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DECLARATION
FOR
CORNERSTONE PARK

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

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FOR CORNERSTONE PARK**

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

**DECLARATION
FOR CORNERSTONE PARK**

THIS **DECLARATION FOR CORNERSTONE PARK** is made this _____ day of _____, 2000, by **Highway Seventy, LLC**, a Virginia limited liability company, hereinafter also referred to as the "Developer", and by Branch Banking And Trust Company Of Virginia, a Virginia state banking corporation, hereinafter referred to as "Developer's Lender", and Samuel G. Scott, Trustee, hereinafter referred to as "Trustee";

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located in Wake County, North Carolina, described on **Exhibit A** attached hereto and incorporated by reference, said real property being referred to herein as the "Existing Property", which is located in a residential development presently named "Cornerstone Park" (the name of which the Developer reserves the right to change from time to time);

AND WHEREAS, Developer desires to develop Cornerstone Park as a residential planned community under the Act with a mixture of residential and recreational uses, and wishes to establish and declare this Declaration with respect to the Existing Property and all Additional Property, if any, subjected to this Declaration (the Existing Property, together with all Additional Property, if any, subjected to this Declaration being defined herein as "The Properties"), in order to protect the value and desirability of The Properties by providing for development thereof in accordance with a common plan, and to provide for maintenance of Common Elements and other facilities in The Properties;

AND WHEREAS, although separate easements, covenants and restrictions (which may or may not be similar to those herein contained) may be imposed by Developer with respect to various phases, sections or subdivisions of The Properties, Developer desires to subject all of The Properties to this Declaration, and to establish certain rights for, and impose certain obligations upon, the Owners of The Properties as provided herein;

NOW, THEREFORE, Developer hereby subjects the Existing Property to this Declaration, and hereby declares that all of The Properties shall be owned, held, transferred, sold, conveyed, donated, dedicated, leased, encumbered, occupied and used subject to the terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens hereinafter stated, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of The Properties and preserving the values and amenities in The Properties (this Declaration constituting no obligation, promise or representation of the Developer to provide any recreation facility or amenity in The Properties, or to or for the Owners of The Properties, except as specifically stated herein), and all of which shall run with The Properties and all parts thereof and shall be binding on and inure to the benefit of each Owner of The Properties or any part thereof.

ARTICLE I

DEFINITIONS

The following words and terms, when used in this Declaration or any amendment hereto, or any Supplemental Declaration, unless amended or unless the context clearly indicates otherwise, are defined as follows (when the word as defined has an initial capital letter or letters, its use in this Declaration has the defined meaning only when used with the same initial capital letter or letters). 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, and, in the event of any conflict between the definitions contained herein and the definitions contained in the Act or the Nonprofit Corporation Act, the Act or Nonprofit Corporation Act, as appropriate, shall control:

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

(b) "Additional Property" is defined as all real property subjected to or annexed to this Declaration subsequent to the recording of this Declaration in the Registry, either by Supplemental Declaration or by merger, as provided herein.

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

(d) "Association" is defined as Cornerstone Park Community Association, Inc., a North Carolina nonprofit corporation incorporated or to be incorporated under the Nonprofit Corporation Act to serve as the Association under this Declaration, and its successors and assigns.

(e) "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. Unless reserved by or for Developer, Declarant or any Major Builder in this Declaration, other Governing Documents or applicable Legal Requirements, all rights, powers, easements, functions, services, obligations and duties of the Association may be performed or directed by the Board on behalf of the Association.

(f) "Builder" is defined as a Person who is regularly in the business of constructing Dwellings on real property for resale to other Persons, and who purchases one or more Lots in The

Properties for the purpose of constructing thereon Dwellings for resale to other Persons. A Major Builder also is a "Builder" (but it is possible, although not currently contemplated, that there could be Builders who are not Major Builders).

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

(h) "Centex" is defined as Centex Homes, a Nevada general partnership, and its successors and assigns.

(i) "City" is defined as the City of Raleigh, North Carolina, 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, whichever governmental entity or entities is/are applicable.

(j) "Common Elements" is defined as all real property in The Properties, including all improvements thereon, that is owned or leased by the Association, other than Lots.

(k) "Common Expenses" is defined as expenditures made by or financial liabilities of the Association, including the following: (i) the expenses of maintenance of the Common Elements and Common Expense Properties, including allocations for reserves; (ii) expenses declared to be or described as Common Expenses by the provisions of this Declaration; (iii) ad valorem property taxes and City assessments, if any, applicable to the Common Elements or other assets of the Association; (iv) premiums for hazard, liability or other insurance obtained by the Association; (v) all other expenses incurred by the Association in performing its functions and providing services under this Declaration, including operating expenses and unexpected contingencies; and (vi) expenses determined by the Board to be Common Expenses of the Association.

(l) "Common Expense Properties" is defined as any one or more of the Landscape Easements, Landscaped Rights-of-Way and Major Streets, including improvements therein, that are maintained by the Association and paid for as part of the Common Expenses.

(m) "contiguous" is defined as including all of the following: adjacent to; across a public or private street right of way from; and separated from by an easement, Common Elements or property owned by the City.

(n) "Declarant" is defined as Highway Seventy, LLC, its successors and assigns, until such time as there is a change in the Declarant as provided in Article XVII herein, at which time the Declarant shall be as provided in Article XVII (which includes the possibility of two or more

Declarants). Whenever there are two or more Declarants under this Declaration, unless otherwise specifically provided herein: (i) all of such Declarants are liable jointly and severally for Declarant obligations under this Declaration; and (ii) whenever consent or written agreement or affirmative vote of the Declarant or Class B Member of the Association is required in order for a matter to pass or be effective, the consent, written agreement or affirmative vote by all of such Declarants is required for such matter to pass or be effective.

(o) "Declarant Control Period" is defined as the period of time beginning at the time of recording of this Declaration in the Registry and ending on the first to occur of the following:

(i) the later of 5:00 p.m. on the date that is seven (7) years following the date of recording of this Declaration in the Registry, or 5:00 p.m. on the date that is five (5) years following the date of recordation in the Registry of the most recent Supplemental Declaration signed by the Developer or the Major Builders subjecting Additional Property to this Declaration (provided, however, once the Declarant Control Period has ended because of the expiration of one of the foregoing time periods, the recordation thereafter of a Supplemental Declaration subjecting Additional Property to this Declaration shall not reinstate the Declarant Control Period; further provided, however, if the Developer is delayed in the development of The Properties as the result of a sanitary sewer, water or building permit moratorium, or as the result of some other cause or event beyond the Developer's control, then the applicable time period shall be extended by the amount of time of the delay or by three (3) years, whichever extension is less); or

(ii) final termination of the Class B Membership in the Association; or

(iii) the end of the Development Period.

(p) "Declaration" is defined as this Declaration For Cornerstone Park, and all duly adopted and recorded amendments hereto.

(q) "Developer" is defined as Highway Seventy, LLC, its successors and assigns. Developer is the initial Declarant under this Declaration and may have rights and benefits hereunder that are common to both Developer and Declarant. Until such time as Developer is no longer Declarant, it may exercise such common rights and benefits in either capacity.

(r) "Development Period" is defined as the period of time from the date of recording of this Declaration in the Registry through and including the later of the last day on which Developer or any Major Builder owns any portion of The Properties, or the date of release of the last bond (or letter of credit or other, similar financial guarantee) posted by Developer with the City in connection with

Developer's development of The Properties. Further provided, with respect to appointment of the Architectural Review Committee and architectural approvals for Improvements required to be approved by the Architectural Review Committee as provided herein, unless the Declarant and Major Builders together agree otherwise, the Development Period shall continue until all construction of Dwellings has been completed on all Lots.

