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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS  
FOR OLD POOLE PLACE**

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

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

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR OLD POOLE PLACE ("Declaration") is made the date in the notary acknowledgment below by Habitat for Humanity of Wake County, Inc., (hereinafter referred to as "Declarant"):

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property located in Wake County, North Carolina, which is more particularly described on Exhibit "A" attached hereto and made a part hereof by reference (hereinafter sometimes referred to as the "Property").

WHEREAS, Declarant desires to create on such property an exclusive residential community of single-family homes (which will include both detached and attached dwellings) to be known as Old Poole Place (hereinafter sometimes referred to as "Subdivision");

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the common area within the Subdivision and to provide for enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desires to create a planned community pursuant to the provisions of Chapter 47F of the General Statutes of North Carolina (the "Act"), and to subject all of the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area (as hereinafter defined), to administer and enforce the covenants and restrictions applicable to the Subdivision, and to collect and disburse the assessments and charges

hereinafter created, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the Old Poole Place Homeowners Association, Inc., for the purpose of exercising the aforesaid functions. NOW, THEREFORE, Declarant declares that the Property and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration, all of which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I DEFINITIONS

Section 1. "Act" shall mean and refer to Chapter 47F of the General Statutes of North Carolina, designated as the North Carolina Planned Community Act.

Section 2. "Association" shall mean and refer to the **OLD POOLE PLACE HOMEOWNERS ASSOCIATION, INC.**, a North Carolina non-profit corporation, its successors and assigns.

Section 3. "Association Document" shall mean collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, any supplemental declaration as may be applicable to separate portions of the Properties, the rules and regulations, the Architectural Guidelines, and any resolutions adopted by the Board, all as may be amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

Section 4. "Board of Directors" or "Board" shall mean the body responsible for administration of the Association selected as provided in the Bylaws.

Section 5. "Builder" shall mean and refer to any persons, firms or entities that purchase one or more Lots in the Properties for the purpose of constructing a Dwelling for resale to consumers in the ordinary course of its business.

Section 6. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 7. "Code" shall mean and refer to the City of Raleigh, North Carolina, Code of Ordinances, as amended from time to time.

Section 8. "Common Area" shall mean and refer to any and all real and personal property in which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners, including easements held by the Association for those purposes. Common Area shall include, without limitation, all recreation, stormwater areas, landscape islands, round-a-bouts located within the right-way, and mail kiosks within the Subdivision. Except as otherwise provided in this Declaration, the Common Area shall be maintained by the Association or its successors in interest.

Section 9. "Common Expense" shall mean and refer to all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, this Declaration and other Governing

Documents and including specifically, but without limitation, all of the following:

- (i) all expenses of ownership, administration and maintenance of Common Area, including repair, restoration and replacement thereof, and expenses for acquisition, maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members, and including monies allocated to reserve funds for any of the same;
- (ii) any fees or charges for utilities used in connection with the Common Area;
- (iii) *ad valorem* taxes and public assessments, if any, levied against the Common Property owned in fee by the Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained by the Association result in additional taxes on such real property that would not be assessed in the absence of such improvements, in which event such additional taxes shall be paid by the Association as a Common Expense);
- (iv) any unpaid assessments following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (v) financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (vi) costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City of Raleigh or other Governmental Entity;
- (vii) premiums for hazard, liability and other insurance insuring the Common Property or the Association, its officers, directors and employees, or the Townhome Lots;
- (viii) fees and expenses of management agents, attorneys, accountants, and other Persons employed by the Association for Association business;
- (ix) expenses declared to be or described as Common Expenses by the Act, the Code, or this Declaration;
- (x) expenses determined by the Board of Directors or by the Members to be Common Expenses; and
- (xi) all other expenses incurred by the Association in performing its functions, including operating, management and administrative expenses. (Common expenses for the maintenance of Limited Common Property are "Limited Common Expenses", which is a subcategory of Common Expense.)

