessary with respect to any cross-referencing of any provisions of the Declaration.

(Execution and exhibit pages follow.)

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

Declarant:

Capital Companies Group, LLC

By: _____
John Patrick Williams, Manager

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I certify that the following person personally appeared before me this day and acknowledged to me that he or she signed the foregoing document on behalf of Capital Companies Group, LLC in the capacity indicated: John Patrick Williams

Date: December 6, 2018

_____
Nathan M. Garren, Notary Public

My commission expires: 10/08/2022

NATHAN M GARREN
Notary Public
North Carolina
Durham County

EXHIBIT A
EXISTING PROPERTY

BEGINNING AT A POINT, SAID POINT A COMMON CORNER WITH NOW OR FORMERLY LOT 29, TWIN CREEKS AT OLDE MILL STREAM, PHASE 5B, B.M. 2006, PAGE 1533, FRANKLIN COUNTY REGISTER OF DEEDS AND B.M. 2006, PAGE 221, FRANKLIN COUNTY REGISTER OF DEEDS, SAID POINT ALSO A COMMON CORNER WITH NOW OR FORMERLY STEPHEN TAYLOR HEIRS, HAVING NO DEED REFERENCE BUT PIN 1842-62-7025, FRANKLIN COUNTY GIS; SAID POINT THE SOUTHWEST CORNER OF LARRY D. SEIBEL, D.B. 827, PG. 265, P.B. 98, PG. 105, FRANKLIN COUNTY REGISTER OF DEEDS;
THENCE, LEAVING SAID LOT 29 AND WITH SAID HEIRS THENCE N 14°15'14" E A DISTANCE OF 1005.66';
THENCE, LEAVING SAID HEIRS AND ACROSS SAID SEIBEL THE FOLLOWING COURSES AND DISTANCES:
N 49°35'20" E A DISTANCE OF 36.72'; THENCE N 39°26'20" E A DISTANCE OF 49.42';
THENCE N 30°26'06" E A DISTANCE OF 18.45'; THENCE S 36°43'59" E A DISTANCE OF 19.78';
THENCE S 85°45'39" E A DISTANCE OF 11.85'; THENCE S 53°37'37" E A DISTANCE OF 7.39';
THENCE S 28°07'33" E A DISTANCE OF 18.46'; THENCE N 60°14'36" E A DISTANCE OF 22.22';
THENCE S 70°06'01" E A DISTANCE OF 17.17'; THENCE N 48°26'14" E A DISTANCE OF 24.92';
THENCE N 36°14'18" E A DISTANCE OF 19.46'; THENCE N 05°04'52" E A DISTANCE OF 11.34';
THENCE N 72°37'21" E A DISTANCE OF 8.33'; THENCE N 65°18'30" E A DISTANCE OF 15.63';
THENCE N 86°26'23" E A DISTANCE OF 18.91'; THENCE N 40°29'25" E A DISTANCE OF 22.22';
THENCE N 59°01'32" E A DISTANCE OF 19.34'; THENCE N 87°57'09" E A DISTANCE OF 16.94';
THENCE N 81°00'39" E A DISTANCE OF 4.48'; THENCE N 81°00'39" E A DISTANCE OF 19.02';
THENCE N 49°49'52" E A DISTANCE OF 12.01'; THENCE S 78°10'01" E A DISTANCE OF 19.02';
THENCE N 55°33'59" E A DISTANCE OF 25.53'; THENCE N 83°29'36" E A DISTANCE OF 67.63';
THENCE S 46°32'45" E A DISTANCE OF 29.96'; THENCE S 38°14'18" E A DISTANCE OF 28.75';
THENCE S 07°37'08" W A DISTANCE OF 33.31'; THENCE N 52°57'22" E A DISTANCE OF 44.00';
THENCE S 37°01'29" E A DISTANCE OF 60.00'; THENCE S 17°16'04" E A DISTANCE OF 44.49';
THENCE A CURVE TO THE LEFT HAVING A RADIUS OF 51.50', AN ARC LENGTH OF
22.26, A CHORD BEARING AND DISTANCE OF S 32°27'26" E, 22.08'; THENCE S 44°50'14" E A DISTANCE OF 8.19'; THENCE S 53°11'37" W A DISTANCE OF 97.11'; THENCE S 37°01'29" E A DISTANCE OF 75.40';
THENCE S 39°27'15" E A DISTANCE OF 14.84'; THENCE S 46°19'50" W A DISTANCE OF 50.02';
THENCE N 39°18'25" W A DISTANCE OF 23.76'; THENCE S 52°58'31" W A DISTANCE OF 102.00';
THENCE S 37°01'29" E A DISTANCE OF 33.13'; THENCE S 47°30'33" E A DISTANCE OF 52.46';
THENCE S 16°25'04" E A DISTANCE OF 171.48'; THENCE S 88°09'21" W A DISTANCE OF 17.76';
THENCE S 88°09'21" W A DISTANCE OF 183.65'; THENCE S 02°22'23" E A DISTANCE OF 101.93';
THENCE N 88°10'31" E A DISTANCE OF 36.31'; THENCE S 01°49'29" E A DISTANCE OF 50.00';
THENCE S 01°50'56" E A DISTANCE OF 102.07'; THENCE N 88°09'04" E A DISTANCE OF 205.95';
THENCE N 83°15'26" E A DISTANCE OF 208.74'; THENCE N 01°49'29" W A DISTANCE OF 13.51';
THENCE N 88°10'31" E A DISTANCE OF 50.00'; THENCE S 01°49'29" E A DISTANCE OF 13.51';
THENCE S 01°49'29" E A DISTANCE OF 38.01'; THENCE N 87°45'45" E A DISTANCE OF 95.97'
TO A POINT, SAID POINT ALONG A COMMON LINE WITH NOW OR FORMERLY ROBERT O. AND RUTH P. SILLS, DEED BOOK 743, PAGE 674, FRANKLIN COUNTY REGISTER OF DEEDS;
THENCE, LEAVING SAID SEIBEL AND WITH SAIDSILLS S 02°14'15" E TO THE NORTHERN RIGHT-OF-WAY FOR STEPHEN TAYLOR ROAD; THENCE, CONTINUING S 02°14'15" E ACROSS SAID ROAD TO THE NORTHWEST CORNER OF NOW OR FORMERLY SHARON GILL LEWIS, DEED BOOK 1063, PAGE 762, FRANKLIN COUNTY REGISTER OF DEEDS, AND WITH LEWIS A TOTAL