(s) "duly called meeting of the Association" is a meeting of the Association which has been called, and with respect to which notice has been given, in accordance with the Governing Documents and all applicable Legal Requirements; "present", in the context of meetings of the Association, means present in person, or represented by proxy meeting all applicable requirements of the Governing Documents and the Legal Requirements, or present by mailed ballot (when allowed) meeting all applicable requirements of the Governing Documents and the Legal Requirements; "notice", in connection with any meeting of the Association, shall include notice of the date, time and place of the meeting, the items on the meeting agenda, a description of the general nature of any proposed amendment to this Declaration, the Articles or the Bylaws, any budget changes, and any proposal to remove an officer or director. If ratification of a proposed budget is to be voted on, the notice shall specify same and shall include a statement that the budget may be ratified without a quorum.

(t) "Dwelling" is defined as a permanent building (or portion thereof) on a Lot physically arranged to create an independent housekeeping establishment with separate facilities for cooking, sleeping, and toilet, and intended for occupancy as a residence. This definition of Dwelling includes both detached dwellings and attached dwellings (for example, townhome dwellings, which may be located in a building that contains more than one townhome dwelling).

(u) "Existing Property" is defined as the real property subjected to this Declaration as described in Article II and on **Exhibit A** attached hereto and incorporated by reference.

(v) "Governing Documents" is defined as this Declaration, all applicable Supplemental Declarations, the Articles, the Bylaws, the rules and regulations of the Association, and duly adopted architectural guidelines.

(w) "Improvement" or "improvement" is defined as a Dwelling and all other improvements, including any one or more of the following: garages; decks; patios; parking areas; storage areas; recreational areas, equipment and facilities; mailboxes; exterior antennae, dishes or other apparatus to receive or transmit television or radio or microwave or other signals; fences; walls; hedges; mass plantings and other landscaping; poles; driveways; clearing, grading and other site preparation; swimming pools; signs; illumination; and all other exterior improvements. The definition of

Improvements includes both initial Improvements and all subsequent changes and additions to existing Improvements.

(x) "include" or "including" is defined as being inclusive of, but not limited to, the particular examples described, unless otherwise obvious from the context in which it is used.

(y) "Landscape Easement" or "Sign Easement" (the terms being used interchangeably) is defined as an area within or contiguous to The Properties that is reserved or established by Developer (or, following the end of the Development Period, by the Association) as an easement for the maintenance therein by the Association of any one or more of the following: plants, trees, flowers, bushes, grass, other landscaping materials, signs, monuments, lighting equipment, irrigation equipment and other associated equipment, apparatus and facilities. A Landscape Easement may be established or reserved by notation on a plat recorded in the Registry or by written document recorded in the Registry. Maintenance of Landscape Easements and improvements therein by the Association is a Common Expense.

(z) "Landscaped Right-of-Way" is defined as a median or other area, including improvements therein, within a public or private street right-of-way in or contiguous to The Properties which is designated as a Landscaped Right-of-Way by Developer or the Association. Maintenance of Landscaped Rights-of-Way and improvements therein by the Association is a Common Expense. The Association may maintain Landscape Easements in a Landscaped Right-of-Way.

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

(bb) "Limited Common Elements" is defined as a portion of the Common Elements allocated by this Declaration or by applicable Legal Requirements for the exclusive use of one or more but fewer than all of the Lots. While it is not contemplated that there will be any Limited Common Elements under this Declaration, the provisions of this Declaration related to Limited Common Elements have been included to deal with any Limited Common Elements that may exist in the future.

(cc) "Lot Owner" or "Owner of a Lot", as those terms are used herein, is defined as the Owner of record as shown in the Registry, whether one or more Persons, including Declarant and Major Builders, of fee simple title to any Lot, but excluding those having an interest in the foregoing

as a result of a contract, option to purchase, or as security for an obligation. A "Lot Owner" is a specific type of Owner as that term is defined herein.

(dd) "maintain", "maintaining", "maintenance" or any substantially similar term used in this Declaration, is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

(ee) "Major Builder" is defined as a Person who has a valid but uncompleted contract with Developer to purchase one or more of the Tracts described on **Exhibit A**, or who has purchased one or more of said Tracts from Developer pursuant to such contract. A Major Builder shall continue as a Major Builder under this Declaration until the later of the time that such Person no longer has a valid but uncompleted contract with Developer or no longer owns any portion of The Properties. As of the date of recordation of this Declaration in the Registry, Centex and Westfield are Major Builders. Following completion of construction of the Recreation Facility, Developer also shall be included within the definition of Major Builder with respect to all portions of The Properties owned by Developer. **Notwithstanding anything to the contrary herein or any failure to specifically state same in any applicable portion of this Declaration, during the Declarant Control Period matters in this Declaration or other Governing Documents that require the consent or written agreement of the Declarant or the affirmative vote of the Class B Member of the Association, also must have the consent, written agreement or affirmative vote by all of the Major Builders. Whenever any rights or benefits of the Declarant also are allocated in this Declaration to a Major Builder, such rights or benefits are allocated to such Person in only one of those capacities, it being the express intention of this sentence that such rights or benefits not be doubled or duplicated as a result of a Major Builder also being a Declarant. When a Major Builder also is a Declarant, the Major Builder shall exercise such duplicate rights and benefits in its capacity as a Declarant and not as a Major Builder.**

(ff) "Major Streets" is defined as the rights of way of the two (2) major streets within The Properties to be dedicated to public use, the Major Streets being depicted on **Exhibit B** attached hereto and incorporated by reference. Maintenance by the Association of certain improvements in Major Streets as provided herein is a Common Expense.

(gg) "Master Plan" is defined as the most current version of the drawing approved by the Developer that depicts the conceptual plan for development of The Properties. If there is any conflict between the Master Plan and a Subdivision Plan, the Subdivision Plan shall control.

(hh) "Member" is defined as a Lot Owner, including Declarant and Major Builders, with the membership and voting rights of each Member in the Association being as described herein.

(ii) "mortgage" or "deed of trust" (the terms being used interchangeably herein) 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.

(jj) "Mortgagee" means an institutional lender (including any of the following: 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) which holds a first lien deed of trust encumbering a Lot. Only for the purposes of the notice and inspection rights contained in this Declaration in the portions hereof dealing specifically with Mortgagees, amendment of this Declaration and termination of this Declaration, the term "Mortgagee" 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 Mortgagees 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 a Mortgagee 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 Mortgagee of the request for approval.

(kk) "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.

(ll) "Owner" is defined as the owner of record as shown in the Registry, whether one or more Persons, including Declarant and Major Builders, of fee simple title to any portion of the Properties, but excluding those having an interest in the foregoing as a result of a contract, option to purchase, or as security for an obligation.

(mm) "Person" is defined as any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or other legal or commercial entity.

(nn) "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 storm water drainage, decorative landscape planting and other decorative landscaping features, floor plans and elevations, and other items specified from time to time in any applicable architectural guidelines. "Approved Plans" are Plans that have been approved by the Architectural Review Committee (or by the Board, on appeal from the Architectural Review Committee).

(oo) "Property Classifications". The various portions of The Properties subjected to this Declaration shall be classified as one of the following (Note: The Property Classification of one or more portions of The Properties may change from time to time as plats thereof are recorded or re-recorded in the Registry or as otherwise provided herein. During the Development Period the Developer, in its sole discretion (and thereafter, the Board), has the authority to resolve any question or dispute regarding the Property Classification of any part or all of The Properties):

(1) "dedicated public street right of way" (or publicly dedicated street right of way" or "public street", the terms being used interchangeably herein) is defined as any portion of The Properties that has been dedicated to public use as a street, either by the recordation of a plat in the Registry, or in such other manner as required or allowed by the City.