Section 10. "Declarant" shall mean and refer to **Habitat for Humanity of Wake County, Inc.**, a North Carolina non-profit corporation. It shall also mean and refer to any person, company or entity to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the applicable public registry for Wake County, North Carolina.

Section 11. "Declarant Control Period" or "Development Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- a) December 31, 2047;
- b) Not later than four months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B

Member; *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, a sufficient number of votes (at the 9-to-1 ratio provided in Section 2(b) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or

- c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104(d) of the Act.

Section 12. "Declaration" shall mean and refer to this "Declaration of Covenants, Conditions, Easements, and Restrictions for Old Poole Place", and all amendments thereto and supplements thereof.

Section 13. "Dwelling", "Dwelling Unit" and "Unit" shall mean and refer to any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner. A Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

Section 14. "Lot" shall mean and refer to any plot of land other than Common Area, with delineated boundary lines, shown on any recorded subdivision plat of the Properties that may be independently owned and conveyed. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of new subdivision plats, any newly-platted Lot shall thereafter constitute a Lot. The term shall refer to the land which is part of the Lot as well as any improvements thereon including the Unit or Dwelling.

Section 15. "Member" shall mean and refer to every person or entity who or which holds membership in the Association as set forth in this Declaration.

Section 16. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 17. "Properties" or "Property" shall mean and refer to the property described in Exhibit "A" to this Declaration, together with such additional property as is subjected to this Declaration in accordance with Article II.

Section 18. "Single-Family Detached Dwelling" shall mean and refer to a Dwelling which is not attached to any other Dwelling and is free-standing. "Single-Family Detached Lot" shall mean and refer to a Lot on which a single-family detached Dwelling has been or will be built.

Section 19. "Stormwater Agreements" shall mean any stormwater agreement, stormwater control structure bioretention maintenance agreement, stormwater control structure wet detention maintenance

agreement, or any other agreement, permit, or contract regarding stormwater in the Property issued by the City of Raleigh or Wake County or any other governmental agency or entity.

Section 20. “Stormwater Facility” or “Stormwater Facilities” or “Facilities” is defined as any one or more of the following that serves or benefits any part or all of the Properties or is required by the applicable legal requirements in connection with any part or all of the Properties, whether located in the Properties or outside of the Properties: (i) “drainage easements” (also referred to herein as “stormwater easements” or “stormwater drainage easements”) that are shown on plats of the Properties recorded in the registry or established by written instruments recorded in the registry, and which either are located on the Common Area or benefit or serve more than one (1) Lot; and (ii) all stormwater management facilities for the Properties including ponds, man-made or natural areas and/or planted or landscaped areas into which stormwater drains, or in which stormwater is collected, or from which it is discharged, drains, pipes, conduits, inlets, swales, creeks, streams, channels, dams, ditches, filters, buffers, bio-retention areas, level spreaders, constructed wetlands, and other equipment, facilities and stormwater management measures used for inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging and/or managing stormwater. Except as otherwise provided herein, Stormwater Facilities are part of the Common Area, and maintenance of Stormwater Facilities are part of the Common Area expense.

Section 21. “Townhome Dwelling” shall mean and refer to a Dwelling which is attached to one or more Dwellings by a common wall. “Townhome Lot” shall mean and refer to a Lot on which a Townhome Dwelling has been or will be built.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE OLD POOLE PLACE HOMEOWNERS ASSOCIATION, INC.**

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, used and occupied subject to this Declaration as of the date of recording hereof, which is within the jurisdiction of the Association, is described on Exhibit "A" attached hereto.

Section 2. Annexation of Additional Property. At any time prior to December 31, 2047, any land may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed. Any property annexed pursuant to this subsection may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

A supplementary declaration may contain such complementary additions to and modifications of the covenants and restrictions contained in this Declaration, including, without limitation, different voting rights and different annual and special assessments for the Lots or Units so annexed, as Declarant, in its sole discretion, may deem necessary or appropriate to reflect the different character or use of the property added. In no event, however, shall any supplementary declaration revoke, modify or add to the covenants and restrictions established by this Declaration so as to materially and adversely affect any portion of the Properties already subject to this Declaration. A supplementary declaration annexing additional property

need only be executed by the Declarant and, if applicable, by the owner of the property being annexed, and shall not require the joinder or consent of the Association or any of its Members.

