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DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS

FOR

WATERSTONE RESIDENTIAL

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

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF
POLITICAL SIGNS.**



**DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS
FOR
WATERSTONE RESIDENTIAL**

THIS DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS (this “**Declaration**”) is made effective as of the 14th day of November, 2013, by ASHTON RALEIGH RESIDENTIAL L.L.C., a North Carolina limited liability company (hereinafter “**Declarant**”), and GREAT WATERSTONE, LP, a North Carolina limited partnership (“**Initial Owner**”).

Background Statement

Declarant and Initial Owner, pursuant to the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (the “**Act**”), desire to create a planned residential community by executing and recording this Declaration in the Orange County Registry (hereafter defined) causing the real property described in Exhibit “A” attached hereto to become subject to this Declaration by receiving from the owner of such real property and recording in the Orange County Registry a Supplementary Declaration (hereafter defined) delivered in accordance with the terms of this Declaration. Thereafter, this Declaration shall govern and control the use and enjoyment of all real property that from time to time is subject to this Declaration. Initial Owner is also the owner of the real property described in in Exhibit “A-1” attached hereto (the “**Additional Property**”). Initial Owner and Declarant have entered into an Agreement of Sale and Purchase (Developed Lots/Lot Takedown) of even date herewith (the “**Lot Purchase Agreement**”), whereby Declarant is entitled to (i) cause portions of the Additional Property to be subjected to this Declaration; (ii) purchase portions of the Additional Property that have been subdivided into Units (hereafter defined); and (iii) cause other portions of the Additional Property not subdivided into Units to be conveyed to Waterstone Residential Neighborhood Association, Inc., as Common Property (hereafter defined). Initial Owner is agreeable to joining in this Declaration to facilitate the satisfaction of such obligations, permit Declarant to receive all the rights granted in accordance with the terms of this Declaration, and allow Initial Owner to succeed to all the rights of Declarant under this Declaration, subject to the limitations contained herein, upon the termination of the Lot Purchase Agreement prior to the conveyance of all Units to Declarant.

Reference is further made to that Declaration of Master Plan Protective Covenants for Waterstone dated November 30, 2006 and recorded in Book 4171, Page 17, Orange County Registry, as amended from time to time (the “**Master Declaration**”). All the real property which becomes subject to this Declaration is also subject to the terms of the Master Declaration.

NOW, THEREFORE, Declarant and Initial Owner hereby declare that the real property described in Exhibit “A” attached hereto, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and the Act and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, shall be binding on all persons having any right, title or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives,



successors, successors-in-title, and assigns, and shall inure to the benefit of each and every owner of all or any portion thereof. Declarant and Initial Owner are imposing the restrictions set forth herein to satisfy the requirements hereof without in any manner, express or implied, agreeing to or obligating either to undertake development activities. The subsection of the real property described in Exhibit "A" attached hereto to this Declaration shall be supported by the Supplementary Declaration signed by the owner of the subject real property as provided in this Declaration.

Article I. **Definitions**

The following words, when used in this Declaration or in any amendment thereof (unless the context shall prohibit), shall have the following meanings:

- (a) **"Act"** shall have the meaning set out in the recitals.
- (b) **"Additional Property"** shall mean and refer to all portions of the real property described in Exhibit "A-1" attached hereto, less all real property already subjected to this Declaration.
- (c) **"Administration Fee"** shall have the meaning ascribed to it in Article IV, Section 2.
- (d) **"Approved Developer"** shall mean and refer to such builder or developer approved by Declarant in a recorded amendment to this Declaration; provided, however, that Declarant reserves the right to unilaterally and without further consent substitute a new builder or developer for any Approved Developer by recording an amendment to this Declaration. Declarant may grant rights of Approved Developer to one or several developers. Rights of Approved Developer hereunder shall apply only to the particular portion of the Community, including, without limitation, a Neighborhood therein, which is acquired by the Approved Developer. Any reference to an Approved Developer shall refer to the Approved Developer for such Neighborhood as defined herein.
- (e) **"ARC"** shall have the meaning ascribed to it in Article VIII, Section 2.
- (f) **"Architectural Guidelines"** shall mean and refer to those guidelines developed by Declarant or the Association pursuant to Article VIII, Section 3.
- (g) **"Assessment Loan"** shall have the meaning ascribed to it in Article IV, Section 11.
- (h) **"Association"** shall mean and refer to Waterstone Residential Neighborhood Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.
- (i) **"Beginning Index"** shall have the meaning ascribed to it in Article XVI, Section 3.



(j) “**Board of Directors**” or “**Board**” shall mean and refer to the appointed or elected leadership body of the Association, as applicable, having its normal meaning under North Carolina corporate law.

(k) “**Bound Parties**” shall have the meaning set out in Article XVI, Section 1.

(l) “**Break-even Number**” shall have the meaning ascribed to it in Article IV, Section 11.

(m) “**Buffer Areas**” shall have the meaning ascribed to it in Article VI, Section 27.

(n) “**Bylaws**” shall refer to the Bylaws of Waterstone Residential Neighborhood Association, Inc., attached to this Declaration as Exhibit “B” and incorporated herein by this reference.

(o) “**Claim**” shall have the meaning ascribed to it in Article XVI, Section 1.

(p) “**Claimant**” shall have the meaning ascribed to it in Article XVI, Section 3.

(q) “**Common Driveway**” shall have the meaning ascribed to it in Article XIV, Section 8.

(r) “**Common Expense**” shall mean and refer to expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

(s) “**Common Expense Liability**” shall mean and refer to the liability for Common Expenses allocated to each Unit as permitted by the Declaration, the Act, or otherwise by law.

(t) “**Common Property**” shall mean and refer to any and all real and personal property and easements, leaseholds and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned or held by the Association in the Community for the common use and enjoyment of the Owners.

(u) “**Community**” shall mean and refer to that certain real property and interests therein described in Exhibit “A” attached hereto and all additional real property that may become subject to this Declaration in accordance herewith.

(v) “**Community-Wide Standard**” shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Declarant. Such determination, however, must be consistent with the Community-Wide Standard originally established by Declarant.

(w) “**Declarant**” shall mean and refer to Ashton Raleigh Residential L.L.C., a North Carolina limited liability company, and its successors-in-title and assigns, provided, such successor-in-title or assign shall be designated as the successor “Declarant” by the “Declarant” hereunder at the time of such designation; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as “Declarant” hereunder shall cease. Declarant shall have the right to declare more than one party as successor



Declarant. The foregoing reference to Ashton Raleigh Residential L.L.C., a North Carolina limited liability company, and its successors-in-title and assigns, shall be subject to the rights of Initial Owner described in Article XV, Section 23 of this Declaration.

(x) “**Declarant Control Period**” shall mean and refer to that period of time commencing on the date of this Declaration first set forth above and terminating on the earlier of (i) the date that Owner, Declarant or any Approved Developer do not own any property within the Community; (ii) the date on which Declarant records in the Register of Deeds for Orange County, North Carolina a written instrument expressing Declarant’s intention to terminate the Declarant Control Period; and (iii) December 31, 2033.

(y) “**Declaration**” shall mean and refer to this Declaration of Protective Covenants and Easements, as the same may be amended from time to time.

(z) “**Delinquency Notice**” shall have the meaning ascribed to it in Article IV, Section 7.

(aa) “**Eligible Mortgage Holder**” shall have the meaning ascribed to it in Article XIII, Section 1.

(bb) “**Extension Index**” shall have the meaning ascribed to it in Article XVI, Section 3.

(cc) “**Exempt Claim**” shall have the meaning ascribed to it in Article XVI, Section 1.

(dd) “**Governing Documents**” shall mean and refer to this Declaration, the Bylaws, and the Restrictions and Rules collectively. In the event of any discrepancy or inconsistency between this Declaration, the Bylaws, and the Restrictions and Rules, the order of governing priority and authority as among such instruments shall be (i) this Declaration, and then (ii) the Bylaws, and then (iii) the Restrictions and Rules.

(ee) “**Grace Period**” shall have the meaning ascribed to it in Article IV, Section 7.

(ff) “**Index**” shall have the meaning ascribed to it in Article XVI, Section 3.

(gg) “**Initial Owner**” shall mean and refer to GREAT WATERSTONE, LP, a North Carolina limited partnership, its successors-in-title and assigns.

(hh) “**Liability Policy**” shall have the meaning ascribed to it in Article X, Section 1.

(ii) “**Lot Purchase Agreement**” shall have the meaning ascribed to it in the Background Statement.

(jj) “**Majority**” shall mean and refer to those eligible votes, Owners or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.



(kk) “**Master Association**” shall mean and refer to Waterstone Owners Association, Inc., a North Carolina non-profit corporation, and its successors and assigns, as more particularly described in the Master Declaration.

(ll) “**Master Declaration**” shall have the meaning set out in the recitals.

(mm) “**Mortgage**” shall mean and refer to any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(nn) “**Mortgagee**” shall mean and refer to the holder of a Mortgage.

(oo) “**Neighborhood**” shall mean and refer to each of the Single Family Neighborhood and the Townhouse Neighborhood and any other separately developed and denominated residential area within the Community. Declarant shall have the right to designate separate Neighborhood status and change the Neighborhood status of any previously designated Neighborhood for any property in the Community. Declarant shall have the right to further subdivide a Neighborhood into two or more new Neighborhoods.

(pp) “**Notice**” shall have the meaning ascribed to in Article XVI, Section 3.

(qq) “**Occupancy Plans**” shall have the meaning ascribed to it in Article VI, Section 4.

(rr) “**Occupant**” shall mean and refer to any Person occupying all or any portion of a Unit or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

(ss) “**Operating Deficit**” shall mean and refer to the difference between the total amount of the annual assessments for the fiscal year levied on all Units and the amount of actual expenditures by the Association during the fiscal year, including the funding of reserves, but excluding (i) amounts levied against Units but are unpaid and (ii) special assessments for capital improvements.

(tt) “**Owner**” shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Unit located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(uu) “**Orange County Registry**” shall mean and refer to the Office of the Register of Deeds for Orange County, North Carolina.

(vv) “**Parties**” shall have the meaning ascribed to it in Article XVI, Section 3.

(ww) “**Pedestrian Pathways**” shall have the meaning ascribed to it in Article VI, Section 27.

(xx) “**Person**” shall mean and refer to any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.



(yy) “**Phase**” shall mean and refer to any phase, section or portion of the Community for which one or more Plats containing separate lot lines for one or more Units is recorded in the Orange County Registry.

(zz) “**Plans**” shall have the meaning ascribed to it in Article VIII, Section 3.

(aaa) “**Plat**” shall mean and refer to any plat or survey of the Community or any part thereof recorded in the Orange County Registry.

(bbb) “**Property Insurance Policy**” shall have the meaning ascribed to it in Article X, Section 1.

(ccc) “**Respondent**” shall have the meaning ascribed to it in Article XVI, Section 3.

(ddd) “**Reserved Special Declarant Rights**” shall mean and refer to, during the period of time in which Ashton Raleigh Residential L.L.C., its successors and assigns (“**Ashton**”), is the owner of any Units or any Additional Property, Ashton shall be entitled to continue to (i) exercise exclusive architectural approval and control over all its Units in accordance with Article VIII, Section 2(a); (ii) exercise all rights to complete improvements indicated on Plats and plans on file with Declarant pertaining to its Units; (iii) exercise any and all development rights, including utilizing easements granted to or reserved for the benefit of Declarant, contained in this Declaration and required to properly complete construction of improvements related to its Units in a manner consistent with past practices of Ashton with respect to other Units in the Community; (iv) maintain a sales office, construction models, management offices, and signage pertaining to its Units; (v) add any portion of the Additional Property which it owns or has a right to acquire to the Community utilizing appropriate Supplementary Declarations, including causing all other necessary parties to join in such Supplementary Declarations; (vi) retain rights of consent over any and all amendments to this Declaration or the Bylaws (whether proposed by any successor Declarant or the Association), with such approval not to be unreasonably withheld; and (vii) undertake all other related activities previously undertaken as the Declarant that are deemed necessary or appropriate to facilitate the disposition of its Units in a commercially reasonable manner.

(eee) “**Restrictions and Rules**” shall mean and refer to the restrictions and rules adopted by the Board, as they may be supplemented, modified and repealed pursuant to Article VII.

(fff) “**Reviewer**” shall have the meaning ascribed to it in Article VII, Section 2.

(ggg) “**Settlement Demand**” shall have the meaning ascribed to it in Article XVI, Section 3.

(hhh) “**Settlement Offer**” shall have the meaning ascribed to it in Article XVI, Section 3.

(iii) “**Shell Residence**” shall have the meaning ascribed to it in Article IV, Section 8.



(jjj) “**Single Family Neighborhood**” shall mean and refer to any portion of the Community designated on Exhibit “A” attached hereto as a Single Family Neighborhood and containing Single Family Units.

(kkk) “**Single Family Unit**” shall mean and refer to a Unit on which a single family detached dwelling is (or in the future will be) constructed.

(lll) “**Special Declarant Rights**” shall mean and refer to, during the Declarant Control Period, pursuant to subsection 47F-1-103(28) of the Act, rights hereby granted by Initial Owner to Declarant for the benefit of Declarant, which rights include, without limitation, any right (i) to complete improvements indicated on plats and plans on file with Declarant; (ii) to exercise any development rights; (iii) to maintain sales offices and construction models, management offices, and signage advertising the Community; (iv) to use easements through the Common Property for the purpose of making improvements within the Community; (v) to make the Community part of a larger planned community or group of planned communities; (vi) to appoint or remove any officer or Association Board member; or (vii) any other right reserved for Declarant hereunder.

(mmm) “**Supplementary Declaration**” shall mean and refer to an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

(nnn) “**Termination of Mediation**” shall have the meaning ascribed to it in Article XVI, Section 3.

(ooo) “**Termination of Negotiation**” shall have the meaning ascribed to it in Article XVI, Section 3.

(ppp) “**Total Association Vote**” shall mean and refer to all of the votes attributable to members of the Association (including votes of Declarant and Approved Developer). With respect to any vote determined by a Total Association Vote, during the Declarant Control Period, such vote shall require the approval of such action by Declarant and the applicable Approved Developer owning an affected property. For purposes of clarification, Total Association Vote shall mean all of the votes attributable to members of the Association (including votes of Declarant and Approved Developer) and not simply those voting when a quorum is present and/or voting.

(qqq) “**Town**” means the Town of Hillsborough, North Carolina.

(rrr) “**Townhouse**” shall mean and refer to a row of individual buildings connected by common side walls (each individual building Unit being hereinafter referred to as a “**Townhouse Unit**”); each Townhouse Unit (albeit connected) shall be constructed on a separate lot. Each wall which is built as a part of the original construction of a Townhouse Unit and placed on the dividing line between the Lots (and all reconstruction or extensions of such walls) shall constitute a “party wall” and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls, lateral support, in below-ground construction and liability for property damage due to negligence or willful acts or omission shall apply thereto.



(sss) “Townhouse Neighborhood” shall mean and refer to any portion of the Community designated on Exhibit “A” attached hereto as a Townhouse Neighborhood and containing Townhouse Units.

(ttt) “Unit” shall mean and refer to a portion of the Community, whether improved or unimproved, that may be independently owned and conveyed and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, that is part of the Unit as well as any improvements thereon. The term shall include within its meaning Townhouse Units and Single Family Units, as well as vacant land intended for development as such, but shall not include Common Property or property dedicated to the public. In the case of a building within a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision Plat is filed of record on all or a portion of the parcel. Thereafter, the portion not encompassed by such Plat shall continue to be treated in accordance with this paragraph. The ownership of each Unit shall include, and there shall automatically pass with the title to each Unit as an appurtenance thereto, all of the right, title and interest of an Owner in the Common Property, if any, which shall include, without limitation, membership in the Association.

(uuu) “Work” shall have the meaning ascribed to it in Article VIII, Section 2.

Article II.

Property Subject to this Declaration

Section 1. Property Hereby Subjected to this Declaration. The real property described in Exhibit “A” attached hereto and by reference made a part hereof is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and, by virtue of the recording of this Declaration and the Supplementary Declaration granted by the owner thereof, shall be held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to this Declaration.

Section 2. Subject to Master Declaration. This Declaration shall be and is subject and subordinate to the Master Declaration, and the terms of the Master Declaration are incorporated herein by reference. The rights and obligations contained in this Declaration are intended to be in addition to, and a supplement to, the rights and obligations contained in the Master Declaration. It is understood that the Association referenced in this Declaration is a “Sub-Association” as that term is used in the Master Declaration. Pursuant to Section 2.1(b) of the Master Declaration, the Association (acting as a “Sub-Association” under the Master Declaration), and not individual Unit Owners, shall be deemed the member of the Master Association for purposes of voting on Master Association matters. This Declaration shall not be deemed a delegation of duties under Section 5.10 of the Master Declaration.

Section 3. Other Property. Only the real property described Exhibit “A” attached hereto is hereby made subject to this Declaration; provided, however, by one or more Supplementary Declarations, Declarant and the Association (with the approval of Declarant



during the Declarant Control Period), have the right, but not the obligation, to subject or cause to be subjected other real property to this Declaration as hereinafter provided.

