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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OAKHURST TOWNHOMES

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**DECLARATION OF
COVENANTS CONDITIONS AND RESTRICTIONS
FOR
OAKHURST TOWNHOMES**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR OAKHURST TOWNHOMES (this "Declaration") is made this _____ day of _____, 2017 by OAKHURST TOWN HOMES LLC, a North Carolina limited liability company (together with its successors and assigns, "Declarant"). Each capitalized term used in this Declaration shall have the meaning for such term defined herein unless otherwise required by context.

WITNESSETH:

WHEREAS, Declarant is the owner of the property described in Exhibit A attached hereto and made a part hereof, which property, together with such Additional Property as shall have been from time to time brought under the scheme of this Declaration by Supplemental Declaration filed in the Registry (collectively, the "Property"), has been or will be developed into building lots and related amenities for use as a community of townhome lots, upon which townhome units will be constructed (each a "Townhome" and collectively "Townhomes"), said community to be known as Oakhurst Townhomes (provided, however, Declarant reserves the right to change said name as to all or any portion of the Property at any time and from time to time); and

WHEREAS, Declarant desires to insure the attractiveness of the Lots and community facilities within the Property and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of the Property, and to provide for the maintenance and upkeep of the Common Areas, the Located Easements, and other community facilities and utilities within the Property; and, in order to accomplish these objectives, Declarant deems it advisable to subject the Property to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth; and

WHEREAS, Declarant deems it desirable, in order to insure the efficient preservation, protection, and enhancement of the values and amenities of the Property and the residents' enjoyment of the specific rights, privileges, and easements in the Common Areas, the Located Easements, and the other community facilities and utilities within the Property, that an organization be created to which will be delegated and assigned the powers of maintaining the Common Areas, the Located Easements, and the other community facilities and utilities within the Property, administering and enforcing this Declaration, and collecting and disbursing the assessments and charges hereinafter imposed; and

WHEREAS, Declarant has caused or will cause to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of Oakhurst Townhome Association, Inc. ("Association");

NOW, THEREFORE, the Declarant declares that the Property is and shall be owned, held, leased, transferred, sold, mortgaged, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges, and liens, which shall run with the title to Property and be binding upon and inure to the benefit of all Owners thereof and their heirs, personal representatives, successors, and assigns.

ARTICLE 1. DEFINITIONS

Without limitation of other capitalized terms defined herein, certain of the capitalized terms used in this Declaration are defined in and shall have the meanings given them in this Article 1.

Section 1.1. “Act” shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.

Section 1.2. “Additional Property” shall mean the property described on Exhibit B attached hereto, all of any portion of which may from time to time be made subject to the Declaration pursuant to Article 2 hereof and which, when so subjected, shall become a part of the Property.

Section 1.3. “Annual Assessment” shall have the meaning set forth in Article 7, Section 7.3.

Section 1.4. “Assessment Year” shall mean such one year period as shall be specified by the Board in its discretion.

Section 1.5. “Association” shall mean Oakhurst Townhome Association, Inc., a North Carolina non-profit corporation.

Section 1.6. “Authority” over any parcel of property shall mean a right of ownership or control (whether in whole or in part) over such parcel of property.

Section 1.7. “Board” shall mean the Board of Directors of the Association. Notwithstanding anything to the contrary set forth in this Declaration or the Charter Documents, so long as Declarant owns any portion of the Property, Declarant shall have the right at any time and from time to time to appoint and remove any and all members of the Board.

Section 1.8. “Builder” shall mean NVR, Inc. d/b/a Ryan Homes or other person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes within the Property.

Section 1.9. “Charter Documents” shall mean the Articles of Incorporation and Bylaws of the Association, as applicable, as the same may be amended.

Section 1.10. “Common Areas” shall mean all portions of the Property which are deeded to the Association for the common use and enjoyment of all Members or owned by Declarant and designated for the common use and enjoyment of the Association and its Members, and all improvements and facilities constructed thereon for such purposes, including, but not limited to (without any obligation by Declarant to construct or install the same), the Stormwater Detention

Easement Areas shown on recorded Plats, any signage, irrigation, drainage facilities, sidewalks, entrance monuments, landscaped areas, lighting, green or natural area, swimming pool, clubhouse, private streets, private alleyways, and other amenities constructed on portions of Common Areas on the Property. Declarant shall deed Common Areas to the Association prior to converting Class B Membership to Class A Membership.

Section 1.11. “Declarant” shall mean Oakhurst Town Homes LLC, its successors and assigns.

Section 1.12. “Declarant Rights” shall mean all the rights contained in N.C.G.S. § 47F-1-103(ii) and 28 of the Act.

Section 1.13. “Declaration of Stormwater Drainage Easement” recorded in Book 31328 at Page 913 in the Mecklenburg County Public Registry.

Section 1.14. “General Utility Easements” shall have the meaning set forth in Article 4, Section 4.1.

Section 1.15. “Homeowner” shall mean any individual or entity other than Declarant or Builder who shall reside in a dwelling or lease a dwelling for occupancy of the dwelling upon a Lot.

Section 1.16. “Improvement” shall mean any structure and all appurtenances thereto of every type and kind, including but not limited to: buildings, outbuildings, patios, tennis courts, garages, doghouses, swimming pools, basketball goals, mailboxes, aerials, roads, driveways, parking areas, fences, walls, retaining walls, stairs, decks, landscaping, plantings, planted trees and shrubs, ponds, lakes, changes in grade or slope, site preparation, poles, signs, exterior air conditioning, external facilities used in connection with utilities (including water, sewer, gas, electric, telephone, regular, cable or satellite television or computer service), exterior illumination, front doors, window blinds, changes in any exterior color, and any new exterior construction or exterior improvement not included in any of the foregoing. The definition of Improvement includes both original Improvements and all later changes and/or repairs to Improvements, except that it does not include replacement of trees or shrubs with those of the same or similar species or replacement or repair of Improvements previously approved by the Architectural Control Committee provided such replacement or repair does not change any exterior color, material, design or appearance from that previously approved by the Architectural Control Committee.

Section 1.17. “Individual Assessments” shall have the meaning set forth in Article 7, Section 7.5.

Section 1.18. “Located Easements” shall have the meaning set forth in Article 4, Section 4.1.

Section 1.19. “Lot” shall mean a portion of the Property which has been included as a numbered or lettered plot of land on a Plat.

Section 1.20. “Member” shall have the meaning set forth in Article 5, Section 5.1.

Section 1.21. “Owner” shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.22. “Person” shall mean any individual, corporation, partnership, association, trust, or other legal entity.

Section 1.23. “Plats” shall mean such plats of all or any portion of the Property as shall have been from time to time recorded in the Registry (each a “Plat”).

Section 1.24. “Private Open Space” shall mean those areas shown as Private Open Space on recorded Plats of the Property that are located in the rear yards of Lots.

Section 1.25. “Private Services” shall mean the private water, water meters, sewer, roads, curbs, sidewalks, trees, garbage pickup, irrigation of front and side yards, street lights and landscaping as provided herein.

Section 1.26. “Property” shall mean the property described in Exhibit A hereto, together with such Additional Property as shall have been from time to time brought under the scheme of this Declaration by Supplemental Declaration filed in the Registry.

Section 1.27. “Registry” shall mean the office of the Register of Deeds for Mecklenburg County, North Carolina.

Section 1.28. “Special Assessments” shall have the meaning set forth in Article 7, Section 7.4.

Section 1.29. “Supplemental Declaration” shall mean a Supplemental Declaration of Covenants, Conditions and Restrictions filed in the Registry pursuant to Article 2, Section 2.2.

Section 1.30. “Townhome” shall mean one individual dwelling located on a Lot.

Section 1.31. “Working Capital Contributions” shall have the meaning set forth in Article 7, Section 7.15.

ARTICLE 2. PROPERTY

Section 2.1. Property Subject to Declaration. The Property shall be owned, held, leased, transferred, sold, mortgaged, conveyed and occupied subject to this Declaration and any amendments thereto.

Section 2.2. Scope of Additional Coverage. Declarant shall have the right, at its election without the consent of any Owner, to release Property from the scheme of this Declaration and/or to bring property within the scheme of this Declaration and subject to the jurisdiction of the Association any portion of the Additional Property which Declarant shall elect, by filing a Supplemental Declaration in the Registry. At such time as any Additional Property is brought within the scheme of this Declaration set forth above, it shall be part of the Property.