(2) "Exempt Property" is defined as all portions of The Properties included within any one or more of the following:

- a) All Common Elements;
- b) All Sub-Association Common Elements;
- c) All property owned by the City;
- d) All property within publicly dedicated street rights of way;

Exempt Property is not subject to any assessments under this Declaration. Exempt Property owned by the City and property within publicly dedicated street rights of way that is owned by the City or by a provider of public utility services (including electricity, telephone, Internet and cable television lines, pipes, equipment and facilities) is not subject to any of the provisions of this Declaration, unless the City or applicable provider of utility services consents to such Exempt Property being subject to the provisions of this Declaration.

(3) "Lot" is defined as any parcel of land within The Properties which is intended for the construction and use thereon of a Dwelling, and is shown as a separate numbered or lettered parcel on any plat recorded in the Registry pursuant to a Subdivision Plan approved by the City.

(4) "Proposed Lot" is any portion of The Properties that is shown on the Master Plan as a lot but which has not yet become a Lot by recordation of a plat pursuant to a Subdivision Plan. The sum of the number of Lots plus Proposed Lots is defined as the "Total Planned Lots". A Proposed Lot is part of the Unsubdivided Land. At the time of the recordation of this Declaration, the number of Total Planned Lots is 451, with Westfield under contract to purchase 296 of same from Developer and with Centex under contract to purchase 155 of same from Developer. The number of Proposed Lots and Total Planned Lots are subject to change as Subdivision Plans are approved and plats thereof recorded in the Registry.

(5) "Sub-Association Common Elements" is defined as portions of The Properties owned or maintained by a Sub-Association for the use or benefit of some or all of its members, other than Lots.

(6) "Unsubdivided Land" is defined as all portions of The Properties that are not Lots or Exempt Property.

(pp) "reasonable attorneys' fees" is defined as attorneys' fees reasonably incurred, without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

(qq) "Recreation Facility" is defined as that portion of The Properties on which the Developer, prior to June 1, 2002, agrees to construct a swimming pool and bath house building (consisting of rest rooms and a small meeting room), and to convey same to the Association, free and clear of all liens and encumbrances, except for this Declaration and all other rights of way, easements and restrictive covenants of record in the Registry that are applicable to such portion of The Properties. It is the intention of Developer to construct the Recreation Facility on land to be subdivided out of "Lot 5" as described on **Exhibit A**. The actual location and configuration of the Recreation Facility shall be as constructed.

(rr) "Recreation Facility Completion Date" is defined as the last day of the month in which construction of the Recreation Facility is completed to the extent that either the swimming pool is open for use or a certificate of occupancy is issued by the City for the Recreation Facility, whichever first occurs.

(ss) "Registry" is defined as the office of the Register of Deeds for Wake County, North Carolina, or any successor office in which deeds, plats, easements, mortgages and deeds of trust are recorded.

(tt) "Subdivision Plan" is defined as the most current development plan approved by the City for the applicable portion of The Properties, as evidenced by a plat recorded in the Registry.

(uu) "The Properties" is defined as the Existing Property, together with all Additional Property.

(vv) "utility" or "public utility" (the terms being used interchangeably herein) is defined as any one or more of the following used in any part or all of The Properties and as the Person who provides same to any part or all of The Properties: electricity; telephone; Internet service; water; sanitary sewer; natural gas; television; and any other service or facility generally recognized as a public utility or determined to be a public utility by the Developer (during the Development Period, and thereafter, by the Board).

(ww) "Westfield" is defined as Westfield Homes Of North Carolina, Inc., a North Carolina corporation.

ARTICLE II

THE PROPERTIES; ANNEXATION AND WITHDRAWAL

Section 1. Existing Property Made Subject To Declaration. The Existing Property described on **Exhibit A** attached hereto and incorporated by reference is hereby made subject to this Declaration, and constitutes The Properties at the time of recordation of this Declaration in the Registry.

Section 2. Annexation of Additional Property.

(a) At any time during the Declarant Control Period Declarant or any Major Builder, by and with the written consent of Declarant and all Major Builders, may annex (or subject, the words being used interchangeably in the context of adding to The Properties) to this Declaration any part or all of any real property that is contiguous to any part of The Properties by recordation of a Supplemental Declaration in the Registry executed by Declarant and all such Major Builders. Provided, however, during the Declarant Control Period any such annexation of Additional Property also shall require approval by the United States Department of Housing and Urban Development

(“HUD”) or its designee and/or by the United States Veterans Administration (“VA”) or its designee unless, at the time of such annexation, applicable HUD or VA regulations no longer require such approval.

(b) If Declarant, a Major Builder or any other Person desires to annex real property to the Declaration that is not of a type described in the immediately preceding subsection, such real property may be annexed to this Declaration only by the recordation in the Registry of a Supplemental Declaration executed by the owner of such real property, the appropriate officers of the Association, and by Declarant and all Major Builders during the Declarant Control Period, following approval of the proposed annexation by the affirmative vote by each class of Members of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a duly called meeting of the Association. Provided, however, during the Declarant Control Period any such annexation of Additional Property by Declarant or a Major Builder also shall require approval by the United States Department of Housing and Urban Development (“HUD”) or its designee and/or by the United States Veterans Administration (“VA”) or its designee unless, at the time of such annexation, applicable HUD or VA regulations no longer require such approval.

Section 3. Supplemental Declaration. Each Supplemental Declaration shall be effective to annex Additional Property to this Declaration only upon compliance with the terms of this Declaration and recordation 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 recordation of the Supplemental Declaration. Each Supplemental Declaration shall describe the Additional Property annexed and shall reference this Declaration. A Supplemental Declaration need not be in any specific form and need not be titled Supplemental Declaration, but it shall clearly indicate the intention to subject the Additional Property to this Declaration and shall be executed by all Persons required to execute same as provided herein. Any Supplemental Declaration may specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens, not inconsistent with this Declaration, as Declarant, the Major Builder or the Person subjecting the Additional Property to this Declaration may determine. This Declaration shall control over any provision of any Supplemental Declaration that conflicts or is inconsistent with this Declaration.

Section 4. Order of Development and Annexation. It is Developer’s intent to develop The Properties in accordance with applicable Subdivision Plans, and Developer reserves the right at any time and from time to time to review and modify one or more Subdivision Plans. Such review and modification may include a change in the use or proposed use of any portion of The Properties, or a change in location of any passive or active recreational feature, activity or amenity. Subdivision Plans shall not obligate Developer to develop any particular portion of The Properties now or in the future, nor shall Developer be required to follow any particular sequence or order of

development of The Properties. Additional Property may be subjected to this Declaration before or after development of portions of The Properties previously subjected to this Declaration has been completed.

Section 5. Withdrawal.

(a) At any time and from time to time during the Development Period Declarant or any Major Builder, by and with the written consent of Declarant and all Major Builders, but without the approval or joinder of the Association or any other Person (except for the Owner of the portion of The Properties being withdrawn), may record a Supplemental Declaration withdrawing one or more portions of The Properties from this Declaration, provided each portion of The Properties to be withdrawn has a City zoning classification that allows use for, and is intended for use for, commercial or other non-residential purposes (non-residential meaning use for something other than occupancy of a Dwelling).

(b) After the end of the Development Period, at any time and from time to time one or more portions of The Properties may be withdrawn from this Declaration, provided such portion of The Properties to be withdrawn has a City zoning classification that allows use for, and is intended for use for, commercial or other non-residential purposes, and the withdrawal has been approved by the Owner of such portion of The Properties and by the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a duly called meeting of the Association for which the notice of the meeting includes notice of the proposal to withdraw such portion of The Properties.

Section 6. Effect of Annexation or Withdrawal. Any portion of The Properties that is withdrawn from this Declaration may be used, occupied, conveyed, sold, leased and developed in any manner allowed under applicable Legal Requirements, without regard to the provisions of this Declaration.