OF 75.35' FROM THE PREVIOUS DISTANCE OF 95.97'; THENCE, CONTINUING WITH SAID LEWIS S 00°51'45" W A DISTANCE OF 159.41' TO A POINT, SAID POINT ALONG A COMMON LINE WITH NOW OR FORMERLY CALVIN A. RAY AND MARY ANN HUGHES; THENCE, LEAVING SAID LEWIS AND WITH SAID RAY AND HUGHES S 88°10'31" W A DISTANCE OF 730.65' TO A POINT, SAID POINT THE NORTHEAST CORNER OF LOT 33, TWIN CREEKS AT OLDE MILL STREAM, PHASE 5B, AFORESAID BOOK OF MAPS; THENCE, LEAVING SAID RAY AND HUGHES AND WITH LOT 33 S 88°01'27" W A DISTANCE OF 121.30' TO THE EAST SIDE OF HALTWHISTLE STREET, A 50' PUBLIC RIGHT-OF-WAY; THENCE, CROSSING SAID RIGHT-OF-WAY S 88°01'27" W 50.14' TO THE NORTHEAST CORNER OF LOT 32; THENCE, WITH LOT 32, 31, 30 AND PORTION OF LOT 29 S 88°01'27" W 241.52' TO THE POINT AND PLACE OF BEGINNING CONTAININGAN AREA OF 687,775 SQUARE FEET OR 15.789 ACRES, MORE OR LESS.