Section 2.3. Additional Declaration Documents. Declarant may supplement the provisions of this Declaration, whether with regard to the entire Property or any portion thereof, including any modifications as may be necessary to reflect the different character of any portion of the Property, provided the same are not inconsistent with the plan and spirit hereof. So long as Declarant owns any part of the Property, Declarant's prior written consent shall be required for any Person to supplement the provisions of this Declaration in regard to any portion of the Property.

ARTICLE 3. **RIGHTS IN COMMON AREAS**

Section 3.1. Owner's Easements of Enjoyment. Subject to the provisions of Section 3.5 of this Article and other provisions of this Declaration, each Owner shall have a right and easement of use and enjoyment in and to the Common Areas, Private Open Spaces and such easements shall be appurtenant to and shall pass with the title to such Owner's Lot; provided, however, that such easements shall not give such Owner the right to make alterations, additions, or improvements to any part of any Common Area.

Section 3.2. Delegation of Use. The rights and easements of use and enjoyment granted to each Owner in Section 3.1 of this Article may be exercised by the members of the Owner's family who occupy the Owner's Lot, and may be delegated by the Owner to such Owner's tenants who occupy said Lot as their principal residence.

Section 3.3. Title to the Common Areas.

(a) Declarant shall convey to the Association (by special warranty deed) fee simple title to the Common Areas, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default, restrictive covenants and utility easements, and any other title exceptions of record. Common Areas and Private Open Spaces may be conveyed by Declarant to the Association in whole or in part from time to time.

(b) While it is anticipated that the Common Areas and Private Open Spaces shall be limited to those properties specifically set forth on the Plats, nothing contained herein shall prevent the Declarant, by Supplemental Declaration or otherwise, to create, and to convey to the Association, any Common Areas and Private Open Spaces.

Section 3.4. Control of Common Areas and Private Open Spaces. Subject to other provisions in this Declaration, the Association shall have sole and exclusive Authority over the usage of and guidelines applicable to the Common Areas and Private Open Spaces.

Section 3.5. Extent of Owner's Easement. The rights and easements of use and enjoyment created in this Article shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation, and maintenance of the Common Areas and Private Open Spaces (including limiting the number of guests of Owners who may use such Common Areas

and Private Open Spaces) subject to limitations established by the Declarant or the Association, as applicable, on such right to impose regulations.

(b) Subject to affirmative vote of eighty percent (80%) of the votes of the Class A Members and the vote of the Class B Member (for so long as Class B Membership exists), the right of the Association to borrow money for the purpose of improving the Common Areas and Private Open Spaces and in aid thereof to mortgage such Common Areas; provided that the rights of such mortgagee in the Common Areas and Private Open Spaces shall be subordinate to the rights of the Owners hereunder.

(c) The right of the Association to take such steps as is reasonably necessary to protect the Common Areas and Private Open Spaces against foreclosure.

(d) Subject to the affirmative vote of eighty percent (80%) of the votes of the Class A Members and the vote of the Class B Member (for so long as Class B Membership exists), the right of the Association to dedicate or transfer all or any part of the Common Areas and Private Open Spaces, subject to the provisions of Section 47F-3-112 of the Act; provided that this paragraph shall not preclude the Association from either granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage, utilities and drainage facilities upon, over, under and across the Common Areas and Private Open Spaces without the assent of the Members when such easements are requisite for the convenient use and enjoyment of the Property, as determined by the Board in its sole discretion or the reconfiguration of Lots and Common Areas and Private Open Spaces by Declarant.

(e) The right of the Association to grant easements, leases and licenses through or over the Common Areas and Private Open Spaces.

(f) The rights of the Association and Declarant to use the easements for ingress and egress over, in, to and throughout the Common Areas and Private Open Spaces and to access, maintain and replace water meters within the Property.

(g) The right of Declarant, its successors and assigns to make any improvements for any reason, they deem proper upon the Common Areas and Private Open Spaces, even after their conveyance to the Association. Declarant hereby reserves an easement over the Common Areas and Private Open Spaces for the purpose of development of the remainder of the Property or Additional Property owned by Declarant. Although not limited in scope of this easement, this easement shall include the right of access at all times for Declarant's employees, agents, subcontractors, invitees, etc., over the Common Areas and Private Open Spaces and shall include the right to construct, maintain and dedicate any additional utility easements, drainage easements or any additional sanitary sewer or water line easements across any of the Common Areas and Private Open Spaces. This Easement to the Declarant shall terminate upon the completion of the development of the Property by Declarant but shall survive for the Association.

ARTICLE 4.

EASEMENTS

Section 4.1. Located Easements. An easement on each Lot is hereby reserved by the Declarant along, over, under, and upon a strip of land five (5) feet in width parallel and contiguous to the front and rear Lot lines of each Lot, (collectively, the "General Utility Easements") and such easements may be used by Declarant. The purpose(s) of the General Utility Easements shall be to provide for installation, maintenance, construction, and operation of drainage facilities, water meters and private and public utility service lines to, from, or for each of the Lots. In addition, as shown on the Plats, the Declarant has reserved (and may hereafter reserve) the following other easements (which, together with the General Utility Easements are collectively sometimes referred to herein as the "Located Easements"), which Located Easements are reserved by Declarant for itself, its successors and assigns, over, under, and across the Property, and which Declarant may modify or extinguish when in its sole discretion adequate easements are otherwise available:

(a) Landscape and irrigation easements and Private Service easements, consisting of: (i) those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of landscaping amenities, including, but not limited to, monumentation, signage and sitework; (ii) street medians, shoulder, and boulevard areas within street rights of way and Private Open Spaces;

(b) Specific utility easements, consisting of those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of irrigation equipment and public and private utilities, including without limitation gas, electric, telephone, cable, storm water, sewer, and water;

(c) Irrigation easements, consisting of those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of irrigation facilities; and

(d) Drainage easements, consisting of those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of drainage facilities.

(e) Construction easements, consisting of those areas over the Lots and adjoining Common Areas as easements for purposes reasonably related to the installation of streets and construction of improvements to the Townhomes on the Lots as well as Common Areas. Declarant and its contractors shall have full rights of ingress and egress to and through, over, and about the Lots and adjoining Common Areas during such period of time that Declarant is engaged in any construction or improvement work on or with the Property and shall further have an easement for the purpose of storing the materials, vehicles, tools, equipment, etc., which are being utilized in such construction. No Owner or his/her guests or invitees, shall in any way interfere or hamper Declarant or its employees or contractors in the exercise of these rights and easements.

(f) Repair and maintenance easements are reserved for the benefit of Declarant and the Association over, under, and through that portion of each Lot upon which is located any wall or any portion thereof for the construction, replacement, maintenance, and continued location of such wall, together with a general right of ingress, egress, and regress over and upon each Lot for the purpose of accessing such construction and location easement. Easements are reserved for the benefit of Declarant and the Association over, under, and through each Lot in order to perform any maintenance, alteration, or repair required or permitted herein to be performed by the Declarant or the Association, including, without limitation, the matters set forth in Sections 6.1(a), 6.1(b) and 6.1(c) of Article 6 (and the Owner of each Lot shall permit the Declarant and the Association and any representative of either to enter for such purposes at reasonable times and with reasonable advance notice), and for immediate entry onto each Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. The Declarant or the Association may, without consent or approval of any Owner, grant or convey any of the easement rights hereinabove reserved for the purposes set forth herein to any person, public or private utility or service company or any agent of Declarant or the Association.

(g) Settlement and overhang easements consisting of those areas over the Lots and adjoining Common Areas as easements for building encroachments created by initial construction and by subsequent settling and overhangs. A valid easement for said encroachments and for maintenance of same shall continue so long as said encroachments exist. In the event a Townhome is partially or totally destroyed, and then rebuilt, minor encroachments over parts of the adjoining Lots or Common Area(s) resulting from the reconstruction shall also be permitted and a valid easement for said encroachments and the maintenance thereof shall continue.

Section 4.2. Rights and Limitations With Regard to Located Easements. With regard to the Located Easements, the following shall apply:

(a) Since the locations of certain of the Located Easements may not have been finally determined as of the date of recording of this Declaration in the Registry, for a period of ten (10) years after the date of recording of this Declaration in the Registry, Declarant reserves to itself and its successors and assigns, and shall be vested with, the right to establish and adjust the locations of such of the Located Easements as are not finally established as of such date of recording and to record in the Registry on behalf of each and every affected Owner such revisions or supplements to the Plats as may be necessary or desirable to reflect the final locations of the Located Easements.