ARTICLE III

FUNCTIONS, SERVICES AND POWERS OF THE ASSOCIATION

Section 1. Minimum List of Functions and Services. The following are the "Minimum List of Functions and Services" which the Association shall do, provide, perform, accept, or be responsible for, as the case may be:

(a) The Association shall carry out the Association's obligations and business under the terms of 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 Landscape Easements, including portions thereof located in easements granted to or reserved by the Association or by Developer on behalf of the Association. In determining the level of maintenance to be performed by the Association, the Board may give due consideration to the extent to which the City or any other Person is responsible for and performs such maintenance.

(c) Subject to the terms of any encroachment agreement between the Association and the City, the Association shall maintain grass and landscaping within the Major Streets with such frequency and in such manner as determined by the Board. In determining the level of maintenance to be performed by the Association, the Board may give due consideration to the extent to which the City or any other Person is responsible for and performs such maintenance.

(d) The Association shall accept transfer of ownership from Developer of any and all Common Elements located within The Properties.

(e) The Association shall accept from Declarant any and all assignments of Declarant rights under this Declaration or any Supplemental Declaration, and shall assume all obligations 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.

(f) The Association shall accept from Declarant any and all appointments of the Association as the agent of Declarant for administration and enforcement of any of the provisions of this 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.

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

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

(i) The Association shall make available to each Member making written request therefor an annual financial report and, upon either the (i) the affirmative vote of majority of the votes cast

by the Members present at a duly called meeting of the Association, or (ii) the written request of the Members possessing twenty-five percent (25%) or more of the total votes of all the Members of the Association, shall have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Member making written request therefor.

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

(k) The Association shall establish a proposed annual operating budget as provided in this Declaration.

(l) The Association shall establish the amount of and collect assessments as provided for in this Declaration.

(m) The Association shall establish reserve funds as provided in this Declaration.

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

(o) The Association shall pay all applicable ad valorem property taxes and City assessments, if any, on the Common Elements.

(p) The Association shall obtain and maintain insurance as required in this Declaration.

(q) The Association shall be responsible for storm water management as provided in this Declaration.

Section 2. Other Functions and Services. The Association is authorized, but not required (except as specified in the immediately preceding Section 1), to do, provide, perform, accept, or be responsible for any or all of the following:

(a) The Association may take all actions its deems necessary to enforce and implement the provisions of the Governing Documents, and to perform any of the functions or services delegated to the Association by the Governing Documents.

(b) The Association may enter into agreements with the City to enable the Association to maintain the Common Elements, Landscape Easements and Major Streets.

(c) The Association may maintain Landscaped Rights-of-Way and may enter into agreements with the City with respect to such maintenance and with respect to encroachment into publicly dedicated street rights of way.

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

(e) The Association may make reasonable rules and regulations for the use and operation of the Common Elements, and amend them from time to time. Provided, however, any such rule or regulation adopted by the Board of the Association may be amended or repealed by the affirmative vote of a majority of the votes cast by the Members present at a duly called meeting of the Association.

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

(g) 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 against Lot Owners who are delinquent in payment of assessments or by liens on other Association assets, as determined by the Board, subject to the Governing Documents and applicable Legal Requirements.

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

(i) 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.

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

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

(l) The Association may employ a manager or firm to manage the business and property of the Association (herein also referred to as a “property manager” or “management company”), and may employ independent contractors or other employees as the Board may deem necessary.

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

(n) The Association may contract with Declarant or any other Person for performance of services which the Association is required to perform pursuant to the terms hereof, such contracts to be at competitive rates and upon such terms and for such consideration as the Board may deem proper, advisable and in the best interests of the Association.

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

(p) 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.

(q) The Association may impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Lots and rights of access to easements in Common Elements that provide public utility services to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer.

(r) After notice and an opportunity to be heard, the Association impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Lots and rights of access to easements in Common Elements that provide public utility services to Lots) for reasonable periods for violations of this Declaration, the Bylaws or other Governing Documents.

(s) In addition to the insurance coverages required by this Declaration, the Association may obtain and maintain such other insurance coverage as the Board determines to be in the best interests of the Association.

(t) In addition to the foregoing, exercise all powers and rights authorized under the Act.

Section 3. Storm Water Management. Except for the maintenance responsibilities placed on Lot Owners by this Section or assumed or undertaken by other Persons, the Association,

as a Common Expense, shall: (i) maintain all storm water easements (also referred to herein as “storm water drainage easements” or “drainage easements”) in The Properties that are shown on plats of The Properties recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Elements or benefit or serve more than one (1) Lot; and (ii) maintain the storm water management facilities, if any, on or serving The Properties, which are part of the storm water management system for The Properties as shown on approved Subdivision Plans or other plans approved by the City. Provided, however, such maintenance obligations shall cease and terminate, or be reduced, at such time as the City, through a department of public works or some other agency or division, elects to maintain, in whole or in part, the storm water drainage easements and storm water management facilities, or some other Person is providing the necessary maintenance. Following any such assumption of maintenance by the City or other Person, the Association may, without obligation, continue to provide maintenance to the extent that the City or other Person fails to provide adequate maintenance, in the opinion of the Board. The Owner of any Lot on or over which a storm water drainage easement (or portion thereof) is located shall be responsible for maintenance of that easement (or portion thereof), including any one or more of the following: (i) mowing of grass with reasonable frequency, where applicable; (ii) removal of debris and other matter to the best of the Lot Owner’s ability, where such debris or matter has impeded or threatens to impede the free flow of storm water over or through the easement or any storm water management facilities. Such Lot Owner’s responsibility shall include notification of the Association of any defects in any fencing, if any surrounding or within a storm water drainage easement or storm water management facility, any debris or other matter which the Lot Owner feels is beyond the Lot Owner’s reasonable ability to remove, and any excessive erosion within a storm water drainage easement. The Owner of a Lot on which a storm water drainage easement is located shall not obstruct that easement in any manner. The Owner of a Lot served by a storm water drainage easement shall keep such Lot clear of all debris and other matter which, if carried by water flow into or onto the area of the storm water drainage easement, might significantly impede the free flow of storm water over or through the easement or any storm water drainage facilities. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all storm water drainage facilities and equipment used exclusively in connection with such Lot or the Improvements thereon, including guttering, and pipes and drains for transportation of storm water from such Lot into a storm water drainage easement or into a storm water management facility that is part of the storm water management system for The Properties.

Developer, during the Development Period, and thereafter, the Association, subject to any approval required by the City, may at any time and from time to time relocate, abandon and/or release one or more storm water drainage easements in The Properties, provided that such relocation, abandonment or release does not materially adversely affect any portion of The Properties, including the Common Elements.

Section 4. Conveyance or Dedication of Common Elements. The Association, upon complying with applicable provisions of the Act for conveyance or dedication of Common Elements, and, in addition thereto, only after obtaining (i) the written agreement or consent of those Class A Members who have, or the affirmative vote at a duly called meeting of the Association of those Class A Members who have, sixty-seven percent (67%) or more of the total number of votes allocated to the Class A Members, and (ii) during the Declarant Control Period the written consent of Declarant and all Major Builders, the Association, may dedicate portions of Common Elements to public use, and may convey or exchange portions of Common Elements, for any purpose approved by such Members (and, during the Declarant Control Period, also approved by Declarant and all Major Builders), including any one or more of the following purposes: (i) to eliminate unintentional encroachments of Improvements or easements; (ii) to correct any building or other setback violations; (iii) to adjust boundary lines of portions of The Properties; and (iv) to facilitate the orderly subdivision and development of The Properties as determined by the Board. All such conveyances shall be subject to the following: (i) no such conveyance (either alone, or in conjunction with other conveyances) results in a reduction of the portion of the Common Elements that constitutes "open space" required by the City below the minimum amount of "open space", if any, required by the City; (ii) if required by applicable Legal Requirements, the City approves any boundary line adjustment; (iii) any boundary line adjustment is approved by the Owners of all portions of The Properties affected by the adjustment; (iv) each Lot contiguous to Common Elements prior to the conveyance remains contiguous to Common Elements after the conveyance, unless otherwise approved by the affected Owner; (v) the conveyance does not materially conflict with any applicable Subdivision Plan; (vi) no conveyance of Common Elements deprives any Lot of its rights of access and support; and (vii) any conveyance of real property to the Association must be free and clear of all encumbrances except for this Declaration and any applicable Supplemental Declaration, street rights of way or access easements, greenway easements and easements for utilities and storm water drainage.

