

After Recording Return to:

Robert Knowles

**5425 Hillsborough St.
Raleigh, NC 27606**

**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
TRYON POINTE
WAKE COUNTY, NORTH CAROLINA**

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

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

Submitted electronically by "Nexsen Pruet, LLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Wake County Register of Deeds.

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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR TRYON POINTE**

**WAKE COUNTY,
NORTH CAROLINA**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (this "*Declaration*") is made by Tryon Pointe, LLC, a North Carolina limited liability company ("*Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property lying and being in Wake County, North Carolina, as such property is shown on the legal description attached hereto as Exhibit "A" and incorporated herein (the "*Property*"), and Declarant has the consent of the lienholders of the Property; and

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, the Tryon Pointe Homeowners Association, Inc. has previously been or will be created to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below) and to administer and enforce the covenants and restrictions and design guidelines imposed hereby; and

WHEREAS, it is intended that every owner of any of the Lots automatically, and by reason of such ownership in this Declaration, become a Member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association; and

NOW THEREFORE, Declarant does hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership homeowners association pursuant to the provisions of the North Carolina Planned Community Act, N.C. Gen. Stat. §§ 47F-1-101, et seq.

**ARTICLE I
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article, such definitions being cumulative of those set forth in the recitals and elsewhere in this Declaration.

"Additional Property" shall mean any and all real property lying and being within five (5) miles of the Property.

"Annual Assessment" shall have the meaning specified in ARTICLE VI entitled "ASSESSMENTS", and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in such Article).

"Approved Builder" shall mean **SDH RALEIGH LLC**, a Georgia limited liability

company, Smith Douglas Homes, LLC, McKee Homes, LLC and any other home builder approved by Declarant for the construction of houses on Lots which home builder has been granted rights of Approved Builder hereunder by the Declarant in a written instrument. Declarant may grant rights of Approved Builder to one or several home builders. Rights of Approved Builder hereunder shall apply only to the Lots within the Property which are acquired by such Approved Builder or as otherwise specified in this Declaration.

"Area of Common Responsibility" shall mean the areas which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.

"Articles of Incorporation" shall mean the Articles of Incorporation of the Tryon Pointe Homeowners Association, Inc., as the same may be amended from time to time.

"Association" shall mean Tryon Pointe Homeowners Association, Inc., a North Carolina non-profit corporation.

"Board of Directors" or the **"Board"** shall mean the body responsible for the administration of the Association, as provided in the Bylaws.

"Bylaws" shall mean the Bylaws of the Association attached to this Declaration as Exhibit "B" and incorporated herein by this reference, as may be amended from time to time.

"County" shall mean and refer to Wake County, North Carolina, a municipal corporation.

"Common Area" shall mean and refer to any and all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners.

"Declarant" shall mean Tryon Pointe, LLC, a North Carolina limited liability company, its successors and assigns, or any person or entity to whom all of Declarant's rights reserved to the Declarant hereunder are assigned in accordance with the provisions hereof. The Declarant's rights shall only be assigned by written, recorded instrument expressly assigning those rights. Any purported assignment without such consent shall be deemed void and of no force and effect.

"Declaration" shall mean this Declaration of Covenants, Restrictions and Easements for Tryon Pointe, as the same may be hereafter amended in accordance with the terms hereof.

"Development Period" shall mean the earlier of: (a) the date that the Declarant and Approved Builder no longer owns any portion of the Property and no longer owns any Additional Property that can be annexed, as provided herein, and a certificate of occupancy has been issued for the residential dwelling located on each Lot; or (b) the date of recording by Declarant, with the consent of Approved Builder, in the Registry of Deeds of a written instrument terminating all of Declarant's rights hereunder. Declarant, with the consent of Approved Builder, may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the Register of Deeds.

"Dwelling" shall mean and refer to any building or portion thereof within the Property which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner, and specifically including detached dwellings located on separate Lots. A detached Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

"Improved Lot" shall mean a Lot (i) upon which there is located a structure for which a certificate of occupancy has been issued by the applicable government authority, and (ii) which has been conveyed to a Person who intends to occupy the dwelling, or if the dwelling is occupied as a

residence before such conveyance, the date of such occupancy. Any Lot which has been approved by Declarant or Approved Builder 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 or Approved Builder, so long as such Lot is approved for use as a model home and is not occupied for residential purposes.

“Lot” shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family, as shown on the Plat.

“Member” shall mean a Person subject to membership in the Association pursuant to ARTICLE IV entitled “The Association”.

“Mortgage” shall mean a deed or other document by means of which title to any Lot is conveyed or encumbered to secure a debt. The term **“Mortgagee”** shall refer to a beneficiary or holder of a Mortgage.

“Owner” shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

“Person” shall mean a natural person, corporation, trust, partnership or any other legal entity.

“Plats” shall mean all plats for any portion of the Property, and any amendments to such Plats, which are hereafter recorded in the Register of Deeds’ plat book records, and shall also include any Plats, or amendments thereto recorded for the purpose of subjecting any of the Additional Property to this Declaration.

“Property” shall have the meaning ascribed to it hereinabove.

“Recorded Plat” shall mean that certain plat entitled “Final Plat of Tryon Pointe Subdivision,” prepared by Stewart-Proctor, PLLC, Engineering and Surveying, and recorded in Book of Maps 2022, Pages 674-677 (inclusive), Wake County Registry, County of Wake, North Carolina.

“Register of Deeds” shall mean the Register of Deeds for the County where the Property is located.

“Security Services” shall mean those activities, devices, or services intended to, or which may have the effect of, enhancing safety or security, including activities, devices, or services limiting or controlling access, or providing of patrol services or otherwise monitor activities within the Property.

“Stormwater Maintenance Manual” shall mean that certain Stormwater Agreement/Operations and Maintenance Manual recorded in Deed Book 18880, Page 564, Wake County, North Carolina Registry of Deeds.

“Supplemental Declaration” shall mean an instrument filed with the Register of Deeds which imposes additional restrictions and/or obligations on the land described in such instrument.

“Unimproved Lot” shall mean any Lot that is not an Improved Lot.

ARTICLE II PROPERTY SUBMITTED TO THIS DECLARATION

Section 2.01 Lots Hereby Subjected to this Declaration. Declarant, for itself and its

successors and assigns, does hereby submit the Property and the Lots to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2.02 All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all burdens, and enjoys all benefits, made applicable hereunder.

Section 2.03 Unilateral Annexation of Additional Property by Declarant. Declarant shall have the unilateral right, privilege and option, at any time and from time to time, during a period of fifteen (15) years after the date of this Declaration, to subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the Register of Deeds an amendment to this Declaration describing the property being annexed. Except for the consent of the owner of the Additional Property, if not the Declarant, no approval from any Member of the Association, or from anyone else whomsoever, shall be required for Declarant to subject Additional Property to this Declaration.

From and after such recording, the annexed property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall further have the right at its election, without the consent of any Owner or Owners, to subject any such annexed property to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens by filing a Supplemental Declaration with the Register of Deeds covering only such annexed property. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, and developments contained in such additional declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the annexed property in order to reflect the different character and intended use of such property.

Section 2.04 Annexation by the Association. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by recording with the Register of Deeds a Supplemental Declaration describing the property being annexed; Any such Supplemental Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon recording in the Register of Deeds, unless a later effective date is provided therein.

Section 2.05 Withdrawal of Property. Declarant reserves the right to amend this Declaration, during the Development Period for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property and is not contrary to the planned residential development requirements of the zoning ordinance in effect for the Property. This provision includes Declarant's right to deed over property to any governmental entity as required or deemed necessary in Declarant's discretion. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not Declarant.

Section 2.06 Other Acts of Declarant. Declarant reserves the right to amend this Declaration during the Development Period to merge the Association into other homeowners' or community associations and to combine this Declaration with the declaration of such association.

ARTICLE III EASEMENTS OVER AND AGREEMENTS REGARDING THE PROPERTY

Section 3.01 General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision Plat(s) for the Property, as amended from time to time, as well as the easements now or hereafter established by the Declarant in this Declaration or by any other document recorded in the Register of Deeds.

Section 3.02 Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the occupants of the Owner's Lot in and to the Common Area which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

- (a) the right of the Association to suspend the right of an Owner to use the Common Area for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws, rules and regulations or Architectural Guidelines;
- (b) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, or for constructing, repairing or improving any facilities located or to be located thereon, in accordance with Section 5.07 hereof;
- (c) the right of the Association, acting through the Board of Directors, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Area, in accordance with Section 5.07 hereof;
- (d) the right of the Association to transfer or convey title to all or any portion of the Common Area in accordance with Section 5.07 hereof and, during the Development Period, with the consent of Declarant;
- (e) all other rights of the Association, Declarant, Approved Builder, Owners and occupants set forth in this Declaration, in any Supplemental Declaration, or in any deed conveying Common Area to the Association; and
- (f) all encumbrances, zoning conditions and other matters shown by the public records affecting title to the Common Area.

Section 3.03 Easements for Utilities. Declarant and Approved Builder hereby reserve and establish for the benefit of Declarant, Approved Builder and the Association a blanket easement upon, across, above and under all of the Property for access, ingress, egress, installing, altering, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, reuse water, telephone and electricity, 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 the Declarant, Approved Builder, or the Association might decide to have installed to serve the Property. Declarant, Approved Builder, the Association or their respective designees, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, Declarant, Approved Builder or the Board shall have the right to grant such easement. The Board of Directors, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements under, through, or over

the Lots and/or the Common Area as may be reasonably necessary to or desirable for the ongoing operation and maintenance of the Property.

Section 3.04 RESERVED.

Section 3.05 Easement for Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, rules and regulations of the Association and Architectural Guidelines, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association 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. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable period of time after requested by the Association, but shall not authorize entry into any single family residential dwelling located on a Lot without the permission of the Owner.

Section 3.06 Easement for Maintenance. Declarant and Approved Builder hereby grant to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of the Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractor(s) at their sole cost and expense.

Section 3.07 Easement for Entry Features, Mailbox Kiosk and Streetscapes. Declarant and Approved Builder hereby reserve and establish for the benefit of Declarant, Approved Builder and the Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features, the mailbox kiosk and streetscapes for the Property, over and upon any portion of a Lot containing such entry features, mailbox kiosk or streetscapes as may be more fully described on the recorded subdivision Plat(s) for the Property. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features, mailbox kiosk and streetscapes and the right to grade the land under and around the same.

Section 3.08 Easement for Drainage. Declarant and Approved Builder hereby reserve and establish for the benefit of Declarant, Approved Builder 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 Property for access, ingress, egress, installing, altering, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Property or any portion thereof. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. In addition, Declarant and Approved Builder hereby reserve and establish for the benefit of Declarant, Approved Builder and the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surfaces within or adjacent to the Property. Neither the Declarant, Approved Builder, the Association, nor their respective officers, directors, representatives or agents nor any builder or Owner constructing according to plans and specifications approved by the ARC shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the community.

Section 3.09 Easement During Development Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, Architectural Guidelines, and amendments or revisions thereto, Declarant and

Approved Builder reserve and establish easements during the Development Period across the Property to maintain and carry on, upon such portion of the Property as Declarant or Approved Builder may reasonably deem necessary, such facilities and activities as in its sole opinion may be required or convenient for Declarant's or Approved Builder's, as the case may be, development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or for the development, construction or benefit of any neighboring property, including, but not limited to: (a) the right to place or authorize the placement of marketing and directional signs on Lots or right-of-way(s) at street intersections within the community; (b) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Property, including, without limitation, any Lot; (c) the right to tie into any portion of the Property with streets, driveways, paths, parking areas and walkways; (d) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, reuse water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property; (e) the right to grant easements over, under, in or on the Property, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Property; (f) the right, without the consent of any Person, to subdivide and/or revise and re-record the subdivision Plat(s) of the Property, including, without limitation, creating and/or more specifically describing any Lot, changing any Lot or portion of a Lot to Common Area, creating a public or private street over all or any portion of a Lot or other property within the community; provided, however, the boundary lines of any Lot not owned by Declarant or Approved Builder shall not be changed without the written consent of the Owner(s) and Mortgagee(s) of such Lot; (g) the right to convert Lots (with the consent of the Owner thereof) to Common Area and/or streets; (h) the right to construct utilities, recreational facilities and other improvements on Common Area; (i) the right to carry on sales and promotional activities in the community; and (j) the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and Approved Builder may use residences, offices or other buildings owned or leased by Declarant or Approved Builder, respectively, as model residences and sales offices. This Section shall not be amended without the written consent of Declarant until the rights of Declarant have terminated as provided in Sections 15.12 and 15.13 hereof.

ARTICLE IV THE ASSOCIATION

Section 4.01 The Association. Prior to the date of this Declaration has been recorded with the Register of Deeds, the Association has been formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Area of Common Responsibility, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the Members of the Association.

Section 4.02 Membership. Every Owner is and shall be a Member of the Association. In no event shall such membership be severed from the Ownership of such Lot.

Section 4.03 Classes of Membership; Voting Rights. The Association shall have two classes of voting membership: Class A and Class B.