Nothing contained in this Article shall be construed to obligate or require Declarant to make any additions to the Properties.

Section 3. Annexation of Additional Property by Members. The Association may subject any contiguous property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Owners representing at least sixty-seven percent (67%) of the votes of the Association represented at a meeting duly called for such purpose, and the consent of Declarant during the Development Period. The additional property shall be annexed by the recording by the Association of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed.

Section 4. Conveyance of Common Area in Annexed Property. Promptly upon request of Declarant, the owner of the annexed property shall convey any or all Common Area located within the newly annexed property to the Association or, if requested by the Declarant, to the Declarant. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

Section 5. Merger. Additional property may also be made subject to this Declaration by merger or consolidation of the Association with another *non-profit* corporation formed for the same or similar purposes in accordance with the provisions of Section 2-121 of the Act. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration within the Properties and the covenants and restrictions established upon property owned by the other association as one scheme. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 6. Effect of Addition of Property. Except by amendment of this Declaration as provided in Section 3 of Article XIII hereof, no addition of property, whether by annexation, merger, or consolidation, shall revoke or modify any provision of this Declaration as to the Properties already subject hereto or diminish the rights of the Owners of Lots and Units within the Properties, except for the dilution of voting strength that occurs as a result of inclusion of additional Members of the Association.

Section 7. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Properties then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Subdivision, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Subdivision.

Section 8. Good Faith Lender's Clause. Any violation of these covenants, conditions or restrictions shall not affect any lien or deed of trust of record held in good faith, upon any Lot or commercial Unit, which liens may be enforced in due course, subject to the terms of this Declaration.

### ARTICLE III

## MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two (2) classes of membership with respect to voting rights:

(a) Class A Members. Class A members mean and refer to, collectively, all of the Class A-1 and Class A-2 Members, each of whom shall be a Class A Member.

Until such time as the Class A members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be a non-voting membership except as to matters and in such events as hereinafter specified.

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

(i) Class A-1 Members. Class A-1 Members shall be those Owners of Single-Family Detached Lots, except for those Persons who are Class B members.

(ii) Class A-2 Members. Class A-2 Members shall be those Owners of Townhome Lots, except for those Persons who are Class B members.

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to nine (9) votes for each Lot that it owns (each such Lot being a "Class B Lot"). Assessment of Lots owned by the Declarant is governed by the provisions of Article V of this Declaration. Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the directors and officers of the Association. Declarant's intent to exercise or continue to exercise that right may be set forth in the notice of each annual meeting of the Members. See §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant.

#### **ARTICLE IV PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by the provisions of this Section 1 and by the rules and regulations adopted by the Board, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association to suspend the voting rights of an Owner subject to a hearing or opportunity to present evidence in accordance with Section 47F-3-107.1 of the Act for any period during which any assessment against his Lot remains unpaid, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) the right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public or quasi-public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least 80% of the votes of the entire membership of the Association and Declarant, during the Development Period, agree to such dedication, sale or transfer. Nothing herein shall be deemed to prohibit the Board, without consent of the Members, from granting easements over and across the Common Area to any public agency, authority or utility for the installation and maintenance of sewage, utility (including cable television) or drainage facilities when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of properties within the Subdivision. Notwithstanding anything herein to the contrary, the Common Area shall be preserved for the perpetual benefit of the owners of Lots within the Subdivision and shall not be conveyed except to a governmental entity or another non-profit corporation organized for similar purposes.

(d) the right of the Association, to borrow money and, with the assent of Members' entitled to at least 80% of the votes of the entire membership of the Association and Declarant's approval during the Development Period, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Members and the Association as set forth herein.