(b) Within the Located Easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels. Except as otherwise specifically provided in this Declaration and except for maintenance and repairs for which a public authority or public utility shall be responsible, the Located Easements on each Lot and all Improvements therein shall be maintained continuously by the Owner.

(c) It is anticipated that Declarant shall assign to the Association Declarant's rights with respect to the Located Easements.

(d) Declarant shall have the right to assign to any public authority or public utility company, in whole or in part, any easement reserved by Declarant under this Declaration.

Section 4.3. Easement of Ingress and Egress. Full rights of ingress and egress are reserved for the benefit of Declarant and the Association for the exercise of the Located Easement rights, as well as the maintenance and repair rights (as set forth in Article 11) in accordance with the provisions hereof for the carrying out by Declarant and/or the Association of the rights, functions, duties, and obligations of each hereunder (to the extent applicable); provided, that any such entry by Declarant or the Association upon any Lot shall be made with as minimum inconvenience to the Owner of such Lot as reasonably practical, and any damage caused as a result of the gross negligence of Declarant's or the Association's employees or agents shall be repaired by Declarant or the Association (as the case may be) at the expense of Declarant or the Association (as the case may be).

Section 4.4. Reservation of Special Declarant Rights. Declarant hereby reserves all Special Declarant Rights as defined in Section 47F-1-103(28) of the Act, including, but not limited to the following: the right to complete, repair, maintain, replace and operate improvements on the Property; the right to exercise any development rights; the right to maintain sales offices, management offices, models and signs advertising the Property; the right to use easements through the Common Area and through any Lot or Lots for the purpose of making, repairing, maintaining, replacing and operating improvements within the Property; and the right to elect, appoint or remove any officer or board member of the Association during any period of declarant control. These Special Declarant rights shall expire one year after the conveyance of Declarant's last Lot in the Property.

Section 4.5. Easements for Driveway Encroachments. Declarant hereby establishes an easement for any Lot ("Benefited Lot") whose driveway, as installed by Declarant, encroaches onto the adjoining Lot ("Burdened Lot"). This easement shall be non-exclusive and perpetual and shall allow the portion of the Benefited Lot's encroaching driveway, as installed by Declarant, to remain on the Burdened Lot. This easement is appurtenant to the Benefitted Lot and shall burden and run with the title to the Burdened Lot and shall be binding on all Owners, successors and assigns of the Benefited Lots and Burdened Lots. The foregoing easement shall also apply to any replacement driveway in conformance with the original driveway installed and constructed by Declarant.

Section 4.6. Declaration of Stormwater Drainage Easement. The Declarant and/or the Association shall be solely responsible for the construction of the detention system and the maintenance and repair of the detention system as provided in the Declaration of Stormwater Drainage Easement ("Stormwater Drainage Easement").

ARTICLE 5.
MEMBERSHIP IN THE ASSOCIATION

Section 5.1. Membership in the Association. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The voting rights of the Members shall be appurtenant to the ownership of the Lots. When more than one Person owns an interest (other than a leasehold or security interest) in a Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

Section 5.2. Classes of Members. The Association shall have two classes of membership:

(a) Class A. Class A Members shall be all Members with the exception of Declarant. Each Class A Member shall be entitled to one vote (1) per Lot owned by such Member.

(b) Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot owned by it. The Class B Membership shall cease on the earliest of (a) the date on which Declarant no longer owns any part of the Property, or (b) the date Declarant shall elect, in its sole discretion, that Class B Membership cease and be converted to Class A Membership (which election may be made upon Declarant giving written notice of the election to the Board).

Section 5.3. Voting, Quorum, and Notice Requirements. Except as may be otherwise specifically set forth in this Declaration or in the Charter Documents, the vote of the majority of the aggregate votes entitled to be cast by all classes of the Members present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present shall be the act of the Members meeting. The Charter Documents will set forth (a) the number of votes present that will constitute a quorum at a properly called meeting of Members and (b) the notice requirements for all action to be taken by the Members.

In any instance in this Declaration in which the affirmative vote of a number or percentage of votes of the Association is called for, it shall be interpreted to mean the following: The affirmative vote of that number or percentage of votes of the Association that: (i) are entitled to be cast and (ii) are present or represented by proxy at a Proper Meeting. A "Proper Meeting" shall mean a meeting of the members of the Association: (a) at which a quorum is present and (b) which is duly called and held for the purpose of casting such vote.

ARTICLE 6.
POWERS RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 6.1. Powers and Obligations of the Association. The Association, for the benefit of the Owners, shall have the following specific powers and rights (without limitation of other powers and rights the Association may have) and obligations:

(a) The power, right, and obligation to improve, maintain, or cause to be maintained the Common Areas, Located Easements, Private Open Spaces and the

Stormwater Drainage Easement (or particular portions thereof or particular improvements therein, as determined from time to time by the Association in its discretion) and to perform the Private Services;

(b) The power, right and obligation to periodically paint, stain, repair, replace, and care for all exterior building surfaces (including without limitation: water supply and sewer lines serving more than one Lot, external brick, siding, roof surfaces, roof systems, gutters, downspouts and decks; but excluding: patios, driveways, porches, second-story balconies, stoops, entry doors and garage doors and their appurtenant hardware, door sills, all exterior glass including windows and window frames and patio, porch, and/or balcony doors, foundations, footings, floor joists, subfloors and any other element not listed as being the obligation of the Association, all of which shall be maintained, repaired, and replaced by the Owner, with any replacement windows and doors being the same as originally installed); provided, however, the Owner, and not the Association, shall maintain any exterior improvements made by the Owner;

(c) The power, right and obligation to maintain, repair, and replace the landscaping (including irrigation system) in the front and rear yards of the Townhomes on the Lots, including, but not limited to, trees, hedges, shrubs, flowers, ground cover and grass, but excluding any additional landscaping installed by any Owner (any such landscaping being required to be approved in writing by the Architectural Control Committee) and excluding any enclosed patio areas installed by any Owner and excluding rear yard landscaping and maintenance of fenced rear yards upon Lots.

Notwithstanding Subsections (b) and (c) above, if the need of replacement, maintenance, or repair is caused through the willful or negligent act of the Owner, the Owner's family, guest, or invitees, the cost of such replacement, maintenance, or repairs shall be the obligation of that Owner and shall be assessed by Individual Assessment.

(d) The power and right to own the Common Areas and have easement rights over the Private Open Spaces and the facilities and improvements thereon;

(e) The power and right to enter into agreements to enable the Association to improve and maintain the Common Areas, Private Open Spaces, Private Services and Located Easements or portions thereof;

(f) The power and right to make (without being obligated to do so) all rules and regulations the Association deems necessary and establish guidelines for the use, operation and restriction of activities on the Lots and the Common Areas, Private Open Spaces and Located Easements (including, without limitation, guidelines, rules, and regulations related to architectural control), and to amend them from time to time as the Association deems necessary in its sole discretion;

(g) The power and right to enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Areas, Private Open Spaces, Located Easements, and the Association;

(h) The power and right to enter into agreements or contracts with utility companies with respect to utility installation, consumption, and service matters relating to the Common Areas, Private Open Spaces, Private Services, Located Easements, and the Association;

(i) The power and right to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Board sees fit;

(j) The power and right to enter into contracts (specifically including, without limitation, street light leases), maintain one or more bank accounts, and generally to have all the powers necessary or incidental to the operation and management of the Association;

(k) The power and right to sue or defend in any court of law in on behalf of the Association and to provide reserves for repairs and replacements;

(l) The power, right, and obligation to make available to each Member within sixty days after the end of each Assessment Year an annual report of the Association and, upon resolution adopted by the Board or upon the written request of the Class A Members holding at least three-fourths (3/4) of the eligible votes of Class A Members of the Association at such time, to have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Member within thirty days after completion;

(m) The power, right, and obligation to adjust the amount, collect, and use any insurance proceeds to repair damage to or replace lost property of the Association; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

(n) The power and right to exercise all powers, duties, and authority vested in the Association by this Declaration and the Declaration of Stormwater Drainage Easement or the Charter Documents and not reserved to the Members or Declarant by other provisions of this Declaration or the Charter Documents;

(o) The power and right to employ a manager or firm to manage the affairs and property of the Association (including, without limitation, collection of assessments provided for in this Declaration and enforcement of the other provisions of this Declaration), to employ independent contractors, or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;

(p) The power and right to retain the services of legal and accounting firms;

(q) The power and right to the extent permitted hereby, to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and, at its discretion, seek damages or other relief for violation of such provisions or rules, and to

fine Owners for violations after proper notice and opportunity to be heard as required by the Act;

(r) The power and right to contract with any third party or any Member (including Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be at competitive rates and otherwise upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association;

(s) The power and right to take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its rights or obligations hereunder or for the operation or protection of the Association;

(t) The power and right to set the Assessments; and

(u) Anything contained herein to the contrary notwithstanding, except as specifically set forth herein, none of the above-described rights and powers of the Association shall be obligatory on the part of the Association, and the failure or refusal by the Association to implement any such rights and powers shall not constitute a breach or default by the Association or the Board or the officers of the Association of any duties or obligations arising hereunder or otherwise owing to its Members.