Section 4. Additional Covenants, Restrictions and Easements. Declarant may with the consent of Initial Owner and any Approved Developer that is the Owner of the affected property, subject any portion of the property submitted to this Declaration initially or by Supplementary Declaration to additional covenants, restrictions and easements and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such property. Such additional covenants, conditions, restrictions and easements may be set forth in a Supplementary Declaration or a separate declaration of protective covenants, declaration of condominium or other document filed either concurrently with or after the annexation of the subject property. Any such document filed by Initial Owner and Declarant may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument against property within the Community without Initial Owner's, Declarant's and the applicable Approved Developer's (such Approved Developer being the Owner of the affected property) review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by Initial Owner, Declarant and the applicable Approved Developer and recorded in the land records of the county or counties where the Community is located. No such instrument recorded by any Person, other than by both Initial Owner and Declarant pursuant to this section, may conflict with the Declaration, Bylaws or Articles.

Article III.

Association Membership and Voting Rights

Section 1. Membership. Every Person who is the record owner of a fee or undivided fee interest in any Unit subject to this Declaration shall be deemed to have a membership in the Association as provided in and subject to the provisions of Article IV of the Bylaws.

Section 2. Voting. The Association shall have two classes of voting membership:

(a) **Class I.** The Class I Association Members shall be all the Association Members except the Declarant. Class I Association Members shall be entitled to one (1) vote for each Unit owned by such Association Member. When more than one Person owns an interest (other than a leasehold or security interest in a Unit, all such Persons shall be Members and the voting rights appurtenant to said Unit shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

(b) **Class II.** The Class II Association Member shall be Declarant. The Class II Association Member shall be entitled to ten (10) votes for each Unit owned by Declarant.

Section 3. Exercise of Voting Rights; Quorum. Votes must be cast in person or by proxy as provided in Article IV of the Bylaws. No vote shall be exercised on behalf of any Unit



if any assessment for such Unit is delinquent. Except as otherwise provided herein, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the Total Association Vote are present in person or by proxy at the beginning of a meeting, unless a greater percentage is required by applicable law, in which event the greater number shall apply. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy.

Section 4. Declarant Control. During the Declarant Control Period, Declarant reserves the right to appoint or remove any member of the Board and any officer or officers of the Association and exercise any Special Declarant Rights.

Section 5. Professional Management of the Association. The management and obligations of the Association may be delegated to a professional management organization in the discretion of Declarant during the Declarant Control Period, and thereafter by the Board by majority vote. Any professional management contract shall be reasonable and customary as to term, compensation, and termination. During the Declarant Control Period all contracts with any professional management organization shall include a right of termination without cause or penalty upon ninety (90) days advance notice and without penalty at any time after the end of the Declarant Control Period pursuant to section 47F-3-105 of the Act.

Section 6. Neighborhoods.

During the Declarant Control Period, with the consent of the applicable Approved Developer that is the Owner of the affected property, by designation on Exhibit "A" to this Declaration, a Supplementary Declaration, or a Plat, may establish Neighborhoods within the Community; assign property to a specific Neighborhood; re-designate Neighborhood boundaries; or remove property from a specific Neighborhood.

The Owner(s) of a Majority of the total number of Units within any Neighborhood may at any time petition the Board of Directors to divide the property constituting the Neighborhood into two or more Neighborhoods. Such petition shall be in writing and shall include a survey of the entire parcel that indicates the proposed boundaries of the new Neighborhoods or otherwise identifies the Units to be included within the proposed Neighborhoods. Such petition shall be deemed granted thirty (30) days following the filing of all required documents with the Board unless the Board of Directors denies such application in writing within such thirty (30) day period. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood, and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Units within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform



rate per Unit to all Neighborhoods receiving the same service), shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article IV, Section 5 hereof.

Section 7. Townhouse Neighborhood. It is anticipated that the Townhouse Neighborhood will have different and additional requirements for services than the Single-Family Neighborhood. In addition to the specific services described below, the Board shall consider the requirements of the Townhouse Neighborhood and provide the Townhouse Neighborhood with appropriate services requested and approved by the Owners holding two-thirds (2/3) of the Total Association Vote allocated to Units within the Townhouse Neighborhood, provided the same is consistent with the Community-Wide Standard, and such services shall be assessed against each Townhouse Unit in equal proportions. Any assessments imposed pursuant to this Section shall be Neighborhood assessments as described in Article IV.

Without limiting the generality of the preceding paragraph, the Association shall specifically maintain and keep in good repair the following areas of the Townhouse Neighborhood:

- The roofs, downspouts, and gutters of the Townhouse Units;
- All yards and landscaping within the Townhouse Neighborhood; and
- All fences installed by Declarant, an Approved Developer, or the Association.
- All roadways within the Townhouse Neighborhood, which shall be private roads whose maintenance, repair and replacement costs shall be assessed as Neighborhood assessments.

The Owner shall be responsible for the maintenance, repair and replacement of a Townhouse Unit's siding; but, the Association shall have the right, but not the obligation, to perform such siding maintenance, repair and replacement. For example, power washing the exterior of a Townhouse Unit would be responsibility of the Owner and not the Association, unless the Association decided, in its sole discretion, to do so.

All maintenance described in this Section shall be assessed against the Townhouse Units in equal proportions; provided, however, that damage caused by one or more Owners or Occupants can be charged solely to such Owners or Occupants in the Board's discretion. No costs of maintenance described in this Section may be assessed against Single-Family Units.

Initial Owner hereby grants to Declarant and the Association such easements over all property within the Townhouse Neighborhood as necessary or reasonably convenient for the Association to fulfill its responsibilities in this Section.

Section 8. Affordable Housing Neighborhood. The initial real property subjected to this Declaration ("New Tract 3B") shall be conveyed by Initial Owner to Community Home Trust, a North Carolina nonprofit corporation (formerly Orange Community Housing and Land Trust) ("CHT"), for the purposes of developing, owning and/or disposing of up to twenty-four (24) Townhouse Units as affordable housing. New Tract 3B shall be developed as a separate



Neighborhood under this Declaration in accordance with all provisions of Article VIII hereof and shall not contain more than twenty-four (24) Townhouse Units. Declarant or Approved Developer shall provide (1) nonexclusive vehicular and pedestrian access to New Tract 3B; (2) any necessary cross-access nonexclusive easement agreements necessary for access to New Tract 3B; and (3) cause public utilities otherwise available in adjacent portions of the Community to be made available to the perimeter of New Tract 3B.

Article IV. **Assessments**

Section 1. Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, welfare, common benefit, and enjoyment of the Owners and Occupants of Units, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors. The assessments described herein are Association imposed assessments and are not governmental assessments as may be imposed by any governmentally established Special Assessment District now existing or as may hereafter be established.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) Neighborhood assessments, if any; (c) special assessments, such assessments to be established and collected as hereinafter provided; and (d) specific assessments against any particular Unit that are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. Each such assessment, together with late charges, interest, costs, reasonable attorney's fees actually incurred and any Administrative Fee shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Unit, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within ten (10) days after receiving a written request therefor, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit shall be binding upon the Association as of the date of issuance.

Unless provided otherwise in this Declaration, assessments shall be paid at a uniform rate per Unit in such manner and on such dates as may be fixed by the Board of Directors, which may be billed on a monthly, quarterly or annual basis as may reasonably be determined by the Board of Directors, from time to time, and which may include, without limitation, acceleration, upon ten (10) days' written notice, of assessments for delinquents; provided however, that (a) notwithstanding any provision in this Declaration to the contrary, assessments to pay a judgment against the Association may be made only against the Units in the Community at the time the judgment was entered and (b) if any Common Expense is caused by the negligence or



misconduct of any Unit Owner or Occupant, the Association may assess the expenses exclusively against that Unit Owner or Occupant's Unit. Unless otherwise provided by the Board, assessments shall be paid in quarterly installments. The Board may charge each Owner a service, collection, consulting, or administration fee (an "Administration Fee") in an amount to be determined by the Board in connection with the assessment and collection of the assessments provided for in this Declaration.

Section 3. Computation. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Budget shall be further subject to the review and approval of Declarant during the Declarant Control Period. The Board shall cause the budget and the assessment to be levied against each Unit for the year (or portion thereof in the case of the initial budget) and a notice of the meeting to consider ratification of the budget (which notice shall include a statement that the budget may be ratified without a quorum being present) to be provided to each member no more than thirty (30) days after the adoption of the budget. The date of the meeting of the members to consider ratification of the budget shall be not less than ten (10) days nor more than sixty (60) days after mailing of the budget and notice. To the extent permitted by the Act, there shall be no requirement that a quorum be present at the meeting. The meeting shall be held at least thirty (30) days prior to the due date for payment of the assessment (or the first installment thereof). The budget is ratified and the assessment shall become effective unless disapproved at a meeting by at least ninety-five percent (95%) of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, the budget last ratified shall be continued until a new budget is ratified. Any surplus funds of the Association remaining after payment of or provision for the operating expenses of the Association, the funding of a reasonable operating expense surplus, and any prepayment of reserves may be refunded or credited to the Owners in the discretion of the Board or may be considered Association funds for use in covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Section 4. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments. The imposition of any special assessments shall be subject to the review and approval of Declarant during the Declarant Control Period. Subject to Declarant's approval during the Declarant Control Period, any special assessments shall be effective only if approved by a Majority of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Neighborhood Assessments. With the consent of Declarant during the Declarant Control Period, the Association may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for maintenance required to be performed by the Association with respect to property within such Neighborhood pursuant to this Declaration. Furthermore, the Association may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for maintenance not expressly required by this Declaration



requested and approved by the Owners holding two-thirds (2/3) of the Total Association Vote allocated to Units within a Neighborhood. Notwithstanding the foregoing, to the extent permitted under the Act, the making of any assessments against the property in a particular Neighborhood shall be further subject to the review and approval of Declarant during the Declarant Control Period.

Section 6. Lien for Assessments. All sums assessed against any Unit pursuant to this Declaration, together with late charges, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, costs, reasonable attorney's fees actually incurred and any Administrative Fee, as provided herein, when remaining unpaid for thirty (30) days or longer, shall be secured by a lien on such Unit in favor of the Association when the Association files a claim of lien in the Office of the Register of Deeds of the county where the Unit is located in the manner provided by law.

The lien of the Association for assessments, interest, late fees, fines and costs of collection provided in this Declaration shall be superior to all other liens and encumbrances on such Unit, except that such lien of the Association shall be subordinate to (i) the lien of any first Mortgage recorded before the docketing of the assessment lien in the office of the clerk of superior court, (ii) liens and encumbrances recorded before the docketing of the claim of lien and (iii) to the extent provided at law, liens for real estate taxes and other governmental assessments and charges against the Unit. This Section does not affect the priority of mechanics' or materialmens' liens.

All other Persons acquiring liens or encumbrances on any Unit after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

A Mortgagee is not required to collect assessments and nothing in this Declaration shall require that failure to pay assessments shall constitute a default under a Mortgage. Any Person (including the Mortgagee) acquiring title to any Unit by virtue of a foreclosure of a first Mortgage shall be liable and obligated only for assessments, including special assessments, as shall become due and payable for said Unit subsequent to the date of acquisition of such title, and such Person shall not be liable for the payment of any assessments that were in default and delinquent at the time it acquired such title except as provided in the next sentence and N.C.G.S. 47C-3-116(f). In the event of the acquisition of title to a Unit by foreclosure of a first Mortgage, any assessment or assessments as to which the Person so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Units as a part of the Common Expense. Nothing contained in this Declaration shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or as preventing the enforcement of collection of such payment by means other than foreclosure.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any sums (including assessments or installments thereof) assessed against any Unit pursuant to this Declaration that are not paid when due shall be delinquent. Any such sums delinquent for a period of more than fifteen (15) days shall incur a late charge in such amount as the Board may from time to time determine (not to exceed the greater of Twenty and No/100 Dollars (\$20.00)



per month [with such cap subject to adjustment by the Board every five (5) years during the duration of this Declaration] or ten percent (10%) of any installment unpaid). The Association shall cause a notice of delinquency to be given to any member who has not paid within fifteen (15) days following the due date (the “**Delinquency Notice**”). The Delinquency Notice shall state (i) the outstanding balance due as of the date of the Delinquency Notice; (ii) that the member has fifteen (15) days from the mailing of the Delinquency Notices (the “**Grace Period**”) to pay the outstanding balance without being required to pay attorneys’ fees and court costs; (iii) the name of and contact information for a representative of the Association whom the member can contact to discuss a payment schedule for the outstanding balance; provided however, that the Association shall not be required to permit payment of the outstanding balance in installments; and (iv) that if the outstanding balance is not paid within the Grace Period, the Association intends to seek payment of attorneys’ fees and court costs. The Delinquency Notice must be sent by first class mail to the Unit of such member and, if different, to the mailing address of the member in the Association’s records. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and a claim of lien, as herein provided, may be filed in the Orange County Registry in the manner provided by law. Such lien shall include the late charge, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, all late charges from the date first due and payable, any Administrative Fee, all costs of collection, and, if the Owner has been provided with a Delinquency Notice and failed to pay the outstanding balance set forth therein within fifteen (15) days from the mailing of the Delinquency Notice, court costs, reasonable attorney’s fees actually incurred, and any other amounts provided or permitted by law. Notwithstanding anything to the contrary in this Declaration, if a member does not contest the collection of the unpaid assessments and enforcement of a lien after the expiration of the Grace Period, then reasonable attorneys’ fees collected by the Association in connection with such debt shall not exceed One Thousand Two Hundred and No/100 Dollars (\$1,200.00) (with such cap subject to adjustment by the Board every five (5) years during the duration of this Declaration) not including costs or expenses incurred; provided however, such limitation shall not apply to judicial foreclosures or to proceedings authorized under Section 116(d) or Section 120 of Article 3 of Chapter 47F of the North Carolina General Statutes. The collection of unpaid assessments and enforcement of the lien shall be deemed uncontested as long as the member does not dispute, contest or raise any objection, defense, offset or counterclaim as to the amount or validity of the unpaid assessments and lien asserted or the Association’s right to collect the debt and enforce the lien.

If any sum assessed against any Unit pursuant to this Declaration remains unpaid after sixty (60) days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes; provided however, (i) the Association may not foreclose the lien under Article 2A of Chapter 45 of the North Carolina General Statutes if the debt securing the lien consists solely of fines imposed by the Association, interest on unpaid fines, or reasonable attorney’s fees incurred by the Association solely associated with fines imposed by the Association (such lien may be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes); and (ii) any lien securing debt consisting solely of Administrative Fees may only be enforced by judicial foreclosure as

provided in Article 29A of Chapter 1 of the North Carolina General Statutes. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents, to the extent permitted by this Declaration and applicable law, the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes; or in any other manner permitted by applicable law. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Unit at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, order, or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and reasonable attorney's fees, including, without limitation, any Administrative Fee, then to late charges, then interest and then to delinquent assessments.

Section 8. Date of Commencement of Assessments/No Assessment Obligation for Declarant.

(a) The assessments provided for herein shall commence as to all Units subject to assessment hereunder in any Phase of the Community as of the first day of the calendar year in which the first Unit in such Phase is conveyed by Declarant or an Approved Developer to a Person other than Declarant or Approved Developer. All assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. All assessments shall be rounded up to the nearest dollar and payable as such. Until the commencement of assessments provided for herein, an Approved Developer shall be responsible for all costs associated with the property owned by such Approved Developer.

(b) Anything to the contrary contained in this Declaration notwithstanding, after the commencement of assessment payments as to any Units, Declarant, Approved Developer, and their respective affiliates, shall not be obligated to pay assessments as to any Units owned by any of such parties. This allocation provision applies to Association imposed assessments only and not any governmental assessment that may be assessed against a Unit.

(c) Any Unit that has been approved by Declarant or Approved Developer for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether

owned by Declarant, Approved Developer, or any other Person, so long as such Unit is approved for use as a model home and is not occupied for residential purposes.

Section 9. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XV, Section 1 of this Declaration and the costs of maintenance performed by the Association that the Owner is responsible for under Article V, Section 2 of this Declaration shall be specific assessments. The Board (with the approval of Declarant during the Declarant Control Period) may also specifically assess Units for the following Association expenses:

(a) Expenses of the Association that benefit less than all of the Units may be specifically assessed equitably among all of the Units that are benefited according to the benefit received.

(b) Expenses of the Association that benefit all Units, but do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

This Section specifically contemplates, without limitation, that the Association may incur expenses (including, without limitation, expenses for extraordinary items, matters and occurrences and expenses not anticipated and/or not budgeted for in advance) for certain maintenance, insurance and repair (in accordance with this Declaration) related to single-family attached or detached Townhouses within the Community, which expenses benefit the Units containing such type of housing only. Such expenses shall be included in the budget prepared as described in Article IV, Section 3, and the Units primarily benefited by such expenses shall be subject to specific assessment imposed by the Board pursuant to this Section to cover such expenses. Without limiting the generality of the foregoing, the cost of maintaining water or sewer pipes that serve more than one but less than all of the Units may be assessed against the Units served as a specific assessment.

Section 10. Auto Withdraw for Assessment. Declarant or the Association may establish a system in which assessments shall be automatically withdrawn from the applicable bank account of the Owner and, to the extent permitted under applicable law, may require the use of such automatic withdrawal system.