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided, however, that any such dedication shall require the assent of the Declarant and the Members as set forth in subparagraph (c) above, and further provided that, if the Board determines, in its sole discretion, that such exchange is necessary to cure an encroachment or setback violation on any Lot, the Board may effect such exchange without the consent of or approval by the Members.

(f) the right of the Association to open the Common Area and, in particular, the recreational facilities constructed thereon, for use by non-members of the Association.

(g) the right of the Association to expand or add to the Common Area and to improve, maintain and operate the Common Area.

(h) the right of the Association to adopt, promulgate and enforce rules and regulations concerning the use of the Common Area.

(i) the right of the Association to otherwise deal with the Common Area as provided in the Articles of Incorporation and Bylaws of the Association.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties in Wake County, North Carolina.

(b) Tenants: Contract Purchasers. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be assigned by such Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Wake County, North Carolina. So as not to overburden the use of the Properties, if an Owner assigns said right and easement of enjoyment and access to Owner's tenants or contract purchasers, then so long as such assignment is in effect, Owner shall forfeit his right and easement of enjoyment and access.

(c) Guests. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board.

(d) Suspension of Rights. The rights of any delegate or assignee of an Owner shall be suspended by, upon and during suspension of such Owner's rights as provided in Section 8 of Article XIII of this Declaration.

Section 3. Conveyance of Common Area to the Association. No later than the expiration of the Development Period, Declarant shall convey, and the Association shall accept, fee simple title to all Common Area within the Properties, and shall reserve for or grant to the Association all Common Area easements, all subject to such easements, reservations, conditions and restrictions as then may be of record, and the Association shall accept all such conveyances, grants and reservations, provided, however, that during the Development Period, Declarant reserves an easement over and across any Common Area deeded to the Association for the purpose of constructing and maintaining any improvements on the Common Area as it deems necessary or advisable, provided that any such improvements must comply with the requirements of the appropriate governmental authority. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements. It is the intent of Declarant that the Common Area (whether owned in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, the Declarant, by recording any plat or map of any phase or section of the Subdivision, grants to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation from Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on or in any Common Area; (4) fill or excavate any Common Area or any part thereof; or (5) plant vegetation on or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

It is the intent of the Declarant that a Common Area Easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized or approved in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area (including Common Area Easements) is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate and in compliance with the Zoning Conditions, and to keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration or rules and regulations

adopted by the Association as provided herein or in the Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

(c) Declarant and Association's Right of Entry for Maintenance of Common Area Easements. The Declarant and Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

(d) Stormwater Facility Maintenance. The Properties include Stormwater Facilities that are the perpetual responsibility of the Association. Such Stormwater Facilities are subject to the Code and is binding on the Association. The Facilities, associated easements, and stormwater notes are or will be shown on a plat(s) recorded with the Wake County Register of Deeds. The Property subject to the above section of the Code is the "Property" referred to in this Article. The Stormwater Facilities must be maintained in accordance with the City Requirements, which include all ordinances, policies, standards, and maintenance protocols. Immediately upon taking title or ownership of any property or assets within the Subdivision, the Association shall accept responsibility for all property and assets owned by the Association.

## ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments, benefitted assessments, and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 8 of this Article V and all costs of collection, including reasonable attorney's fees, shall be a charge against and, a continuing lien upon the Lot against which such assessment is made subject to § 47F-3-116 of the Act, as amended. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, subject to notice provided in accordance with § 47F-3-116(e) of the Act, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

It is the intent of the Declarant that any monetary fines imposed against an Owner pursuant to the Bylaws of the Association or Section 8 of Article XIII of this Declaration and subject to §47F-3-107.1 of the Act shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

Any Lot conveyed from Declarant to a Builder or from a Builder to another Builder shall be exempt from payment of assessments until the conveyance of the Lot by the Builder to an Owner other than a Builder. Upon the conveyance of a Lot by a Builder to an Owner other than a Builder, the full amount of the assessment for the Lot shall be paid by the Owner of the Lot commencing on the first day of the first month after said event.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for: (i) acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area, including but not limited to the storm water system, including the Stormwater Facilities, located within the Common Area or recreation area; (ii) repair and reconstruction of improvements on the Common Area, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) maintenance of Lots and the exterior of Townhome Units, as provided in Article hereof; (iv) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (v) procurement and maintenance of insurance in accordance with Section 4(b) of Article IV of this Declaration; (vi) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vii) payment of principal and interest on funds borrowed for Association purposes; (viii) such other needs as may arise; and (xiii) payment for the maintenance and operation of lights within the Common Area.