Section 6.2. Liability Limitations. Neither Declarant, nor any Member, nor the Board, nor any member or manager of Declarant nor any officer or director of the Association shall be liable for: (a) debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise; (b) any incidental or consequential damages for failure to inspect any premises, improvements, or portions thereof or for failure to repair or maintain the same; or (c) any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, expense, damage, liability, action, or cause of action relating to the performance by the Board of its duties except for any such loss, expense, damage, liability, action, or cause of action resulting from the gross negligence or willful misconduct of the person to be indemnified.

ARTICLE 7.

ASSESSMENTS

Section 7.1. Covenant for Assessments. The Owner of a Lot (except for Declarant), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments; (b) Special Assessments; (c) Individual Assessments; and (d) Working Capital Contributions (collectively "Assessments"). Any such Assessments or charge, together with interest, costs, fines and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Each such Assessment, together with interest, costs, fines

and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment or charge fell due. Notwithstanding the provisions above, Builder shall not be obligated to pay Annual Assessments or Special Assessments until a certificate of occupancy has been issued for a Lot and Builder shall be exempt from payment of Working Capital Contributions.

Section 7.2. Purposes of Assessments. The Assessments shall be used to carry out of the rights, powers, and obligations of the Association pursuant to the terms of this Declaration and the Declaration of Stormwater Drainage Easement and to promote the enjoyment and welfare of the Property, including in particular, but without limitation, to (i) maintain and repair the Common Areas, Private Open Spaces, Located Easements and Stormwater Drainage Easement and provide the Private Services; (ii) pay ad valorem taxes, premiums for hazard insurance in connection with the Common Areas, Private Open Spaces and Located Easements, and public liability and other insurance of the Association, including directors and officers liability insurance; (iii) carry out the duties of the Association; (iv) carry out the purposes of the Association and its Architectural Control Committee as stated in the Charter Documents and this Declaration; (v) as more particularly described in Article 6, Section 6.1(b), repair and replacement of exterior surfaces of the Townhomes (excluding, entry doors, garage doors, second story balconies, balcony doors, light fixtures, and windows); (vi) as more particularly described in Article 6, Section 6.1(c), repair and replacement of the landscaping (including irrigation systems) in the front and side yards of the Townhomes on the Lots and irrigation systems in the front and side yards of the Townhome Lots, including, but not limited to, trees, hedges, shrubs, flowers, ground cover and grass, but excluding any additional landscaping installed by any Owner; (vii) pay all utility expenses of the Common Areas, Private Open Spaces and Private Services; (viii) and maintenance of insurance as provided in Article 10, Section 10.6. If any Owner of a Lot elects to have irrigation installed in the rear yard of such Lots, such Owner shall be assessed an additional fee for such irrigation services in addition to Annual Assessments. All costs and expenses associated with operating, maintaining, repairing, and replacing the improvements within the Common Areas, Private Open Spaces and Located Easements benefiting the Property in general (as determined from time to time in the sole discretion of the Board) shall be the responsibility of the Association.

In addition to the general purposes set forth above, the Assessments shall expressly be used for repayment of any loan incurred, payment of any sum due under any lease entered into, and satisfaction of any other expense of installation, maintenance, repair, or replacement incurred by Declarant or the Association in connection with the acquisition of decorative street light poles, fixtures, bulbs, wiring, and all equipment related to the use thereof within the Property and for providing the Private Services. However, to the extent that there is any fee or payment due on account of the maintenance of any such poles not located on streets dedicated to the public, such fees or expenses shall be borne entirely by the Owners of Lots and assessed in such manner as shall be determined by the Board.

Section 7.3. Annual Assessments. For each Assessment Year, in accordance with the provisions of the Act and this Declaration, the Board shall determine the amount of the annual assessment provided for in this Article 7 (the "Annual Assessment") to be assessed against each Lot (which, except as provided in Section 7.6 below and for Lots with rear yard irrigation systems, shall be uniform for all Lots). In making such determination, the Board shall take into

consideration, among other things, estimated development and maintenance costs to be borne by the Association under this Article 7, and future needs of the Association under this Article 7. The time of payment of the Annual Assessment shall be determined by the Board from time to time as set forth in statements of amounts due sent to each Lot Owner.

Section 7.4. Special Assessments. In addition to the Annual Assessment, the Board may levy in any Assessment Year, in accordance with the provisions of the Act and this Declaration, special assessments (each a “Special Assessment”) against each Lot (which, except as provided in Section 7.6 below, shall be uniform for all Lots) for the purpose of defraying, in whole or in part, any costs incurred by the Association under this Article 7 which are not paid for out of funds on hand in the Association or out of the Annual Assessment collected by the Association, as determined by the Board in its discretion.

Section 7.5. Individual Assessments. The Board may levy particular assessments against an individual Owner (“Individual Assessments”) for: (i) reimbursement to the Association for repairs to the Common Areas, Private Open Spaces, any exterior portions of the Townhomes and/or Lots pursuant to Articles 6 and 11 or Located Easements occasioned by the willful or negligent acts of such Owner; or (ii) 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 Charter Documents, or any rules or regulations promulgated hereunder, including, without limitation, reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article 11, or otherwise specifically allocable to such Owner hereunder or (iii) a benefit or service to fewer than all the Lots shall be assessed exclusively against the Lot benefitted (such as rear yard irrigation services).

Section 7.6. Assessment Limitations on Declarant Owned Lots. Notwithstanding any other provision of this Declaration, no Lot owned by Declarant shall be subject to any Assessment.

Section 7.7. Use of Working Capital Contributions. The Working Capital Contributions provided for in Section 7.15 below may be used by the Association for any of the purposes described in Section 7.2 above, as determined from time to time by the Board in its discretion.

Section 7.8. Commencement of Annual Assessments. The first Annual Assessment shall commence with the Assessment Year in which any Lot is conveyed to an Owner other than Declarant or Builder or any later Assessment Year as determined by the Board in its discretion. Annual Assessments shall continue thereafter for each Assessment Year.

Section 7.9. Due Date of Assessments; Payment. Annual Assessments shall be due and payable on a monthly basis on the first day of each month of each Assessment Year or on such other basis as shall be determined from time to time by the Board in its discretion. The due date of any Special Assessment or Individual Assessment shall be fixed in the Board resolution authorizing such Special Assessment or Individual Assessment.

Section 7.10. Notice. In the event of the establishment or revision in the amount or rate of an Annual Assessment, Special Assessment, or Individual Assessment, the Board shall fix the amount thereof, and in regard to any Special Assessment or Individual Assessment, the

applicable due date(s) for the payment of such Special Assessment or Individual Assessment, and shall provide written notice thereof to each Owner subject thereto.

Section 7.11. Omission by Board. The omission by the Board, before the expiration of any Assessment Year, to fix the Annual Assessment hereunder for that or any subsequent Assessment Year shall not be deemed to waive or modify in any respect any of the provisions of this Declaration or to release any Owner from the obligation to pay the Annual Assessment due for that or any subsequent Assessment Year. The Annual Assessment fixed for the preceding Assessment Year shall continue until a new Annual Assessment is fixed.

Section 7.12. Owner's Personal Obligation for Payment. Each Assessment provided for herein shall be the personal and individual debt of the Owner (as of the due date of the applicable Assessment) to which such Assessment relates. The personal obligation to pay any such Assessment, together with interest thereon and costs of collection, shall not pass to the successors in title of such Owner unless expressly assumed by such successors. Although unpaid Assessment charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, as provided in Section 7.13 below, the unpaid Assessment charges continue to be a lien on the Lot against which the Assessment has been made. In the event of default in the payment of any such Assessment, the defaulting Owner shall be obligated to pay interest, late fees, and all costs and expenses of collection, including reasonable attorneys' fees, as determined from time to time by the Board consistent with the provisions of the Act.