Any of the foregoing real property acquired by the Association shall be part of the Common Elements and, without further act of the Association or its Members, shall be released from all provisions of this Declaration (and any applicable Supplemental Declaration) except those applicable to the Common Elements. The portion of the Common Elements dedicated, conveyed or exchanged by the Association, without further act of the Association or its Members, shall cease to be Common Elements and shall be subject to those provisions of this Declaration (and any applicable Supplemental Declaration) that would have been applicable to such real property had it not been Common Elements, except that, if required by the City, such portion of the Common Elements may be conveyed by the Association to the City free and clear of all of the terms of this Declaration and any applicable Supplemental Declaration.

In addition to the foregoing requirements, during the Declarant Control Period any conveyance or dedication of Common Elements also shall require approval by the United States Department of Housing and Urban Development ("HUD") or its designee and/or by the United States Veterans Administration ("VA") or its designee unless, at the time of such conveyance or dedication, applicable HUD or VA regulations no longer require such approval.

Section 5. Mortgage and Pledge. Subject to the voting or written consent requirements of the Act and, in addition thereto, upon (i) the written agreement or consent of those Class A Members who have, or the affirmative vote at a duly called meeting of the Association of those Class A Members who have, sixty-seven percent (67%) or more of the total number of votes allocated to the Class A Members, and (ii) during the Declarant Control Period, the written consent of Declarant and all Major Builders, the Association 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 this Declaration. Declarant or any Major Builder may, but shall not be required to, make loans to the Association, subject to the foregoing and further subject to approval by such Person of the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, at any time that there is any unpaid amount owed to Declarant or a Major Builder under any loan made by such Person to the Association, without that Person's written consent the annual assessments shall not be reduced below the amounts in effect at the time such loan first was made.

In addition to the foregoing requirements, during the Declarant Control Period any mortgage or pledge of Common Elements also shall require approval by the United States Department of Housing and Urban Development ("HUD") or its designee and/or by the United States Veterans Administration ("VA") or its designee unless, at the time of such mortgage or pledge, applicable HUD or VA regulations no longer require such approval.

Section 6. Liability Limitations. Except as otherwise required by applicable Legal Requirements, neither Developer, Declarant or any Major 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 shareholder, director, officer, member, manager, agent or employee of Developer, Declarant or any Major Builder, 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. Neither Developer, Declarant or any Major Builder, nor the Association, nor any of the shareholders, directors, officers, partners, members, managers, agents or employees of same, 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, as required herein Developer,

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

Neither the Board, the Association, any current or former Member of the Association, nor Developer, Declarant or any Major Builder, 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. The Association shall not be liable for any failure of or interruption to any service to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage which is caused by the elements or by any Owner or any other Person, or which results from electricity, water, snow or ice which may leak or flow from or over any portion of The Properties or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type resulting from the foregoing. No diminution, offset or abatement of any assessment or other charge shall be claimed or allowed for inconvenience or discomfort arising from maintenance of the Common Elements, Common Expense Properties, or from any action taken by the Association to comply with any applicable Legal Requirement. This Section is not intended, nor shall it be construed, to relieve any insurer of its contractual obligations under any policy benefitting the Association or any Owner.

Section 7. Merger or Consolidation. Upon a merger or consolidation of the Association with another association in accordance with all applicable 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. The surviving or consolidated association shall be considered the Association under this Declaration and may administer the terms and provisions of this 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 applicable Legal Requirements, no merger or consolidation shall effect any revocation of the provisions of this 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. During the

Development Period, no merger or consolidation of the Association with another association shall be valid without the written consent of Declarant and all Major Builders. In addition to all applicable Legal Requirements, any merger or consolidation of the Association with another association shall be effective and legally valid only upon the affirmative vote by each class of Members of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a duly called meeting of the Association.

In addition to the foregoing requirements, during the Declarant Control Period any merger or consolidation also shall require approval by the United States Department of Housing and Urban Development ("HUD") or its designee and/or by the United States Veterans Administration ("VA") or its designee unless, at the time of such merger or consolidation, applicable HUD or VA regulations no longer require such approval.

ARTICLE IV

RIGHTS IN AND TO THE COMMON ELEMENTS

Section 1. Lot Owners' Rights and Easements of Enjoyment. Subject to the provisions of this Declaration and any applicable Supplemental Declaration, every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Elements, which right and easement shall be appurtenant to and shall pass with the title to such Owner's Lot; PROVIDED, HOWEVER, such easement shall not give any Lot Owner the right to make alterations, additions or Improvements to any part of the Common Elements, nor to encumber the Common Elements as security for any indebtedness of the Lot Owner. Subject to the terms of the Act and the Governing Documents, a Lot Owner's right of use and enjoyment in and to the Common Elements shall extend to the Lot Owner's immediate family members and guests, and a Lot Owner may delegate or assign such Lot Owner's right of use and enjoyment in and to the Common Elements to lessees and contract purchasers who reside in the Dwelling on such Owner's Lot.

Section 2. Title to the Common Elements. Developer shall convey to the Association by special warranty deed fee simple title to the Recreation Facility (as provided in Article XIII) and to all other real property portions of the Common Elements owned by the Developer, if any, free and clear of all encumbrances and liens, except for this Declaration, ad valorem property taxes subsequent to the date of conveyance, street rights-of-way, storm water drainage easements, utility easements, and any other matters required under applicable Legal Requirements. Except for the Recreation Facility, which shall be constructed and conveyed as otherwise provided in this Declaration, title to all real property portions of the Common Elements shall be conveyed by Developer to the Association at or prior to the time of conveyance by

Developer of the first portion of the applicable phase, section or subdivision of The Properties in or adjacent to which that Common Elements is located (provided, however, any failure of Developer to so convey the Common Elements shall not invalidate this Declaration, shall not constitute a breach of this Declaration giving rise to any legal remedy other than suit for specific performance to convey such Common Elements, and shall not invalidate any subsequent conveyance to the Association of the same or any other portion of the Common Elements). The Association shall not refuse Developer's classification of any of The Properties as Common Elements, Landscape Easements or Landscaped Rights-of-Way, nor shall the Association refuse to accept from Developer the conveyance, transfer or assignment of any Common Elements or of any improvements in, or personal property to be used in, any Common Expense Properties.

Section 3. Extent of Lot Owners' Easement. The rights and easements of enjoyment of the Lot Owners in and to the Common Elements are subject to all of the following:

(a) The right of the Association to prescribe and enforce regulations governing the use and maintenance of the Common Elements (including reasonable charges for the use thereof, limitations on the number of guests of Members who may use the Common Elements, and, as determined by the Board, establishing for Persons who are not Members of the Association memberships in, or privileges to use, the Recreation Facility).

(b) Temporary unavailability of any of the Common Elements for necessary maintenance.

(c) The right of the Association to borrow money for the purpose of maintaining the Common Elements or to enable the Association to perform its functions or provide the services under this Declaration.

(d) Subject to any voting or written consent requirements of the Act and this Declaration, the right of the Association to mortgage the Common Elements, provided that the rights of any Mortgagee in the Common Elements shall be subordinate to the rights of the Lot Owners hereunder.