Section 11. Obligation to Fund Deficits; Assessment Loans. To the extent permitted under the Act, an Approved Developer shall be obligated to fund any Operating Deficit in proportion to the number of Units the Approved Developer owns as compared to the total number of Units owned by the Declarant and all other Approved Developers. Approved Developers, at their option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the



Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Approved Developer). An Approved Developer shall receive a credit in the amount of any Operating Deficit that it funds against any assessments that would otherwise be due and payable by Approved Developer. Notwithstanding the foregoing, to the extent permitted under the Act, Declarant shall have the right, but not the obligation, to fund any Operating Deficit by the same means as provided above with respect to its proportionate share of the total Units owned by it and all Approved Developers. In the event Declarant funds any such Operating Deficit, any such payment will be characterized, in the Declarant's sole and absolute discretion and election, as (a) a contribution to the Association, (b) a credit against any assessments that would otherwise be due and payable by Declarant, if any; (c) an advance against future Assessments that would be due and payable by Declarant, if any; (d) in-kind services, or (e) an Assessment Loan to the Association. The amount and character (contribution, creditable current payment, future advance, in-kind services or loan) of such payment by the Declarant will be conspicuously disclosed in the financial records of the Association. The payment of any Operating Deficit in any year will under no circumstances obligate the Declarant to continue payment of any Operating Deficit in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

It is anticipated that until Declarant has sold a certain number of Units (which number has not yet been determined, and which number is referred to herein as the "**Break-even Number**"), the annual assessments collected by the Association will not be sufficient to pay all Common Expense on a current basis, but that the anticipated annual assessments collected after the Break-even Number of Units has been sold will exceed the Common Expense. To fund this shortfall, Declarant reserves the right, but is not obligated, to make a loan (the "**Assessment Loan**") to the Association, as provided below, until cash flow from the annual assessments is sufficient to pay the Common Expense. If Declarant elects to make the Assessment Loan, then Declarant shall advance to the Association the amount by which the Common Expense exceeds the annual assessments collected for such year. The Association will have the affirmative obligation to repay the Assessment Loan to Declarant in accordance with the terms hereof, with no interest thereon except as otherwise provided in this section. The Association shall use proceeds advanced to the Association only to pay the above described shortfall in the Common Expense. The Association shall repay the Assessment Loan to Declarant in monthly installments or as otherwise determined by Declarant commencing at such time as sales of Units reach the Break-even Number, until the balance of the Assessment Loan has been repaid to Declarant in accordance with its terms; provided, however, an Assessment Loan shall in no event be repaid to Declarant later than ten (10) years after made, unless earlier accelerated due to a default by the Association. After maturity, whether by acceleration or otherwise, if the Assessment Loan remains unpaid, the outstanding balance shall bear interest at the legal rate for judgments as if there was no contract rate. Each Owner of a Unit, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, is hereby deemed to covenant and agree (and such covenant further shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Unit), that such an Assessment Loan is reasonable and was made by Declarant and accepted by the Association in good faith and at arm's length.



Section 12. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or Approved Developer or their respective affiliates, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to the amount from time to time established by the Board of Directors. This contribution shall be in addition to, not in lieu of, any other assessments levied on the Unit and shall not in any way be construed as part of or identical to any such assessments or as an advance payment of any such assessments. This contribution shall be collected at the closing of the Unit and disbursed to the Association. Working capital contributions may be utilized for the payment of any obligation of the Association.

Section 13. Conveyance Pro-rations. With respect to any Unit conveyed by Declarant, the purchaser of such Unit shall pay to the Association at closing the amount of the annual assessment for the installment period in which the closing occurs on such Unit as if such Unit were not owned by Declarant or Approved Developer or their affiliates prorated based upon the number of days remaining in such installment period. With respect to any Unit conveyed by any Owner other than Declarant or Approved Developer or their affiliates, the amount of the annual assessment applicable to such Unit for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

Section 14. Reduction or Assessments for Undeveloped Units. Declarant, during the Declarant Control Period, and thereafter the Board, shall have the authority to reduce the assessments as to any Unit on which no structure has been completed (i.e., no Certificate of Occupancy has been issued).

Article V. **Maintenance**

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping, lighting, fencing, paving, and other improvements situated on the Common Property. The Association shall also maintain (i) all greenways trails in the Community, if any; (ii) all parking areas that serve more than one Unit; (iii) all entry features for the Community, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features regardless of whether such entry features are on a Unit, Common Property, or a public right-of-way, (iv) all private Community streets and alleys, including street signs, if any, originally installed by Declarant or its affiliates or an Approved Developer, (v) all drainage detention and retention areas that were originally maintained by Declarant or its affiliates, to the extent such areas are not maintained on an ongoing basis by a governmental entity; provided however, except as set forth for the Townhouse Neighborhood in Article III, Section 7, each Owner of any particular Unit, and not the Association, shall be responsible for maintenance of all storm water drainage facilities located on and used exclusively in connection with such Unit or the improvements thereon, including, for example, guttering, and pipes and drains for transportation of stormwater from such Unit into any storm water detention/retention ponds and storm water drainage facilities for the Community, (vi) all



water and sewer pipes or facilities that serve more than one (1) Unit, whether located within or without the Unit's boundaries, to the extent that such pipes and facilities are not maintained by public, private or municipal utility companies, (vii) all Community recreational amenities, (viii) all Buffer Areas (as defined below) in the Community regardless of whether such Buffer Areas are on a Unit or Common Property, and (ix) all street lighting in the Community to the extent not maintained by a governmental entity. The Association shall also maintain all property outside of Units located within the Community that was originally maintained by Declarant, Approved Developer, or their respective affiliates. Notwithstanding the foregoing, areas designated as "**Common Areas**" under the Master Declaration from time to time shall not be maintained by the Association, to the extent maintained by the Master Association.

The stormwater control measures serving the Community shall be Common Property. The Association shall provide for the maintenance of the stormwater control measures in accordance with any operation and maintenance standards maintained by all applicable governmental entities. Common Expenses shall include contributions toward the maintenance of stormwater control measures. Common Expenses may further include funds required by applicable governmental entities to be placed in escrow relating to repair and replacement of such stormwater control measures, if any, including those relating to the control of nitrogen. If no such escrow is required, the Association may create a reserve fund for the maintenance and replacement of the stormwater control measures.

The Association may, but shall not be obligated to, maintain, repair, or replace, as necessary, any and all mailboxes or mailbox posts located within the Community. In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

There is hereby granted to the Association a blanket easement upon, across, over, and under all property within the Community for access, ingress, and egress as necessary to permit the Association to perform its maintenance responsibilities hereunder. The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

The Association shall not be liable for injury or damage to person or property caused by or resulting from the elements, the Owner of any Unit, any other Person, any utility, rain, snow or ice which may leak or flow from any portion of the Common Property, or any pipe, drain, conduit, appliance or equipment that the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner, or any Owner's Occupants, guests or family, for loss or damage, by theft or otherwise, of any property that may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupants, guests or family, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities hereunder, where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. The Association shall repair incidental damage to any Unit resulting from performance of work by the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons of its choice such duties as are approved by the Board.

Section 2. Owner's Responsibility. Except as provided in Section 1 above and Article III, Section 7, all maintenance of the Unit and all structures, parking areas, landscaping



and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with the Community-Wide Standard and this Declaration. If the Board of Directors determines that (a) any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, or (b) the need for maintenance, repair or replacement that otherwise is the responsibility of the Association hereunder is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. Except in an emergency situation, the Owner shall have ten (10) days from the date of the notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within such time period, to commence such work within such ten (10) day period and diligently pursue completion within a reasonable time. If any Owner does not comply with the provisions hereof or in an emergency situation, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant that is the responsibility of the Association hereunder (including, but not limited to, landscaping of Common Property) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association, even if the Association accepts the maintenance or repair.

In addition, each Owner shall be obligated:

- (a) to perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Units;
- (b) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and
- (c) to maintain his or her Unit in a neat and attractive condition in a manner consistent with the Community-Wide Standard.

Section 3. Party Walls and Party Fences.

(a) General Rules of Law to Apply. Each wall or fence built as a part of the original construction of the Units that shall serve and separate any two (2) adjoining Units shall constitute a party wall, fence, or privacy screening, and, to the extent not inconsistent with the



provisions of this Section, the general rules of law regarding party walls and fences and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions; provided, however, that each Owner is responsible for usual and routine maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(c) Damage and Destruction. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall or fence may restore it, and if the other Owner or Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section, an Owner of a residence that shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Article VI.

Use Restrictions and Rules

Section 1. General. This Article, beginning at Section 2, sets out certain use restrictions that must be complied with by all Owners and Occupants. These use restrictions may be amended only in the manner provided in Article XV, Section 4 hereof regarding amendment of this Declaration. The Board of Directors may, from time to time, without consent of the members, promulgate, modify or delete other use restrictions and Restrictions and Rules applicable to the Units and the Common Property as provided in Article VII. Without limiting any similar provisions contained herein, it is understood that this Article is in addition to, and not in place of, the use restrictions contained in the Master Declaration.

(a) Property Subject to UDO. The Units are subject to the Town of Hillsborough, North Carolina Unified Development Ordinance ("UDO"). In the event the provisions of this Declaration are more stringent than would apply under the UDO, the provisions of this Declaration shall control.

Section 2. Use of Units. All Units shall be used for single-family residential purposes exclusively, and no trade, business or business activity of any kind shall be carried on or conducted in, from or upon any Unit or any part of the Community at any time without the prior written approval of the Board, except that the Owner or Occupant residing on a Unit may conduct such ancillary business activities within the residence on the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or



smell from the exterior of the residence; (b) the business activity does not involve regular, frequent or conspicuous visitation of the Unit by employees, clients, customers, suppliers or other business invitees for business purposes; (c) the business activity conforms to all zoning requirements for the Town of Hillsborough; (d) the business activity does not increase traffic in the Community (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; (f) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board; and (g) the business activity does not result in a materially greater use of common facilities or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full- or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

Section 3. Signs and Flags. No sign (including brokerage or for sale/lease signs), flag, banner, sculpture, fountain, outdoor play equipment, solar equipment, artificial vegetation, sports equipment, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, or upon any part of the Community that is visible from the outside of a Unit or vehicle parked within the Community except in compliance with the Restrictions and Rules of the Association authorizing such sign, if any; provided however, signs required by governmental agencies and approved by the Declarant or the Board, as applicable, may be displayed (e.g. permit boards). No flag or in-ground flag poles (except as Declarant may use) shall be permitted within the Community except in compliance with the Restrictions and Rules of the association authorizing such flag and/or in-ground flag poles, if any. Notwithstanding the foregoing, during the Declarant Control Period, the Declarant, and thereafter the Board, shall have the right to erect any sign or flag appropriate to its respective activities and may authorize similar activities by any affiliate of the Declarant or any Approved Developer.

The Board may impose a fine against any Owner or Occupant of up to One Hundred and No/100 Dollars (\$100.00) per day for violations of this Section, in addition to any other remedies of the Association. Any fine imposed pursuant to this Section shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for collection of assessments. Any permitted sign or other display shall conform to the requirements of the UDO. In the event the requirements of this Declaration, or as the Declarant or the Board, as applicable, may otherwise require, are more stringent than may be required by the UDO, the requirements of this Declaration or as the Declarant or Board, as applicable, may otherwise require shall control.

Section 4. Timeshares. The use, occupancy, marketing, advertisement or promotion of a Unit under timeshare, fractional ownership, interval exchange (whether the program is



based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership plans or arrangements, including but not limited to a time share program, as that term is defined in Article 4, Chapter 93A of the North Carolina General Statutes, (collectively, "**Occupancy Plans**") through which a participant in the plan or arrangement acquires an ownership interest in the Unit with attendant rights of periodic use and occupancy or acquires contract rights to such periodic use and occupancy of the Unit or a portfolio of accommodations including the Unit is absolutely prohibited.

Section 5. Vehicles/Parking. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibuses, scooters, go-carts, golf carts, trucks, campers, buses, vans, automobiles and limousines. Vehicles shall not be parked on the Common Property (except passenger non-commercial automobiles parked in designated parking areas while the users thereof are using the Common Property) or on any other portion of the Community other than the driveway and the garage, or in the case of a Townhouse Unit without a garage, in a parking space provided in the Townhouse Neighborhood for the Townhouse Units therein. There shall be no assigned parking spaces within the Common Property of a Townhouse Neighborhood; provided, however, the Board may set aside Common Property parking spaces as handicap parking only and assign the same to a Townhouse Unit.

Unless the Unit is a Townhouse Unit without a garage, and except to the extent that the Occupants of a Unit shall have more vehicles than the number of garage parking spaces serving their Unit, all vehicles shall be parked within such garage parking spaces. Vehicles may be parked in the driveway and additional parking spot, if any serving a Unit only after all of the garage parking spaces serving such Unit have vehicles parked in them. All parking shall be subject to such further Restrictions and Rules as the Board may adopt.

Disabled vehicles, stored vehicles, boats, trailers, campers, buses, vans (except mini-vans or utility vehicles used as non-commercial passenger vehicles), trucks (except pick-up trucks and sport utility vehicles), recreational vehicles (for example, without limitation, RV's and motor homes), and vehicles used primarily for advertising purposes are prohibited from being parked in the Community, except in garages. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writing on their exteriors shall be allowed temporarily in the Community during normal business hours for the purpose of serving any Unit or the Common Property; provided, however, without the prior written consent of the Board, no such vehicle shall be authorized to remain in the Community overnight or for any purpose except serving a Unit or the Common Property. For purposes of this paragraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is inoperable. A vehicle shall be considered "stored" if it remains on the Community for three (3) consecutive days or longer without the prior written permission of the Board.

If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Restrictions and Rules, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity that will do the towing and the name and telephone number of a person to contact regarding the alleged



violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Unit, is obstructing the flow of traffic, is parked in any unpaved area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this Section, neither the Association nor any director, officer or agent of the Association shall be liable to any person for any claim of damage or otherwise as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

Section 6. Occupants Bound. All provisions of the Declaration and of any Restrictions and Rules or use restrictions promulgated pursuant thereto that govern the conduct of Owners and that provide for sanctions against Owners shall also apply to all Occupants of any Unit even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

Section 7. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Unit, except that a reasonable number of domestic cats and dogs may be kept provided they are kept within the dwelling and are not kept, bred, or maintained for any commercial purposes. Notwithstanding the foregoing, no dogs of the Doberman Pinscher, Rottweiler or "Pit Bull" breed shall be kept in the Community (including the Units). A "Pit Bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying a majority of the physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds. No person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Unit without the consent of such other Owner. No animals shall be permitted on or in the Common Areas at any time except as permitted by the Restrictions and Rules of the Association or by applicable law. The Board may establish reasonable rules to limit the number of allowed pets. Pets shall be kept on a leash at all times when outside the dwelling, and the Owner shall clean up after his or her pet. No animal shall interfere with, intimidate, threaten or have a reasonable likelihood of interfering with, intimidating or threatening any Owner, Occupant, other person, other pet, or the peaceful and quiet enjoyment of any other Owner or Occupant, person or other pet. At any time and in its sole and absolute discretion, the Board may require the owner of any prohibited animal or any permitted animal which interferes with, intimidates or threatens any person or other pet in the Community or which causes or results in an unreasonable disturbance, to permanently remove such animal from the Community promptly after notice by the Association. Neither the Declarant, the Board nor the Association shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any Owner or Occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Board of Directors, the Declarant, each Owner and the Association in such regard.



Section 8. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Unit. No Unit shall be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Unit that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Unit, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property adjacent to the Unit. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no exterior speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise that creates or produces excessively loud sounds or any vibrations, or any conduct that creates any noxious or offensive odors outside a home shall be located, used, placed, installed or maintained upon the exterior of any Unit, or any portion thereof, unless required by law. The inconvenience or other harm complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. This provision shall not apply to any Unit(s) owned by Declarant or Approved Developer.

Section 9. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, that might tend to cause disorderly, unsightly or unkempt conditions shall not be pursued or undertaken in any part of the Community.

Section 10. Antennas and Satellite Dishes. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Unit, unless approved in accordance with the provisions of Article VI hereof; provided, however, no such approval shall be necessary to install (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services or to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless such installation (i) imposes unreasonable delay or prevents the use of the antennae; (ii) unreasonably increases the cost of installation; or (iii) an acceptable quality signal cannot otherwise be obtained. The Board and Declarant (and its affiliates) reserve the right to (but shall not be obligated to) erect any type and size of master antenna, satellite dish or other similar master



system for the benefit of the Community. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an individual outdoor antenna or similar device would be the most cost-effective way to receive the signals sought to be received.

Section 11. Tree Removal. No trees shall be removed without the express prior consent of the Board or its designee, except for trees removed by Declarant, Approved Developer, or their respective affiliates.

Section 12. Lighting. Notwithstanding Article VIII above, the following exterior lighting may be installed without the necessity of obtaining the prior approval of the Board or its designee: (a) seasonal decorative lights during the Christmas season; (b) illumination of model homes and entrance features constructed by Declarant, Approved Developer, or their respective affiliates; and (c) other lighting originally installed by Declarant, Approved Developer, or their respective affiliates. Plans for all other exterior lighting must be submitted and approved in accordance with Article VIII hereof. Decorative post lights will not be approved unless they conform with established street lighting.