Section 7.13. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, are, together with interest, late fees, administrative fees, and the costs of collection, including reasonable attorney's fees as provided in this Article, a continuing lien and charge on the Lot owned by the defaulting Owner as of the Assessment due date and shall bind and run with the title to such Lot. Except as provided below, the aforesaid lien shall be superior to all other liens and charges against such Lot. Further provided, that the Board shall have the power to subordinate the aforesaid assessment lien to any other lien, and such power shall be entirely discretionary with the Board. The Association may bring an action at law against the Owner personally obligated to pay the Assessment, or to foreclose the lien against the Lot as provided in the Act.

Section 7.14. Subordination of the Lien to Mortgages. The lien of the Assessments shall be subordinate and inferior to the lien of any first priority mortgage or deed of trust encumbering a Lot; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the foreclosure sale or other transfer of the Lot pursuant to the terms and conditions of any such first priority mortgage or deed of trust. Such sale or transfer shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due or from the lien thereof.

Section 7.15. Working Capital Contributions. In addition to, and not in lieu of, the Annual Assessments, Special Assessments, and Individual Assessments provided for above in this Article 7, Declarant hereby imposes against each Lot the working capital contribution requirements set forth below. Each capital contribution required hereunder is herein referred to as a "Working Capital Contribution." With regard to each Lot, a Working Capital Contribution shall be paid to the Association by the initial Homeowner of such Lot and dwelling unit where

such Lot is conveyed by Declarant or Builder to the initial Homeowner. Each Working Capital Contribution shall not be considered to be an advance payment of any Annual Assessment, Special Assessment, or Individual Assessment. The amount of the Working Capital Contribution shall be in the amount of Five Hundred Dollars (\$500.00).

Section 7.16. Reserve Accounts. The Board shall establish and maintain reserve accounts for long-term capital replacements/repairs and improvements.

Section 7.17. Duties of the Board of Directors.

(a) The Board shall fix the amount of the Annual Assessment or Assessments against each Member, for each Annual Assessment period, at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Members and Assessments applicable thereto which shall be kept in the office of the Association, or at any other place designated by the Board upon notice to the Members, and which shall be open to inspection by any Member. Unless otherwise provided by the Board, the annual Assessment Period shall be deemed the calendar year commencing January 1" and ending December 31" of any year. The Board shall have the right to change the Annual Assessment Period to a fiscal year other than a calendar year by vote of the Board and to increase the Annual Assessment as provided below.

(b) Within thirty (30) days after adoption of any proposed budget of the Association, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget shall be deemed ratified at the meeting unless at that meeting a majority of the votes in the Association reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners (or the initial budget if no other budget has been ratified by the Owners) shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

ARTICLE 8.

USE OF PROPERTY – PROTECTIVE COVENANTS

The Property shall be occupied and used as follows:

Section 8.1. Residential Purposes Only. Each Lot shall be used exclusively for single-family, non-transient residential purposes with no more than two (2) non-related parties residing therein and garages, carports, and parking spaces shall be used exclusively for the parking of passenger automobiles or light (noncommercial) vans or trucks therein or thereon; provided, however, each Developer shall have the right to use Lots owned by it for the purpose of construction and operation of sales and marketing centers (and for related uses) for the Property. No structure shall be erected, placed, altered, used, or permitted to remain on any Lot other than one single-family private dwelling and private garage(s) approved by the Architectural Control

Committee in accordance with the requirements of Article 9 of this Declaration. No Lot or portion thereof may be used for hotel or other transient residential purposes.

Section 8.2. Obstructions, etc. Except with the prior written consent of the Association, there shall be no obstruction of the Common Areas or Located Easements, nothing shall be kept or stored in the Common Areas or Located Easements, nor shall anything be altered, or constructed or planted in, or removed from the Common Areas or Located Easements. Notwithstanding the above, Declarant shall have the right to install signs in the Common Areas and Located Easements.

Section 8.3. Restricted Actions by Owners. No waste as determined by the Association shall be committed in the Common Areas or Located Easements. Each Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances), and other governmental rules and restrictions in regard to such Owner's Lot.

Section 8.4. Signs. No sign of any kind shall be displayed to the public view on any Lot except no more than one professional sign which is consistent with such rules, regulations, and guidelines as shall from time to time be issued by the Architectural Control Committee, approved in writing by the Architectural Control Committee (and, for so long as Class B Membership exists, approved in writing by Declarant), and which is for the purpose of advertising the Lot for sale or rent; however, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property, or to restrict the Association from posting permanent signs designed to aid in vehicular access and related information. No "for rent" or similar type signs shall be displayed on any Lot at any time.

Section 8.5. Attachments/Satellite Dishes. No permanent attachments of any kind or character whatsoever shall be made to the roof or exterior walls of any dwelling on a Lot. No outside radio transmission tower or receiving antenna shall be erected by an Owner within the Properties and no outdoor television antenna, including a satellite dish antenna, may be erected or installed, except one (1) satellite dish of no more than one meter in diameter may be installed in accordance with the Federal Communication Commission's Over-The-Air Reception Devices Rule. The Architecture Review Committee will publish guidelines to Lot Owners for placement of a satellite dish antenna on the property for consistency with community architectural goals

Section 8.6. Animals. No animals, livestock, or poultry shall be raised, bred, or kept on any Lot except that dogs, cats, or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board in its sole discretion) such as, but without limitation, by noise, excessive barking, odor, damage or destruction of property, or refuse. At any time after three (3) warning notices have been given by the Board to an Owner within any twelve month period regarding nuisance of an animal, the Board, in its sole discretion, shall have the right to demand that the animal be removed from any Lot. Failure to do so by the offending Owner may result in a fine of up to \$100.00 per day, as authorized by the Act and as determined by the Board, until the Owner complies. No animal enclosure may be constructed or maintained on any Lot unless such dog run has been approved in writing by the Architectural Control Committee prior to commencement of construction. Notwithstanding the foregoing, in no event shall more than three (3) dogs be maintained on any Lot. No pet shall be permitted upon the Common Area unless carried, accompanied or leashed

by a person that can control the pet. Pets shall not be permitted to defecate in the Common Area or the Lot of another Owner and each Owner shall clean up immediately after his or her pet if an accident occurs. All pets shall be registered or inoculated as required by law. Each Owner shall hold the Association, its officers, directors and agents harmless from any claim resulting from any action of his or her pet, and shall repair at his expense any damage to the Common Area or another Lot caused by his or her pet.

Section 8.7. Vehicles/Parking. All vehicles must be parked in garages or driveways on the Lots in parking spaces as designated by the Association. Any street parking and parking in the Common Areas shall be in the areas designated by the Association only and shall be on a first-come, first-serve basis and subject to any rules or regulations that may be promulgated by the Association. No house trailer or mobile home, school bus, truck greater than 6,000 pounds or commercial vehicle over three-fourths (3/4) ton capacity or having ladders, pipes, or similar racks or utility beds, boat or boat trailer, jet ski or jet ski trailer, motor home, camper, or van (not to include passenger vans for non-commercial use), junked or wrecked vehicles, or vehicles on blocks shall be kept, stored, or parked overnight on any street, Common Area, or Lot. Any such vehicle must be currently licensed (if applicable) and must be parked in an enclosed garage. Vehicles parked on driveways shall not block access over public sidewalks. The above provision shall not prevent Declarant of Builder from locating construction and/or sale trailers within the Property as necessary. No significant automobile repair shall be allowed on the Property. The Association shall have the right to tow any vehicle in violation of this Section at the vehicle owner's expense. Violations of this provision can subject the Owner to fines of up to \$100.00 per occurrence, or \$100.00 per day, pursuant to NCGS 47-F-3-107.1. Owners are responsible for advising their lessees, guests and occupants of this rule and ensuring compliance, and Owners are subject to fines for violations of this restriction by their lessees, guests and occupants.

Section 8.8. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Waste of any nature shall not be kept on any part of the Property except on a temporary basis in sanitary containers. Trash containers must be stored inside garages upon a Lot other than during the 24 hours prior to and following the trash pickup day for the Lot.

Section 8.9. New Construction. Construction of new buildings only shall be permitted on Lots, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot.

Section 8.10. No Temporary Structures. No structure of a temporary character on any Lot, such as a trailer, tent, shack, or other outbuilding, shall be used at any time as a dwelling.