(e) Subject to any voting or written consent requirements of the Act and the Governing Documents, the right of the Association (and the right of Declarant and Major Builders to require the Association) to convey portions of the Common Elements for any one or more of the following purposes: (i) to correct erroneous, unintentional or inadvertent conveyances of Common Elements by Developer to the Association that are inconsistent with the applicable Subdivision Plan; (ii) to eliminate unintentional encroachments of Improvements or easements; (iii) to correct any building or other setback violations; (iv) to adjust Lot boundary lines; and (v) as otherwise determined by the Board to facilitate the orderly subdivision and development of The Properties, or that is in the best interests of the Association and its Members, subject to the following: (i) no such conveyance

(either alone, or in conjunction with other conveyances) results in a reduction of the portion of the Common Elements that constitutes "open space" required by the City below the minimum amount of "open space", if any, required by the City; (ii) if required by applicable Legal Requirements, the City approves any boundary line adjustment; (iii) any boundary line adjustment is approved by the Owners of all Lots affected by the adjustment; (iv) each Lot contiguous to Common Elements (excluding easements) prior to the conveyance remains contiguous to Common Elements after the conveyance, unless otherwise approved by the affected Lot Owner; (v) the conveyance does not materially conflict with any applicable Subdivision Plan; and (vi) no conveyance of Common Elements deprives any Lot of its rights of access and support.

(f) The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure.

(g) Subject to any applicable notice and hearing requirements of the Act, the right of the Association to fine a Lot Owner and/or suspend the rights (voting and other) and easements of enjoyment in and to the Common Elements of a Lot Owner or such Lot Owner's family members, lessees, guests, invitees, or contract purchasers, for any period during which any assessment or other amount owed by the Lot Owner to the Association remains unpaid, and for a reasonable period of time for any violation or infraction of the Governing Documents, the Act or the Association's published rules and regulations. Provided, however, no such suspension shall constitute a waiver or discharge of the Lot Owner's obligation to pay any assessment or other charge under this Declaration. Further provided, the Association shall not suspend the right of any Lot Owner to use any portion of the Common Elements over which there is an easement that provides access for ingress and egress from a public street to such Owner's Lot, or over which a sanitary sewer, water or other utility easement is located that provides such utility services to such Owner's Lot, but such Lot Owner shall remain subject to the rules and regulations, if any, established by the Association for use of such portion of the Common Elements.

(h) The right of the Association to charge reasonable admission and other fees for the use of the Recreation Facility and other Common Elements.

(i) Subject to any voting or written consent requirements of the Act and this Declaration, the right of the Association to sell, dedicate, grant easements over, under and through, or otherwise transfer all or any part of the Common Elements to the City, any public agency, authority, or provider of utility services, for such purposes and upon such terms as the Board, or the Members who exercise the required affirmative vote (if the motion or resolution passed by such vote contains such terms), may determine.

(j) Subject to any voting or written consent requirements of the Act and this Declaration, the right of the Association to transfer title to any part or all of the Common Elements to another nonprofit corporation or association organized and existing for purposes substantially similar to the Association with respect to the Common Elements. Upon the approval of the Board, the Association may lease from, or accept transfer of title from, any such nonprofit corporation or association of any part or all of the property owned by such nonprofit corporation or association.

(k) Easements for storm water drainage, storm water control or removal, utilities, Landscape Easements and other matters shown on recorded plats of the Common Elements or created or reserved by Developer prior to or simultaneously with conveyance of such Common Elements by Developer to the Association, and/or granted by the Association as permitted by this Declaration.

(l) all other provisions of this Declaration affecting such rights and easements.

(m) Lot Owners and their family members, lessees, guests, invitees and contract purchasers, without the prior written consent or approval of the Developer (or the Board, following the end of the Declarant Control Period) shall not do any of the following within any portion of any Common Elements, Landscape Easements, Landscaped Rights-of-Way or Major Streets, except as reasonably may be required to perform any Owner Maintenance Responsibilities specified in the Article of this Declaration dealing with same:

- (1) Grant any easements of any nature whatsoever;
- (2) Remove any trees or vegetation, except in an emergency situation or in order to prevent injury or damage to any Person or property;
- (3) Erect gates, fences or other structures;
- (4) Remove or interfere with any structures maintained therein by the Association;
- (5) Maintain any garbage receptacles;
- (6) Fill or excavate; or
- (7) Plant vegetation in, or otherwise restrict or interfere with the maintenance of, the Common Elements, Landscape Easements, Landscaped Rights-of-Way or Major Streets.

Section 4. Leases Subject to this Declaration. Every lease agreement between a Lot Owner and a lessee for the lease of a Lot shall provide that the terms of the lease shall be subject in

all respects to the provisions of the Governing Documents, and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. Provided, however, all such leases shall be subject to the terms of this Declaration and the other Governing Documents, whether or not stated therein.

Section 5. Ingress and Egress; Utilities. Notwithstanding anything to the contrary appearing in this Declaration, (i) if ingress and egress from a public street to 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) 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.

ARTICLE V

ASSOCIATION MEMBERSHIP AND VOTING

Section 1. Membership. Each Owner of a Lot, including Declarant and each Major Builder, is a Member of the Association and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to a Lot or title to any Unsubdivided Land that later becomes a Lot or Lots, consents to be a Member of the Association, subject to the terms of the Governing Documents and applicable Legal Requirements. Membership in the Association shall be appurtenant to and may not be separated from the Lot owned by the Lot Owner, and the Board may adopt reasonable rules relating to the proof of ownership. Membership in the Association shall terminate automatically whenever a Person ceases to be a Lot Owner (except that the Class B Membership shall finally terminate only as provided herein), but such termination shall not release or relieve any such Person from any liability or obligation incurred under this Declaration during the period of such Person's ownership, nor impair any rights or remedies which the Association or any other Lot Owner has with regard to such former Lot Owner.

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

(a) **Class A.** Class A Members are all Owners of Lots, excluding Declarant and all Major Builders during the Declarant Control Period. Provided, following the end of the Declarant Control Period, Declarant and all Major Builders also are Class A Members with respect to all Lots owned by such Persons. A Class A Member is entitled to one (1) vote for each Lot owned by such Class A Member (and when the Class B Membership terminates, Declarant and each Major Builder also

shall be entitled to one (1) vote for each Lot owned by such Person). Provided, however, only one (1) vote is entitled to be cast for each Lot, regardless of the number of Owners thereof.

(b) **Class B.** The Class B Members are Declarant and all Major Builders. During the existence of the Class B Membership, the Class B Members are entitled to three (3) votes for each Lot owned by such Class B Members. The Class B Membership shall terminate and the Class B Members shall become Class A Members upon the first to occur of the following:

(1) the end of the Declarant Control Period for any reason other than final termination of the Class B Membership in the Association.

(2) when the number of votes of the Class A Members equals the number of votes of the Class B Members (that is, when the number of Lots owned by Declarant and all Major Builders is 25% or less of the total number of Lots then existing in The Properties). Provided, however, until all Unsubdivided Land in The Properties has been developed into Lots in accordance with Subdivision Plans approved by the City, the Class B Membership may be reinstated at any time that number of Lots in owned by Declarant and all Major Builders is more than 25% of the total number of Lots in The Properties. Unless otherwise terminated under subsection (1) of this subsection (b), the Class B Membership may terminate and be reinstated on one or more occasions until all of the Unsubdivided Land has been developed into Lots in accordance with Subdivision Plans approved by the City. Termination of the Class B Membership that has been reinstated after all of the Unsubdivided Land has been developed into Lots, or failure of the Class B Membership to be reinstated after all of the Unsubdivided Land has been developed into Lots because Declarant and the Major Builders then own 25% or less of the total number of Lots in The Properties, constitutes "final termination" of the Class B Membership under this Declaration.

Section 3. Voting.