Section 13. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant of any Unit may obstruct or rechannel the drainage flows after the location and installation of drainage swales, storm sewers or storm drains. Initial Owner hereby grants to Declarant, Approved Developer, and their respective affiliates, a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 14. Sight Distance at Intersections. All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

Section 15. Clotheslines, Garbage Cans, Woodpiles, Etc. No exterior clotheslines, woodpiles and other similar items of any type shall be permitted in the Community without the prior written consent of the Board or its designee. Subject to the requirements of any applicable ordinance of the Town of Hillsborough, garbage cans and other similar items shall be located or screened so as to be concealed from view of neighboring Units, streets and property located adjacent to the Unit. All rubbish, trash and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Initial Owner, however, hereby expressly grants to Declarant and Approved Developer, to the extent allowed by applicable law, the right to dump and bury rocks and trees on property within the Community as needed for efficient construction and to allow, in Declarant's sole discretion, other developers and builders within the Community to do so. The Association may, but shall



not be required to, contract with a private trash collection company to pick up all usual and customary household trash on a regular basis. The Board of Directors shall determine the type of trash and recycling receptacles for the Community. If individual trash and recycling receptacles are used, such receptacles shall be placed in the easement area no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash and recycling pick up shall also be subject to such reasonable Restrictions and Rules as the Board of Directors may adopt.

Section 16. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board or its designee. Initial Owner, however, hereby expressly grants to Declarant and each Approved Developer, the right to replat any Unit(s) or other property in the Community owned by Declarant or Approved Developer, respectively. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Section 17. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns and small firearms of all types.

Section 18. Fences. No fence or fencing type barrier of any kind, other than fencing installed by Declarant or an Approved Developer, shall be placed, erected, allowed or maintained upon any portion of the Community, including any Unit, without the prior written consent of the Board or its designee. The Board or its designee may issue guidelines detailing acceptable fence styles or other specifications but in no event may a chain link fence or a free-standing hog wire fence be approved.

Section 19. Exterior Colors. The exterior of all improvements, including, without limitation, residences, constructed, erected, allowed or maintained upon any Unit must be painted or repainted in a color as approved by the Board or its designee.

Section 20. Mailboxes. No mailboxes and appurtenant posts and/or structures shall be erected without the prior written approval of the Board or its designee; and if community mailboxes are provided within any Common Area, Units served by such community mailboxes shall be prohibited from erecting individual mailboxes. Generally, if individual mailboxes are allowed, they must be of the same type and color as that originally installed by Declarant, Approved Developer, or their respective affiliates.

Section 21. Detached Structures. No detached structures shall be placed, erected, allowed or maintained upon any Unit or within the Community unless installed by Declarant or an Approved Developer, without the prior written consent of the Board or its designee. All detached structures must be consistent in design materials and color with the dwelling on the Unit. In no event shall any trailers, campers, vehicles, shacks, tents, any garages (attached and detached), barns or other structures be used as a residence or living space in any manner whatsoever, either temporarily or permanently, within the Community. Specifically, no garage, including, but not limited to, attached and detached garages, shall be utilized in any manner whatsoever as an additional living space or residence.



However, this Section shall not be construed to prevent Declarant, Approved Developer, and those engaged in development, construction, marketing, property management or sales from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant or Approved Developer from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

Section 22. Entry Features and Street Signs. Owners shall not alter, remove or add improvements to any entry features or street signs constructed within the Community, or any part of any easement area associated therewith, without the prior written consent of the Board or its designee.

Section 23. Swimming Pools. No above ground swimming pools shall be permitted in the Community.

Section 24. Sidewalks. Other than sidewalks and walkways constructed in the Community by Declarant or an Approved Developer, all sidewalks and walkways are subject to approval or disapproval under Article VIII below.

Section 25. Buffer Areas. The Community may contain wetlands and certain buffer areas as shown on the recorded subdivision Plats for the Community (the “**Buffer Areas**”). The wetlands and Buffer Areas shall be left in their undisturbed, natural state and no land-disturbing activity, placement of impervious surfaces, removal of vegetation, encroachment, construction, or erection of any structure shall occur thereon unless performed by Declarant, Approved Developer, or the Association in accordance with all applicable local, state and federal rules, regulations, laws and ordinances. The Association, Approved Developer and/or Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the wetlands or Buffer Areas. In addition to the requirements of the Declaration, Buffer Areas are subject to ordinances and regulations imposed by governmental entities; therefore, the consent of such entities may be required for certain activities. Without limiting the generality of the foregoing, for all Buffer Areas, all Owners, Declarant, Approved Developer, and the Association shall abide by all local, state and federal rules, regulations, laws and ordinances concerning such areas.

Section 26. Wetlands, Ponds, Creeks and Streams. Except as herein provided, all wetlands, ponds, storm water retention or detention ponds, creeks and streams within the Community shall be used for aesthetic amenities and storm water drainage only, no other use thereof, including, without limitation, swimming, ice skating, playing, or use of personal flotation devices, and other recreation, shall be permitted, without the written consent of the Board of Directors. The Association, Approved Developer and/or Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of wetlands, ponds, storm water retention or detention ponds, creeks or streams within the Community. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any wetlands, ponds, storm water retention or detention ponds, creeks or streams within the Community, or



any other Common Property. Applicable governmental agencies, the Approved Developer, Declarant and the Association, shall have the sole right to control the water level of all other bodies of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any wetlands, ponds, storm water retention or detention ponds, creeks and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any pond, storm water retention or detention pond, creek or stream within the Community and shall not be permitted to withdraw water from any pond, storm water retention or detention pond, creek or stream as may exist in the Community without the prior written consent of the Board of Directors.

Section 27. Pedestrian Pathways. Except as herein provided, the pedestrian pathways within the Community (the “**Pedestrian Pathways**”) shall be used as governed by Association Restrictions and Rules, which may prohibit certain means of transportation or recreation to be used on a path. Provided, however, this provision shall not prohibit the use of the Pedestrian Pathways by any person with a disability by the use of a wheelchair or other necessary transportation device, and further provided, that the Board of Directors may adopt such rules as may be deemed appropriate concerning the use of the Pedestrian Pathways.

Section 28. Use of Common Property. There shall be no obstruction of the Common Property nor shall anything be kept, parked or stored on any part of the Common Property without the prior written consent of the Board. This provision shall not apply to an Approved Developer who owns either the entire Single Family Neighborhood or the entire Townhouse Neighborhood with respect to Common Property located within such Neighborhood owned by such Approved Developer, nor shall this provision apply to Declarant during the Declarant Control Period.

Section 29. Prohibition of Damage. Without the prior written consent of the Board, nothing shall be done or kept in the Community that would increase the rate of insurance which the Association is obligated to obtain hereunder, that would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or would increase the Common Expense of the Association. No Owner shall do any work that, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Community or any structure located within the Community, would reduce the value thereof, or would impair any easement or hereditament thereto. No damage to or waste of the Common Property, or any part thereof, shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees or Occupants of his or her Unit.

Section 30. Window Air Conditioning Units. No window air conditioning units or fans shall be installed on any Unit in the Community.

Section 31. Window Coverings. All shades, drapery linings and other window treatments visible from the exterior of a Unit, with the exception of stained wood blinds or



shutters, shall be white or off-white. No foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purpose.

Section 32. Colors. No exterior colors on any Structure shall be permitted that, in the sole judgment of Declarant (during the Declarant Control Period) or the ARC, would be inharmonious or discordant or incongruous. Any future exterior color changes desired by an Owner must be first approved by the ARC.

Article VII. Use and Conduct

Section 1. Framework for Regulation. The Governing Documents establish, as part of the general plan of development for the Community, a framework of affirmative and negative covenants, easements and restrictions that govern Waterstone Residential. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology that inevitably will affect the Community, its Owners and residents. Toward that end, this Article establishes procedures for adopting and modifying previously adopted Restrictions and Rules that are reasonable under the circumstances and do not conflict with this Declaration, and are approved in writing by the Declarant during the Declarant Control Period, which approval may be granted or denied in its sole discretion.

Section 2. Rule Making Authority.

(a) Subject to the terms of this Article, the written approval of the Declarant during the Declarant Control Period as provided in Section 1 immediately above, and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt, modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice by mail to all Owners concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (c) below, unless disapproved (i) at a meeting by Owners representing more than 50% of the Total Association Vote or (ii) by Declarant during the Declarant Control Period. The Board shall have no obligation to call a meeting of the Owners to consider disapproval except upon receipt of a petition of the Owners as required for special meetings in the Declaration or the Bylaws. Upon such petition of the Owners prior to the effective date of any Board action under this Section 2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Owners may, at an Association meeting duly called for such purpose, vote to adopt rules that modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Any such action shall require approval of Owners representing a Majority of the Total Association Vote and the Majority of the voting interests in



each Neighborhood whose Units are or will be subject to the rule in question and by Declarant during the Declarant Control Period.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than fifteen (15) days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Owner or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing or expanding any provision of this Declaration. In the event of a conflict between any provision of this Declaration and the Restrictions and Rules, the Declaration shall control.

(e) No Restrictions and Rules shall be adopted, modified, cancelled, limited, created, excepted to, or expanded under this Section 2 if such action would have a material adverse effect upon the ability of an Approved Developer to develop, construct or sell Units constructed, or to be constructed by such Approved Developer.

(f) The procedures required under this Section 2 shall not apply to the enactment and enforcement of administrative Restrictions and Rules governing use of the Common Property unless the Board (and Declarant during the Declarant Control Period) chooses in its discretion to submit to such procedures. Examples of such administrative Restrictions and Rules shall include, but not be limited to, hours of operation of a recreational facility, speed limits on private roads, any other traffic management decision, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board may enact, amend, or enforce any administrative rule with respect to the Common Property by majority vote of the Board, with the consent of Declarant during the Declarant Control Period, and shall exercise business judgment in the enactment, amendment, and enforcement of such administrative Restrictions and Rules. Nothing herein shall prevent the Board from delegating ministerial tasks required for the administration of the Common Property.

Section 3. Owners' Acknowledgment and Notice to Purchasers. All Owners are given notice that use of their Units and the Common Area is limited by the Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that changes may have been adopted by the Association. Copies of the current Restrictions and Rules may be obtained from the Association.

Section 4. Protection of Owners and Others. Except as may be set forth in this Declaration (either initially or by amendment), all Restrictions and Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly; however, the Restrictions and Rules may vary by Neighborhood.



(b) Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the structure.

(c) Activities Within Units. No rule shall interfere with the activities carried on within the confines of structures on Units, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities within Units that are not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible from outside of the structures on Units, or that create an unreasonable source of annoyance to persons outside of the Unit.

(d) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Property to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Property available, from adopting generally applicable rules for use of Common Property, or from denying use privileges to those who are delinquent in paying assessments or abuse the Common Property or violate the Governing Documents.

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

(f) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the right of Declarant and Approved Developer to develop the Community or other properties in the vicinity of the Community.

The limitations in subsections (a) through (f) of this Section 4 shall only limit rulemaking authority exercised under Article VII, Section 2; they shall not apply to amendments to this Declaration.

Article VIII.

Architecture and Landscaping

Section 1. General. No structure or thing shall be placed, erected, or installed upon any Unit after the date it is made subject to this Declaration, and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on any property within the Community after the date it is made subject to this Declaration, except in compliance with this Article and the Architectural Guidelines.



Any Owner may remodel, paint or redecorate the interior of such Owner's Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

All buildings constructed on any property within the Community after the date such property is made subject to this Declaration shall be designed by and built in accordance with the plans and specifications approved by Declarant or its designee in its sole discretion.

This Article shall not apply to Declarant's activities during the Declarant Control Period.

Section 2. Architectural Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Community, acknowledges that as the initial owner or developer, as applicable, of the Community and as an Owner of portions of the Community as well as other real estate within the vicinity of the Community, Declarant and Approved Developer have a substantial interest in ensuring that the improvements within the Community enhance the reputation of Declarant and Approved Developer and do not impair the ability of Declarant or Approved Developer to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article as described in Article VIII, Section 1 ("**Work**") shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such Work, which approval may be granted or withheld in Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights granted by Initial Owner or reserved under this Article shall continue during the Declarant Control Period.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may, but shall not be obligated to, delegate from time to time all or a portion of its rights granted by Initial Owner or of its reserved rights under this Article to (i) an architectural review committee appointed by the Board of Directors (the "**ARC**"), (ii) an Approved Developer, or (iii) a committee comprised of architects, engineers or other persons who may or may not be Owners. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision that Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by Declarant.

(b) Architectural Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through



the ARC, shall assume jurisdiction over architectural matters hereunder. The ARC, when appointed, shall consist of not less than three persons appointed, and subject to removal and replacement, by the Board of Directors. A committee member may be an independent architect, engineer or similar professional, whose compensation, if any, shall be established from time to time by the Board. Subject to the foregoing, the members of the ARC need not be Owners.

Unless and until such time as Declarant delegates all or a portion of its rights granted by Initial Owner or of its reserved rights to the ARC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

Section 3. Guidelines and Procedures.

(a) Architectural Guidelines. Declarant may prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions that may vary according to land use and housing type and from one area of the Community to another. The Architectural Guidelines are intended to provide guidance to Owners and builders regarding matters of particular concern to the Reviewer in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Architectural Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Architectural Guidelines during the Declarant Control Period, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend. Upon termination of the Declarant Control Period or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the consent of the Board. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners and builders who seek to engage in development or construction within the Community.

(b) Procedures. Except as otherwise specifically provided in the Architectural Guidelines, no Work shall commence on any portion of the Community until an application for



approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications ("**Plans**") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall make a determination on each application within thirty (30) days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

Until expiration of the Declarant Control Period, the ARC shall notify Declarant in writing within three (3) business days after the ARC has approved any application relating to proposed Work within the scope of matters delegated to the ARC by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC.

The Reviewer shall notify the applicant in writing of the final determination on any application within five (5) days thereafter or, with respect to any determination by the ARC subject to Declarant's veto right, within five (5) days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the ten (10) day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's right to veto approval by the ARC pursuant to this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless a variance has been granted pursuant to Section 5 below. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within one year of commencement unless otherwise specified in the notice of



approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Section 4. No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

Section 5. Variances. The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Restrictions and Rules. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design.

The Reviewer shall have sole and full authority to determine matters of aesthetic judgment and the determination of the Reviewer as to such matters shall be final and shall not be subject to judicial review so long as exercised in accordance with the procedures set forth in this Article.



Declarant, the Association, the Board, any committee, or any member of any of the foregoing, shall not be held liable for soil conditions; drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not such contractor has been approved or featured by Declarant to construct homes or other structures in the Community; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the Board, the ARC, and the members of each shall be defended and indemnified by the Association.

Section 7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Reviewer shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Reviewer from taking enforcement action with respect to any condition as to which the Reviewer had notice as of the date of such certificate.

Section 8. Prohibited Improvements and Activities.

(a) Noise Disturbances. Because of the sound transmission properties that may exist within walls, placement of speakers within the shared walls of any Townhouse Unit shall be prohibited. Furthermore, Owners, their guests and tenants shall refrain from any activity or condition which is a source of unreasonable noise or interference with the peaceful possession and quiet enjoyment of any other portion of the Community by other Owners or tenants of Owners, and their respective families, invitees and guests.

(b) Games and Play Structures. No play or game structures, including basketball hoops, soccer goals or tennis courts, shall be located on any Unit or Common Areas without the prior written consent of the ARC and compliance with this Article VIII and the Architectural Guidelines promulgated from time to time. Portable basketball goals are prohibited. Except as permitted in this Article VIII, Section 8(b), there shall be no permanent athletic equipment (e.g., hockey or soccer nets or goals; skateboard, bicycle or rollerblade ramps, etc.) placed on any portion of a Unit that is visible from any adjacent or neighboring Unit, Common Area or street. Temporary skateboard, bicycle and rollerblade ramps may not cause the user to be propelled onto any street or sidewalk. All portable athletic equipment shall be removed from driveways and placed in a home, garage or rear yard of the Unit each night.

Article IX. Leasing and Sale of Units

Section 1. Leasing. In order to preserve the character of the Community as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Units shall be governed by the restrictions imposed by this Article.



(a) General. Owners desiring to lease their Units may do so only in compliance with applicable Restrictions and Rules of the Association.

(b) Signs. Except for any sign posted by the Declarant, no “For Rent” or “For Sale” signs shall be displayed on or within any Unit, as further provided in Article VI, **Error! Reference source not found.** above.

(c) Leasing Provisions. Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

(i) Notice. At least seven (7) days prior to entering into the lease of a Unit, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any Restrictions and Rules adopted pursuant thereto.

(ii) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Owner must provide the lessee copies of the Declaration, Bylaws, and the Restrictions and Rules. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board’s approval or disapproval shall be limited to the form of the proposed lease.

(iii) Liability for Assessments, Use of Common Property, and Compliance with Declaration, Bylaws, and Restrictions and Rules. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(d) Compliance with Declaration, Bylaws, and Restrictions and Rules. The lessee shall comply with all provisions of the Declaration, Bylaws, and the Restrictions and Rules (collectively, “**Governing Documents**”) and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all Occupants of his or her Unit to comply with the Governing Documents and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Governing Documents for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with Article V, Section 2 of the Bylaws. If the fine is not paid by the lessee



within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

Any violation of the Governing Documents by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Governing Documents, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Unit.

(e) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities and other amenities, if any.

(f) Liability for Assessments. When a Unit Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(g) Applicability of this Article. Notwithstanding the above, this Article shall not apply to any leasing transaction entered into by Declarant, Approved Developer, the Association, or the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, and they shall be permitted to lease without obtaining a permit.

Section 2. Sale of Units. Except for Declarant, a Unit Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the transfer or sales documents. The Unit Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board may reasonably



require. This Section shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Unit, the purchaser of the Unit shall give written notice to the Board of Directors of his or her ownership of the Unit.

Article X.