Section 8.11. Mailboxes. All mailboxes within the Property shall conform to the mailbox design guidelines from time to time promulgated by the Architectural Control Committee.

Section 8.12. No Drilling or Mining. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any Lot. No derrick or other structure designed for use in quarrying or for drilling for oil or natural gas shall be erected, maintained, or permitted on any Lot.

Section 8.13. Diligent Construction. All construction, landscaping, or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion.

Section 8.14. No Subdivision or Combination of Lots. No Lot shall be subdivided by sale, lease, or otherwise so as to reduce the total Lot area as shown on the Plat of such Lot and no Lot shall be combined with another Lot. The foregoing shall not apply to Declarant.

Section 8.15. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirement applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to each Lot.

Section 8.16. Nuisance. No noxious or offensive activity shall be carried on in or upon any Lot or Common Areas nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Property or unreasonably interfere with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his or her Lot which would result in the cancellation of insurance on said Lot or any other dwelling or any part of the Common Area or which would be in violation of any law. Examples of such offensive activities shall include, but not be limited to, the origination or emission of any loud or disturbing noise or vibrations, the maintenance or repairs of motor vehicles or other equipment on the Property, the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces or yards, or similar unsightly activity not in keeping with the aesthetic character and high level of appearance of the community. Garage doors shall remain closed at all times except when in use. The Board or its designee with the approval of the Board may establish reasonable rules and regulations for enforcing the provisions of this Section.

Section 8.17. Leases. Each Lot is restricted to single-family residential use by its Owner, his immediate family, guest, invitees and lessees. The Association and the Board has deemed it to be in the best interest of Lot Owners to restrict the number of Lots that may be leased or occupied by persons other than the Owner. Such restrictions will, among other things, enhance property values by promoting stability and reducing resident turnover; increasing interest by the Lot Owners in the appearance and maintenance of their Lots; minimizing problems of rule enforcement and vandalism; and ensuring that Lots and Lot Owners qualify for certain federally-supported mortgage programs. These restrictions do not restrict any Owner's rights under the First Amendment or any other provision of the U.S. Constitution, nor are they violative of public policy.

(a) Notice to Board: Any Lot Owner intending to make a lease of his/her Lot shall give prior written notice to the Board (or any Managing Agent designated by the Board) of such intention. For purposes of this Section, "lease" is defined as regular, exclusive occupancy of a Lot by any person(s), other than the Lot Owner, for which the Lot Owner receives any

consideration or benefit, including but not limited to, a fee, service, property or gratuity. The required notice shall include a complete copy the proposed lease, and such other information as the Board or its agent shall reasonably require. All leases of Lots shall be in writing, prepared by Owner or his or her attorney or agent and acceptable to the Board or its Managing Agent. The provisions of this Section shall also apply to the renewal of or modification to the terms of any lease of a Lot. No subleasing of a Lot shall be allowed. No Lot shall be leased for transient or hotel purposes, and the minimum initial term of any proposed lease shall not be less than twelve months. No leases of less than the entire Lot and home constructed thereon are allowed.

(b) Approval of the Board: Within 15 days after receipt of such notice, the Board or its Managing Agent shall provide the Owner with written notice of its approval or disapproval of the proposed lease. The decision of the Board shall be final and non-appealable, but approval shall not be unreasonably withheld. The Board's approval may be conditioned upon the addition, deletion, or modification of any provision of the proposed lease. The Board may withhold approval based upon information gleaned by the Board from any investigative, criminal or other background reports obtained by or provided to the Board. The procedures for obtaining, and the parameters for reviewing such reports, shall be promulgated by the Board. The Board specifically reserves the right to withhold the approval of any lease which would result in more than twenty-five percent (25%) of the total number of Lots at any given time within the Property being occupied by persons other than the Lot Owner. The failure of the Board to provide written notice to the Lot Owner of its approval or disapproval of the proposed lease within the 15-day period contemplated by this section shall be deemed an approval of the proposed lease.

(c) Compliance with Declaration, By-Laws, and Rules and Regulations: Any Lot Owner leasing his/her Lot shall provide the lessee with a copy of the Declaration, By-Laws, and Rules and Regulations affecting the Property upon execution of the lease; the lessee will be required to sign an acknowledgement that he/she has received a copy of these documents, and agrees to abide by their terms. The lessee shall be bound in all respects by the provisions contained therein. Any default by a lessee of such provisions shall entitle the Association to terminate the lease, and the Lot Owner hereby irrevocably appoints the Association as its lawful attorney-in-fact (which appointment is coupled with an interest) to take all actions necessary to terminate the lease and the lessee's right to possession of the Lot, including the commencement of legal proceedings against the Lot Owner and/or the lessee. If the Association proceeds to evict the lessee, any costs, including reasonable attorneys' fees and expenses actually incurred and court costs associated with the eviction shall be an assessment and lien against the Lot.

(d) Void Transactions: Any lease of a Lot which is not approved pursuant to the terms of this section shall be void, unless subsequently approved in writing by the Board. Any violation of these provisions shall subject the Lot Owner to a fixed or daily fine, after notice and an opportunity to be heard, in accordance with N.C.G.S. § 47C-3-107.1.

(e) In no event shall any lease or rental agreement release or relieve a Lot Owner from the obligation to pay annual and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the lessee in such lease or rental agreement.

(f) 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.

(g) The Board reserves the right to waive any or all of these restrictions with respect to any particular Lot for exceptional circumstances or if strict enforcement hereof would result in undue hardship to the Owner. Decisions on claimed exceptional circumstances shall be determined on a case-by-case basis, and are in the sole discretion of the Board.

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

Section 8.18. Window Treatments. For front and side windows, draperies, curtains, mini-blinds, Venetian blinds, window shades or shutters are permissible provided that the outward-facing surface shall be white, beige or cream. Any other colors are prohibited. All window treatments must be maintained in good repair at all times. The color of the inward-facing surface of window treatments may be of the Owner's choosing. Straw or straw-like plastic shades are prohibited. For windows located on the rear of the home, there are no style or color restrictions; however, all window treatments shall be maintained in a neat, attractive manner and in good repair at all times.

Section 8.19. Hanging Items. No laundry, clotheslines, or other similar personal items may be hung or stored outside of the buildings.

Section 8.20. Flags and Banners. The Board or any committee it so designates may adopt rules and regulations governing the type, number, style and content of flags, banners, and similar displays located on a Lot. No free-standing flag poles shall be located upon a Lot but attached flag poles shall be permitted subject to rules and regulations established by the Board.

Section 8.21. Termite Treatment. Lot Owners, at their discretion and sole expense, shall be responsible for any termite inspections of their Unit, contracting for termite treatment, purchasing a termite bond, and/or repairing any termite damage. If it comes to the attention of the Board that a Unit has termite damage, the Board may (but is not obligated to) require the Owner of the infested unit to repair the damage and apply appropriate treatment to eliminate the termites and prevent future infestation and damage.

Section 8.22. Storage Containers. Temporary storage or shipping containers and dumpsters may not be placed upon any Lot, the Common Area or Private Open Spaces for more than five consecutive days without the prior written approval of the Board or ACC.

Section 8.23. Fences. Except as approved by the Declarant, or as subsequently approved by the ACC, no fence, wall or other barrier shall be constructed upon any Lot or any other portion of the Property provided however that black aluminum fences up to 48" in height shall be permitted in a location to be approved by the Architectural Control Committee in advance of installation. No fence shall be erected, placed or altered on any Lot nearer to any street adjacent to such Lot than the exterior wall of the main dwelling constructed on such Lot which faces the applicable street. Except as permitted or excluded above and below, fences are subject to the complete jurisdiction of the Architectural Control Committee as to location, style, color and height. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. Chain link, basket weave, shadow box and split rail fences are expressly prohibited. Rear yard fences shall not extend past the centerline of the house when viewed from each side of the house. If only one side of a fence has finished details, that side shall face outward toward the neighboring Lots. Notwithstanding anything herein to the contrary, temporary fences used in connection with construction, model homes and soil erosion silt fences may be permitted by the Association or the Declarant.

ARTICLE 9.