(a) When any Lot entitling the Owner thereof to membership as a Class A or Class B Member is owned of record in the name of two (2) or more Persons, their acts and presence with respect to voting, written consents, and quorum requirements shall be as follows:

(1) If only one (1) of multiple Lot Owners is present in person or by proxy at a meeting of the Association, then such Lot Owner is entitled to cast the vote allocated to that Owner's Lot;

(2) If more than one (1) of multiple Lot Owners is present in person or by proxy at a meeting of the Association, the vote for that Lot may be cast only in accordance with the agreement of a majority in interest of such multiple Lot Owners. Majority agreement is conclusively

presumed if any one of the multiple Lot Owners casts the vote allocated to such Owners' Lot without protest being made promptly to the Person presiding over the meeting by any of the other Owners of the Lot (or Person possessing a valid proxy from any such other Lot Owner);

(3) If more than one (1) of multiple Lot Owners is present in person or by proxy at a meeting of the Association, but the vote is evenly split on any particular matter, the vote shall not be counted (but the presence of such Lot Owners in person or by proxy shall be counted for purposes of determining quorums);

(4) The presence at a meeting, in person or by proxy, of one (1) or more, but less than all, of multiple Owners of a Lot, shall be sufficient for quorum purposes with respect to the vote allocated to such Lot; and

(5) The principles of this Section shall apply, insofar as possible, to the execution of proxies, waivers, consents, written agreements, or objections.

(b) Except when this Declaration, other Governing Documents, or applicable Legal Requirements specifically require a higher percentage or require the applicable percentage to be calculated based on the number of votes "entitled to be cast" by, or the total number of votes allocated to, the Members or portion of Members or Class of Members entitled to vote on the matter at issue, the affirmative vote of a majority of the votes cast at a duly called meeting at which a quorum is present is the act of the Members or portion of Members or Class of Members with respect to the matter voted upon. A "majority" is defined as more than 50% of the total number of votes cast by such Members or portion of Members or Class of Members present at a duly called meeting of the Association. Provided, however, and in addition to the foregoing, during the Declarant Control Period the written consent of Declarant and all Major Builders also shall be required to make effective any matter voted upon by any portion, Class or all of the Members.

(c) Unless otherwise specifically provided in this Declaration, other Governing Documents, or any applicable Legal Requirement, any matter that may be adopted by the vote of Members may be adopted by the written consent of the Members or applicable Class of Members, subject to the following: (i) the foregoing rules governing voting when there is more than one Owner of a Lot applies to written consents; (ii) the majority or other percentage required for adoption by voting is applicable to adoption by written consent, except that, with respect to written consents, the percentage shall be determined in relation to the total number of votes that the Members, or applicable Class of Members (or portion thereof), would be **entitled** to cast if a vote was held; (iii) the date on which the last required Member signs the written consent is the date for determining whether or not the required percentage of Members has consented; and (iv) a written consent may

be withdrawn if done so in the same manner required for giving the written consent and if done prior to the time that the last written consent necessary for adoption of the matter is executed.

(d) Payment of special assessments or any other assessments or charges shall not entitle Members to votes in addition to those specified herein.

(e) Notwithstanding anything to the contrary that may appear herein, no votes allocated to Lots owned by the Association may be cast, nor may they be counted for purposes of determining a quorum.

Section 4. Quorum and Notice Requirements. A quorum shall be required for all meetings of the Association. Unless otherwise specifically provided in this Declaration, the quorum requirements and notice requirements for meetings of the Association shall be as set forth in the Bylaws or, if not addressed in the Bylaws, in accordance with applicable Legal Requirements.

In the event that business cannot be conducted at any meeting of the Association because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those Members present in person or by proxy. Notwithstanding any provisions to the contrary in this Declaration or other Governing Document, the quorum requirement at the next meeting shall be one-half (½) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 5. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy which is authorized in writing and meets the applicable requirements of the Governing Documents and Legal Requirements. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term. A Member may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the Person presiding over a meeting of the Association. Proxies may not be used in connection with meetings of the Board, Architectural Review Committee or any other Board committee.

Section 6. Ballots by Mail. When directed by the Board, in its sole discretion, a statement of certain motions to be introduced for vote of the Members at an annual or special meeting of the Association, and a ballot on which each Member may vote for or against each such motion, shall be sent with the notice of the annual or special meeting at which such vote is to be held. The form of the ballot and requirements for the execution, presentation and effectiveness thereof, not inconsistent with this Declaration, shall be as determined by the Board. Each mail ballot properly executed and presented at the applicable meeting shall be counted in calculating the quorum

requirements for the meeting, but such ballots shall not be counted in determining whether or not a quorum is present to vote on motions or other matters that do not appear on the ballot. With respect to any such ballot, the Board shall establish the rules for withdrawal or revocation of the ballot, which rules shall clearly be set forth on the ballot or on the notice of the meeting that accompanies any such ballot. Mail ballots from Members who are not entitled to vote on the date of the meeting of the Association at which the vote is held shall not be counted for voting or quorum purposes.

ARTICLE VI

ASSESSMENTS AND OTHER CHARGES

Section 1. Creation of the Lien and Personal Obligation for Assessments. Subject to the terms of this Declaration, each Owner of a Lot, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is hereby deemed to consent and agree to pay to the Association (or to any Person which may be designated by the Association to collect such monies on behalf of the Association) assessments and other charges as follows: (i) annual assessments; (ii) Reserve Fund Assessment; (iii) special assessments for capital improvements or other matters as set forth herein; (iv) special individual assessments levied against a Lot Owner to reimburse the Association for maintenance expenses resulting from the failure of such Lot Owner to maintain adequately that Owner's Lot, or for such other purposes as stated herein; (v) architectural review fees and costs as specified herein; (vi) fines for violations of Association rules and regulations with respect to use of the Common Elements; (vii) late payment penalties and interest on unpaid assessments; and (viii) other charges imposed under authority contained in the Governing Documents (architectural review fees, fines, penalties, interest and other charges all being referred to herein collectively as "other charges"), and, in addition to such assessments and other charges, to pay all costs, fees and expenses, including reasonable attorneys' fees, incurred by the Association in enforcing or collecting any of the foregoing assessments or other charges. All assessments and other charges shall be established and collected as hereinafter provided. All assessments and other charges remaining unpaid for a period of thirty (30) days or longer, together with the costs of collection thereof, including reasonable attorneys' fees, shall constitute a lien on the Lot against which they are assessed or charged from the time of the filing of a lien in the office of the Clerk of Superior Court of Wake County, North Carolina, and shall be the personal and continuing obligation of the Person who was the Owner of such Lot at the time when the assessment or other charge first became due and payable. A Lot Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Lot Owner unless expressly assumed by the subsequent Lot Owner. No Lot 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 this Declaration, any obligation of a Lot Owner to pay assessments or other charges or monetary obligations under this Declaration shall constitute evidence of indebtedness for the purpose of establishing under Section 6-21.2 of the North Carolina General Statutes (or any successor statute) the right to collect reasonable attorneys' fees in any action or proceeding to enforce or collect payment of such obligation. Provided, however, the foregoing sentence specifically is intended to supplement, and not to interfere, limit, invalidate or be in conflict with, any provisions of the Act with respect to reasonable attorneys' fees.

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

No Lot Owner shall be relieved of, or released from, the obligation to pay assessments and other charges under this Declaration because of any resignation or attempted resignation by such Lot Owner of membership in the Association while such Owner owns a Lot, or because of any suspension of such Lot Owner's membership or membership rights in the Association as allowed under the Governing Documents.

Section 3. Nature, Purpose and Use of Assessments. The assessments shall be used by the Association for any one or more of the following: (i) to pay the Common Expenses; (ii) to perform the functions or provide the services required or authorized of the Association pursuant to this Declaration and any applicable Supplemental Declaration; and (iii) to implement, administer and enforce the terms and provisions of this Declaration and any applicable Supplemental Declaration, as the Board determines to be in the best interests of the Association or its Members.