Section 3. Annual Assessments.

The Board of Directors shall adopt, as soon as practicable, a budget for the Association for the period that lasts from the creation of the Association until December 31, 2023, and from such budget the Board of Directors will establish the annual assessment for the period of time that lasts from the creation of the Association until December 31, 2023.

Beginning on January 1, 2024, and thereafter, the annual assessments shall be based on a budget approved under the provisions set forth in Section 5 below.

The annual assessment for all Class B Lots and Development Parcels owned by the Class B Member shall be zero, provided, however, that any Lot which contains a Single-Family Detached Dwelling occupied as a residence shall be assessed at the Class A-1 rate, and any Lot which contains a Townhome Dwelling occupied as a residence shall be assessed at the Class A-2 rate.

The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the annual assessments incident to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4 Declarant's Assessments. Notwithstanding any other provision of this Declaration or the Bylaws of the Association, the Declarant shall not be obligated for, nor subject to, any annual or special assessment for any Lot or other property that it owns within the Properties, provided, however, that the Declarant shall be responsible for paying the difference between: (i) the operating expenses of the Association; and (ii) the total operating revenues of the Association from all sources including, without limitation, annual and special assessments, revenues generated from fees charged by the Association for use of the Common Area, and investment income (said difference being hereinafter referred to as the "Operating Deficit"). For purposes of this Section, the term "operating expenses" shall not include contributions to any reserves for replacement, operating reserves, depreciation reserves, capital expenditures, or special assessments.

Declarant may, by written notice given by the Declarant to the Association on or before November 30 of any year, to be effective as of January 1, terminate its obligation to pay the Operating Deficit and waive its right to exclusion from assessments. In such event, each Lot owned by the Declarant which contains a Dwelling for which a certificate of occupancy has been issued shall be assessed at the rate of twenty-five percent (25%) of the annual assessment in effect for all other Lots, as the same may change from time to time. Upon sale of such Lot by Declarant to any other person or entity, such Lot shall be assessed at the full rate, commencing on the day on which title to such Lot is transferred to such third party. Notwithstanding any other provision of this Declaration, a Lot owned by the Declarant which contains a Dwelling occupied as a residence (but not as a model or sales center) shall be assessed at the rate applicable to all other Lots.

Section 5. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give the Members written notice of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless, at that meeting, Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the proposed budget provides for annual assessments not more than ten percent (10%) greater than the annual assessment for the immediately preceding calendar year, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Except as otherwise provided in this Declaration, an Annexation Declaration, or any Legal Requirements (e.g., additional or different stormwater assessments or different assessments pertaining to Limited Common Area), annual assessments shall be fixed at a uniform rate for all Lots in each Class or sub-Class and may be collected on a yearly, semiannual, quarterly or monthly

basis, as determined by the Board.

Assessments for Common Expenses applicable only to the Class A-1 Lots shall be assessed only against Class A-1 Lots, and assessments for Common Expenses applicable only to Class A-2 Lots shall be assessed only against Class A-2 Lots. Assessments for Common Expenses applicable to all Lots shall, to the extent provided herein, be assessed against all Lots.

The Association shall, upon demand and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or the management company employed by the Association, setting forth whether the assessments for a specific Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 6. Additional Assessments for Limited Common Area. Declarant reserves the right, by Annexation Declaration or any other declaration applicable only to certain phases or Classes within the Properties, to subject portions of the Properties to provisions requiring the Owners thereof to pay additional annual assessments and special assessments to the Association for the maintenance of Limited Common Area, including, without limitation, related Stormwater Control Facilities and private streets, private rights-of-way, private alleys, and private alley easements on such Limited Common Area.