Insurance and Casualty Losses

Section 1. Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain all insurance required by Chapter 47F of the North Carolina General Statutes or any other applicable law. Without limiting the generality of the foregoing, the Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article V, Section 1 or Article III, Section 7 hereof (a "**Property Insurance Policy**"). The Property Insurance Policy shall cover all risks, loss or damage commonly insured against including, without limitation, fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts. If a Property Insurance Policy is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid United States mail to all Unit Owners. The Property Insurance Policy shall provide that (a) each Unit Owner is an insured Person under the policy to the extent of the Unit Owner's insurable interest, (b) the insurer waives its rights to subrogate under the Property Insurance Policy against any Unit Owner or member of the Unit Owner's household, and (c) no act or omission by any Unit Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the Property Insurance Policy.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property and the areas that the Association is responsible for maintaining pursuant to Article III, Section 7 insuring the Association and its members covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Property (a "**Liability Policy**"). The Liability Policy shall have a combined single limit of at least Two Million and No/100 Dollars (\$2,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through Declarant or its affiliates or an Approved Developer and to reimburse the Person so providing or arranging the insurance coverage for the cost thereof, and Declarant or its affiliates shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant or its



affiliate, as the case may be, and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant or its affiliate, as the case may be, in obtaining such coverage.

Premiums for all insurance shall be Common Expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective parties that may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in North Carolina.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto, but insurance proceeds for the loss are payable to any insurance trustee designated for that purpose or otherwise to the Association and not to any Mortgagee.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All property insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually.

(e) In addition to the requirements with respect to the Property Insurance Policy set forth above, the Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any one or more individual Owners;



(iv) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration;

(vi) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association; and

(vii) that each Unit Owner is an insured Person under the policy to the extent of the Owner's insurable interest.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2. Damage and Destruction -- Property Insured by Association.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless (i) the Community is terminated, (ii) repair or reconstruction would be illegal under any state or local health or safety statute or ordinance, or (iii) within sixty (60) days after the casualty, at least eighty percent (80%) of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or



destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Units owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the insurance proceeds attributable to the damaged Common Property shall be used to restore it to its natural state and it shall be maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition. The remainder of the insurance proceeds, if any, shall be distributed to all the Unit Owners or lienholder, as their interests may appear, in proportion to the Common Expense liabilities of all Units.

Section 3. Damage and Destruction – Units. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Unit shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Unit and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified in Article XV, Section 1 of this Declaration.

Section 4. Insurance Deductible. The deductible for any property insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

Section 5. Insurance for Townhouse Neighborhood.

The Association shall procure and maintain the following fire and extended coverage insurance, and the total costs of such insurance shall be assessed against each Townhouse Unit in equal proportions:



(a) Coverage. Each Townhouse Unit shall be insured in an amount equal to at least eighty percent (80%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing form waiver of subrogation.

(b) Liability. Public liability insurance shall be secured by the Association with respect to each Townhouse Unit with limits of liability of no less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence.

All such policies shall name the Owner as one of the named insureds as its interest appears and, upon written request, copies of said policies and renewals thereof shall be furnished to each applicable Owner. Upon failure by the Association to promptly pay the premiums due on the policy insuring the Owner's Townhouse Unit, such Owner may, but it is not required to, pay the delinquent premium(s), and shall bill the Association for such premium amount but any such Owner shall not be entitled to offset any such bill against its future assessments without express written authorization from the Association for any such offset.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

Article XI.

Condemnation

Whenever all or any part of the Common Property shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on behalf of the Association or on the written direction of all Owners of Units subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association as trustee for all Owners. The provisions of Article X, Section 2 above, applicable to damage or destruction of property insured by the Association, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

Article XII.

Annexation and Withdrawal of Property

Section 1. Annexation. Declarant shall have the right to amend this Declaration from time to time so long as Declarant owns or has rights to purchase any portion of the



Additional Property for the purpose of subjecting all or any portion of the Additional Property to this Declaration, which shall cause such real property to be annexed to and incorporated into the Community. In addition, the Declarant during the Declarant Control Period, and thereafter, the Association, with the consent of Owners of at least two-thirds (2/3) of the Units, may subject other real property located in the vicinity of the Community to the provisions of this Declaration. Any such annexation of additional real property to the Community by the Declarant or the Association shall be accomplished by filing for record in the land records of the county in which the real property to be annexed is located a Supplementary Declaration referencing this Declaration, describing the real property being annexed and the intention to subject the real estate so described to the terms and conditions of this Declaration and amending Exhibit "A" to include the subject real property to the other real property described therein. Such Supplementary Declaration shall be executed by the party having authority to complete such annexation as provided above and any other party who may be the owner of the subject real property. Any such annexation shall be effective upon the filing for record of the Supplementary Declaration, unless a later effective date is provided therein.

Section 2. Withdrawal of Property. Declarant reserves the right to amend this Declaration during the Declarant Control Period for the purpose of removing any portion of the Community then owned by Declarant or its affiliates or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community and Declarant and any applicable Approved Developer has given its consent to such removal. Any such withdrawal shall be accomplished by the filing for record of an amendment to this Declaration describing the property removed and shall be effective upon filing for record in the land records of the county or counties where the Community is located unless a later effective date is provided therein. Notwithstanding the foregoing, any amendment by Declarant to remove any portion of the Community then owned by Declarant or its affiliates or the Association from the coverage of this Declaration shall be executed by Declarant and the owner(s) of the property being removed and shall not require the vote or consent of any other Person.

Article XIII.

Mortgagee Provisions

The following provisions are for the benefit of holders of first Mortgages on Units in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Unit number) (therefore becoming an "**Eligible Mortgage Holder**") will be entitled to timely written notice of:



(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days;

(c) any lapse, cancellation or material modification of any insurance policy maintained by the Association; or

(d) any proposed action that would require the consent of a specified percentage of Mortgage holders.

Section 2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 3. Notice to Association. Upon request, each Unit Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

Section 4. Amendments by Board. If the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements that necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 5. Applicability of Article XIII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

Section 6. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

Article XIV. **Easements**

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Unit and such portion or portions of the Common Property adjacent thereto or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance of not more



than five (5) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Property or as between adjacent Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant or the Association.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Unit shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Unit, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Unit Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests and invitees;

(ii) the right of the Association to suspend the voting rights of a Unit Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Unit that is hereby provided for remains unpaid; and, for a reasonable period of time, for an infraction of the Declaration, Bylaws, or Restrictions and Rules;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant and/or its affiliates, Approved Developer and/or its affiliates, any Unit or Unit Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant, Approved Developer, or any Unit Owner encumbering any Unit or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, interests, options, easements or privileges herein reserved or established for the benefit of Declarant and/or its affiliates, Approved Developer and/or its affiliates, any Unit or Unit Owner, and/or the holder of any Mortgage, irrespective of when executed, given by Declarant, Approved Developer, or any Unit Owner encumbering any Unit or other property located within the Community); no such Mortgage given by the Association shall be effective unless an instrument agreeing to such Mortgage has been approved by Owners representing at least eighty percent (80%) of the Total Association Vote (other than Declarant so long as the consent of Declarant is required) and the consent of Declarant (during the Declarant Control Period) and the consent of Approved Developer (during the Declarant Control Period);



(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association; no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (during the Declarant Control Period) and Owners representing at least eighty percent (80%) of the Total Association Vote;

(v) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property to government entities, any quasi-governmental agency or to any utility company or cable television company;

(vi) all other rights of the Association, Declarant, Approved Developer, Owners and Occupants set forth in this Declaration, in any Supplementary Declaration or in any deed conveying Common Property to the Association; and

(vii) all encumbrances and other matters shown by the public records affecting title to the Common Property.

(b) Any Unit Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his family, his tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Unit if leased.

Initial Owner hereby grants and establishes for the benefit of each Unit a nonexclusive easement for access to and from the Common Property within the Community. Until such time as any shared amenity or other property that is intended to become Common Property is transferred to the Association, Initial Owner further grants and establishes for the benefit of each Unit a nonexclusive easement for use access to and from such shared amenity or other property.

Section 3. Easements for Utilities. There is hereby granted to the Association blanket easements upon, across, above and under all property within the Community for access to, ingress to, egress from, installation of, repairing, replacing and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity utilities, as well as storm drainage and any other service, such as, but not limited to, a master television antenna system, cable television system, or security system, which Declarant, the Approved Developer, or the Association might decide to have installed to serve the Community or portions thereof; provided, however, that no such easement may unreasonably interfere with an Approved Developer's ability to construct dwellings on the Units. It shall be expressly permissible for Declarant, the Approved Developer, the Association, or the designees of either, as the case may be, to install, repair, replace and maintain, or to authorize the installation, repairing, replacing and maintaining, of such wires, conduits, cables and other equipment related to the providing of any such utility or service; provided, however, that during the Declarant Control Period, the location of such equipment shall be subject to the reasonable review and approval of Declarant and the applicable Approved Developer owning the affected property. Should any party furnishing any such utility or service



request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

Section 4. Easements for Association Maintenance. There is hereby expressly granted to the Association a perpetual easement across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 5. Easements for Maintenance and Repair. There shall be reciprocal appurtenant easements between adjacent Units for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping, located on each Unit, which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Units and along a line perpendicular to such boundary at such point. The easement shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Unit Owner exercising this easement right shall be liable for the prompt repair of any damage to the Unit over which this easement is exercised that is caused by the maintenance or repair work. The damaged portions of such Unit shall be restored to substantially the same condition as existed prior to the damage.

Section 6. Easements for Entry. In addition to the right of the Board to exercise self-help as provided in Article XV, Section 2 hereof, the Board shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security and safety reasons, which right may be exercised by the manager and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

Section 7. Easements for Entry Features and Street Signs. There is hereby reserved to Declarant, the Approved Developer, the Association, and the designees of either, an easement over and upon all of the Community for ingress to, egress from, installation, construction, landscaping and maintenance of streetscapes, entry features and street signs for the Community, including without limitation those areas of the Community labeled as a "streetscape" area on any Plat for the Community, recorded by Declarant and/or Approved Developer in the land records of the county where the Community is located. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around all entry features and/or within any such "streetscape" area and the right to grade the land under and around the entry features or within the "streetscape" areas.



Section 8. Easements for Common Driveways. Initial Owner hereby creates joint and reciprocal easements in perpetuity for vehicular and pedestrian traffic in, upon, over and across those areas, if any, shown on any Plat for the Community, recorded by Declarant and/or Approved Developer in the land records of the county or counties where the Community is located, as a common driveway (or such similar or equivalent language as would indicate that such area is a common driveway among two or more Units) (hereinafter referred to as a “**Common Driveway**”). These easements shall be for the benefit of any Owner of a Unit upon which a Common Driveway is located and shall be for access to and ingress and egress to and from such Owner’s Unit by such Owner, and his or her family members, invitees, and designees in, upon, over and across the Common Driveway. Any Common Driveway shall continue to be used for this purpose by the Owners of the Units upon which such Common Driveway is located and by the subsequent Owners and successors-in-title to such Units. In connection with the reservation of these easements, it is acknowledged and agreed that the Owner of a Unit burdened by these easements will be required to use the easements for access to and ingress and egress to and from such Owner’s Unit and that such easements are critical to the future use and enjoyment of such Owner’s Unit. No Owner shall be allowed to change, alter or diminish the rights of an Owner of a Unit burdened by these easements to the use and enjoyment of the Common Driveway on such Owner’s Unit. This Section shall not apply to any alleys in the Community and any common driveways which are not located on a Unit in the Community.

Each Common Driveway shall be cleaned, maintained, repaired and replaced as a joint effort by the Owners of the Units upon which such Common Driveway is located. This responsibility and the cost thereof shall be shared on an equal basis by each of said Owners, notwithstanding the respective use of the Common Driveway by the Owners of the Units upon which such Common Driveway is located. In order to protect the value of the respective Units and to ensure the proper use and enjoyment of the respective Units, the owner of a Unit upon which a Common Driveway is located shall have the full and unrestricted right to cause the cleaning, maintenance, repair and replacement of the Common Driveway located on such Owner’s Unit as may be necessary to ensure that such Common Driveway is maintained in a good, proper and functional condition and appearance. The failure by any Owner of a Unit upon which a Common Driveway is located to pay when due his or her portion of any expense incurred by another Owner of a Unit upon which such Common Driveway is located for cleaning, maintenance, repair and replacement of such Common Driveway shall be a violation of the covenants and restrictions set forth in this Declaration, and such nonpaying Owner shall be liable to the Owner who performed such cleaning, maintenance, repair and replacement for his or her portion of such expense, plus costs and expenses, including reasonable attorney’s fees, incurred by such Owner in collecting such amount.

Section 9. Easements for Encroachments. The dwellings located on the Units may have certain eaves, roof overhangs, building materials and other structures attached to the walls and roofs of such dwellings which may encroach over or extend into the air space, improvements and/or real property located on adjoining or contiguous Units and/or Common Property. All of the Units and the Common Property shall be subject to easements for encroachments and for the maintenance, repair and replacement thereof as a result of construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement so



long as such encroachment exists. If any such Unit, including any dwelling located thereon, is damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, the Owner of such Unit shall have an easement to reconstruct such encroachments in connection with the reconstruction of such dwelling. Easements shall also exist for encroachment upon the Common Property and/or Units as necessary for the express purpose of maintenance, repair and restoration of any Unit or structure located thereon. The easements shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance, repair and restoration. The Owner of the Unit exercising the easement right shall be liable for the prompt repair of any damage to the property over which the easement is exercised which is caused by the maintenance, repair or restoration work. The damaged portions of such property shall be restored to substantially the same condition as existed prior to the damage.

Section 10. Easement for Private Street, Sidewalks and Signs. Initial Owner hereby grants, conveys, declares, creates, imposes and establishes a perpetual, nonexclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets, alleys and drives as depicted on the recorded subdivision Plats for the Community. The right-of-way easement herein granted shall permit joint usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants. Initial Owner hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any such easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional nonexclusive easements to third parties, over, under and across the easement area. Initial Owner hereby reserves for the benefit of Declarant and grants to Approved Developer, and to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across the private streets, alleys and drives for the installation, maintenance, and use of such streets, alleys, drives, sidewalks, traffic directional signs, grading for proper drainage, and related activities and improvements.

Section 11. Mailbox and Trash Receptacle Easement. Initial Owner hereby declares, creates, imposes and establishes a non-exclusive joint and reciprocal easement in perpetuity over and across an area five (5) feet wide running along and contiguous to the boundary line of any private streets in the Community for the installation of and use and enjoyment of mailboxes and the placement of trash receptacles for pickup. Each mailbox shall be of a standard type as approved under Article VI hereof.

Section 12. Easement for Drainage. Initial Owner hereby grants to Declarant, Approved Developer, and the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision Plat(s) for the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Community or any portion thereof (but without obligation on the part of Declarant or Approved Developer). This easement shall include the right (but not the obligation on the part of Declarant, Approved Developer) to



construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. In addition, there is hereby granted to Declarant, Approved Developer, and the Association a blanket easement across all Units for creating and maintaining satisfactory drainage in the Community (but without obligation on the part of Declarant or Approved Developer); provided, however, such easement area shall not include any portion of a Unit within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Units will result from the construction of impervious surface within the Community. Neither Declarant, Approved Developer, the Association, nor any builder or Owner constructing according to plans and specifications approved or deemed approved under Article VIII hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from such construction.

Section 13. Unit Owner - Easement for Utilities. Initial Owner hereby establishes for the benefit of each Unit a nonexclusive easement for installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Unit and situated in, on or under any other Unit or the Common Property. The Board of Directors, and without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements, and other easements, permits or licenses necessary or desirable for the proper maintenance or operation of the Community under, through, or over the Units, and the Common Property as may be reasonably necessary to or desirable for the ongoing operation of the Community. In the event that any Owner desires access to the attic or other areas of another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owners of such Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such Units and the property the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 14. Easements for Public Service Personnel. Police, fire, water, health and other authorized municipal officials, employees and their vehicles, including the ; paramedic, rescue and other emergency personnel and their vehicles and equipment; school bus and U.S. Postal Service delivery drivers and their vehicles; private delivery or courier service personnel and their vehicles; and persons providing garbage collection services within the Development and their vehicles and equipment will each have a perpetual, non-exclusive easement for access, ingress and egress over the Community's Property, including any private roadways constituting a portion of a Neighborhood, for the performance of their official duties. Such easement shall include access to and maintenance of any utilities or stormwater facilities or BMP upon the Association's failure to discharge any duties it may have therefore.



Article XV. General Provisions

Section 1. Enforcement. Each Owner and every Occupant of a Unit shall comply strictly with the Bylaws, the Restrictions and Rules, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his or her Unit, if any. The Board of Directors may impose fines for violations of the Declaration, Bylaws, or Restrictions and Rules in accordance with the Bylaws and the Act, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the Restrictions and Rules shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, Restrictions and Rules or use restrictions and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Unit or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition that violates this Declaration, the Bylaws, the Restrictions and Rules or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Unit Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Unit Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually, until terminated by the agreement of the Owners of at least eighty (80%) percent of the Units as provided in the North Carolina Planned Community Act. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

It is the intention of Declarant that the Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or replacement statute or any other applicable law that would or could terminate the Declaration other than in the



manner provided for termination herein. Accordingly, the Association, in its discretion, may at any time and from time to time, re-record in the land records of the county where any portion of the Community is located the Declaration or some memorandum or other notice hereof in order to continue the Declaration in full force and effect and/or to qualify the Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other applicable law.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Unit unless any such Unit Owner shall consent thereto in writing. Further, and notwithstanding the above, at any time during the Declarant Control Period, Declarant shall have the right, in its sole and absolute discretion, to make any amendments or modifications to this Declaration which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to procedural, administrative or substantive provisions of this Declaration, without obtaining the approval of any Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of Owners of at least sixty-seven percent (67%) of the Total Association Vote and the consent of Declarant (during the Declarant Control Period). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration that reserves or grants special rights to Declarant and/or its affiliates, and/or to Approved Developer and/or its affiliates, shall be amended without the prior written consent of any of the foregoing affected by such amendment during the Declarant Control Period. Further, no provision of this Declaration shall be amended that would have a material adverse effect on the rights and/or easements of Declarant and/or its affiliates, and/or to Approved Developer and/or its affiliates granted under this Declaration without the prior written consent of any of the foregoing affected by such amendment during the Declarant Control Period.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in a court of competent jurisdiction in a county in which the Community is located within one (1) year of the recordation of such amendment.