All assessments and other charges collected by the Association shall be the separate property of the Association. As assessments and other charges are paid to the Association by Lot Owners, such funds may be commingled with assessments and other charges paid to the Association by other Lot 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 Lot Owner shall cease to be a Member of the Association, the Association shall not be required to account to such Lot Owner for any share of the funds or assets of the Association or any portion thereof which may have been paid to the Association by such Lot Owner or acquired with any funds paid to the Association by such Lot Owner.

Section 4. Maximum Annual Assessment and Annual Assessment.

(a) For calendar year 2001, the maximum annual assessment for each Lot shall be \$300.00 per Lot.

(b) Beginning with calendar year 2002, unless otherwise determined by the Board the maximum annual assessment shall automatically increase each calendar year by an amount equal to the greater of (i) ten percent (10%) of the maximum annual assessment for the immediately preceding calendar year, or (ii) the amount of the maximum annual assessment for the immediately preceding calendar year multiplied by the percentage increase reflected in the Consumer Price Index-U.S. City Average, All Items (published by the U.S. Bureau of Labor Statistics, Washington, D.C.) then in effect or such other index as may be the successor to said Consumer Price Index, for the twelve month period ending the immediately preceding July 1. Provided, however, for any calendar year the Board, in its sole discretion by majority vote, may elect to provide for no increase in the maximum annual assessment, or may provide for an increase in the maximum annual assessment in an amount less than the amount by which it would automatically increase as provided herein. Further provided, however, if the Board provides for no increase in the maximum annual assessment or provides for an increase less than the amount by which it would automatically increase as provided herein, the Board may at any time during that calendar year increase the maximum annual assessment up to the maximum amount to which it would have increased automatically as provided herein. The amount finally determined as the maximum annual assessment for a calendar year shall be the amount on which the increase for the subsequent calendar year is based.

(c) The maximum annual assessment for any calendar year may be established at an amount higher than the amount established under this Declaration or by the Board as provided herein, by the affirmative vote by each class of Members of sixty-seven percent (67%) or more of the votes cast by the Members of that class present at a duly called meeting of the Association for which notice of the meeting included notice of the proposal to increase the maximum annual assessment. Provided, however, the automatic increase in the maximum annual assessment for the year subsequent to any year in which the membership increases the maximum annual assessment above its limit as otherwise established pursuant to this Declaration, shall be calculated based on the maximum annual assessment that would have been in effect if no action of the membership had been taken. Further provided, the provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken incident to a merger or consolidation in which the Association is authorized to participate under the Governing Documents or any Legal Requirement.

(d) The annual assessment for calendar years 2001 and 2002 shall be \$240.00 per Lot. Beginning with the annual assessment for calendar year 2002, the Board shall establish the annual assessment at any amount not in excess of the maximum annual assessment for that calendar year.

(e) If the Board establishes the annual assessment at an amount less than the maximum annual assessment for that calendar year and, thereafter, during such calendar year, determines that such annual assessment is insufficient, the Board, by majority vote, may levy one or more supplemental annual assessments. Provided, however, the total of the annual assessment plus all

supplemental assessments assessed in any calendar year shall not exceed that calendar year's maximum annual assessment.

Section 5. Reduced Annual Assessment.

(a) Notwithstanding anything to the contrary herein, through the Recreation Facility Completion Date the annual assessment for each Lot owned by Class A Members shall be reduced to one-half ($\frac{1}{2}$) of the amount of the applicable annual assessment, and after the Recreation Facility Completion Date shall be the full amount of such annual assessment. For example, if the construction of the Recreation Facility is completed on May 15, the annual assessment for that year shall be due and payable at $\frac{1}{2}$ of the full rate for January through May and at the full rate for June through December. The additional portion of the annual assessment applicable following the Recreation Facility Completion Date shall be due and payable as specified in a notice from the Association to the Class A Members.

(b) Notwithstanding anything to the contrary herein, through the Recreation Facility Completion Date the annual assessment for each Lot owned by Class B Members shall be reduced to one-fourth ($\frac{1}{4}$) of the amount of the applicable annual assessment, and after the Recreation Facility Completion Date, through the month in which final termination of the Class B Membership occurs, shall be one-half ($\frac{1}{2}$) of the full amount of the applicable annual assessment. For example, if the construction of the Recreation Facility is completed on May 15, the annual assessment for that year shall be due and payable at $\frac{1}{4}$ of the full rate for January through May and at $\frac{1}{2}$ of the full rate thereafter. The additional portion of the annual assessment applicable following the Recreation Facility Completion Date shall be due and payable as specified in a notice from the Association to the Class B Members.

Section 6. Commencement of Assessments. Lots shall be subject to annual and special assessments beginning with calendar year 2001. Provided, however, with respect to any portion of The Properties that first becomes a Lot on or after January 1, 2001, and with respect to any Lot that first becomes a portion of The Properties on or after January 1, 2001, such Lot shall become subject to annual and special assessments on the first day of the calendar month immediately following the calendar month in which it becomes a Lot or in which it is subjected to this Declaration, whichever is applicable, and the annual assessment for that calendar year shall be determined by multiplying the amount of the applicable annual assessment by a fraction whose numerator is the number of months in that calendar year that the Lot is subject to assessment, and whose denominator is twelve (12). The payment due date(s) for each annual assessment shall be as determined by the Board.

Section 7. Operating Budget. The Board shall adopt an operating budget for calendar year 2001, it being contemplated that, prior to January, 2001, there will not be any Members in the Association other than Declarant and Major Builders. Beginning with calendar year 2002, the Board shall adopt a proposed annual operating budget for the Association for each calendar year, containing an estimate of the total amount believed to be necessary to pay the Common Expenses for that calendar year, including such reasonable amounts as the Board deems necessary to provide working capital (available for day-to-day operating expenses and otherwise uncommitted for specific expenses), reserves for contingencies, and reserves for replacement of Common Elements and Common Expense Properties, as applicable. The Board shall give due consideration to the annual operating budget in establishing the annual assessment for that calendar year. Within thirty (30) days after adoption of same, the Board shall provide a summary thereof to all Members (provided, however, a copy or summary provided to any one of multiple Owners of a Lot is deemed to be provided to all Owners of such Lot), together with a notice of the annual or special meeting of the Association at which ratification of such proposed annual operating budget will be considered, including a statement that the proposed annual operating budget may be ratified without a quorum for the meeting. The annual or special meeting at which ratification of the proposed annual operating budget is to be considered shall be held not less than ten (10) days nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting at which ratification of the proposed annual operating budget is to be considered. The proposed annual operating budget is ratified unless at that meeting Members possessing sixty-seven percent (67%) or more of the total number of votes in the Association rejects it. In the event that the proposed annual operating budget is rejected, the annual operating budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent annual operating budget proposed by the Board.

Section 8. Establishing the Annual Assessment. The Board shall establish the amount of the annual assessment for each calendar year beginning with calendar year 2003 and shall cause written notice of each annual assessment to be sent to at least one (1) of the Owners of each Lot not less than thirty (30) days in advance of the payment due date specified in the notice (which shall not be earlier than January 31 of the applicable calendar year), which written notice may be in the form of an invoice for the annual assessment. The failure of the Board to establish the amount of any annual assessment as required herein shall not constitute a violation, waiver or modification of the provisions of this Declaration, or a waiver of the Board's right to establish the annual assessment at any time during the calendar year to which it is applicable, or a release of any Lot Owner from the obligation to pay the assessment or any installment thereof for that or any subsequent year, and the annual assessment for the immediately preceding calendar year shall continue in effect until the Board has established the new annual assessment (but when established, the amount of the new annual assessment shall be retroactive to January 1 of the applicable calendar year). If the annual assessment for any calendar year has not been established by December 31 of