All of the provisions of this Declaration relating to special assessments shall apply to the additional special assessments for Limited Common Property, with the following exceptions: (i) the additional assessments with respect to any particular Limited Common Property are assessed only against the Owners of the portion of the Properties associated with such Limited Common Property; (ii) the initial additional maximum annual assessment and additional annual assessment for each Lot associated with such Limited Common Property shall be established in the Annexation Declaration that creates or establishes that Limited Common Property or the obligations associated therewith; (iii) the actual additional annual and special assessments may vary from phase to phase, section to section, or whether Class A-1 or Class A-2; and (iv) the additional annual and special assessments for portions of the Properties in any particular phase, section or Class within the Properties shall be used exclusively in connection with the Limited Common Property associated with that phase, section or Class.

Section 7. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Sub-Association Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring expenses, *provided that* any such assessment shall have been approved by the Declarant (during the Declarant Control Period) and by not less than two-thirds (2/3) of the votes of the Class A Members present and voting (in person or by proxy) at a meeting of the Members, one of the purposes of which is to vote on the special assessment, and further provided that the special assessment for a Class B Lot shall always be zero. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Written notice of any meeting called for the purpose of voting on a special assessment shall

be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

Section 8. Limited Special Assessments. The Board of Directors, without vote of the Members, may levy a limited special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Any fine imposed against an Owner pursuant to the Bylaws shall also constitute a limited special assessment against such Owner's Lot. Special assessments and limited special assessments shall constitute a lien to the same extent as other annual assessments against the Lot.

Section 9. Effect of Nonpayment of Assessments: Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due subject to § 47F-3-116 of the Act, as amended. Interest, late payment charges, reasonable attorneys' fees, and the costs of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first mortgage on a Lot. Sale or transfer of a Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage shall extinguish the lien of any assessment which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof; but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage.

Section 11. Initial Capital Contribution. At the time of closing of the initial sale of a Lot from Declarant or a Builder, Purchaser shall contribute a sum equal to \$600.00 for each single-family Dwelling and \$630.00 for each Townhome Dwelling. The purpose of such working capital contributions is to ensure that the Association will have adequate cash available to defray operating costs, meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid pursuant to this Section shall not be considered as an advance payment of any regular or special assessment. Such sum may also be utilized to reimburse Declarant the exact cost of any premiums or insurance policies purchased for the benefit of the Association by Declarant.

Section 12. Exempt Property. All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 13. Legal Actions Against Declarant and Owners. The affirmative vote or consent of the Owners that is equal to or greater than sixty-seven percent (67%) of the total number of votes in the Association first shall be required prior to the Association doing any or all of the following with respect to the Declarant, any successor Declarant, any Owner or any Member regardless of whether such Person is the Declarant or is an Owner or Member at the time the Association takes the action or obtains the necessary vote or consent required to take such action: (i) file a complaint, on account of any act or omission with any Governmental Entity which has regulatory or judicial authority over the Properties or any part thereof; or (ii) assert a claim against, sue or request legal or equitable relief against Declarant, Owner or Member in any court, before any Governmental Entity board, or otherwise, provided however, nothing contained in this section shall be construed to require said number of votes for any lien enforcement actions arising out of Article V.

Section 14. Class A-1 Assessments. Subject to the provisions of this Section 14 and notwithstanding any other provision of this Declaration, the Association shall have the power to levy, in addition to all other assessments that may be levied as provided herein, assessments against the Lots in Class A-1 to fund Common Expenses incurred by the Association for the primary benefit of the Lots within such Class including, without limitation, maintenance required to be performed by the Association with respect to property within that Class. Such Class A-1 Assessments shall be collected in the same manner as and shall constitute a lien to the same extent as other assessments against the Lot.