Section 5. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 6. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 7. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 8. Conveyance of Property to Association; No Implied Rights. Declarant and its affiliates and/or Approved Developer and its affiliates (with the consent of Declarant during the Declarant Control Period) may transfer or convey to the Association at any time and from time to time any personal property or any interest in improved or unimproved real property. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its members. During the Declarant Control Period, Declarant or Approved Developer (with the consent of Declarant) may, upon written notice to the Association, require the reconveyance by the Association to Declarant or Approved Developer, or the designees of either, of any Common Property or any portion thereof, improved or unimproved, at no charge to Declarant, Approved Developer or their designees, without a vote of the Owners/members of the Association, if the Common Property or portion thereof is: (i) found by Declarant or Approved Developer to have been conveyed in error, (ii) needed by Declarant or Approved Developer in order to make adjustments in property boundary lines, or (iii) reasonably determined by Declarant or Approved Developer to be needed due to changes in the overall scheme of development for the Community. During the Declarant Control Period, Declarant shall have the further right to transfer or convey to the Master Association at any time and from time to time any personal property or any interest in improved or unimproved real property in accordance with the terms and provisions of the Master Declaration.

The Association hereby constitutes and appoints Declarant and its assigns as the Association's agent and attorney-in-fact to accept/make on behalf of the Association any such conveyances and reconveyances and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any of the foregoing conveyances and reconveyances, and all of the acts of such attorney-in-fact are hereby ratified. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise.



Declarant, Approved Developer, and their affiliates shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section, and Declarant, Approved Developer, and their affiliates shall have no duty or obligation to convey any property or property rights to the Association, regardless of whether or not any such property has been made available for the use of Owners. The Association shall also accept assignment of, and shall assume and agree to perform, any contracts entered into by Declarant, Approved Developer, and their affiliates for the benefit of the Association, its members or the Owners, including, without limitation, detention pond maintenance agreements and all types of utility easements.

Declarant, and/or Approved Developer (with the consent of Declarant during the Declarant Control Period) may reserve, by condition, restriction, lease, license, easement or otherwise, such rights of use and enjoyment in and to all or any portion of the property conveyed as Declarant and/or Approved Developer may reasonably require, so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision Plat, nor the use by the Owners or maintenance by the Association of any property, shall create any rights, easements or licenses in the Association or the Owners, express or implied, unless and until any such property, rights, easements or licenses are conveyed to the Association or the Owners, as the case may be, by an instrument recorded in the Office of the Register of Deeds of the county or counties where the property is located.

Section 9. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 10. Indemnification. In accordance with, and to the full extent allowed by, the North Carolina Nonprofit Corporation Act, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association, or as an ARC member, against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, suit or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association or the ARC and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances.

Section 11. Construction and Sale Period. Notwithstanding any provisions contained in the Governing Documents, Declarant hereby expressly reserves unto itself and its successors and assigns, and grants to Approved Developer and its successors and assigns, a non-exclusive, perpetual right, privilege, and easement with respect to the Community for the benefit of Declarant, its successors and assigns and the Approved Developer, its successors and



assigns, over, under, in, and/or on the Community, without obligation and without charge to Declarant or the Approved Developer, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair or replacement in the Community and any other property now owned or that may in the future be owned by Declarant or Approved Developer. The reserved easement shall constitute a burden on the title to the Community and specifically includes, but is not limited to:

(a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; and the right to tie into any portion of the Community with streets, driveways, parking areas and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee payable to the Association or any Owner for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(b) the right to use (continually or from time to time) without charge any clubhouse or similar structure and appurtenant recreational facilities, if any, for business purposes or company functions and any similar use, including, but not limited to, sales and marketing meetings, offices for sales or other employees and agents, a design studio and employee parties; and

(c) the right to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model residences, construction trailers and sales offices in the Community.

No rights, privileges and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Community, but shall be held independent of such title, and no such right, privilege or easement shall be surrendered, conveyed or released unless and until and except by delivery of a quitclaim deed from Declarant and the Approved Developer releasing such right, privilege or easement by express reference thereto.

If these reserved easements are exercised without annexing any Additional Property to the Community, the owners of the affected Additional Property shall share the costs, if any, of using and maintaining utility and similar facilities, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities, with the Owners in the Community in the proportion that the number of completed dwellings on the affected Additional Property bears to the sum of the number of completed dwellings on the affected Additional Property plus the number of Units in the Community. The costs of maintenance and repair of Community streets and driveways shall likewise be apportioned to the affected Additional Property if the only means of vehicular access to the affected Additional Property is across the Community. For the purposes of this provision, a dwelling on the affected Additional Property shall be considered completed when a certificate of occupancy has been granted. The allocation of expenses and the collection therefor may be done on a monthly, quarterly or annual basis as may reasonably be determined by the Association in accordance with this Declaration. If any of the Additional Property is added to the Community, from the time of the annexation, the sharing



of costs and expenses and the use of any property so added shall be governed by this Declaration, rather than by these reserved easements.

This Section shall not be amended without the prior written consent of Declarant and Approved Developer during the Declarant Control Period.

Section 12. Books and Records.

(a) Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 13. Financial Statements. Financial statements for the Association shall be compiled annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's financial statements at the annual meeting, the Owners, by a Majority vote, may require that the financial statements of the Association be audited as a Common Expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request.

Section 14. Notice of Sale or Lease. In the event an Owner sells or leases his or her Unit, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Unit and such other information as the Board may reasonably require.

Section 15. Agreements. Subject to the prior approval of Declarant, during the Declarant Control Period, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors



shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 16. Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

Section 17. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation of the Association, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 18. Use of Recreational Facilities by Nonmembers. During the Declarant Control Period, Declarant shall have the right to grant to persons who are not members of the Association permission to use the Community recreational facilities (if any). The extent and duration of nonmember use and the fee to be charged therefor shall be determined solely by Declarant, with the consent of the Approved Developer. For so long as Declarant or an affiliate of Declarant or Approved Developer or an affiliate of Approved Developer owns such recreational facilities, nonmember user fees shall be paid to such entity. If such recreational facilities are conveyed to the Association, nonmember user fees due and payable after the date of such conveyance shall be paid to the Association. If the Association chooses to continue to offer such rights to persons who are not members of the Association, the amount of such person's payments may be increased each year by the Board so long as the percentage increase (as compared to the previous year's installment) does not exceed the percentage increase in the annual assessment levied against members of the Association (as compared to the previous year's assessment).

Unless otherwise determined by the Person granting such nonmember user rights, any use right granted to nonmembers which extends beyond the termination of the Declarant Control Period shall be valid and may not be terminated by the Association so long as the terms and conditions imposed upon nonmember use by Declarant or Approved Developer are complied with by the nonmember user.

Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege and easement with respect to the Community for the benefit of Declarant, its successors, assigns, Approved Developer, its successors, assigns, and the above discussed nonmember users, over, under, in and/or on the Common Property of the Community (including, without limitation, the above described recreational facilities), without obligation and without charge to the foregoing, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. Such



right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, on or in the Community roads, parking areas and walkways.

Declarant, its partners and affiliates, Approved Developer, its partners and affiliates, and the officers, directors, shareholders, employees, agents, successors and assigns of any of the foregoing, shall not be liable for and are hereby held harmless by the Association from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case, the Association's sole remedy shall be to suspend the use right of the nonmember who has not timely paid until all amounts owed are paid. Declarant, its partners and affiliates, Approved Developer, its partners and affiliates, and the officers, directors, shareholders, employees, agents, successors and assigns of any of the foregoing, shall also not be liable for and are hereby held harmless by the Association from any personal injury or property damage caused by a nonmember entitled to use the above described recreational facilities.

Section 19. Security.

(a) Declarant, Approved Developer, and the Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community and the Units safer than they otherwise might be. HOWEVER, THE ASSOCIATION, DECLARANT, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, APPROVED DEVELOPER, ITS PARTNERS AND AFFILIATES, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING, SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, NOR SHALL ANY OF THE FOREGOING BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, DECLARANT, ITS PARTNERS AND AFFILIATES, APPROVED DEVELOPER, ITS PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING, ARE NOT INSURERS AND THAT EACH PERSON USING THE COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO PROPERTY, TO UNITS, AND TO THE CONTENTS OF UNITS AND THE STRUCTURES THEREON RESULTING FROM ACTS OF THIRD PARTIES.



Section 20. Conflict. In the event of a conflict between the provisions of this Declaration and the provisions of North Carolina law, then to the extent that the provisions of North Carolina law cannot be waived by agreement, North Carolina law shall control.

Section 21. Emergency Powers. In the event of a natural disaster or other catastrophic emergency that renders the operation of the Association or the Board impracticable, actions required hereunder may be taken by meetings and votes (where required herein) over telephone or electronic mail communications as appropriate. Each Unit Owner consents to transacting such business over electronic mail and shall submit a valid electronic mail address to the Board for use in such situations.

Section 22. Special Declarant Rights. In addition to all rights granted to Declarant hereunder, Declarant hereby reserves, during the Declarant Control Period, all rights listed in subsection 47F-1-103(28) of the Act, which include, without limitation, the right to (i) to complete improvements indicated on Plats and plans on file with Declarant; (ii) to exercise any development rights; (iii) to maintain sales offices and construction models, management offices, and signage advertising the Community; (iv) to use easements through the Common Property for the purpose of making Improvements within the Community; (v) to make the Community part of a larger planned community or group of planned communities; or (vi) to appoint or remove any officer or Association Board member. Declarant may freely assign or transfer any or all Special Declarant Rights, or any other rights of Declarant hereunder, in whole or in part, by one or more instrument.

Section 23. Transfer of Declarant Rights. So long as the Lot Purchase Agreement remains in effect, Declarant shall be entitled to exercise all rights granted to the "Declarant" under this Declaration irrespective of its ownership interest in the real property described in Exhibit "A" attached hereto or otherwise constituting the Community; provided, however, that upon any termination of the Lot Purchase Agreement before all the lots which are the subject of the Lot Purchase Agreement are acquired, Initial Owner may file of record a Notice of Termination in the Orange County Registry, whereupon all of the rights of Ashton Raleigh Residential L.L.C., its successors and assigns, as the "Declarant" under this Declaration except for the Reserved Special Declarant Rights shall cease and all Declarant rights except the Reserved Special Declarant Rights shall thereafter vest solely in Initial Owner. Initial Owner shall thereafter be free to exercise all the rights of the "Declarant" under this Declaration and transfer the same as provided herein.

Article XVI.

DISPUTE RESOLUTIONS AND LIMITATION ON LITIGATION

Section 1. Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Declarant, Approved Developer, all persons or entities subject to this Declaration, and any person or entity not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**") agree to encourage the amicable resolution of disputes involving the Community in order to avoid the emotional and financial costs of litigation. Accordingly, to the extent permitted under applicable law, each Bound Party



covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Community including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles, or the design, construction, maintenance, habitability of, or condition of any Unit or any Common Property (collectively “**Claim**”), except for those Claims authorized in Section 2 below, shall be resolved using the procedures set forth in Section 3 below in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

Section 2. Exempt Claims. The following Claims (“**Exempt Claims**”) shall be exempt from the provisions of Section 1 above:

(a) Any suit by the Association against any Bound Party to enforce the provisions relating to Common Expenses;

(b) Any suit by the Association to obtain a temporary restraining order or equivalent emergency equitable relief and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions relating to architectural control or use restrictions;

(c) Any suit to enforce purchase and sale contracts for individual Units;

(d) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim that would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, Bylaws, Articles or rules of the Association;

(e) Any suit arising out of a written contract between Owners that would constitute a cause of action under the laws of the State of North Carolina in the absence of the Declaration, Bylaws, and Articles of the Association;

(f) Any suit in which all parties are not Bound Parties; and

(g) Any suits or actions by a Mortgagee for enforcement of a Mortgage or other loan documents

Further, to the fullest extent permitted under applicable law, Declarant and each Approved Developer shall have the right, in each of their sole discretion, to choose to make any claim in which Declarant and/or the Approved Developer is a party an Exempt Claim. Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 3 shall require the approval of the Association.



Section 3. Mandatory Procedures for All Other Claims. To the extent permitted under applicable law, all claims other than Exempt Claims shall be resolved using the following procedures:

(a) **Notice.** Any Bound Party having a claim (“**Claimant**”) against any other Bound Party (“**Respondent**”), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the “**Notice**”), stating plainly and concisely:

- (i) The nature of the Claim, including date, time, location, persons involved and Respondent’s role in Claim;
- (ii) The basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the claim arises);
- (iii) What Claimant wants Respondent to do or not to do to resolve the Claim; and
- (iv) That the Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) **Negotiation.**

- (i) Each Claimant and Respondent (the “**Parties**”) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.
- (ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) **Mediation.**

- (i) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“**Termination of Negotiations**”), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the same geographical area upon which the Parties may mutually agree.
- (ii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and



all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

- (iii) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation**"). The Termination of Mediation notice shall set forth when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.
- (iv) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("**Settlement Demand**") to the Respondent. The Respondent shall make a formal written settlement offer ("**Settlement Offer**") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.
- (v) The Parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(d) Final and Binding Arbitration. To the extent permitted under applicable law, any and all claims, disputes and controversies (other than Exempt Claims) by and between Declarant, Approved Developer, Association and/or Owners or any combination thereof arising from or related to the Community (including Units and Common Property), any improvements to the Community, the sale of property in the Community, including, without limitation, any claim of breach of contract or warranty, negligence, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealings, shall be settled by binding arbitration before a single arbitrator if the aggregate amount sought by party or group of similarly situated parties is less than or equal to \$500,000.00; and in the event the aggregate of the claims and counterclaims by any party or group of similarly situated parties in the arbitration proceeding exceeds \$500,000.00, the arbitration proceeding shall be conducted and decided by a panel of three (3) neutral arbitrators. The arbitrator or arbitrators, as the case may be, shall be mutually agreed upon by the parties, each being a practicing attorney actively engaged in the practice of law for at least ten (10) years in the area of commercial real estate or construction law or a retired judge of the State of North Carolina who has served on the bench for at least ten (10) years. Arbitration will be governed by the commercial or construction arbitration rules of the American Arbitration Association ("AAA"), whichever is applicable, but will not be administered by the AAA unless the parties so agree. If there is an impasse in the



selection of a single arbitrator or an arbitration panel, as the case may be, a party may make a motion to compel arbitration with the superior court for Orange County, North Carolina and ask the court to resolve the selection of arbitrators.

(e) This arbitration agreement shall inure to the benefit of, and be enforceable by, all successors and assigns of the parties. Any party shall be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self-executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, arbitrability, revocability or voidability for any cause, the scope of arbitrable issues, and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement and, notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The compensation for the arbitrator or arbitrators, as the case may be, shall be borne equally by the arbitrating parties. Any additional fees shall be assessed by the party incurring the same unless assessed in accordance with the arbitration award. Parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC §1 *et seq.*) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or (ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms.

The venue of the arbitration hearing shall be in Orange County, North Carolina. Unless all parties necessary for a complete and consistent resolution of the Claim as determined by Declarant can be joined in the arbitration proceeding or unless all other Claims necessary for a complete and consistent resolution of the Claim as determined by Declarant can be consolidated, then Declarant may elect to have the Claim heard in a court of law. Unless Declarant otherwise consents, all claims and causes of action of all persons and entities to enforce (or who are bound by) this arbitration provision shall be asserted in a single arbitration proceeding and multiple parties may be joined in the arbitration proceeding so that all Claims may be resolved in one forum. No Claim may be asserted that would be barred by the statute of limitations or the statute of repose. In any arbitration proceeding, requests for production of documents may proceed as provided under Rule 34 of the Federal Rules of Civil Procedure (were the claims and causes of action being asserted in the United States District Court). Depositions may be taken as allowed



by the arbitration panel, which panel shall reasonably limit the number of depositions in order to avoid unnecessary or unreasonable expense, delay, or harassment.

The law of the State of North Carolina, including but not limited to *res judicata* and collateral estoppel, but without regard to principles of conflict of laws, shall be applicable to any arbitration award. In any arbitration hearing, there shall be a court reporter and a transcript of the hearing. The arbitration award shall be in writing and rendered within 30 days after the close of the hearing, shall be signed by the sole arbitrator or a majority of the arbitrators, shall include findings of fact and conclusions of law, and shall include a breakdown as to specific claims. Subject to an internal appeal of the award as hereinafter provided, judgment on the arbitration award may be entered in accordance with applicable law in any court having jurisdiction thereof. The parties submit to the jurisdiction of the courts of North Carolina sitting in Orange County to compel arbitration or to enter judgment on an arbitration award. In the event a party fails to proceed with arbitration, unsuccessfully challenges or appeals the arbitrators' award, or fails to comply with the arbitration award, the other party is entitled to costs of suit including a reasonable attorneys' fee for having to compel arbitration or defend or enforce the award. Otherwise, each party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration including, without limitation, the costs of a court reporter and transcript of the hearing.