ARCHITECTURAL CONTROL

Section 9.1. General. Notwithstanding any other provision of this Declaration, no Improvement, including, without limitation, site preparation on any Lot or change in grade or slope of any Lot or erection of building or exterior addition or alteration to any building situated upon the Property or erection of or changes or additions to front doors, fences, hedges, walls, storage buildings, mail boxes, and other structures, or construction of any swimming pools or other improvements, shall be commenced, erected, or maintained on any portion of the Property until the Architectural Control Committee appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements. Subject to approval by the Board, the Architectural Control Committee shall have the authority to issue and amend from time to time (but shall not be required to do so) guidelines, rules, and regulations with respect to construction of Improvements. Notwithstanding the foregoing, as to any Builder, Declarant may provide blanket approval of site plans, general housing styles and finishes which may then be constructed on any Lot without the need for additional written approvals of, or the submission of, specifications, exterior color and finish, landscape plan, site development or any other matter included within the definition of "Plans." Once granted, such blanket approval shall be irrevocable and binding on the Committee as to any Lots owned by Builder or subject to any contract to purchase or option to purchase of Builder. Once blanket approval is granted, a Builder shall not be obligated to obtain any other approvals from the Declarant, Board or Committee.

Section 9.2. Composition. The Architectural Control Committee shall be composed of at least three individuals (the exact number to be designated by the Board from time to time), annually appointed by the Board, each to be generally familiar with residential and community

development design matters and knowledgeable about the Association's concern for high level design standards within the Property. In the event of the death, removal, or resignation of any member of the Architectural Control Committee, the Board shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced by the Board at any time, with or without cause, and without prior notice. For so long as Declarant owns any portion of the Property, Declarant shall also have the right at any time and from time to time to appoint and remove any and all members of the Architectural Control Committee.

Section 9.3. Procedure. No Improvement of any kind or nature shall be erected, remodeled, or placed on any portion of the Property until all plans and specifications and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee.

Section 9.4. Authority. The Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on any portion of the Property which may, in the opinion of the Architectural Control Committee, affect the living enjoyment of any Owner or the general value of the Property or any portion thereof.

Section 9.5. Enforcement. The Architectural Control Committee shall have the specific right (but no obligation) to enforce the provisions contained in this Article 9, and/or to prevent any violation of the provisions contained in this Article 9 by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article 9. The Association shall also have the right (but not obligation) to enforce these provisions.

Section 9.6. Limitation of Liability. Neither the Architectural Control Committee, nor the members thereof, nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

Section 9.7. Miscellaneous. No member of the Architectural Control Committee shall be entitled to compensation for, or be liable for claims, causes of action, or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of, services performed pursuant to this Article 9. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses associated with its activities hereunder.

ARTICLE 10.

INSURANCE

Section 10.1. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds. Sections 10.2 through 10.5 of this Article 10 set forth the requirements of Section 47F-3-113 of the Act. In the event the insurance requirements set forth in the Act or any portion of the Act are changed, amended, or deleted, the insurance requirements set forth in Sections 10.2 through 10.5 of this Article 10 shall likewise be changed, amended, or deleted to conform

with the insurance provisions of the Act without the requirement of a formal amendment to this Declaration.

Section 10.2. Property Insurance. The Association shall maintain, to the extent reasonably available, property insurance on the Common Areas, Private Open Spaces, Located Easements and Stormwater Drainage Easement insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by this property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lien holders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lien holders are not entitled to receive payment of any portion of the proceeds, unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

Section 10.3. Liability Insurance. The Association shall maintain, to the extent reasonably available, liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas, Private Open Spaces, Located Easements and Stormwater Drainage Easement. The liability insurance shall be for the benefit of the Owners, occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, members, managers, agents, and employees in such amounts and with such coverage that shall be determined by the Board; provided that such liability insurance shall be for at least One Million Dollars (\$1,000,000.00) per occurrence for death, bodily injury, and property damage.

Section 10.4. Required Provisions for Property and Liability Insurance. Insurance policies carried pursuant to Sections 10.2 and 10.3 above shall provide that:

- (a) Each Owner is an insured person under the policy to the extent of the Owner's insurable interest;
- (b) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and
- (c) If, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 10.5. Insurance Repairs. Any portion of the planned community for which insurance is required under Sections 10.2 and 10.3 hereinabove which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the planned community is

terminated; (b) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or (c) the Association determines not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense if any portion of the planned community is not repaired or replaced, (a) the insurance proceeds attributable to the damaged Common Area or Located Easement shall be used to restore the damaged area to a condition compatible with the remainder of the planned community; (b) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the Owners of the Lots to which those limited common elements were allocated, or to lien holders, as their interests may appear; and (c) the remainder of the proceeds shall be distributed to all the Lot Owners or lien holders, as their interests may appear, in proportion to the common expense liabilities of all the Lots. Notwithstanding the provisions of this Section 10.5, Section 47F-2-118 (termination of the planned community) governs the distribution of the insurance proceeds if the planned community is terminated.

Section 10.6. Casualty Insurance Maintained By the Association. The Association shall procure and maintain casualty insurance upon the Lots and the Townhomes thereon for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and provisions shall be made for the issuance for certificates or mortgagee endorsements to the mortgagees of Owners upon request therefor by any Owner. Each Lot shall be insured in an amount equal to one hundred percent (100%) of its insurable replacement value of the Townhome thereon as determined annually by the Association with the assistance of the insurance company providing coverage.

(a) Coverage. Such coverage shall provide protection against: loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and such other risks as from time to time shall be reasonably required by the Association.

(b) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the Annual Assessment.

(c) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Association, the Owners and their mortgagees in the following shares:

(i) If an insured casualty shall occur resulting in damage to a Lot or Lots, proceeds from insurance shall be held in undivided shares for the affected Owners in proportion to the cost of repairing the damage insured against in said policy, which cost shall be determined by the Association;

(ii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner of that Lot shall be held in trust for the mortgagee and the other Owners, as their interests may appear.

(d) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner: First, all expenses of the insurance trustee shall be first paid or provisions made therefor; and then any remaining proceeds shall be paid to defray the cost of the covered item.

(e) Responsibility for Repair. If the proceeds of insurance are insufficient to repair damage or destruction to any portion of the Townhomes by fire or other casualty, or if such casualty is not insured against, then the reconstruction or repair of any damaged improvements contained within any Lot shall be accomplished promptly by the Owner(s) of such Lot or Lots, and the extent of such repairs shall be an expense of such Owner(s). If the Owner of the affected Lot fails to promptly accomplish such repair or reconstruction, the Association may perform such repairs or reconstruction on his behalf, and the expense of such repair or reconstruction may be assessed against that Lot, and if not paid shall be a lien on the Lot having all of the priorities provided in this Declaration.

Section 10.7. Public Liability Insurance. The Association shall procure public liability insurance with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group, to a single Owner. If an insured casualty shall occur resulting in damage or injury to a claimant whose claim is insured against in said policy, proceeds from the Association shall be applied as follows: all expenses of the insurance trustee shall be first paid or provisions made therefor; and the balance held in undivided shares for compensation for injuries suffered by each claimant whose claim is insured against in said policy, all as determined by the Association.

Section 10.8. Insufficient Proceeds. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 10.9. Owner's Personal Property. The Association or Declarant shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or such Owner's family, guests, or invitees, located on or used at the Common Areas or Located Easements. Further, the Association or Declarant shall not be responsible or liable for any damage or loss to any personal property of any Owner, such Owner's family, guests or invitees located on or used at the Common Areas or Located Easements. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

Section 10.11. Security. In the event the Association decides to provide, maintain, or support certain security and fire protection measures, neither the Association, the Board, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or

fire protection within the Property, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason of failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner of any Lot and each tenant, guest, and invitee thereof acknowledges and understands that neither the Association, the Board, Declarant nor any successor of Declarant are insurers, and each such Owner of a Lot, and such Owner's tenants, guests, and invitees hereby assume all risks for loss or damage to persons, property, or contents belonging to any such persons.

ARTICLE 11. **MAINTENANCE**

Section 11.1. Duty of Maintenance. The Owner of each Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot owned by such Owner in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse, and waste;
- (b) Keeping exterior lighting and mechanical facilities in working order;
- (c) Complying with all governmental health regulations;
- (d) Maintaining those exterior portions of Townhomes not maintained by the Association as set forth in Section 6.1(b); and
- (e) Repair of damage to Improvements; it being understood and agreed that if any Improvements are damaged or destroyed by fire, or other casualty covered by the policy of insurance maintained by the Association pursuant to Article 10, Section 10.6, the proceeds from such insurance policy shall be used to repair the damage insured against in said policy. In the event that the proceeds are insufficient to repair the damage or destruction to any portion of the Townhomes or if such casualty is not insured against, then the Owner(s) of the damaged Townhomes shall be responsible for the reconstruction or repair of any damaged improvements as provided in Article 10, Section 10.6(e) of this Declaration.