- (a) Class A. The Class A Members shall be all those Persons holding an interest required for membership in the Association, as specified in this Section 4.03, except for those Persons who are Class B Members. Until such time as the Class A Members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be a non-voting membership except as to such matters and in such events as are hereinafter specified.

The Class A Members shall be entitled to full voting privileges on the earlier of the following dates to occur: (i) the date which the Declarant, may so designate by notice in writing delivered to the Association, or (ii) the termination of the Development Period. Until the earliest of these dates occurs, the Class A Members shall be entitled to vote only on matters for which it is herein specifically provided, or for which it is provided by law, that approval of each and every class of membership of the Association is required. When entitled to vote, Class A Members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership.

(b) Class B. Declarant shall be the only Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters and in all events. At such time as the Class A Members shall be entitled to full voting privileges, as provided in Paragraph (a) hereof, the Class B membership shall automatically terminate and cease to exist, and the Class B Member shall be and become a Class A Member insofar as it may then hold any interest required for membership.

From and after the date at which the Class B membership automatically terminates and ceases to exist, such membership shall not be renewed or reinstated.

Section 4.04 Suspension of Membership Rights. The membership rights of any Member of the Association, including the right to vote, may be suspended by the Board of Directors pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such Member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association.

Section 4.05 Meetings of the Membership. All matters concerning the meetings of Members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to Members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 4.06 Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association, or the Owners of Lots, must vote. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B Member) shall be personally liable to any owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, and shall be liable to the Association only for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence, compensation for services beyond reimbursement for expenses, acting in bad faith, obtaining an improper personal benefit in transaction involving the Association, liability from the operation of a motor vehicle, unlawful loans or distributions from the Association, or fraud against the Association.

Section 4.07 Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any Person or other entity to manage the affairs of the Association, or any part thereof, as the Board of Directors deems to be in the best interests of the Association.

ARTICLE V ASSOCIATION PROPERTY

Section 5.01 Common Areas and Association Property. The Declarant shall have the right to transfer and convey to the Association any portion of the Property. All portions of the Property which the Declarant transfers to the Association shall thereafter constitute Common Areas. Said right shall be exercised by the Declarant upon request of Approved Builder, or in its sole discretion,

at any time, and from time to time, until five (5) years after the end of the Development Period.

The Association will govern use of the Common Areas and may promulgate rules and regulations related to such use. The Declarant or the Association may authorize persons who are not Owners to use the Common Areas or portions of the Common Areas.

The Common Areas shall be conveyed to the Association by special warranty deed free of debt encumbrance, and subject to easements and encumbrances recorded with the Register of Deeds, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements. COMMON AREAS SHALL BE CONVEYED TO THE ASSOCIATION WITHOUT WARRANTY - "AS IS" AND "WHERE IS".

Section 5.02 Limited Common Areas. Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use of primary benefit of Owners. By way of illustration and not limitation, Limited Common Areas may include patio areas, recreational facilities, landscaped areas, and other portions of the Common Area. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be an Association expense allocated, in any reasonable manner established by the Association, among the Owners.

Limited Common Areas may be designated as such in the deed conveying such area to the Association or on the Plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots, so long as Declarant has a right to subject additional property to this Declaration pursuant to ARTICLE II.

After recording the initial deed conveying such area to the Association or the Plat relating to such Common Area, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Declarant during the Development Period and thereafter by the Board of Directors and the vote of Voting Members representing a majority of the total votes in the Association. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with ARTICLE II, any such assignment or reassignment shall also require Declarant's written consent.

Section 5.03 Resource Conservation Areas. The Declarant or the Association may delineate portions of the Common Areas as Resource Conservation Areas. Use of portions of the Common Areas designated as Resource Conservation Areas will be limited or prohibited as provided in the delineation.

A failure of Declarant or the Association to designate a portion of the Common Areas as a Resource Conservation Area will not relieve any Owner of the obligation to comply with all laws, rules, and permits.

Section 5.04 Member's Rights in Association Property. Every Owner of any Lot shall have a nonexclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. Such right and easement of enjoyment and use are and shall be subject to the limitations and easements which are described herein, including, without limitation, the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association, to suspend the enjoyment rights of the owner of any Lot during any period in which any assessment which is due to the Association from such Owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of the terms of this Declaration or the Associations' published rules and regulations. In addition, the Board of Directors may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors.

Section 5.05 Condemnation. If any part of the Common Areas are either: (a) taken by any authority having the power of condemnation or eminent domain, or (b) conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least eighty percent (80%) of the Class A votes (and, if during the Development Period, the written consent of Declarant), then the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent available unless, within sixty (60) days after such taking, at least sixty-seven percent (67%) of the Class A votes (and Declarant, if during the Development Period) otherwise agree. If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

Section 5.06 Damage or Destruction. If any improvements located on any Common Areas are damaged or destroyed on account of the occurrence of any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by at least 67% of the Class A votes (and by Declarant, if during the Development Period), not to repair or reconstruct such damage. If that it shall be decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Class A Members, levy special assessments to cover the shortfall.

Section 5.07 Actions Requiring Owner Approval. Any conveyance or mortgaging of the Common Areas will require the consent of at least eighty percent (80%) of the Class A votes held by Members other than the Declarant and, if during the Development Period, the consent of Declarant.

Section 5.08 No Partition. The Common Areas shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the Property and without the written consent of all holders of all mortgages encumbering any portion of the Property.

Section 5.09 Taxes and Governmental Assessments. The Association shall pay when due, and in any case before the accrual of penalties thereon, all taxes, assessments, license fees, permit fees and other charges imposed by any governmental authority in connection with the Association's ownership or operation of the Common Area. Provided, however, that the Association may institute an appropriate legal proceeding for the purpose of contesting or objecting to the amount or the validity of any such tax, assessment, fee, or charge by appropriate legal proceedings. If the Association fails to pay any governmental charge when due or fails to contest any governmental charge in a timely and appropriate legal proceeding, then each Owner shall become personally obligated to pay to the governmental authority imposing such charge a portion of the charge in an amount determined by multiplying the total charge by a fraction, the denominator of which is the total Lots and the numerator of which is the Lots owned by the Owner for whom the calculation is being performed (the "Owner's Share"); If the Owner does not pay the Owner's Share within thirty (30) days following actual notice to the Owner of the Owner's Share, then the Owner's Share shall become a continuing lien on the property owned by the Owner, and the governmental entity may bring an action at law against the Owner to obtain payment of the Owner's Share or may foreclose the lien against the property of the Owner.

Section 5.10 Liability. Owners, occupants and their guests shall use the Common Area, Area

of Common Responsibility, all areas maintained by the Association and all portions of the Property not contained within a Lot at their own risk and shall assume sole responsibility for their personal belongings used or stored thereon. All Owners and occupants shall have an affirmative duty and responsibility to inspect the Common Area and all portions of the Property not contained within a Lot for any defects, perils or other unsafe conditions relating to the use and enjoyment thereof. The Association, Approved Builder, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for: (a) personal injury to any person occurring on the Common Area; (b) loss or damage to personal belongings used or stored on the Common Area or on any other portion of the Property; or (c) loss or damage, by theft or otherwise, of any other property of such Owner or occupant.

In addition to the foregoing, the Association, Approved Builder, the Declarant and their respective officers, directors, employees, representatives and agents shall not be liable for injury or damage to any Person or property: (a) caused by the elements or by an Owner or any other Person; (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, lake, dam, pond, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Area; or (c) caused by any street, pipe, plumbing, drain, pond, lake, dam, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair.

ARTICLE VI ASSESSMENTS

Section 6.01 Creation of Lien and Personal Obligation. Each Owner, by acceptance of a deed or other conveyance for an Improved Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration. During the Development Period, no assessment created pursuant to this Article VI may be levied against Declarant or Approved Builder.

All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with interest thereon, late charges, and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Lot; (2) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; and (3) the lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee of such Mortgage is the seller of the Lot. The covenant to pay assessments herein stated is and shall be a covenant running with land.

Section 6.02 Purposes of Assessments. The assessments levied by the Association pursuant to this Section shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, this Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: (a) payment of all costs and expenses incurred by the Association in connection with the maintenance and operation of the Area of Common Responsibility and the Association's other operations; (b) payment of the premiums for all insurance, fidelity and other bonds which shall be obtained by the Association; (c) the payment of the fees of such management firms as the Board of Directors shall employ; (d) payment of fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting and architectural services; (e) sums for property taxes for the Common Area; and (f) such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its Members.

Section 6.03 Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws) or at any time it deems best, the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the Members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). If North Carolina law requires that the Owners approve the budget, the budget shall be approved by the Owners in the manner and through the procedures specified by North Carolina law and as specified in the Bylaws.

The assessments provided for herein shall commence as to a Lot on the date that such Lot becomes an Improved Lot. Each Owner of an Improved Lot shall pay a portion of the Annual Assessment that will be calculated by multiplying the total Annual Assessment by a fraction, the denominator will be the number of Lots and the numerator will be the number of Lots that Owner owns. The result may be adjusted by the Board by up to One Hundred and 00/100 Dollars (\$100.00) for the purpose of creating whole dollar amounts for payments, equal periodic payments and avoiding losses due to rounding. The Board of Directors shall send a copy of the budget adopted as provided above, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot, prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in a single installment or in such multiple installments as the Board of Directors shall determine and shall be paid to the Association when due without further notice.

Section 6.04 Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefore, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this Section shall be payable at such times and such installments as the Board of Directors shall determine. Each Improved Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this Section.

Section 6.05 Specific Assessments. The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of anything maintained by the Association, which is occasioned by the act(s) of individual Owner(s), their family, pets or their invitees, and not the result of ordinary wear and tear, (ii) for the payment of expenses of the Association which are attributable to or incurred as a result of the conduct of an Owner or the occupants, guests, tenants, invitees, pets, family members, or licensees of the Owner; (ii) for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder, or (iii) for any common expenses, other than expenses for the maintenance of the Areas of Common Responsibility, which benefit less than all of the Lots or which significantly disproportionately benefit all Lots (which expenses may be specially assessed equitably among all of the Lots which are benefited according to the benefit received); provided that in no event shall Declarant be obligated to pay any specific assessment. 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.

Upon the establishment of a specific assessment under this Section, the Board shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

Section 6.06 Special Assessment for Working Capital Reserve. Upon the first transfer of title of an Improved Lot there shall be levied against such Improved Lot and paid to the Association a special assessment against such Improved Lot an amount equal to Five Hundred and No/100 Dollars (\$500.00). The Association may comingle all special assessment payments with other funds and use such special assessment payments for any purpose authorized herein, including but not limited to offsetting Association costs, retiring debt created pursuant to Section 6.14 below, or establishing a working capital reserve fund for use in connection with capital repairs and improvements, but shall not be required to do so. Declarant or the Board shall endeavor to collect such special assessment at the closing of the initial purchase of the Improved Lot, however the failure to collect such special assessment at that time shall not excuse the current Owner's obligation to make such payment.

Section 6.07 Effect of Non-Payment of Assessments; Remedies of the Association.

- (a) Delinquency Date. Any assessments, regular, special or specific, which are not paid by the due date are delinquent as of midnight of the due date.
- (b) Automatic Remedies. Except to the extent otherwise expressly required by law or unless otherwise agreed in writing by the Board of Directors, if any assessments are not paid by the due date, then:
 - (i) late charges, interest from the due date, and all compliance costs (including but not limited to reasonable attorney's fees and administrative, service or collection fees), will be added to and included in the amount of such assessment except as otherwise expressly provided in the Association's current Assessment Collection Policy as provided in Section 6.12 hereof;
 - (ii) the Association may notify any credit bureau and/or any mortgagee or other lienholder with respect to the applicable Lot as to any default, including delinquency in payment of assessments and any other monetary amounts due to the Association; and/or
 - (iii) the Association may exercise any other rights and remedies and institute and prosecute such other proceedings as it deems necessary to collect all amounts due.
- (c) Elective Remedies After Notice. If any assessments are not paid within thirty (30) days after the due date, then the Association may elect to exercise any or all of the following remedies, in addition to and not in lieu of the automatic remedies as above provided, and without prejudice to any other rights or remedies, provided that notice and opportunity to be heard is first given:
 - (i) Acceleration of Assessments. The Association may accelerate, through the end of the year in which notice of default and acceleration is given and for an additional six (6) month period thereafter, all regular assessments and all special assessments (including any installment payments) due or to become due during the acceleration period; provided, the maximum period of acceleration may not exceed twelve months after the first day of the month following the month in which notice of default and acceleration is given. All such accelerated assessments are deemed to be special assessments as to the applicable Lot and Owner thereof.

- (ii) Suspension of Services. To the fullest extent allowed by law, the Association may suspend until all assessments (including all special assessments) are paid in full, all rights of the delinquent Owner, the Owner's tenants, and the related parties of either, to (i) receive any and all services provided by the Association to the applicable Lot and any improvements thereon, and/or (ii) use, employ or receive the benefits of any Common Areas, including all rights to use of any and all recreational facilities, if any. Notwithstanding the foregoing, no Owner, Owner's tenant, or any of their related parties may be denied any rights of ingress, egress or regress to or from the Property.