The threshold amounts for determining whether a Claim will be heard by a panel of three (3) arbitrators rather than a single arbitrator shall be automatically increased every fifth anniversary of the recording of this Declaration based on changes in the *Consumer Price Index for All Urban Consumers for the U.S. City Average for All Items, 1982-84=100* published by the U.S. Department of Labor, Bureau of Labor Statistics (the "**Index**") after the recording of this Declaration. The Index which is published most immediately preceding the applicable anniversary of the recording of this Declaration ("**Extension Index**") shall be compared with the Index published most immediately preceding the date of the recording of this Declaration ("**Beginning Index**"). If the Extension Index has increased over the Beginning Index, the applicable threshold amount shall be increased by multiplying such threshold amount by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. The threshold amounts shall not be decreased below the amounts stated in this Article. If the Index is changed so that the base year differs from that used most immediately preceding the date the term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

(f) Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with the above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth above and, in such event, the Party taking action to enforce the agreement



or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, reasonable attorney's fees and court costs.

(g) Litigation. No judicial or administrative proceeding may be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article IV hereof, (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made by Declarant pursuant to Article XIII, Section 4 hereof, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

[continued on next page]



IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed the day and year first above written.

OWNER:

GREAT WATERSTONE, LP,
a North Carolina limited partnership

By: LR Waterstone, Inc.,
a North Carolina corporation – General Partner

By: _____ (SEAL)
Name: SEYMOUR TOFFE
Title: VICE PRESIDENT

STATE OF _____

COUNTY OF _____

I, a notary public for the aforesaid County and State, certify that SEYMOUR TOFFE, the VICE PRESIDENT, of LR WATERSTONE, INC., a North Carolina corporation, the General Partner of GREAT WATERSTONE, LP, a North Carolina limited partnership, appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said entities.

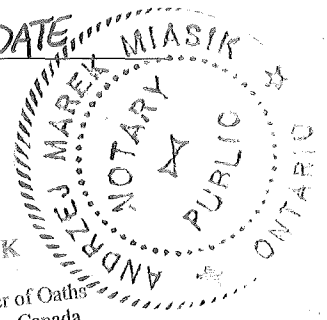
Witness my hand and official seal this 13 day of Nov., 2013.

Notary Public: [Signature]

My Commission Expires: NO EXP. DATE

[NOTARIAL SEAL]

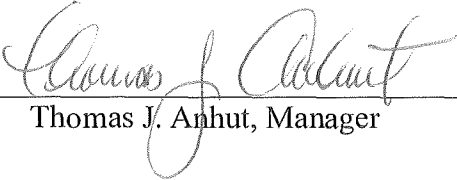
ANDRZEJ M. MIASIK
Barrister & Solicitor
A Notary Public and Commissioner of Oaths
in and for the Province of Ontario, Canada





DECLARANT:

ASHTON RALEIGH RESIDENTIAL L.L.C.,
a North Carolina limited liability company

By: 
Thomas J. Anhut, Manager

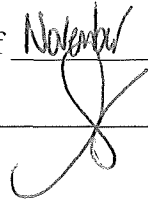
STATE OF North Carolina

COUNTY OF Wake

I, a notary public for the aforesaid County and State, certify that Thomas J. Anhut, Manager of ASHTON RALEIGH RESIDENTIAL L.L.C., a North Carolina limited liability company, appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said entity.

Witness my hand and official seal this 14 day of November, 2013.

Notary Public: _____

 Mary Hill Herold

My Commission Expires: _____

9-24-16

[NOTARIAL SEAL]





The Association has executed this instrument for the purpose of consenting to all of the terms and provisions of this Declaration.

ASSOCIATION:

WATERSTONE RESIDENTIAL NEIGHBORHOOD ASSOCIATION, INC., a North Carolina nonprofit corporation

By: [Signature]
Print Name: Thomas J. Anhut
Title: President

STATE OF NORTH CAROLINA

COUNTY OF Wake

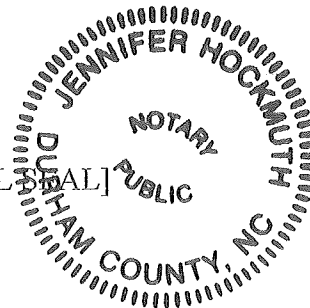
I, Jennifer Hockmuth, a Notary Public, do hereby certify that Thomas J. Anhut personally came before me this day and acknowledged that he is the President of Waterstone Residential Neighborhood Association, Inc., a North Carolina nonprofit corporation, and acknowledged the due execution of the foregoing instrument on behalf of said company.

WITNESS my hand and official stamp or seal this 15th day of November, 2013.

[Signature]
Notary Public

My Commission Expires: 12-18-13

[NOTARIAL SEAL]





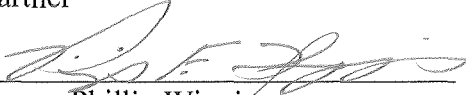
SLF II NC-Waterstone, LLC, as declarant under the Master Declaration, and Master Association have executed this instrument for the limited purpose of evidencing their respective consent to the extent required under the Master Declaration.

DECLARANT UNDER MASTER DECLARATION:

SLF II NC-WATERSTONE, LLC, a Texas limited liability company


By: The Stratford Company, L.P., a Texas limited partnership, its
managing member

By: Stratford Management, Inc., a Texas corporation, its
general partner

By: 
Print Name: Phillip Wiggins
Title: President

MASTER ASSOCIATION:

WATERSTONE OWNERS ASSOCIATION, INC., a North Carolina nonprofit
corporation

By: 
Print Name: S. Randall Nairne
Title: President



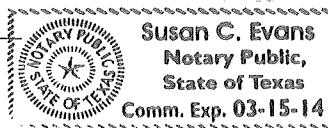
STATE OF ~~NORTH CAROLINA~~ ^{TEXAS}

COUNTY OF DALLAS

I, SUSAN C. EVANS, a Notary Public, do hereby certify that Phillip Wiggins personally came before me this day and acknowledged that he is the President of Stratford Management, Inc., a Texas corporation, which is the general partner of The Stratford Company, L.P., a Texas limited partnership, which is the managing member of SLF II NC-Waterstone, LLC, a Texas limited liability company, and acknowledged the due execution of the foregoing instrument on behalf of said company.

WITNESS my hand and official stamp or seal this 14th day of NOVEMBER, 2013.

[Signature]
Notary Public



My Commission Expires: 3-15-2014

[NOTARIAL SEAL]

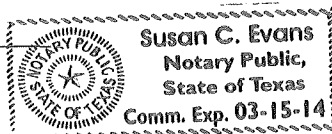
STATE OF ~~NORTH CAROLINA~~ ^{TEXAS}

COUNTY OF DALLAS

I, SUSAN C. EVANS, a Notary Public, do hereby certify that S. RANDALL NEANE personally came before me this day and acknowledged that he is the President of Waterstone Owners Association, Inc., a North Carolina nonprofit corporation, and acknowledged the due execution of the foregoing instrument on behalf of said company.

WITNESS my hand and official stamp or seal this 14th day of NOVEMBER, 2013.

[Signature]
Notary Public



My Commission Expires: 3-15-2014

[NOTARIAL SEAL]



EXHIBIT "A"

Real Property Subjected to the Declaration

BEING all New Tract 3B as shown on that certain Plat appearing of record in Book 111, Page 112 in the Office of the Register of Deeds of Orange County, North Carolina. This real property shall be considered as separate Neighborhood as described in Article III, Section 6. Other Neighborhoods may be designated in the future as provided in Article III, Section 6.



EXHIBIT "A-1"

Additional Property

BEING all New Lot 3A as shown on that certain Plat appearing of record in Book 111, Page 112 in the Office of the Register of Deeds of Orange County, North Carolina; and

BEING all New Tract 1 as shown on that certain Plat appearing of record in Book 99, Page 138 in the Office of the Register of Deeds of Orange County, North Carolina.

TOGETHER WITH all New Lot 3 as shown on that certain Plat appearing of record in Book 104, Page 169 in the Office of the Register of Deeds of Orange County, North Carolina.



EXHIBIT "B"
BYLAWS OF
WATERSTONE RESIDENTIAL NEIGHBORHOOD ASSOCIATION, INC.

Article I.
Definitions

Unless otherwise defined herein, the words, phrases and terms used in these Bylaws shall have the meanings set forth in the Declaration of Protective Covenants and Easements for Waterstone Residential, recorded in the office of the Register of Deeds for Orange County, North Carolina, to which a copy of these Bylaws is attached as an Exhibit (the "**Declaration**"; the Declaration, these Bylaws, and the Articles of Incorporation of the Association are hereinafter collectively referred to as the "**Documents**").

Article II.
Administration of Property

Section 1. Authority and Responsibility. Except as otherwise specifically provided in the Documents, the Association shall be responsible for administering, operating, and managing the Common Property and taking such actions permitted or required by it in the Documents.

Section 2. Official Action. Unless specifically required in the Documents, all actions taken or to be taken by the Association shall be valid when approved by the Board of Directors as hereinafter set forth or when taken by the committee, person or entity to whom such authority has been duly delegated by the Board of Directors as set forth in the Documents. The Association, its Board of Directors, officers, and members shall at all times act in conformity with the Nonprofit Corporation Act of the State of North Carolina and the Documents.

Article III.
Offices - Seal - Fiscal Year

Section 1. Principal Office and Registered Office. The initial principal office and registered office of the Association shall be located at 5711 Six Forks Road, Suite 300, Raleigh, N.C. 27609.

Section 2. Other Offices. The Association may have other offices at such other places within the State of North Carolina as the Board of Directors may from time to time determine or as the affairs of the Association may require.

Section 3. Seal. The seal of the Association shall contain the name of the Association, the word "Seal", year of incorporation and such other words and figures as desired by the Board of Directors.



Section 4. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Article IV. Membership

Section 1. Qualification. Every Person who is the record owner of a fee or undivided fee interest in any Unit subject to the Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Unit. In the event of multiple Owners of a Unit, votes and rights of use and enjoyment shall be as provided in the Documents. Membership shall be appurtenant to and may not be separated from ownership of any Unit. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse but in no event may more than one vote be cast for each Unit owned.

Section 2. Place of Meetings. All meetings of the membership shall be held at the Community or other locations designated by the Board of Directors.

Section 3. Annual Meetings. So long as the members are not entitled to vote for the election of the directors to serve on the Board of Directors, the Association shall not be required to hold an Annual Meeting. Once the Members are entitled to vote for the election of directors, a meeting of the Members shall be held within ninety (90) days after such voting rights first exist to elect directors as otherwise provided in these Bylaws. Subsequent Annual Meetings of the Members shall be held at an hour and place as set by the Board of Directors, but no less frequently than annually. At each such Annual Meeting, the Board of Directors shall be elected in accordance with Section 5 of these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4. Substitute Annual Meetings. If an Annual Meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 5. Special Meetings. Special meetings of the Members shall be promptly scheduled at any time by the Board upon vote of a majority of the Board of Directors or upon written request of the President. A special meeting of the Members shall be called upon written demand delivered to the Secretary by the Members representing ten percent (10%) of the total voting power of the Association, notice of which shall be by written notice to all Members within thirty (30) days of the Secretary's receipt of the demand. For purposes of determining the ten percent (10%), the record date shall be thirty (30) days before delivery of the written demand. Upon the failure of the Association to send notice of a special meeting within thirty (30) days following delivery of written demand as aforesaid, any Member signing the demand may set the time and place of the special meeting and give notice thereof to all Members in accordance with



the North Carolina Planned Community Act and the North Carolina Nonprofit Corporation Act. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

Section 6. Notices of Meetings. Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of any such membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Unit. Notice shall be deemed given upon personal delivery or upon deposit in the mail.

Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Unit shall be deemed notice to all joint Owners of the subject Unit.

The notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 7. Quorum. Except as otherwise provided in the Declaration or these Bylaws, the presence in person or by proxy of Members entitled to cast ten percent (10%) of the Total Association Vote constitutes a quorum at all meetings of the Members. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 8. Voting Rights. Class I Association Members shall be entitled to one vote for each Unit owned and Class II Association Members shall be entitled to cast ten (10) votes for each Unit Owned. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended in the event more than one Person seeks to exercise it.

In no event may the vote that may be cast with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the intention of this Section 4.8 that there be no "splitting" of votes that may be cast by any Member or Members.

Section 9. Proxies. Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in its place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question.



A member may not revoke a proxy given pursuant to this Section 4.9 except by written notice of revocation delivered to the person presiding over a meeting of the Association.

All of the above provisions concerning voting by joint Owners shall apply to the vote cast for any one Unit by two or more proxy holders.

Section 10. Majority-Vote. The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a different percentage vote is stipulated by the Documents. For purposes of clarification, where the Declaration or these Bylaws calls for a vote based upon the Total Association Vote, such vote shall be based upon all Members eligible to vote and not simply those voting when a quorum is present.

Section 11. Actions Without Meeting. Any action that may be taken at a meeting of the membership may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

Article V. Board of Directors

Section 1. General Powers. The business and affairs of the Association shall be managed by the Board of Directors or by such committees as the Board of Directors may establish pursuant to Section 6 of these Bylaws; provided, however, that the Board of Directors may not act on behalf of the Association to amend the Declaration, to elect members of the Board of Directors, or to determine the qualifications, powers and duties, or terms of office of Board of Directors members. The Board of Directors may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 2. Number, Term and Qualification. The initial Board of Directors shall consist of the three (3) individuals appointed by Declarant whose names are set forth in the Articles of Incorporation of the Association. During the Declarant Control Period, Declarant shall retain the sole right to appoint all the directors who shall constitute the Board of Directors unless such appointment right is expressly waived in writing by Declarant. All directors so appointed by Declarant shall serve at the pleasure of Declarant. During the Declarant Control Period, Declarant may remove only those members of the Board of Directors appointed by it. Following the Declarant Control Period, the Board of Directors shall serve until their successors are elected at the next Annual Membership Meeting. At each Annual Membership Meeting after the Declarant Control Period, the Members shall elect three (3) members of the Board of Directors, each to serve for a term of one (1) year. Members of the Board of Directors may succeed themselves in office.



Section 3. Election of Members of the Board of Directors. The election of all members of the Board of Directors shall be by ballot. The candidates for the Board of Directors receiving the highest number of votes (see Section 4.8) shall be elected.

Section 4. Removal. Any member of the Board of Directors, other than a member appointed by Declarant, may be removed from the Board of Directors, with or without cause, by a vote of at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and entitled to vote at any meeting of the Membership at which a quorum is present. Provided, the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting. If any members of the Board of Directors are so removed, their successors as members of the Board of Directors may be appointed by Declarant during the Declarant Control Period or thereafter elected by the membership at the same meeting to fill the unexpired terms of the members of the Board of Directors so removed.

Section 5. Vacancies. A vacancy occurring in the Board of Directors may only be filled by the Declarant during the Declarant Control Period, and thereafter by a majority of the remaining members of the Board of Directors, though less than a quorum, or by the sole remaining member of the Board of Directors; but a vacancy created by an increase in the authorized number of members of the Board of Directors shall be filled only by Declarant during the Declarant Control Period, and thereafter by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting. The Declarant during the Declarant Control Period, and thereafter the Members may elect a member of the Board of Directors at any time to fill any vacancy not filled by the members of the Board of Directors. As indicated in Section 5.4, the Declarant during the Declarant Control Period, and thereafter the Membership shall have the first right to fill any vacancy created by the Membership's removal of a member of the Board of Directors.

Section 6. Chairman. A member of the Board of Directors shall be elected as Chairman of the Board of Directors by the Board of Directors members at the first meeting of the Board of Directors. The Chairman shall preside at all meetings of the Board of Directors and perform such other duties as may be directed by the Board of Directors. Prior to election of a Chairman and/or in the event that the Chairman is not present at any meeting of the Board of Directors, the President of the Association shall preside.

Section 7. Compensation. No Member of the Board of Directors shall receive any compensation from the Association for acting as such; provided, however, that each member of the Board of Directors shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association. Provided, further, that each member of the Board of Directors, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 8. Loans to Board Members and Officers. No loans shall be made by the Association to members of the Board of Directors or officers of the Association. The members



of the Board of Directors who vote for or assent to the making of a loan to a member of the Board of Directors or officer of the Association, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

Section 9. Liability of Board Members. To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable time, each member of the Board of Directors is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as a member of the Board of Directors. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Section 10. Meetings of the Board of Directors.

(h) Regular Meetings. Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board of Directors. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day that is not a legal holiday.

(i) Special Meetings. Special Meetings shall be held when called by the President of the Association, or by any member Board of Directors, after not less than seven (7) or more than thirty (30) days written notice to each member of the Board of Directors.

(j) Notices of Special Meetings. The notice provided for herein may be waived by written instrument signed by those members of the Board of Directors who do not receive said notice. Except to the extent otherwise required by law, the purpose of a special meeting of the Board of Directors need not be stated in the notice. Notice shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mail with proper postage paid and addressed to the member at his last known address on file with the Association; (2) deposit of same in his Unit mail box; or (3) personal delivery to the member. Attendance by a member of the Board of Directors at a meeting shall constitute a waiver of notice of such meeting unless the subject member gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

(k) Approved Meeting Place. All Board of Directors meetings shall be held in Wake County or Orange County, North Carolina or elsewhere as may be reasonably determined by the Board.