Section 11.2. Enforcement. If the Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration, then the Association and Declarant, jointly or severally, may enforce the duties and responsibilities of such Owner in any manner available at law or in equity (subject, however, to any limitations imposed by the Act), including, without limitation, by entering onto the Lot of such Owner and performing such care and maintenance without any liability for damages for wrongful entry, trespass, or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work and, without limiting any other remedy, the Association may impose an Individual Assessment against such Owner. Declarant has the right to assign to the Association the rights of Declarant under this Section.

Notwithstanding the foregoing, if an Owner is in violation of Article 8, Section 8.4 of this Declaration, the Association and Declarant, jointly or severally, may give such Owner written notice of such failure and such Owner must within 24 hours after receiving such notice (which notice shall be deemed received when handed to Owner or prominently posted on the front entry door of the dwelling on the Lot) remove the unauthorized sign(s). Should such Owner fail to fulfill this duty within such 24 hour period, then the Association and Declarant, jointly or severally, shall have the right and power to enter onto the Lot and remove and dispose of such unauthorized sign(s) without any liability for damages for wrongful entry, trespass or otherwise to any Person.

ARTICLE 12. **PARTY WALLS**

Section 12.1. Definition. Each wall or fence separating two Townhomes as a part of the original construction of the Townhomes, and any replacement thereof, shall constitute a “party wall” for purposes of this Article.

Section 12.2. General Law. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all party walls.

Section 12.3. Encroachment. If any portion of any structure originally constructed by Declarant or any party wall, or any common fence, protrudes over an adjoining Lot or into any Common Area, such structure, wall, or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall, or fence, nor any action for damages. In the case of such a protrusion, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner for continuing maintenance and use of the encroaching structure, wall, or fence. The foregoing provision shall also apply to any replacements in conformance with the original structure, wall, or fence constructed by Declarant.

Section 12.4. Sharing of Repair and Maintenance. The cost of replacement, repair, and maintenance of a party wall shall be equally divided by the Owners which share the wall, except that (i) if the damage necessitating the replacement, repair, or maintenance is covered under the terms of any fire or casualty insurance policy maintained by the Association, the proceeds of such policy shall first be used to effect such replacement, repair, and maintenance; and (ii) if the portion of the wall which requires the replacement, repair, or maintenance is an outside wall for one of the Townhomes, but not for the other (that is, not common to both Townhomes) the replacement, repair, or maintenance cost of that portion of the wall shall be borne by the Owner of the Townhome utilizing that portion of the wall, if, and to the extent that, the Association does not have that responsibility.

Section 12.5. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty or requires replacement, repair, or maintenance in excess of the benefits payable under any fire or casualty insurance policy maintained by the Association, and one of the common Owners of the wall repairs, replaces, or performs necessary maintenance work, the

other Owner shall promptly reimburse the Owner who effects the work in an amount equal to one-half of the cost thereof; provided that this obligation shall not be absolute, but shall be subject to the general rules of law regarding negligence and wrongful acts.

Section 12.6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 12.7. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or construction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to the commencement of the work as possible.

ARTICLE 13. EMINENT DOMAIN (CONDEMNATION)

In the event of a taking of all or any portion of a Lot or all any portion of the Common Areas or Located Easements by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act.

ARTICLE 14. TERMINATION OF PLANNED COMMUNITY

The Property, a planned community under the Act, may be terminated only in strict compliance with Section 47F-2-118 of the Act.

ARTICLE 15. AMENDMENT

This Declaration may be amended either by a vote at an annual meeting or special meeting called specifically for that purpose or by a document signed by the requisite percentage of Members in compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no amendment altering or impairing rights reserved by Declarant hereunder may be made without the written consent of the Declarant and except that the Declarant shall have the unilateral right to add Additional Property by Supplemental Declaration without the joinder of any party.

ARTICLE 16. GENERAL PROVISIONS

Section 16.1. Enforcement. The Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, condition, covenant, reservation, lien, and charge now or hereafter imposed by the provisions of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure

or forbearance by the Declarant, the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 16.2. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits this Declaration to override the Act, in which event this Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph, or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph, or clause to any other person or circumstance.

Section 16.3. Term. This Declaration shall run and bind the Property for a term of twenty five (25) years from the date this Declaration is recorded in the Registry, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless terminated or altered in accordance with the provisions of the Act; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be properly recorded in the Registry and shall take effect only upon such recording. For the purposes of this section, additions to the Property as provided in Article 2, Section 2.2 hereof shall not constitute an "amendment".

Section 16.4. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

Section 16.5. Captions. The captions herein are only for convenience and reference and do not define, limit, or describe the scope of this Declaration, or the intent of any provision.

Section 16.6. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

Section 16.7. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 16.8. Conflicts. In the case of any conflict between this Declaration and any of the Charter Documents, this Declaration shall control.

Section 16.9. Condemnation. In the event any Common Area or Located Easement or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

Section 16.10. Disclaimer. Notwithstanding anything contained herein or in the Charter Documents, rules or regulations issued by the Association, or any other document governing or binding the Association (collectively the "Association Documents"), the Association and the Declarant shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety, or welfare of any Member, occupant, or user of any portion of the Property, including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors, or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The Association and the Declarant are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual's or entity's compliance with the laws of the United States, State of North Carolina or any other jurisdiction or the prevention of criminal, tortuous, or like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association and the Declarant, and their respective directors, trustees, officers, members, managers, agents, parties, and affiliates from and against all claims of any kind whatsoever by an invitee, licensee, family member, employee, or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership, or occupancy of any portion of the Property.

Section 16.11. Construction Activities. All Owners, occupants, and users of Lots are hereby placed on notice that Declarant and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within the Property. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Property generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of Lots within the Property.

Section 16.12. No Liability for Third Party Acts. Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property. The Association may, but is not obligated to, maintain or support certain activities within the Property which promote or enhance safety or security within the Property. However, the Association and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Property, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

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

Section 16.13. Assignment. Declarant may assign its rights hereunder (either in their entirety, or with respect to a portion of the Property) by a written instrument recorded in the Registry.

Section 16.14. No Exemption. No Owner shall become exempt from the coverage hereof or obligations imposed hereby (including, without limitation, the obligation to pay Assessments) by non-use of such Owner's Lot or the Common Areas.

Section 16.15. Changes to Plan for the Property. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the Property, and Declarant reserves the right to change any plans for the Property at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions and Declarant's plans for the Property shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof.

Section 16.16. Asserting Certain Claims. Notwithstanding any other provision in this Declaration or Charter Documents, in no event shall the Association assert a claim against, or institute any legal proceeding against, the Declarant, nor shall the Association file any complaint with any governmental agency or authority which has regulatory or judicial authority over the Property on account of any alleged act or omission of the Declarant, unless the asserting of such claim, the instituting of such legal proceeding or the filing of such complaint shall be approved in writing by the Owners of no less than seventy-five percent (75%) of the Lots prior to the date any such claim is asserted, legal proceeding instituted or complaint filed, as the case may be. In the event that such claim is asserted, legal proceeding instituted or complaint filed without the approval of the Owners of the Lots that is herein required, then the Declarant shall have the right to require the claim, legal proceeding or complaint be dismissed. No amendment to this Section 16.16 shall be effective unless such amendment is approved in writing by the Declarant.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed this 25 day of AUGUST, 2017.

OAKHURST TOWN HOMES LLC,
a North Carolina limited liability company

By: _____ (SEAL)

Name: Raymond M. Gee

Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Jonathan Visconti, a Notary Public for said County and State, do hereby certify that Raymond M. Gee as Manager of Oakhurst Town Homes LLC, a North Carolina limited liability company, either being personally known to me or proven by satisfactory evidence (said evidence being Drivers License), personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument by him for the purposes stated therein.

Witness my hand and Notarial stamp or seal, this 25th day of August, 2017.



My commission expires: _____

EXHIBIT A
(Legal Description)

EXHIBIT A

(Legal Description)

Being all of the Property shown on the plat of Oakhurst Townhomes Phase 1, Map1 recorded in Map Book 61 at Page 767 in the Mecklenburg County Public Registry.

Less and except the property described as “Future Phase” on said plat and surrounding properties not owned by the Declarant.

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EXHIBIT B

ADDITIONAL PROPERTY

Being all of that property adjoining or adjacent to the Property or within one (1) mile of the Property described on Exhibit A.