(d) Action for Debt; Foreclosure, Including Expedited Foreclosure.

- (i) Each Owner, by acquisition of any Lot within the Property or any right, title or interest therein, expressly grants to and vests in the Association: (x) the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt; (y) the right and power to foreclose the Association's continuing lien for assessments by all methods available for the enforcement of a mortgage, deed of trust or any other contractual lien, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale; and (z) a continuing power of sale in connection with the non-judicial foreclosure of the Association's continuing lien for assessments as herein provided.

The Board of Directors or the then President of the Association may appoint, in writing, at any time and from time to time, an officer, agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of and as the agent of the Association, including without limitation to deliver and file the notices required by the Chapter 47F of the North Carolina General Statutes (the "Code"), and to conduct the sale and to otherwise comply with said statute. The Board of Directors or the then President of the Association may, at any time and from time to time, remove any such Trustee and appoint a successor or substitute Trustee without further formality than an appointment and designation in writing. Except as otherwise provided by this Declaration, the Association will exercise its power of sale pursuant to the Code. The Association has the right and power to bid on any Lot at any foreclosure sale, either judicial or non-judicial, and to acquire, hold, lease, mortgage, or convey the same.

If directed by the Association to foreclose the Association's continuing lien, Trustee will, either personally or by agent, give notice of the foreclosure sale as required by the Code as then in effect, and sell and convey all or part of the applicable property "AS IS", "WHERE IS", and "WITH ALL FAULTS" to the highest bidder, subject to prior liens, encumbrances and any other matters of record and without representation or warranty, express or implied, by Trustee or the Association. The Association must indemnify Trustee and hold Trustee harmless from and against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the Association's lien or otherwise pursuant to this Declaration, including indemnification for all court and other costs, and attorney's fees incurred by Trustee in defense of any action or proceeding taken against Trustee regarding any of the foregoing.

The filing of suit to collect any sums due hereunder or to foreclose the Association's continuing lien for assessments may never be considered an election so as to preclude exercise of any other rights or remedies, including without limitation foreclosure under power of sale before or after a final judgment. After foreclosure, either judicial or non-judicial, the former Owner

and anyone claiming under the former Owner must immediately surrender possession to the purchaser. If not, the former Owner and anyone claiming under the former Owner will be mere tenants at sufferance of the purchaser, and the purchaser may obtain immediate possession pursuant to any actions or remedies permitted by law, including an action for forcible detainer or eviction to be maintainable by the purchaser.

Each Owner, by acquisition of any Lot, specifically covenants and stipulates as to each and every Trustee's foreclosure sale that the recitals in any appointment or designation of Trustee, any conveyance by the Trustee and any affidavit of the Trustee or the Association related thereto is full proof and evidence of the matters therein stated, that all prerequisites of the foreclosure sale are presumed to have been performed, and that the foreclosure sale made under the powers herein granted is a perpetual bar against the Owner(s) of the Lot(s) sold and their heirs, executors and administrators, successors and assigns, and any Persons whatsoever claiming or to claim thereunder.

Without limitation of any other provisions of this Declaration, Declarant, during the Development Period, or the Board of Directors thereafter, are hereby specifically authorized to amend Section 6.07 in any manner deemed necessary or appropriate as regarding or to conform to applicable provisions or requirements of the North Carolina General Statutes and/or applicable rules pertaining thereto without the joinder or consent of any Owner or any other Person.

- (e) Extinguishment of Inferior Liens. Foreclosure of the Association's continuing lien for assessments terminates, extinguishes and forever discharges all inferior or subordinate liens and encumbrances (being all liens and encumbrances except as provided by Section 6.09) as to the affected Lot. The foregoing applies to judicial and non-judicial foreclosure of the Association's continuing lien for assessments regardless of whether or not the holder of the inferior or subordinate lien or encumbrance is made a party to or given notice of any proceedings in connection therewith, including without limitation to the fullest extent permitted by law whether or not made a party to or given notice of any judicial foreclosure suit and any other proceedings in connection therewith.

Section 6.08 Effect of Foreclosure or Bankruptcy. The effect of judicial or non-judicial foreclosure of a lien which is superior to the Association's continuing assessment lien under this Declaration, or acceptance of a deed in lieu thereof, and the effect of the discharge of an Owner in bankruptcy is determined as of the date of foreclosure, the date of signing of a deed in lieu which is accepted by the grantee or the date of filing of the bankruptcy in which the Owner is discharged, as the case may be (the "Discharge Date"). Foreclosure or acceptance of a deed in lieu as aforesaid does not relieve the former Owner from the personal obligation for payment of assessments due as of the Discharge Date, but does release the Association's continuing assessment lien as to and only as to assessments due prior to the Discharge Date. The purchaser at foreclosure or grantee under a deed in lieu and an Owner discharged in bankruptcy is also relieved from any obligation for payment of assessments due prior to the Discharge Date, but is obligated to pay all assessments assessed or assessable from and after the Discharge Date and the Association's continuing assessment lien fully secures payment of said assessments. For purposes of the foregoing "assessments assessed or assessable" means (i) prorated regular annual assessments based on the number of months remaining in the calendar year in which the Discharge Date occurs regardless of whether the applicable regular annual assessment is payable in advance annually, semi-annually or quarterly, and (ii) any installments for special assessments so payable which become due after the Discharge Date.

Section 6.09 Revival of Assessment Lien. The Association's assessment lien is automatically revived as to any Owner who reacquires ownership of the applicable Lot within two (2) years after the Discharge Date (as defined in the immediately preceding Section) to the same effect as if none of the events causing the Discharge Date to occur had occurred if ownership is

reacquired from the purchaser at foreclosure, the grantee under the deed in lieu of foreclosure, or any successor in title to such purchaser or grantee and the reacquisition of ownership constitutes a fraudulent transfer under Chapter 39 of the North Carolina General Statutes or under any other state or federal statutes or laws.

Section 6.10 No Merger. The Association's assessment lien is not, by merger or otherwise, extinguished or otherwise effected by acquisition of ownership of a Lot at any time and in any manner by the Association except as otherwise expressly agreed in writing by the Association.

Section 6.11 Assessments as Independent Covenant. The obligation to pay assessments is a separate and independent covenant and contractual obligation on the part of each Owner. No offset, credit, waiver, diminution, or abatement may be claimed by any Owner to avoid or diminish the obligation for payment of assessments for any reason, including, by way of illustration but not limitation, (i) by nonuse of any Area of Common Responsibility or abandonment of a Lot, (ii) by reason of any alleged actions or failure to act by Declarant, the Association, the Board, the ARC (as defined herein), or any of their related parties, whether or not required under this Declaration, (iii) for inconvenience or discomfort arising from the making of repairs or improvements which may be or are the responsibility of Declarant, the Association, the Board, the ARC, or any of their related parties, or (iv) by reason of any action taken by Declarant, the Association, the Board of Directors, the ARC, or any of their related parties, to comply with any law, ordinance, or any order or directive of any governmental authority, or pursuant to any judgment or order of a court of competent jurisdiction.

Section 6.12 Assessment Collection Policies. The Association will adopt assessment collection policies consistent with this Declaration and in accordance with the Code. The initial Association Assessment Collection Policy will be adopted by Declarant. Declarant during the Development Period and the Board at any time may from time to time adopt and amend such other assessment collection policies as either may deem to be necessary or appropriate, including with regard to or concerning the Association Assessment Collection Policy as initially adopted by Declarant.

Section 6.13 Declarant Authority and Exemption as to Assessments. NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, ALL PROVISIONS SET FORTH IN THIS DECLARATION REGARDING DECLARANT AND APPROVED BUILDER'S AUTHORITY AND EXEMPTIONS AS TO ASSESSMENTS APPLY.

Section 6.14 Budget Deficits During Development Period. Declarant, at its sole cost and expense, shall advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of Declarant and shall be paid back to Declarant if and to the extent that sufficient funds are generated by assessments in future years until such time as Declarant is repaid in full. Declarant may, but is not obligated to, forgive any promissory notes from the Association made pursuant to this Section 6.14.

Section 6.15 Failure to Assess. The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE VII MAINTENANCE

Section 7.01 Association's Maintenance Responsibility. Except as may be specifically

provided otherwise below, the Association shall only maintain the Area of Common Responsibility, including: (a) any landscaping, grass, plants, shrubs and trees on the Common Area; (b) all community entry features, including, without limitation, any landscaping associated therewith and any irrigation system or lighting system serving such entry features, regardless of whether the same are located on a Lot, Common Area or public right-of-way; (c) all storm water detention/retention ponds and storm water drainage facilities serving the Property in accordance with the Stormwater Maintenance Manual and any gate, fence, wall or other enclosure surrounding said storm water detention/retention ponds, regardless of whether the same are located on a Lot or Common Area; provided, however, the Association shall not be responsible for the maintenance, repair or replacement of any storm water drainage facilities which exclusively serve a Lot; (d) perimeter fencing; (e) retaining walls located on Common Areas (or the perimeter) and on the following Lots identified on the Recorded Plat: Lots 9-31 (inclusive), 47 and 49-54 (inclusive); (f) mail kiosks or centers, if any. In the event that the Association determines that any maintenance which is the responsibility of the Association hereunder is required due to the willful or negligent act of an Owner, or the occupant, family, guest, invitee or lessee of an Owner, then the Association may perform such maintenance and all costs thereof may be assessed to the Owner as a specific assessment. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association. The Association may be relieved of all or any portion of its maintenance responsibilities to the extent that such property is dedicated to any local, state or federal government or quasi-governmental entity and said entity accepts the responsibility for maintenance. In the event of any such assumption, assignment or dedication, however, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is desirable or necessary.

The Board of Directors, in its sole discretion, may leave portions of the Property as undisturbed natural areas and may change the landscaping on the Area of Common Responsibility at any time and from time to time, including the adding or modifying of landscaping improvements, such as the planting of seasonal flowers.

Sanitary sewer and water may be provided to the Lots through a single connection to municipal services, a master meter, and distribution and collection lines maintained by the Association between municipal lines as individual Lots. Costs incurred by the Association arising out of, or related to, municipal use or similar charges, the maintenance, repair, or replacement of, distribution or collection lines and all related matters shall be included as part of the Annual Expenses. The Association may promulgate reasonable rules and regulations regarding the consumption and use of such utilities. The Association shall have the right to install individual meters on each of the Lots and bill each Lot respectively.

Section 7.02 Owner's Maintenance Responsibility. Except to the extent the Association is responsible for maintenance as provided in this Declaration, each Owner must maintain the exterior of each Owner's Dwelling, garage, and all other buildings, structures, fences, walls, recreational equipment, landscaping, and improvements located upon each Owner's Lot, in an attractive, sound and well maintained condition, including proper maintenance and repair as needed of paint, bricks, siding, roofs, exterior walls, driveways, parking areas and all other exterior portions of the Owner's residence and garage. Such maintenance obligation shall include, without limitation, the following: (i) prompt removal of all litter, trash, refuse, and waste; (ii) lawn mowing on a regular basis; (iii) tree and shrub pruning; (iv) watering landscaped areas; (v) keeping improvements and exterior lighting in good repair and working order; (vi) keeping lawn and garden areas alive, free of weeds, and attractive; (vii) keeping driveways and walkways in good repair; (viii) complying with all governmental health and police requirements; (ix) maintaining grading and storm water drainage as originally established on the Lot; (x) periodic maintenance and repair of exterior damage to improvements; (xi) maintaining and repairing the Dwelling located on a Lot, including, without limitation, periodic painting and pressure washing as needed; (xii) maintaining, repairing and replacing all storm water drainage facilities which exclusively serve the Lot; and (xiii) maintaining, repairing and replacing all pipes, wires and conduits, including, without limitation, sanitary sewer, septic, electrical and plumbing systems, which exclusively serve the Lot. Without limitation of the foregoing, each Owner must provide proper repair and maintenance as and when needed as follows:

- (a) The exterior paint on each Owner's Dwelling must be maintained so that no portion thereof peels, scales or cracks excessively, and all painted portions remain neat and free of mildew and discoloration. NO CHANGE IN THE EXTERIOR COLOR SCHEME OF A DWELLING AS ORIGINALLY CONSTRUCTED (INCLUDING AS TO THE ORIGINAL EXTERIOR PAINT COLOR OR COLORS OR THE CONFIGURATION OF THE COLORS) IS PERMITTED WITHOUT PRIOR WRITTEN APPROVAL FROM THE ARC.
- (b) The windows must be maintained so that no caulking thereon is chipped or cracked and no window panes are cracked or broken. All windowsills, door jams and thresholds, framing and trim for all windows and exterior doors and all hinges, latches, locks and all other hardware which are part of and/or necessary to the proper functioning of all windows and exterior doors must be maintained so that all remain whole, sound, in a neat and attractive condition and fully operational.
- (c) All exterior doors, including garage doors, must be maintained, repaired, replaced and/or repainted as needed to prevent an unkempt or unsightly appearance, to prevent leaning or listing, and such as to maintain same in proper working condition, including replacement as needed of damaged or dented garage door panels and any cracked or broken glass in any door.
- (d) All exterior surfaces on each Owner's Dwelling, including siding, brick, stone and stucco, as applicable, must be properly maintained at all times.
- (e) All exterior surfaces of each Owner's Dwelling, including the roof and all walls, windows and exterior doors, must be periodically cleaned as needed to prevent mold, mildew or other discoloration.
- (f) The roof on each Owner's Dwelling must be maintained to prevent sagging, to prevent leaks, so that all shingles, tiles or slates are properly secured, curled shingles or damaged shingles, tiles or slates are replaced and no worn areas or holes are permitted to remain, and such that the structural integrity and exterior appearance of the roof is maintained. The appearance of the roof may not be changed by any such maintenance without the express written approval of the ARC.
- (g) The rain gutters and downspouts on each Owner's Dwelling, if any, must be maintained so that all are properly painted or treated to prevent rust and corrosion, are properly secured to roof, eaves, gables or exterior walls (as the case may be), are maintained without holes, and are promptly repaired or replaced if dented or otherwise damaged.
- (h) All concrete areas on each Owner's Lot, including sidewalks and driveway, must be maintained so that all cracks are appropriately patched or surfaced as they appear, expansion joints are maintained, repaired or replaced, as needed, and oil, grease and other stains are removed as they appear, and all such areas must be kept free of weeds, grass or other vegetation.
- (i) All fences or walls erected on each Owner's Lot must be maintained to prevent any listing or leaning, and all broken or damaged members and all holes and cracks must be repaired so that no portion thereof is permitted to rot or decay. PAINTING OR STAINING OF WOODEN FENCES IS PROHIBITED UNLESS APPROVED IN WRITING BY THE ARC.
- (j) All recreational equipment, which may be installed if and only if approved by the ARC, must be maintained to prevent any unsightly or unkempt condition, including for example but without limitation, proper maintenance of swing sets to prevent rust and corrosion, and proper maintenance of basketball goals to prevent rust and corrosion and

by replacement as needed of torn or worn nets.

Section 7.03 Adjacent or Adjoining Owners. No Owner or their tenant will allow any condition to exist, or fail or neglect to provide any maintenance, which materially and adversely affects any adjoining or adjacent Lot, any Area of Common Responsibility, or any improvements on any such Lot or the Area of Common Responsibility.

Section 7.04 Remedy for Owner's Failure to Maintain. In the event the Board or ARC determine that (i) an Owner may have or has failed or refused to discharge properly the Owner's maintenance obligations as provided in this Article, or (ii) the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder may have or has been caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective related parties, then the Board or ARC may conduct inspections of any affected Lot, the exterior of the residence and all other buildings thereon, and all other structures and improvements thereon (a "Compliance Inspection") and/or perform the repair, replacement or maintenance (the "Required Work") in accordance with this Section.

The Board or ARC must give written notice of intent to conduct a Compliance Inspection and/or to perform Required Work. The notice may be given by posting on the front door of the Dwelling at the applicable Lot regardless of any other address maintained by the Owner. Except in the case of an "emergency", the notice must give the applicable Owner not less than ten (10) days to schedule a Compliance Inspection and/or to perform Required Work (or to commence and thereafter proceed with diligence to completion of Required Work which cannot be reasonably completed in ten (10) days), failing which the Board or ARC may proceed without further notice. For the purposes of this Section 7.04, "emergency" means (i) any condition which may or does cause an imminent risk of infestation by termites, rats or other vermin, or any other health, fire or safety hazard, (ii) any condition which may or does cause water infiltration in to another Lot, Common Areas or any improvements located thereon, and (iii) any other thing, condition or exigent circumstances which may or does present an imminent risk of harm or damage to any Lot or Area of Common Responsibility, or any improvements thereon or to any Owners or occupants thereof. In the case of an emergency the Board or ARC may proceed immediately with any Required Work as either deems necessary to abate the emergency, but will thereafter proceed as aforesaid.

All costs and expenses of conducting a Compliance Inspection as to which a violation is determined to exist and all costs and expenses of Required Work performed by the Board or ARC will be assessed against the applicable Lot and the Owner thereof as a special assessment which must be paid within ten days after notice of same is given to the applicable Owner. The good faith determination by the Board or ARC as to the need for a Compliance Inspection and as to all aspects of Required Work is final and conclusive, and extends to any condition as to such Lot or which adversely affects any other Lot or Area of Common Responsibility. The Association, the Board or ARC and their related parties are not liable for trespass or any other tort or claim for damages in connection with any actions or failure to act pursuant to this Section.

Section 7.05 Damage or Destruction.

- (a) Required Repair; Permitted Removal. Whether or not insured, in the event of damage, casualty loss or other destruction to all or any portion of a Dwelling, garage, building, structure or other improvement (a "Damaged Improvement"), any Damaged Improvement must be repaired, reconstructed or replaced in its entirety, or it must be demolished and removed as hereafter provided.
- (b) Manner of Repair or Removal. All repair, reconstruction or replacement of any Damaged Improvement must be performed in such manner as to restore the Damaged Improvement to substantially the same exterior dimensions and appearance (including as to color, type and quality of materials and as to architectural style and details) as, and must be located in substantially the same location as, when the Damaged Improvement was originally constructed, or to such other appearance and condition as approved by

the ARC. If the Damaged Improvement is not repaired, reconstructed or replaced as aforesaid, then the Damaged Improvement must be removed in its entirety from the Lot, including removal of any foundation, and all other restoration work performed, including grading and sodding, as is required such that after demolition and removal Architectural Guidelines are maintained as determined by the ARC.

- (c) Time Limits. All work regarding a Damaged Improvement must be completed within sixty (60) days after the date of occurrence of the damage, casualty loss or other destruction; or, where such work cannot be completed within the applicable period of time, the work must be commenced within such period and completed within a reasonable time thereafter. In all events, all such work must be completed within ninety (90) days after the date of occurrence of the damage, casualty loss or other destruction unless, for good cause shown, a longer period is approved by the ARC.

Section 7.06 Stormwater Facility Maintenance. As provided in Section 7.01 hereof, the Association shall be responsible for the inspection and maintenance of the stormwater drainage facilities serving the Property, including, without limitation, the stormwater detention/retention pond(s) and any stormwater drainage lines, catch basins, manholes, inlets, outlets, pipes, channels, vegetation, berms or other related drainage facilities located in the community that convey water to the stormwater detention/retention pond(s) and/or control stormwater in the community, in accordance with the Stormwater Maintenance Manual. Additionally, as provided in the Maintenance Manual, each year the Association shall have an inspection report prepared by a qualified registered professional engineer in and submitted to Wake County, North Carolina. The annual report shall include documentation of all inspections, as well as an operation assessment of the facilities. If the annual inspection reveals that the facilities do not function as intended or designed, the Association shall have the facilities repaired following the inspection. In the event of a conflict between this Section 7.06 and the provisions of the Stormwater Maintenance Manual, the provisions of the Stormwater Maintenance Manual shall control.

ARTICLE VIII ARCHITECTURAL CONTROL

Section 8.01 Architectural Control.

- (a) No exterior construction, alteration or addition of any nature whatsoever (including but not limited to a building, outbuilding, driveway, walkway, fence, wall, garage, patio, swing set, play house, play set, trampoline, carport, spas, swimming pool or other structure, planting or removal of landscaping materials, exterior lighting, placement or installation of statuary, flags, fountains and similar items, staking, clearing, excavation, ditching, grading, filling, change in color or type of any existing improvement, improvements or modifications to the roof, material, color, paint stain or varnish, or the interior porches, patios or similar portions of a structure which are visible from outside the Lot), shall be commenced, placed or maintained upon any portion of the Property until complete and final plans and specifications setting forth the information hereinafter described shall have been submitted to, and approved in writing by, the Architectural Review Committee (the "ARC") as to the harmony of the exterior design and general quality with the existing standards, and as to location in relation to surrounding structures and topography. The ARC is authorized to adopt procedures regarding applications for design approvals and the procedure it uses for processing applications (the "Architectural Guidelines").

The owner of each Lot shall include with each application for approval such information, plans and documents as the ARC may reasonably request and shall include the name of the contractor a statement as to the classification of contractor's license held by such contractor and the address and telephone number of the contractor. This information shall be submitted to the ARC with the application. If the identity and license information for the contractor is not available when the Owner makes application to the

ARC, the information shall be submitted to the ARC at least thirty (30) days prior to commencement of construction.

ARC approvals shall be valid for one (1) year from the date of issuance and ARC approvals will not be modified or terminated during such period. 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 any activities. 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 ARC 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, without limiting the generality of the foregoing, the Association may, in its sole discretion, either restore the Lot to the condition that existed before construction began or may complete construction, either at the Owner's costs and with lien rights created herein and under North Carolina law.

- (b) The plans and specifications, which must be submitted to the ARC prior to the commencement of any such work upon any Lot, as hereinabove provided, shall contain at least the nature, kind, shape, height, materials, color, texture and location of such structure, alteration or landscaping and such other information as the ARC may reasonably request in order to render a decision.
- (c) The ARC shall, within thirty (30) days after receipt of a request by an Owner, furnish to any Owner a written response signed by a member of the ARC, stating whether any exterior addition to, change in, or alteration of any structure or landscaping owned by such member on a Lot is in compliance with the provisions of this Section, and such certificate shall be conclusive as to whether the same is in such compliance. If the ARC fails to respond as required by this Section 8.01, said request shall be deemed approved.
- (d) If any construction or alteration or landscaping work is undertaken or performed upon any portion of the Property (i) without application having been first made and approval obtained as provided in subparagraph
 - (a) of this Section, (ii) in a manner that deviates from the plans approved by the ARC, or (iii) without prompt completion, as determined by the ARC, said work shall be deemed to be in violation of this covenant, and the Owner upon whose Lot said work was undertaken or performed may, in the case of unapproved work, be required to restore to its original condition, at his sole expense, the property upon which said work was undertaken or performed, or in the case of approved work, complete the work promptly and in strict compliance with approved plans. Upon the failure or refusal of any Person to perform the work required herein, the ARC, or their authorized agents or employees, may, after fourteen (14) days' notice to such Person, enter upon the property, and make such restoration or complete such work as the ARC, in the exercise of its discretion, may deem necessary or advisable. The Person upon whose property such work shall have been performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such work, including without limitation, reasonable attorneys' fees, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in this Declaration. Such costs shall be paid to the Association by the Person liable for the same at the same time as the next due Annual Assessment payment, or at such earlier time, and in such installments, as the Board of Directors shall determine.

Section 8.02 No Combination of Lots. Contiguous Lots may not be combined without the prior written consent of the ARC. If the ARC approves a combination, such combination shall thereafter be deemed to be a single Lot for all purposes of this Declaration, except that

notwithstanding the foregoing, the amount of assessments for which such single Lot shall be thereafter liable shall be equal to the total assessments for which all of the Lots that were combined would have been liable had such combination not taken place.

Section 8.03 Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this ARTICLE VIII shall be construed as prohibiting any construction, alteration, addition or removal by the Declarant or Approved Builder upon any portion of the Property while such property is owned by the Declarant or Approved Builder. Any construction, alteration, addition or removal performed by the Declarant or Approved Builder upon any property while such property is owned by the Declarant or Approved Builder shall be exempt from the provisions of this ARTICLE VIII.

Section 8.04 Architectural Review Committee. Responsibility for the review of all applications under this ARTICLE VIII shall be vested in the ARC, the members of which need not be Owners, Members of the Association or representatives of Owners or Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Association. The ARC 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 by the ARC in having any application reviewed by architects, engineers or other professionals.

The ARC shall have exclusive jurisdiction over all construction, alterations or additions on any portion of the Property. Until one hundred percent (100%) of the Lots are Improved Lots, Declarant has the right to appoint all members of the ARC, who shall serve at the Declarant's discretion, provided that, at all times during which Developer has such right, (i) no less than one member of the ARC shall be appointed by the Approved Builder and (ii) any decision of the ARC must be approved by unanimous decision of the ARC. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARC, who shall thereafter serve and may be removed in the Board's discretion.

ARC approval of proposals, plans and specifications, or drawings 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 proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

Section 8.05 Delegation. The ARC, with the approval of the Board, may delegate its responsibilities in defined categories of review (such as, but not limited to, changes during construction to previously approved plans) to a subcommittee, designated ARC member or staff member, and may create from among its staff and/or members subcommittees to perform certain or all of its review tasks, and may also employ professional assistance in carrying out its duties and responsibilities. No delegation of the ARC's responsibilities will prevent the ARC from reviewing and overturning the decision of the person or entity to which such authority was delegated. The ARC or the Board may revoke, at any time, any delegation of the ARC's responsibilities.