(l) Quorum. A majority of the members of the Board of Directors then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the members of the Board of Directors present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board of Directors.



Section 11. Action Without Meeting. The members of the Board of Directors shall have the right to take any action in the absence of a meeting that they could take at a meeting by obtaining the written approval of all the members. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors. Said written approval shall be filed with the minutes of the proceedings of the Board of Directors, whether done before or after the action so taken.

Section 12. Presumption of Assent. A member who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a member who voted in favor of such action.

Section 13. Powers and Duties. The Board of Directors shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Community except such powers and duties as by law or by the Documents may not be delegated by the Owners to the Board of Directors. The powers and duties to be exercised by the Board of Directors shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the Common Property to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;
- (b) Determination of the funds required for operation, administration, maintenance and other affairs of the Community and collection of the Common Expenses from the Owners, as provided in the Documents;
- (c) Employment and dismissal of personnel (including without limitation the property manager as described in Section 5.14 below) necessary for the efficient operation, maintenance, repair, and replacement of the Common Property;
- (d) Adoption of Restrictions and Rules covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Property;
- (e) Opening of bank accounts on behalf of the Association and designating the signatories required therefor;
- (f) Obtaining insurance as required or permitted under the terms of the applicable provisions of the Declaration;
- (g) Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant (if an audit is required by the Declaration or determined



appropriate by the Board); furnishing the annual reports and current budgets to the Unit Owners. All books and records shall be kept in accordance with good and sound accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;

(h) Keeping a complete record of the minutes of all meetings of the Board of Directors and Membership in which minute book shall be inserted actions taken by the Board of Directors and/or Members by consent without meeting;

(i) Supervising all officers, agents, and employees of the Association and ensuring that their duties are properly performed;

(j) Enforcing, on behalf of the Association, the assessments as provided in the Declaration including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Declaration, the institution of actions to foreclose liens for such assessments in accordance with the terms of N.C.G.S. § 47F-3-107.1, the imposition of charges for late payment of assessments, and after notice and an opportunity to be heard, levying reasonable fines, as provided in Section 8.7 below, for violations of the Declaration, Bylaws, and Restrictions and Rules of the Association;

(k) Making of repairs, additions, and improvements to or alterations or restoration of the Property in accordance with the other provisions of these Bylaws and the Declaration, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;

(l) Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Declaration or the Restrictions and Rules hereinafter promulgated governing use of the Common Property;

(m) Paying all taxes and assessments that are or may become liens against any part of the Community, other than the Units, and to assess the same against the Owners in the manner herein provided;

(n) Hiring attorneys and other professionals;

(o) Maintaining and repairing any Unit, if such maintenance or repair is required by the Declaration or is necessary in the discretion of the Board of Directors to protect the Common Property or any other Unit or if the Owner of such Unit has failed or refused to perform such maintenance or repair within a reasonable time after ten (10) days prior written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board of Directors to said Owner except in emergency cases when no notice is required. The Board of Directors shall levy a special assessment against such Owner for the costs of said maintenance or repair;



(p) After providing the Unit Owner with ten (10) days prior written notice, entering any Unit when necessary in connection with any maintenance or construction for which the Association is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association and such expenses shall be treated as a Common Expense; and without providing prior notice, entering any Unit for the purpose of correcting or abating any condition or situation deemed by the Board of Directors to be an emergency;

(q) Signing all agreements, contracts, deeds, and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board of Directors;

(r) Furnishing certificates setting forth the amounts of unpaid assessments that have been levied upon a Unit to the Owner or Mortgagee of such Unit, or a proposed purchaser or Mortgagee of such Unit, and imposing and collecting reasonable charges therefor;

(s) Exercising any other powers and duties reserved to the Association exercisable by the Board of Directors in the Declaration, the Articles of Incorporation, or these Bylaws.

The exercise of such authority by the Association shall be subject to the consent and approval of Declarant during the Declarant Control Period.

Section 14. Independent Manager. The management and obligations of the Association may be delegated to a professional management organization in the discretion of Declarant during the Declarant Control Period, and thereafter by the Board of Directors by majority vote. Any professional management contract shall be reasonable and customary as to term, compensation, and termination. During the Declarant Control Period all contracts with any professional management organization shall include a right of termination without cause or penalty upon ninety (90) days advance notice and without penalty at any time after the end of the Declarant Control Period pursuant to section 47F-3-105 of the Act.

Article VI. Committees

Section 1. Creation. The Board of Directors, by resolutions adopted by a majority of the number of members of the Board of Directors then holding office, may create such committees as they deem necessary and appropriate in aiding the Board of Directors to carry out its duties and responsibilities with respect to the management of the Community. Each committee so created shall have such authorities and responsibilities as the Board of Directors deem appropriate and as set forth in the resolutions creating such committee. The Board of Directors shall elect the members for each such committee. Provided, each committee shall have in its membership at least one (1) member of the Board of Directors.



Section 2. Vacancy. Any vacancy occurring on a committee shall be filled by a majority of the number of members then holding office at a regular or special meeting of the Board of Directors.

Section 3. Removal. Any member of a committee may be removed at any time with or without cause by a majority of the number of members of the Board of Directors then holding office.

Section 4. Minutes. Each committee shall keep regular minutes of its proceedings and report the same to the Board of Directors when required.

Section 5. Responsibility of Board Members. The designation of committees and the delegation thereto of authority shall not operate to relieve the Board of Directors or any member thereof of any responsibility or liability imposed upon it or him by law.

If action taken by a committee is not thereafter formally considered by the Board of Directors, a member of the Board of Directors may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

Article VII. Officers

Section 1. Enumeration of Officers. The officers of the Association shall consist of a President, a Secretary, a Treasurer, and such Vice Presidents, Assistant Secretaries, Assistant Treasurers, and such other officers as Declarant during the Declarant Control Period and thereafter the Board of Directors may from time to time elect. Except for the President, no officer need be a member of the Board of Directors.

Section 2. Election and Term. The officers of the Association shall be elected annually by Declarant during the Declarant Control Period and thereafter by the Board of Directors. Such elections shall be held at the first meeting of the Board of Directors next following the Annual or Substitute Annual Meeting of the Members. Each officer shall hold office until his death, resignation, removal, or until his successor is elected and qualified.

Section 3. Removal. Any officer elected or appointed by the Board of Directors may be removed by Declarant during the Declarant Control Period and thereafter by the Board of Directors whenever in its judgment the best interest of the Association will be served thereby.

Section 4. Vacancy. A vacancy in any office may be filled by the election by Declarant during the Declarant Control Period and thereafter by the Board of Directors of a successor to such office. Such election may be held at any meeting of the Board of Directors. The officer elected to such vacancy shall serve for the remaining term of the officer he replaces.

Section 5. Multiple Offices. The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be



simultaneously held by one person. Any officer may also be a member of the Board of Directors.

Section 6. President. The President shall be the chief executive officer of the Association and shall preside at all meetings. He shall see that the orders and resolutions of the Board of Directors are carried out; he shall sign all written instruments regarding the Common Property and co-sign all promissory notes of the Association, if any; and he shall have all of the general powers and duties that are incident to the office of President of a corporation organized under Chapter 55A of the North Carolina General Statutes in the supervision and control of the management of the Association in accordance with these Bylaws.

Section 7. Vice Presidents. The Vice Presidents in the order of their election, unless otherwise determined by the Board of Directors shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Board of Directors shall prescribe.

Section 8. Secretary. The Secretary shall keep the minutes of all meetings of Members and of the Board of Directors; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all duties incident to the Office of Secretary of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

Section 9. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall co-sign promissory notes of the Association; he shall prepare a proposed annual budget (to be approved by the Board of Directors) and the other reports to be furnished to the Members as required in the Declaration. He shall perform all duties incident to the office of Treasurer of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

Section 10. Assistant Secretaries and Treasurers. The Assistant Secretaries and Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

Section 11. Compensation. Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. Each officer, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 12. Indemnification. To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby



indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Article VIII. Operation of the Property

Section 1. Determination of Common Expenses and Fixing of the Common Charges.
The Board of Directors shall from time to time, and at least annually, and with the consent of Declarant during the Declarant Control Period, prepare and adopt a proposed budget for the Property, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Community, and allocate and assess such proposed Common Expenses among the Units at a uniform rate (except where another method of allocation is required or permitted in the Documents), all in accordance with the procedure set forth in Article IV of the Declaration and this Article 8. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Directors pursuant to the provisions of the Declaration. The Common Expenses shall also include such amounts as the Board of Directors, with the consent of Declarant during the Declarant Control Period, deems necessary for the operation and maintenance of the Community, including without limitation, an amount for working capital of the Association; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Property; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year. Within thirty (30) days after adoption of any proposed budget for the Community, the Board of Directors shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget no less than ten (10) nor more than sixty (60) days after mailing of the summary. Notwithstanding any other provisions of these Bylaws, to the extent allowable under the Act there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of these Bylaws, the proposed budget shall be deemed ratified unless at that Meeting at least ninety-five percent (95%) of the Total Association Vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

In addition to the other assessments authorized herein, the Association may levy special assessments, as further provided in Article IV, Section 4 of the Declaration.

With the consent of Declarant during the Declarant Control Period, the Association may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for the primary benefit of property within such Neighborhood, including without limitation, maintenance required to be performed by the Association with respect to property within such Neighborhood. Neighborhood assessments shall be levied as specifically budgeted from time to time by the Board of Directors consistent with the Documents. In addition, the Board of Directors shall levy a Neighborhood assessment



upon the request of the Owners holding two-thirds (2/3) of the Total Association Vote allocated to Units within a Neighborhood.

With the consent of Declarant during the Declarant Control Period, the Board of Directors shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Directors' right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section. Fines levied pursuant to Article XV, Section 1 of the Declaration and the costs of maintenance performed by the Association that the Owner is responsible for under Article V, Section 2 of the Declaration shall be specific assessments. With the consent of Declarant during the Declarant Control Period, the Board of Directors may also specifically assess Units for the following Association expenses:

(a) Expenses of the Association that benefit less than all of the Units may be specifically assessed equitably among all of the Units that are benefited according to the benefit received.

(b) Expenses of the Association that benefit all Units, but do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

This Section specifically contemplates, without limitation, that the Association may incur expenses (including, without limitation, expenses for extraordinary items, matters and occurrences and expenses not anticipated and/or not budgeted for in advance) for certain maintenance, insurance and repair (in accordance with this Declaration) related to single-family attached or detached Townhouses within the Community, which expenses benefit the Units containing such type of housing only. Such expenses shall be included in the budget prepared as described in the Documents, and the Units primarily benefited by such expenses shall be subject to specific assessment imposed by the Board of Directors pursuant to this Section to cover such expenses. Without limiting the generality of the foregoing, the cost of maintaining water or sewer pipes that serve more than one but less than all of the Units may be assessed against the Units served as a specific assessment.

A contribution shall be made by or on behalf of the purchaser to the working capital of the Association upon acquisition of record title to a Unit by the first Owner thereof other than Declarant or Approved Developer or their respective affiliates, as further provided in Article IV, Section 12 of the Declaration. This contribution shall be in addition to, not in lieu of, any other assessments levied on the Unit and shall not in any way be construed as part of or identical to any such assessments or as an advance payment of any such assessments. This contribution shall be collected at the closing of the Unit and disbursed to the Association, and may be used in covering operating and other expenses (which may include reserves) incurred by the Association pursuant to the terms of the Declaration and these Bylaws.



Section 2. Payment of Common Expenses. Except with respect to Units owned by Declarant and Approved Developer, which are assessed pursuant to Article IV, Section 8 of the Declaration, all Owners shall be obligated to pay the Common Expenses assessed by the Board of Directors pursuant to the provisions of Section 8.1 hereof, beginning as of the first day of the calendar year in which the first Unit is conveyed by Declarant or Approved Developer to a Person other than Declarant or Approved Developer.

No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Unit. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Unit prior to the acquisition by the purchaser of such Unit without prejudice to the purchaser's rights to recover from the seller the amounts paid by the purchaser therefor.

Section 3. Collection of Assessments. The Board of Directors shall assess Common Expenses and other recurring assessments against the Units from time to time. Assessments shall be billed on a monthly, quarterly or annual basis as may reasonably be determined by the Board of Directors, from time to time. The Board of Directors shall take prompt action to collect any Common Expenses that remain unpaid for more than thirty (30) days from the due date for payment thereof.

The Board of Directors shall notify the holder of the Mortgage on any Unit (of which it has notice) for which any Common Expenses assessed pursuant to these Bylaws remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 4. Effect of Nonpayment of Assessments; Remedies of Association. Any sums (including assessments or installments thereof) assessed against any Unit pursuant to the Documents that are not paid when due shall be delinquent. Any such sums delinquent shall be governed by Article IV, Section 7 of the Declaration.

Section 5. Lien and Personal Obligations. All Common Expenses provided for in this Article, together with the interest and expenses, including reasonable attorneys' fees (if permitted by law), as provided for herein, shall be a charge on and a continuing lien upon the Unit against which the assessment is made as provided in Article IV of the Declaration, and such lien shall have the priority set forth in Article IV, Section 6 of the Declaration. In addition, each Owner shall be personally liable for any assessment against his Unit as provided in Article IV of the Declaration. No Owner may exempt himself from such liability by non-use or enjoyment of any portion of the Common Property or by the abandonment or sale of his Unit.

Section 6. Abatement and Enjoyment of Violations by Owners. The violation of any rule or regulation adopted by the Board of Directors or the breach of any Bylaw contained



herein, or the breach of any provision of the Declaration, shall give the Board of Directors the right after providing the applicable Owner with ten (10) days prior written notice, in addition to any other rights set forth in these Bylaws or at law or in equity: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; and/or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at the expense of the defaulting Owner; and/or (c) after notice and opportunity to be heard, to levy reasonable fines not to exceed One Hundred and No/100 Dollars (\$100.00) for each day more than five (5) days that the violation occurs (with such cap subject to adjustment by the Board every five (5) years during the during of these Bylaws).

Section 7. Maintenance and Repair. (a) Except as is specifically provided in the Declaration, all maintenance and any repairs to any Unit, whether ordinary or extraordinary, shall be made by the Owner of such Unit. Each Owner shall be responsible for all damages to any and all other Units and/or to the Common Property that his failure to do so may engender; and (b) except as is specifically provided in the Declaration all maintenance, repairs and replacements to the Common Property (unless necessitated by the negligence, misuse or neglect of an Owner, in which case such expense shall be charged to and paid by such Owner), shall be made by the Association; provided, however, there is excluded from the provisions contained in this section any repairs necessitated by casualty insured against by the Association to the extent the Association receives insurance proceeds for such repairs.

Section 8. Additions, Alterations or Improvements by Owners. No Owner shall make any structural addition, alteration, or improvement in or to his Unit, or any change in the exterior appearance thereof, except in accordance with the terms of the Declaration.

Section 9. Use of Common Property. An Owner shall not interfere with the use of the Common Property by the remaining Owners and their employees and invitees.

Section 10. Right of Access. An Owner shall grant a right of access to his Unit to the property manager and/or any other person authorized by the Board of Directors or the property manager for the purpose of making inspection of or for the purpose of correcting any condition originating in his Unit and threatening another Unit or the Common Property, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Property, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Property in or adjoining his Unit; provided, however, that such requests for entry (except in the case of emergencies where no request shall be required) are made in advance and any such entry is at a time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.



Section 11. Rules of Conduct. Restrictions and Rules concerning the use of the Units and the Common Property shall be promulgated and amended by the Board of Directors in accordance with Article VII of the Declaration. Copies of such Restrictions and Rules shall be furnished by the Board of Directors to each Owner prior to the time when the same shall become effective.

Section 12. Common Expenses for Utilities. Any utilities that may be provided to the Units through a single or common meter or facility, and utilities furnished to any portion of the Common Property, shall be paid by each Owner as and when billed according to the extent of such Owner's use or, at the option of the Board of Directors, such may be paid by the Association and assessed against the Units as a Common Expense.

Article IX. Amendments

These Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Owners holding at least sixty-seven percent (67%) of the Total Association Vote, which instrument shall be effective only upon recordation in the Office of the Register of Deeds of Orange County, North Carolina; provided, however, that where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Documents, no amendment of these Bylaws shall be made unless and until the Owners holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities that own or hereafter acquire any interest in the Property shall be bound to abide by any amendment to these Bylaws that is duly passed, signed, acknowledged and recorded as provided herein. No amendment to these Bylaws shall be adopted or passed that shall impair or prejudice the rights of Declarant provided for in the Documents, without the consent of Declarant. Notwithstanding the foregoing, during the Declarant Control Period, no amendment to these Bylaws shall be made without the approval of Declarant. Further, Declarant shall have the same unilateral right to amend these Bylaws as Declarant has under Article IX of the Declaration with respect to an amendment to the Declaration.

Article X. Miscellaneous

Section 1. Severability. Invalidity of any covenant, condition, restriction or other provisions of the Declaration or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 2. Successors Bound. The rights, privileges, duties and responsibilities set forth in the Documents, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any interest in the Property.



Section 3. Gender, Singular, Plural. Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 4. Nonprofit Corporation. No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the members of the Board of Directors, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Articles of Incorporation of the Association and these bylaws.