Section 8.06 Limitation of Liability. The standards and procedures established pursuant to this Article VIII are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Property only and shall not impose on Declarant, the Association or the ARC any duty to any Person. Neither Declarant, the Association, nor the ARC, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, or for ensuring compliance with building codes and other requirements or regulations of the Governmental Authorities. IN ALL CASES THE OWNER IS RESPONSIBLE FOR ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REGULATIONS AND FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF PROPOSED CONSTRUCTION OR MODIFICATIONS,

THE ADEQUACY OF SOILS OR DRAINAGE. Neither Declarant, the Association, the ARC, nor any member of any of the foregoing, shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the ARC and its members shall be defended and indemnified by the Association as provided in this Declaration and the Articles of Incorporation and Bylaws of the Association.

ARTICLE IX INSURANCE

Section 9.01 Association Insurance. The Association shall obtain and maintain commercial general liability insurance of at least One Million and 00/100 Dollars (\$1,000,000.00), and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

Section 9.02 Individual Insurance. Each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots. Each Owner covenants and agrees with all other Owners and with the Association that each Owner will maintain at all times all-risk casualty insurance as well as a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of a covered item in the event of damage or destruction from any such hazard.

The Board has the right, but not the obligation, to require the Owner to furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this Section, the Association has the right, but not the obligation, to purchase such insurance on behalf of the Owner and to assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments herein.

Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association.

Section 9.03 Additional Insurance Requirements.

The Board of Directors shall utilize reasonable efforts to include the following provisions in the policies that the Association obtains:

- (a) waiver of the insurer's rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, occupants, and their respective household members;
- (b) an agreed value endorsement and an inflation guard endorsement; and
- (c) until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Lot, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Lot, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums.

All policies of insurance shall be written with a company licensed to do business in the State of North Carolina. 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.

Nothing contained herein gives any Owner or other party a priority over the rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Lot on which there is a Mortgagee endorsement shall be disbursed jointly to such Lot Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Lot separately or to each occurrence, each Lot Owner shall be responsible for paying the deductible pertaining to his or her Lot, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to the terms of this Declaration.

Additionally, the Association shall obtain such insurance coverage as is necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, if and to the extent applicable to the Property.

Nothing contained herein requires the Association to make a claim under the insurance policies upon the occurrence of an insured event. The Association has the right to exercise reasonable business judgment in all insurance decisions.

Section 9.04 Damage and Destruction - Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any structure or improvement located on a Lot shall be repaired or reconstructed by the Owner thereof in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article VIII of this Declaration. Said repair or reconstruction shall be completed within seventy-five (75) days after such damage or destruction occurred 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 period of time thereafter. Alternatively, the Owner of the Lot may elect to demolish all improvements on the Lot and remove all debris and ruins therefrom within seventy-five (75) days after such damage or destruction occurred and thereafter maintain the Lot in a neat and attractive, landscaped condition consistent with this Declaration. The Owner shall pay all costs which are not covered by insurance proceeds.

ARTICLE X RESTRICTIONS

To provide for the maximum enjoyment of the Lots by all the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the applicable zoning ordinances with respect to the Property and the following provisions:

Section 10.01 Residential Use. Each Lot shall be used for residential purposes exclusively. Leasing of a Lot for residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or occupant residing at the Lot may conduct business activities within the residential dwelling located thereon so long as the business activity: (a) does not otherwise violate the provisions of the Declaration, Bylaws or any rules and regulations of the Association; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Property; (e) does not increase

the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Property; (g) does not constitute a nuisance or a hazardous or offensive use; (h) does not threaten the security or safety of other residents of the Property; and (i) does not involve door-to-door solicitation within the Property, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which 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: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity. Notwithstanding anything to the contrary herein, nothing in this Section 10.01 shall be construed as prohibiting the Declarant or Approved Builder from maintaining model homes, speculative housing, sales trailers or construction trailers in the Property.

Section 10.02 Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the ARC, except for customary name and address signs, one customary "for sale" sign advertising a Lot for sale and any sign required by legal proceedings. The restriction herein stated shall include the prohibition of placement of any sign within a building located on any Lot in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle.

Section 10.03 Vehicles; Parking.

- (a) General. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking spaces serving the Lot" shall refer to the number of garage parking spaces and if, and only if, the Owners and/or occupants of a Lot have more vehicles than the number of garage parking spaces, those excess vehicles which are an Owner's or occupant's primary means of transportation on a regular basis may be parked on the driveway located on such Lot; provided that no vehicle parked on a driveway shall encroach onto any portion of the sidewalk, public right-of-way or any landscaped or grassy area. Vehicles shall be parked only in appropriate parking spaces serving the Lot or other designated parking areas established by the Board, if any. All parking shall be further subject to such reasonable rules and regulations as the Board may adopt from time to time.
- (b) Garages. All homes shall contain a garage; carports shall not be permitted. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. Garages shall be used for the parking of vehicles and not for storage or other purposes. Garages shall not be converted to additional living space unless the same has been approved by the ARC in accordance with Article VIII hereof.
- (c) Disabled and Stored Vehicles. No vehicle may be left upon any portion of the Property, except in an enclosed garage or other area designated by the Board, if any, for a period of more than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Property by the Board of Directors or the appropriate authority of Wake County. No towed vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go cart, golf cart, commercial vehicle, camper, bus or mobile home shall be regularly stored in the Property or temporarily kept in the Property, except if kept in an enclosed garage or other area designated by the Board, if any, for periods longer than forty-eight (48) hours (the temporary removal of such vehicle from the Property shall not be sufficient to establish compliance with the forty-eight (48) consecutive hour provision provided for

herein). Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of such trucks or trucks with a load capacity in excess of three-quarters of a ton shall be parked, kept or stored within the Property except during the time reasonably necessary to provide service to or delivery within the Property or as otherwise permitted by the Board of Directors.

- (d) Commercial Vehicles. The term "commercial vehicles" as used herein, shall include, without limitation, any vehicle which bears any indicia of commercial use, including, but not limited to, writing, logos, ladders, ladder racks, vehicles displaying signage of a commercial or business nature or vehicles which are not primarily used for the transportation of passengers, all as determined by the Board in its sole discretion. Commercial vehicles shall not be permitted in the Property, except if kept in an enclosed garage; provided however, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as may be reasonably necessary to provide service to or make a delivery within the Property.
- (e) Remedies of the Association for Noncompliance. If any vehicle is parked on any portion of the Common Area in violation of this Section or in violation of the Association's rules and regulations, the Board or agent of the Association 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 twelve (12) months of such notice, the Board or agent of the Association may have the vehicle towed in accordance with the notice, without further notice to the Owner or user of the vehicle. Notwithstanding anything herein to the contrary, if a vehicle located on the Common Area is obstructing the flow of traffic, is parked on any grassy or landscaped area, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this Section, the Declarant, its affiliates, the Association and its affiliates, and any director, officer, employee or agent of any of the foregoing, shall not be liable to any Person for any claim of damage as a result of the towing activity. The Board of Directors may exercise any and all remedies available for a violation of this Section, including, without limitation, the right to levy and collect fines against a non-complying Owners or occupants, which remedies shall be in addition to not in lieu of its authority to remove the violating vehicle.
- (f) Declarant and Approved Builder Exemption. Notwithstanding the foregoing, the Declarant, Approved Builder and their respective agents, contractors, subcontractors and assigns shall have the right, during regular business hours, to park vehicles on any and all streets within the Property as needed in order to facilitate the construction, development and build out of the Property.

Section 10.04 Leasing. Lots may be leased for residential purposes. All leases shall be in writing. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least twelve (12) months. No rental sign of any kind shall be erected or displayed within the Property, including, without limitation, on a Lot or in the windows of a residential dwelling located on a Lot, without prior written approval of the ARC pursuant to Article VIII hereof.

- (a) Notice. Within ten (10) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with the following information: (i) a copy of the fully executed lease agreement; (ii) the name of the lessee and all other occupants of the Lot;

(iii) the phone number of the lessee; (iv) the Owner's address and phone number other than at the Lot; and (v) other such information as the Board may reasonably require.

- (b) General. The Owner must provide the lessee with copies of the Declaration, Bylaws, the rules and regulations of the Association and Architectural Guidelines, if any, and the lease shall provide that the Owner has made available to the lessee copies of the Declaration, Bylaws, and the rules and regulations and Architectural Guidelines, if any.
- (c) Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Lot 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 Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations and Architectural Guidelines adopted pursuant thereto and shall control the conduct of all other occupants and guests of the leased Lot in order to ensure such compliance. Owner agrees to cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations and Architectural Guidelines adopted pursuant thereto and is responsible for all violations caused by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations and Architectural Guidelines adopted pursuant thereto. In the event that the lessee or a person living with the lessee violates the Declaration, Bylaws, or a rule or regulation or Architectural Guidelines 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 the provisions contained herein. If the fine is not paid by the lessee within the time period set by the Board of Directors, 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 Lot.

- (d) Use of Common Area. 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 Area.
- (e) Liability for Assessments; Assignment of Rent. If an Owner who is leasing his or her Lot fails to pay any annual, special or specific assessment or any other charge owed to the Association 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 of Directors, lessee shall pay to the Association all unpaid annual, special and specific 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 of Director'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 of Director'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.

Section 10.05 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets in a reasonable number as determined by the Board from time to time. No animals shall be kept, bred or maintained for any commercial purpose. No dog runs, runners or exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article VIII hereof. Dogs shall at all times when outside of a dwelling located on

a Lot be kept on a leash or otherwise under the physical control of a responsible person. All Owners must control their animals at all times, whether or not such Owner is present, in a manner that will prevent any animal from: (a) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently; (b) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees; or (c) otherwise constituting a nuisance or inconvenience to the Owner(s) or occupant(s) of any other Lot; all of the foregoing as determined by the Association in its sole discretion.

All animals shall be registered, licensed and inoculated if and as required by law. Animal control authorities shall be permitted to enter the Property to patrol and remove unlicensed animals. Animal waste deposited in the Property must be removed by the owner of the animal or the person responsible for the animal. The Association may adopt reasonable rules and regulations designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls and noise controls. The Association may require that an Owner remove any animal that presents an actual threat to the health or safety of residents and require abatement of any nuisance or unreasonable source of annoyance. In the event that the Owner fails to remove an animal as provided herein, the Association shall have the right to institute legal action to have the animal removed and all costs associated therewith, including, without limitation, reasonable attorneys' fees actually incurred, shall be a specific assessment against the Lot of such Owner.

Section 10.06 Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No property within the Property shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot 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 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 within the Property, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Property. No plants, animals, device or thing of any sort shall be maintained in the Property whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Property by other Owners and occupants. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier, alarm, equipment or other sound device, mechanical or otherwise, which creates or produces excessively loud sounds or vibrations, 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, or any conduct which creates any noxious or offensive odors outside of a home shall be permitted, located, used, placed, installed or maintained upon any Lot, or any portion thereof. The inconvenience 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. Notwithstanding anything to the contrary herein, each Owner and occupant acknowledges that the Declarant, Approved Builder and their respective representatives, agents, contractors and subcontractors may engage in construction activities on one or more Lots in the Property and each Owner and occupant further agrees that such construction activities shall not be deemed a nuisance as provided herein.

Section 10.07 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, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Property.

Section 10.08 Antennae. No exterior antenna, receiving dish or similar apparatus of any kind for receiving and/or transmitting audio and/or video signals shall be placed, allowed or maintained upon any portion of the Property, including any Lot, unless approved in accordance with

the provisions of Article VIII hereof or as otherwise permitted by the Architectural Guidelines; provided, however, no approval shall be necessary to install the following on a residential dwelling located on a Lot: (a) antennae designed to receive direct broadcast satellite services, including direct-to-home satellite services or antennae designed to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennae designed to receive video programming services via multipoint distribution services or antennae designed to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (c) antennae that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the residential dwelling located on a Lot unless such installation: (x) imposes unreasonable delay or prevents the use of the antennae; (y) unreasonably increases the cost of installation; or (z) an acceptable quality signal cannot otherwise be obtained.

Section 10.09 Tree Removal. No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground and no ornamental or flowering trees, regardless of diameter, shall be removed from a Lot unless approved in accordance with the provisions of Article VIII hereof or as may be otherwise permitted pursuant to the Architectural Guidelines. The County maintains requirements that currently affect the Property regarding "tree coverage" or "tree protection", as are set forth by County ordinance or County zoning code. All owners shall be responsible for observing and complying with the applicable ordinances and requirements of the County concerning tree removal and tree protection. Because the ordinances and requirements of the County may change from time to time, all Owners should consult the County planning department or other applicable entity prior to the removal or disturbance of any trees from or on their Lot. The Association shall keep and maintain any portion of the Open Space designated on a Final Plat as a "Tree Coverage Area" or "Tree Protection Area", or such other similar designation, in its natural and undisturbed state, and no Person shall remove any trees or other vegetation within such area or take any other action that would disturb or alter the undisturbed condition or nature of such area, except that the Association has the right to remove dead or diseased trees and to take other actions with the approval of the County.

The Association and Owners shall also comply with all zoning conditions and local ordinances applicable to tree removal. In the event of a conflict between the provisions of this Section and any zoning condition or local ordinance, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant or Approved Builder.

Section 10.10 Drainage. Catch basins, retention ponds, detention ponds, drainage easement areas and related drainage facilities are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flow after the location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article VIII hereof. In the event storm water drainage from any Lot or Lots flows across another Lot, provisions shall be made by the Owner of such downstream Lot to permit such drainage to continue, without restriction or reduction, across the downstream Lot and into the natural drainage channel or course although no specific drainage easement for such flow of water is provided on the subdivision Plat for the Property recorded in the Registry of Deeds.

Section 10.11 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board of Directors, it would create an unsafe condition.

Section 10.12 Garbage Cans, Woodpiles, Etc. All garbage cans, recycling bins, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located so as to be concealed from the view of neighboring streets and property. All rubbish, trash, garbage, recycling materials and yard waste shall be regularly removed and shall not be allowed to accumulate. Unless otherwise provided by the Board, trash, recycling and yard waste receptacles

shall be placed at the curb no earlier than 5:00 p.m. the day before pick up and shall be removed within twenty-four (24) hours. Trash, garbage, debris, yard waste or other waste matter of any kind may not be burned within the Property. Trash removal, recycling and yard waste pick-up shall also be subject to such reasonable rules and regulations as the Board of Directors may adopt from time to time.

Section 10.13 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with prior written approval in accordance with Article VIII hereof. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision Plat of any Lot(s) with the consent of the Owner of the affected Lot(s) and to approve the revision and re-recording of any Plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Area or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such Lot(s).

Section 10.14 Firearms. The discharge of firearms within the Property is prohibited. The term "firearms" includes, but is not limited to, "B-B" guns, pellet guns, archery equipment and firearms of all types, regardless of size.

Section 10.15 Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without prior written approval in accordance with the provisions of Article VIII hereof or in compliance with applicable Architectural Guidelines. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article VIII, but in no event may a chain link or barbed wire fence be approved. Notwithstanding the foregoing, Declarant and the Association may erect any type of fence on the Common Area or elsewhere within the Property as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for the health and safety of Owners and occupants.

Section 10.16 Utility Lines. Except as may be permitted under and pursuant to Article VIII hereof, no overhead utility lines, including lines for cable television, shall be installed within the Property.

Section 10.17 Air-Conditioning Units. No window air conditioning units may be installed.

Section 10.18 Lighting and Displays. Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Property; (d) seasonal decorative lights for a reasonable period of time during the holiday season as may be determined by the Board in its sole discretion; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article VIII hereof or as may be otherwise permitted under applicable Architectural Guidelines. Religious or holiday symbols and decorations may be displayed on a Lot of the kinds normally displayed in single-family residential neighborhoods; provided, however, the Association may adopt reasonable time, place and manner restrictions with respect to said symbols and decorations visible from outside of a structure located on a Lot, including, without limitation, imposing limitations on appearance, style, size, and number.

Section 10.19 Artificial Vegetation, Gardens, Play Equipment, Exterior Sculpture, Water Features and Similar Items. No artificial vegetation shall be permitted on the exterior of any Lot or the Common Area. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals), exterior sculpture, fountains, or water features may be erected on any Lot without prior written approval in accordance with the provisions of Article VIII hereof and/or in compliance with the Architectural Guidelines.

Section 10.20 Flags. Except for flags which may be installed by the Declarant, no flags may be displayed on any Lot without prior written approval in accordance with the provisions of Article VIII hereof or as may otherwise be permitted in the Architectural Guidelines established thereunder; provided, however, no such approval shall be required to display the flag of the United States of

America and the current flag of the State of North Carolina on a Lot in accordance with the provisions of the U.S. Flag Code (36 US Code 10) and usual and customary practice. The Board of Directors of the Association may promulgate reasonable rules and regulations with respect to the display of flags in the Property, including, without limitation, regulating the size of flags that may be displayed and imposing reasonable time, place and manner restrictions pertaining to the display of the United States flag; provided, however, the Association shall not enact any rule or regulation which has the effect of prohibiting any Owner from displaying the flag of the United States of America on a Lot in the Property in contravention of the Freedom to Display the American Flag Act of 2005.

Section 10.21 Conservation Equipment. No solar energy collector panels or attendant hardware or other conservation equipment shall be constructed or installed on a Lot unless as an integral and harmonious part of the architectural design of a structure or otherwise screened from view and approved in accordance with the provisions of Article VIII hereof or as may be otherwise permitted in the Architectural Guidelines.

Section 10.22 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Article VIII hereof and in no event shall any above-ground swimming pool be permitted; provided, however, portable or inflatable wading pools designed for use by small children shall be permitted so long as the same are properly maintained and stored out of view from neighboring property and the public streets when not in use.

Section 10.23 Address Markers. All address markers and/or address posts shall be of the same type and color as originally installed on a Lot and any modification to or change in address markers and/or address posts shall require written approval under Article VIII hereof.

Section 10.24 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

Section 10.25 Entry Features. Owners shall not alter, remove or add improvements to any entry features or streetscapes constructed on any Lot in connection with the original development of the Property, or any part of any easement area associated therewith without prior written approval in accordance with Article VIII hereof or applicable Architectural Guidelines.

Section 10.26 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose. The side of all window treatments, with the exception of stained wood blinds or shutters, which can be seen at any time from the outside of any structure located on a Lot shall be white, off-white or such other colors as may be permitted in the Architectural Guidelines. Bed sheets, blankets, towels, black plastic, paper and similar type items shall not be used as window treatments.

Section 10.27 Garage Sales. No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Property without the prior written consent of the Board of Directors. If permitted, such activities shall be subject to all reasonable conditions that the Board may impose.

Section 10.28 Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with Article VIII hereof or in compliance with applicable Architectural Guidelines. However, this Section shall not be construed to prevent the Declarant, Approved Builder, their respective representatives and agents and those engaged in development, construction, marketing, property management or sales in the Property from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Section shall be construed to prevent the Declarant or Approved Builder from developing, constructing, marketing, or maintaining model

homes, speculative housing, sales offices or construction trailers within the Property.

Section 10.29 Storm Water Detention/Retention Ponds, Creeks, and Streams. Except as herein provided, all creeks, streams and storm water retention or detention ponds within the Property shall be aesthetic amenities and/or used for 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 Builder 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 any creek, stream or storm water retention/detention ponds within the Property. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any body of water located within the Property. Owners shall have no riparian or littoral rights with respect to the waters in any pond, creek or stream within the Property and shall not be permitted to withdraw water, impede or redirect the flow of water to or from any pond, creek or stream as may exist in the Property.

Section 10.30 Buffer Areas. Land-disturbing activities shall not be conducted within any buffer area shown on the recorded subdivision Plat(s) for the Property, except with prior written approval under Article VIII hereof and in compliance with North Carolina law.

Section 10.31 Pollutants; Hazardous Materials. Without limitation of any other provisions of this Section, no Owner or tenant, and related parties of either, may dump grass clippings, leaves or other debris, detergents, petroleum products, fertilizers, or other pollutants or potentially hazardous or toxic substances, in any sewer system, water system, drainage ditch, stream, pond or lake within the Property, or do anything, or maintain or permit any condition in violation of applicable environmental, toxic or hazardous waste or similar laws, rules or regulations. Storage of gasoline, heating or other fuels, or of any hazardous or toxic materials upon any Lot is strictly prohibited (except that up to five gallons of fuel may be stored upon a Lot for emergency purposes and operation of lawn mowers and similar tools or equipment if properly kept and stored in a safe and non-hazardous manner). THE FOREGOING DOES NOT PLACE UPON DECLARANT, APPROVED BUILDER, THE ASSOCIATION, THE ARC OR ANY OF THEIR RELATED PARTIES ANY OBLIGATION FOR ENFORCEMENT OF ANY APPLICABLE ENVIRONMENTAL, TOXIC, OR HAZARDOUS WASTE OR SIMILAR LAWS, RULES, OR REGULATIONS.

Section 10.32 Right-of-Ways. No fence, wall, hedge, tree, shrub, planting or any other thing or device may protrude into any right-of-way located on the Property. Any such obstruction shall be removed by Owner of such Lot from which the obstruction originates within twenty-four (24) hours of written notice of the same. If such Owner does not remove said obstruction, the Association may, but is not required to, remove such obstruction and the costs of the same shall be a special assessment against the non-performing Owner.

Section 10.33 Interpretation. In all cases, the covenants and restrictions herein contained shall be construed and interpreted in a manner which, in the opinion of the Board of Directors, will best effect the intent of the general plan of development and maintenance herein set forth. Subject to the terms of this Section and the Board of Directors' duty to exercise business judgment and reasonableness, the Board of Directors may modify, cancel, limit, create exceptions to, or expand the restrictions contained herein and may create, modify and enforce reasonable rules governing the use of the Property consistent with the law and with other provisions in this Declaration. The Board of Directors shall send notice to all Owners concerning any new or amended restrictions or rules prior to the date that such restrictions or rules go into effect. For this purpose, notice may be sent to each Owner by U.S. mail, hand delivery, electronic telecommunication or publication in a community notice or newsletter delivered or mailed to each Owner.

Section 10.34 Owner's Liability for Payment of Association Costs. Each Owner, tenant, and their related parties, are expressly prohibited from doing anything which could or does (i) increase the Association's costs of insurance or result in cancellation or diminution in insurance coverage,

(ii) cause damage to any Area of Common Responsibility, including any facilities thereon, or (iii) increase costs of maintenance, repair, replacement, management, operation or discharge of any other obligations of the Association regarding the Area of Common Responsibility, including any facilities thereon, or any other areas maintained by the Association. Regardless of availability of insurance coverage, the Association may charge to each responsible Owner, as a special assessment, all increased costs and all other damages resulting, directly or indirectly, from the acts or omissions of an Owner, tenants, or their related parties, in violation of the foregoing provisions.

ARTICLE XI AMENDMENT

Until the termination of the Development Period, the Declaration may be amended only by Declarant, with the consent of Approved Builder, who may amend this Declaration for any purpose. Thereafter, Declarant or the Board, may unilaterally amend this Declaration if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) enable an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to make, purchase, insure or guarantee mortgage loans on the Lots, (d) an amendment is necessary to enable any governmental agency or private insurance company, including but not limited to the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee mortgage loans on the Lots, or (e) an amendment related to the merger of the Association into some other owner's association.. However, any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing. After the termination of the Development Period, except for items (a) through (e) above, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of two-thirds (2/3) of the Lot Owners.

Any amendment shall become effective upon the recording with the Register of Deeds of the instrument evidencing such change unless a later effective date is specified therein. If an Owner consents to an amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any challenge to an amendment must be made within six months of the recording of the amendment or such amendment shall be presumed to have been validly adopted and to be valid.

Every Owner, by taking record title to a Lot, and each holder of a mortgage upon any portion of any Lot, by acceptance of such mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

ARTICLE XII NON-ARBITRAL PROCEEDINGS

Except as otherwise limited by this Article XII, enforcement of these covenants and restrictions pertaining to: (a) actions brought by the Association against Owners (excluding Declarant) to enforce the provisions of this Declaration (including the foreclosure of liens); (b) the collections of assessments; (c) proceeding involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it ((a)-(d) hereinafter collectively "Non-Arbitral Proceedings"); may be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots, to enforce any liens created by this Declaration.

ARTICLE XIII ARBITRAL PROCEEDINGS

Any dispute other than the Non-Arbitral Proceedings described in ARTICLE XII above, arising out of or related, in whole or in part to this Declaration, or the Property, or any portion thereof or improvement thereon, including any claim involving the Declarant ("Arbitral Proceedings"), shall be resolved in accordance with the procedures described below.

Section 13.01 Negotiation. Before any other action is taken on an Arbitral Proceeding, the parties thereto shall attempt to resolve the dispute through negotiation and the following procedures.

- (a) Alleged Construction Defects. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Property in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant, architect, engineer, or landscape professional involved in the design or construction have been first notified in writing and given the opportunity to meet with the Person contemplating the engagement of an expert (the "Claimant"), to conduct an inspection, and to repair deficiencies, if any, identified by the Declarant, architect, engineer, or landscape professional (the "Respondent"). If after providing such opportunity to the Respondent the Claimant elects to retain an expert, the Claimant shall thereafter deliver to the Respondent written notice that includes, at a minimum, (a) a description of the alleged defect; (b) a certification from an architect or engineer licensed in the State of North Carolina that such alleged defect exists along with a description of the scope of work necessary to cure such alleged defect and a resume of such architect or engineer; and (c) the cost to cure such alleged defect as estimated by the architect or engineer. After delivering the notice required by the preceding sentence the Claimant shall afford the Respondent a reasonable opportunity to cure the alleged defect before initiating any proceedings pursuant to this Section 13.01(a).
- (b) All other Arbitral Disputes. In all Arbitral Disputes other than construction defect claims which are addressed by the preceding Section, the Person asserting or contemplating the assertion of claims (also referred to herein as the "Claimant") shall provide the Respondent with written notice of the Arbitral Dispute which notice must include the Claimant's position with regard to facts, circumstances and law related to the issues to be resolved, together with all documents and evidence that supports such position, and after delivery of such notice the parties shall meet in person and confer for the purpose of resolving a Arbitral Dispute by good faith negotiation.

Section 13.02 Mediation. If the parties cannot resolve their Arbitral Dispute pursuant to the procedures described in the preceding Section 13.01(b), as applicable, within such time period as may be agreed upon by such parties, the Claimant shall have thirty (30) days after the termination of negotiations within which to submit the Arbitral Dispute to mediation pursuant to the mediation procedures in the North Carolina Rules Implementing Statewide Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions or to any other rules upon which the parties to the Arbitral Dispute may mutually agree. Persons other than the parties to the Arbitral Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Arbitral Dispute or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic record of the mediation process. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such mediation.

Section 13.03 Final and Binding Arbitration. If the parties cannot resolve their Arbitral Dispute pursuant to the procedures described in Section 13.01 above, the Claimant shall have ninety (90) days following termination of mediation proceedings (as determined by the mediator) to submit the Arbitral Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association or the Construction Arbitration Rules of the American Arbitration Association, as determined applicable by the arbitrator, the American Arbitration Association or as agreed upon by the parties, as such rules are modified or as otherwise provided in this ARTICLE XIII. If the Claimant does not submit the Arbitral Dispute to arbitration within ninety (90) days after termination of mediation proceedings, the Claimant shall be deemed to have waived any claims related to the Arbitral Dispute and all other parties to the Arbitral Dispute shall be released and discharged from any and all liability to the Claimant on account of such Arbitral Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to a person or entity not a party to the foregoing proceedings.

The existing parties to the Arbitral Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Declarant shall be required to participate in the arbitration proceeding if all parties against whom a Declarant would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 13.03, the arbitrator shall have the authority to try all issues, whether of fact or law.

- (a) Place. The arbitration proceedings shall be heard in the County where the Property is located.
- (b) Commencement and Timing of Proceeding. Arbitration may not be commenced or prosecuted by or on behalf of the Association unless approved by at least seventy-five percent (75%) of the Lot Owners which approval must be accompanied by the approval of a reasonable arbitration budget and the approval and collection of a Special Assessment in an amount equal to the budget to be levied equally among the Lots and collected before commencement of any action. The arbitrator shall determine whether the Association or a Claimant acting on behalf of the Association has satisfied the requirements of this Subsection (b) before commencing any arbitration and shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay, and in no case greater than sixty (60) days from the date of the demand or if the requirement of this Subsection (b) has not been met find for the Respondent on all claims.
- (c) Discovery. The parties to the Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Arbitral Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The Respondent shall also be entitled to conduct further tests and inspections as provided in Section 13.01(a) above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (d) Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive, consequential or statutory damages (all such damages being hereby waived by all Owners and the Declarant); however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for under North Carolina Law, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.

- (e) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.
- (f) Expenses of Arbitration. Each party to the arbitration shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties. As an express limitation to the foregoing, the arbitrator's award shall include the costs and expenses, including attorneys' fees, incurred by the party the arbitrator determines to have prevailed.
- (g) Enforcement of Resolution. If the parties to a Arbitral Dispute resolve such Arbitral Dispute through negotiation or mediation in accordance with Section 13.01 or Section 13.02 above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Subsection (d) and any party to the Arbitral Dispute thereafter fails to comply with such resolution or award, then the other party to the Arbitral Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Subsection (g). In such event, the party taking action to enforce the terms of the negotiation, mediation, or the 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 to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys' fees and court costs.

Section 13.04 Amendment. This Article XIV shall not be amended unless such amendment is approved by Declarant, and at least eighty percent (80%) of the percentage of votes of the Association.

ARTICLE XIV DEVELOPMENT ACTIVITIES

Section 14.01 Development Activities. Declarant, Approved Builder, the contractors, sub-contractors, suppliers, vendors, sales agents, realtors and all other related personnel of Declarant and Approved Builder (all such Persons sometime herein referred to as "Development Personnel") have the right to transact any business and conduct any activities reasonably necessary for all construction within, and all development of, the Property, and for the sale or rental of Lots and single family residences and any other improvements to be constructed within the Property (all such construction, development, sales and all related business and activities herein referred to as "Development Activities"), including without limitation as set forth in this Section 14.01.

Section 14.02 Marketing. Declarant and Approved Builder have the right to maintain models, to have, place and maintain sales and promotional signs, flags, banners and similar promotional devices within the Property, to conduct from time to time an "open house" and similar events for realtors and other persons which may include without limitation leaving limited access gates (if any) open as hereafter provided, and to use for development, sales and/or promotional purposes all or any part of any Lot, including residence or other improvements located thereon, which is owned by Declarant.

Section 14.03 Access. IF AND TO THE EXTENT THAT ANY PATROL OR ACCESS SERVICES, STRUCTURES OR DEVICES, INCLUDING ANY CONTROLLED ACCESS

GATE, GUARDHOUSE AND RELATED STRUCTURES AND DEVICES ("PATROL/ACCESS DEVICES"), ARE PROVIDED FOR THE PROPERTY, THEN DURING THE DEVELOPMENT PERIOD DECLARANT RETAINS FULL AND SOLE AUTHORITY AS TO AND CONTROL OVER THE SAME. DECLARANT'S AUTHORITY AND CONTROL INCLUDES THE RIGHT IN DECLARANT'S SOLE DISCRETION TO DETERMINE THE HOURS, STAFFING AND MANNER OF OPERATION OF ANY AND ALL SUCH PATROL/ACCESS DEVICES, IF ANY. WITHOUT LIMITATION OF THE FOREGOING, DECLARANT IS EXPRESSLY AUTHORIZED DURING THE DEVELOPMENT PERIOD TO DETERMINE IF AND WHEN ANY PATROL/ACCESS DEVICES WILL BE OR BECOME FUNCTIONAL OR OPERATIONAL, INCLUDING THE SOLE RIGHT AND AUTHORITY TO DETERMINE IF AND WHEN ANY CONTROLLED ACCESS GATE WILL BE OR BECOME FUNCTIONAL, AND IF AND WHEN TO LEAVE ANY CONTROLLED ACCESS GATES OPEN FOR ANY PERIODS OF TIME (OR AT ALL TIMES). DURING THE DEVELOPMENT PERIOD DECLARANT MAY ALSO PERMIT, AND AFTER THE DEVELOPMENT PERIOD THE ASSOCIATION AND THE BOARD MUST ALSO PERMIT AND TAKE ALL NECESSARY ACTIONS TO FACILITATE ACCESS TO THE PROPERTY BY ANY DEVELOPMENT PERSONNEL INVOLVED IN ANY DEVELOPMENT ACTIVITIES, BY ANY PROSPECTIVE PURCHASERS, BY ANY SALES AGENTS OR REALTORS AND BY ANY OTHER PERSONS AS DECLARANT REASONABLY DETERMINES IS NECESSARY OR CONVENIENT TO ACCOMMODATE ANY DEVELOPMENT ACTIVITIES. NO PROVISIONS OF THIS DECLARATION, AND NO OTHER STATEMENTS OR COMMUNICATIONS BY DECLARANT OR THE ASSOCIATION, OR ANY RELATED PARTIES OF EITHER, SHALL EVER CONSTITUTE ANY REPRESENTATIONS OR WARRANTIES BY DECLARANT, THE ASSOCIATION, OR THE RELATED PARTIES OF EITHER, CONCERNING THE HOURS, STAFFING OR MANNER OF OPERATION OF ANY PATROL/ACCESS DEVICES, OR CONCERNING ANY SAFETY OR SECURITY BENEFITS OR PROTECTION REGARDING ANY OF THE SAME, ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES BEING HEREBY EXPRESSLY DISCLAIMED.

Section 14.04 Construction. Development Personnel may be required to and are hereby specifically hereby authorized to, engage in construction activities, to store equipment or materials, to create accumulations of trash and debris, and to otherwise engage in activities and create conditions related to its development of the Property, including the construction and sale of residences and any other improvements in the Property, upon multiple Lots, Area of Common Responsibility and any other properties within the Property, excluding any Lot after the initial sale of the Lot to an Owner other than Declarant, and occupancy of the Lot by the said other Owner or their tenant. Without limitation of the foregoing, Declarant is specifically authorized to engage in any of the foregoing activities and any other Development Activities at any times and on any days (including Sundays and holidays) as Declarant or deems necessary.

Section 14.05 Use of Common Areas. During the Development Period, Declarant's and Approved Builder's Development Personnel may use for any Development Activities, without charge, any Area of Common Responsibility (including improvements thereon).

Section 14.06 Construction Facilities. Declarant may permit temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences at such locations as Declarant may direct. Declarant may also authorize usage of garages as sales offices during the Development Period. At or prior to the date of the sale of a Lot to an Owner other than Declarant or Approved Builder, any garage appurtenant to the residence located on the Lot used for sales purposes must be fully reconverted to a garage, and any such other Owner or their successors in title shall be responsible for completion of the reconversion to any extent the reconversion is not completed as aforesaid.

Section 14.07 Parking. Development Personnel may park vehicles at any locations within or in the vicinity of the Property as is necessary to conducting of any Development Activities, excluding the private driveway, if any, as to any residence which is owned by an Owner other than Declarant or Approved Builder and which is occupied by the Owner or their tenant.

Section 14.08 Construction Regulations. Declarant may establish any reasonable regulations as to Owners and tenants, as to the Association, the Board and/or the ARC, as to any related parties of any of the foregoing, and as to any other Person, which Declarant deems appropriate to avoid hindrance or interference with any Development Activities, including limiting or denying access to areas of the Property, designating temporary dumping sites, maintenance of metal buildings or structures and use of Common Areas and/or improvements thereon in connection with its Developmental Activities.

Section 14.09 Time Period. Except as stated in Section 14.05 all provisions of this ARTICLE XIV apply to each Lot owned by Declarant and Approved Builder until each Lot has been improved with a residential dwelling for which a certificate of occupancy has been issued and each Lot has been conveyed to an Owner who intends to occupy the dwelling as a residence, regardless of whether such event occurs during or after the Development Period.

Section 14.10 Liability. ABSENT INTENTIONAL AND WILLFUL MISCONDUCT, DECLARANT AND APPROVED BUILDER, THEIR RELATED PARTIES, AND ALL OTHER DEVELOPMENT PERSONNEL ARE NOT LIABLE TO ANY OWNER OR TENANT, OR TO THE ASSOCIATION OR ACC, OR TO ANY RELATED PARTIES OF ANY OF THE FOREGOING, OR TO ANY OTHER PERSON FOR ANY CONSEQUENCES OF THE REASONABLE CONDUCTING OF ANY DEVELOPMENT ACTIVITIES.

ARTICLE XV MISCELLANEOUS

Section 15.01 Enforcement. Each Owner and occupant shall comply strictly with the Bylaws, rules and regulations, use restrictions and Architectural Guidelines, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision Plat(s) for the Property and in the deed to such Owner's Lot, if any. Declarant or the Association, acting through the Board of Directors, may impose fines or other sanctions for violations of the foregoing in accordance with this Declaration and the Bylaws, which fines shall be collected as provided herein for the collection of assessments; provided, however, only one fine may be imposed for a single violation such that an Owner or occupant may not be fined by Declarant and the Association for the same violation; and provided, further, Declarant or the Association, as the case may be, may count each day a violation continues after notice thereof as a separate violation. In the event fines or other sanctions are imposed by Declarant, Declarant shall have any and all rights to collect such fines or sanctions (which fines shall be payable to the Association) and any related charges, including, without limitation, administrative, service or collection fees, attorneys' fees actually incurred, and costs of collection, in the same manner as provided herein for the collection of assessments by the Association acting through the Board. The failure to comply with this Declaration, the Bylaws, the rules and regulations, use restrictions and the Architectural Guidelines shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorneys' fees actually incurred, maintainable by the Association, Declarant or an aggrieved Owner. Failure by the Declarant, 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. Declarant or the Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or Architectural Guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing. In no event shall the Board of Directors, or any officer of the Association, the Declarant, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration. Notwithstanding anything herein to the contrary, none of the provisions of this Declaration shall obligate or be construed to obligate Declarant, or its agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, or any provision hereof or thereof, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

Section 15.02 Occupants Bound. All provisions of the Declaration, Bylaws, rules and

regulations, use restrictions and Architectural Guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of Lots and the guests and invitees of Owners and occupants. The Owner shall be responsible for insuring that the occupants, the guests, invitees and licensees of the Owner and occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and Architectural Guidelines. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not timely paid, the fine may then be levied against the Owner.

Section 15.03 Self-Help. In addition to any other remedies provided for herein, the Association, acting through the Board, Declarant or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Property to abate or remove any structure, improvement, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, the use restrictions or the Architectural Guidelines. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorneys' fees actually incurred, shall be assessed against the Lot of the violating Owner as a specific assessment.

Section 15.04 No Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 15.05 Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of sixty-seven percent (67%) of the record Owners of the Lots.

Section 15.06 Notices. Any notice required or permitted to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mail, postage prepaid, addressed to the member or Owner to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Lot owned by such member. The date of service shall be the date of mailing. The address of Declarant, Approved Builder or the Association shall be the address of its respective registered agent on file with the Secretary of State of North Carolina. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

Section 15.07 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof 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 15.08 Successors to Declarant. In no event shall any person or other entity succeeding to the interest of Declarant by operation of law or through purchase of Declarant's

interest in all or any portion of the Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of Declarant.

Section 15.09 Right to Develop. Declarant, Approved Builder and their respective employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as Declarant and/or Approved Builder, with the consent of Declarant, deem appropriate in their sole discretion, and Declarant and Approved Builder, and their respective employees, agents, and designees shall have a right to complete construction, repair and maintenance of Lots. Every Person that acquires any interest in a Lot or in the Property acknowledges that the Property is a planned community, the development of which is likely to extend over many years, and agrees not to protect, challenge, or otherwise object to (a) changes in uses or density of property, or (b) changes in the plan as it relates to property. Each Owner acknowledges, understands and covenants to inform its lessees and all occupants of its Lot that the Property and areas adjacent to the Property are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction, and Owner as well as any of its tenants or occupants acknowledges that such construction and development is permitted by this Declaration, notwithstanding the limitations in ARTICLE X and similar provisions, and waives all claims with respect to such inconveniences, sights, sounds, smell and conditions associated with such construction. Owner agrees that if Owner or Owner's employees, lessees, invitees, clients, customers, guests, contractors, or agents enter onto any area of construction, they do so at their own risk, and that the Declarant and Approved Builder, and their respective contractors, agents or employees shall not be liable for any damage, loss or injury to such person.

Section 15.10 Liability Arising from Conduct of Owners. Each Owner, their tenants, and their respective related parties must indemnify and keep indemnified, and hold harmless, Declarant, Approved Builder, the Association, and their related parties from and against all claims, damages, suits, judgments, court costs, attorney's fees, attachments, and all other legal actions caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective related parties.

Section 15.11 Security Measures. Security is the sole responsibility of local law enforcement agencies, including, without limitation, the Sheriff's Department of the County, and individual owners and their tenants, and their respective related parties. Security Services may be provided at the sole discretion of the Board of Directors. The providing of Security Services at any time will in no way prevent the Board from thereafter discontinuing, or from temporarily or permanently modifying, terminating, or removing, any Security Services.

DECLARANT, APPROVED BUILDER, THE ASSOCIATION, AND THEIR RELATED PARTIES ARE NOT LIABLE FOR, AND EACH OWNER, THEIR TENANTS, AND THEIR RESPECTIVE PARTIES MUST INDEMNIFY, KEEP INDEMNIFIED, AND HOLD DECLARANT, APPROVED BUILDER, THE ASSOCIATION AND THEIR RELATED PARTIES HARMLESS AT ALL TIMES FROM, ANY INJURY, LOSS, OR DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION, ANY INJURY OR DAMAGES CAUSED BY THEFT, BURGLARY, TRESPASS, ASSAULT, VANDALISM, OR ANY OTHER CRIME, TO ANY PERSON OR PROPERTY ARISING, DIRECTLY OR INDIRECTLY, FROM THE PROVIDING OR FAILURE TO PROVIDE, ANY SECURITY SERVICES, OR THE DISCONTINUATION, MODIFICATION, DISRUPTION, DEFECT, MALFUNCTION, OPERATION, REPAIR, REPLACEMENT, OR USE OF ANY SECURITY SERVICES.

DECLARANT, APPROVED BUILDER, THE ASSOCIATION, AND THEIR RELATED PARTIES HAVE NO DUTY OBLIGATION, OR RESPONSIBILITY OF ANY KIND WHATSOEVER TO WARN, ADVISE, OR IN ANY OTHER MANNER INFORM ANY OWNERS, TENANTS, OR THEIR RELATED PARTIES, OR ANY OTHER RESIDENTS OR OCCUPANTS OF ANY LOT, OR ANY LAW ENFORCEMENT AGENCY, OR ANY OTHER PERSON AS TO ANY ALLEGED, SUSPECTED, OR KNOWN CRIMINAL ACTIVITIES OF

ANY KIND, CRIMINAL HISTORY OR BACKGROUND OF ANY PERSON, OR CRIMINAL INVESTIGATIONS BY LAW ENFORCEMENT AGENCIES OR BY ANY OTHER PERSON (ALL SUCH MATTERS, ACTIVITIES, AND INVESTIGATIONS HEREIN REFERRED TO AS "CRIMINAL MATTERS"), REGARDLESS OF WHETHER THE CRIMINAL MATTERS INVOLVE THE PROPERTY, OTHER AREAS IN THE VICINITY OF THE PROPERTY OR ANY OTHER PLACE OR LANDS. THE ASSOCIATION MAY (BUT HAS NO OBLIGATION TO) FROM TIME TO TIME DISCLOSE AND/OR TRANSMIT INFORMATION CONCERNING CRIMINAL MATTERS TO OWNERS, TENANTS, AND ANY OTHER OCCUPANTS OF LOTS, TO ANY LAW ENFORCEMENT AGENCIES, AND TO ANY OTHER PERSON WHICH THE ASSOCIATION'S OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AND OTHER RELATED PARTIES IN THEIR SOLE DISCRETION DEEM ADVISABLE.

Each Owner and tenant by acceptance of any right, title, or interest in any Lot, and every Owner, tenant, and occupant of a Lot by virtue of such occupancy, hereby consents, on their behalf and on behalf of their respective related parties, and on behalf of all other Persons coming upon a Lot or Area of Common Responsibility at their invitation, or with their consent or permission, to any such disclosure and/or transmittal of information. Any such disclosure and/or transmission of information does not in any way constitute an undertaking to do so in the future, either as to the Criminal Matters then involved or as to any other current, past, or future Criminal Matters, including in particular, but without limitation, the provisions of this Section regarding indemnity of Owners, their tenants, and their respective related parties.

Section 15.12 Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any portion of the Property and no longer owns any Additional Property that can be annexed, as provided herein, and a certificate of occupancy has been issued for the residential dwelling located on each Lot; or (b) the date of recording by Declarant in the Registry of Deeds of a written instrument terminating all of Declarant's rights hereunder.

Section 15.13 Termination of Rights of Approved Builder. The rights of Approved Builder to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that Approved Builder no longer owns any portion of the Property and no longer has the option to acquire additional property within the community; or (b) the date of recording by Approved Builder in the Registry of Deeds a written instrument terminating all of Approved Builder's rights hereunder.

Section 15.14 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine

Section 15.15 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant or Approved Builder, by reason of the fact that Declarant or Approved Builder, as applicable, may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant or Approved Builder, as applicable, while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

Section 15.16 No Discrimination. No action shall be taken by the Declarant, Approved Builder, the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

Section 15.17 Indemnification. To the fullest extent allowed by the North Carolina Nonprofit Corporation Act, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including,

but not limited to, attorneys' fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 15.18 Agreements. Subject to the prior approval of Declarant, 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 Property or the privilege of possession and enjoyment of any part of the Property.

Section 15.19 Variances. Notwithstanding anything to the contrary contained herein, the Declarant and the Board of Directors, with the consent of the Declarant, 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 is warranted and would not be inconsistent with the overall scheme of development for the Property.

[SIGNATURE PAGES FOLLOWS]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer under seal, this 20 day of May, 2022.

DECLARANT: TRYON POINTE, LLC,
a North Carolina limited liability company

By: Robert Knowles (SEAL)
Robert Knowles, Managing Member

STATE OF NORTH CAROLINA
COUNTY OF wake

I certify that the following person personally appeared before me this day, and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Robert Knowles, Managing Member, of Tryon Pointe, LLC, a North Carolina limited liability company.

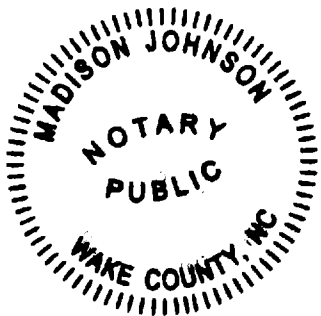
Date: 5/20/22

Notary Public: Madison Johnson
Signature

Notary Printed Name: Madison Johnson

Notary Seal:

My Commission Expires: April, 13, 2027



Signature and Notary Pages Follow

IN WITNESS WHEREOF, Approved Builder, as the Owner of some or all of the tract or parcel of land described on Exhibit "A" attached hereto does hereby declare and consent, on behalf of Approved Builder and such Approved Builder's heirs, successors, legal representatives, successors-in-title and assigns, that from and after the date hereof the property of Approved Builder described on Exhibit "A" attached hereto shall be owned, held, transferred, sold, conveyed, used, occupied, and encumbered subject to all of the terms, provisions, covenants, restrictions and easements contained in the Declaration. This 23 day of May, 2022.

APPROVED BUILDER: SDH Raleigh LLC, a Georgia limited liability company

By: [Signature] (SEAL)
Name: Joel Geniesse
Title: President

STATE OF North Carolina

COUNTY OF Wake

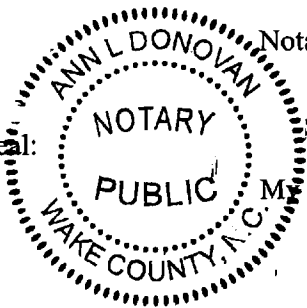
I certify that the following person personally appeared before me this day, and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: JOEL MICHAEL GENIESSE, the PRESIDENT of SDH RALEIGH LLC, a Georgia limited liability company.

Date: 5/23/2022

Notary Public: [Signature]
Signature

Notary Printed Name: Ann L Donovan

Notary Seal:



My Commission Expires: 12/30/2025

Signature and Notary Pages Follow

IN WITNESS WHEREOF, Approved Builder, as the Owner of some or all of the tract or parcel of land described on Exhibit "A" attached hereto does hereby declare and consent, on behalf of Approved Builder and such Approved Builder's heirs, successors, legal representatives, successors- in-title and assigns, that from and after the date hereof the property of Approved Builder described on Exhibit "A" attached hereto shall be owned, held, transferred, sold, conveyed, used, occupied, and encumbered subject to all of the terms, provisions, covenants, restrictions and easements contained in the Declaration. This the 24th day of May, 2022.

APPROVED BUILDER: **McKee Homes, LLC, a Delaware limited liability company**

By: [Signature] (SEAL)
Name: Patricia E. Hanchette
Title: President

STATE OF NC
COUNTY OF Wake

I certify that the following person personally appeared before me this day, and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Patricia Hanchette, the President of McKee Homes, LLC, a Delaware limited liability company.

Date: 05/24/2022 Notary Public: [Signature]
Signature

Notary Printed Name: Ashley Nisonger

Notary Seal:

My Commission Expires: June 19, 2024

ASHLEY NISONGER
NOTARY PUBLIC
Harnett County
North Carolina
My Commission Expires June 19, 2024

JOINDER OF LIENHOLDER

New Providence Capital Lending II, LP, a Texas limited partnership, being the sole beneficiary of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing from Tryon Pointe, LLC, a North Carolina limited liability company, dated March 10, 2021, recorded on March 11, 2021 in Deed Book 18390, Page 1926, Wake County, North Carolina, Registry of Deeds, encumbering all or a portion of the Property hereby consents to the terms and provisions of this Declaration of Covenants, Restrictions and Easements for Tryon Pointe to which this Lienholder Consent and Subordination is attached and acknowledges that the execution thereof does not constitute a default under the lien document or any other document executed in connection with or as security for the indebtedness above described, and subordinates the liens of the lien document and any other liens and/or security instruments securing said indebtedness to the rights and interests created under said Declaration, and acknowledges and agrees that a foreclosure of said liens and/or security interests shall not extinguish the rights, obligations and interests created under this Declaration. No warranties of title are hereby made by lienholder, lienholder's joinder herein being solely limited to such consent and subordination.

New Providence Capital Lending II, LP

a Texas limited partnership

By: [Signature] (SEAL)

Name: MARK PETER

Title: Manager

STATE OF TEXAS

COUNTY OF DALLAS

I certify that MARK PETER, the Manager of New Providence Capital Lending II, LP, a Texas limited partnership, personally appeared before me this day, acknowledging to me that he/she signed the foregoing document on behalf of said limited liability company.

Date: 5/20/22

Notary Public: [Signature]
Signature

Notary Printed Name: Diana Bukols

Notary Seal:

My Commission Expires: 04/03/23



EXHIBIT "A"
Property Description

Lying and being situate in the City of Raleigh, Wake County, North Carolina and more particularly described as follows:

BEING all of Tract 1, containing 31.39 acres, more or less, on Sanderford Road (SR 2564), as shown on that plat and survey entitled "Recombination Plat, Garner Plaza SC, LLC" in St. Mary's Township, Wake County, North Carolina, prepared by Stewart-Proctor, PLLC Engineering and Surveying, dated December 24, 2019 and recorded in Book of Maps 2020, Page 213, Wake County Registry.