Section 15. Class A-2 Assessments. Subject to the provisions of this Section 15 and notwithstanding any other provision of this Declaration, the Association shall have the power to levy, in addition to all other assessments that may be levied as provided herein, assessments against the Lots in Class A-2 to fund Common Expenses incurred by the Association for the primary benefit of the Lots within such Class including, without limitation, maintenance required to be performed by the Association with respect to property within that Class. Such Class A-2 Assessments shall be collected in the same manner as and shall constitute a lien to the same extent as other assessments against the Lot.

Section 16. Reserve Account. The Association shall establish a separate reserve account to fund major repairs to and replacements of Common Area including, without limitation, major repair or replacement of Stormwater Control Measures. Each annual budget shall show the amount to be placed in reserve for each category for which reserves are to be held.

**ARTICLE VI  
MAINTENANCE OF LOTS, UNITS, AND COMMON AREA**

Section 1. Owner’s Responsibility; Remedy for Owner’s Failure to Maintain. Each

Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements which the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot and/or the exterior of any Dwelling or other structure erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 2 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Every Owner shall maintain in full force and effect at all times fire and hazard insurance from an insurer reasonably approved by the Board, in an amount equal to the full replacement value of his or her Living Unit, including the value of excavations and foundations. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid as a result of enforcement by the Association or otherwise.

Section 2. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 4 of this Article VI, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be a limited special assessment against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

Section 3. Access at Reasonable Hours. As provided in Section 5 of Article VIII of this Declaration, the Association, through its duly authorized agents or employees, shall have the right, without notice to the Owner, to enter upon any Lot at reasonable hours on any day to perform any maintenance and repairs to be performed by the Association.

Section 4. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners; (ii) pay all property taxes and other assessments levied against all Common Property owned in fee by the Association; and (iii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any Person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area. Notwithstanding anything to the contrary contained herein, during the Declarant Control Period, the Declarant reserves the right to include the insurance obligations of the Association within a master insurance program controlled

by the Declarant and upon doing so, the insurance obligations provided for under this Declaration shall be deemed satisfied. By virtue of taking title to a Lot within the Community, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any Dwelling or other property located thereon.

Section 5. Additional Maintenance for Single-Family and Townhome Lots.

(a) Association's Responsibility. In addition to maintenance of the Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the front lawns of single-family dwellings which shall not include irrigation and for maintaining the following for Townhome Lots and Townhome Dwellings:

(i) Landscape Maintenance. The Association shall maintain the lawns and landscaping located on the Townhome Lots pursuant to the terms of this Section 5(a). The Association shall provide maintenance for the basic lawn and landscaping package provided by the Declarant for each Townhome Lot which shall not include irrigation. The Association shall determine, in its sole discretion, the level of maintenance, if any, for plantings in excess of the basic landscaping package provided for each Townhome Lot and the Association shall have the option but not the obligation to provide maintenance for plantings in excess of the basic landscaping package for a Townhome Lot. The Owner of a Townhome Lot shall be responsible at its sole cost and expense for additional lawn and landscaping maintenance in excess of that maintenance provided by the Association. The costs of this landscape maintenance provided by the Association shall be paid from the Townhome Lot assessments. The Association may discontinue the landscaping maintenance obligations described in this Section 5 only upon the written consent of Owners of Townhome Lots holding ninety percent (90%) of the votes entitled to be cast and, during the Declarant Control Period, the written consent of Declarant.

(1) Landscape Maintenance Easements. Declarant hereby reserves, for the benefit of itself, its successors and assigns, grants to the Association, its successors and assigns, employees, agents and subcontractors, a nonexclusive perpetual easement at all times over the Townhome Lots for the purpose of maintaining the lawn and landscaping located on those Lots. The easement described in this Section expressly permits access within fenced areas of the Townhome Lots. Further, any fences within these Lots must provide for an unlocked rear yard gate to permit the landscaping services provided in Section 5(a)(i) of Article VI. Failure of the Association or its contractors or agents to provide the services described in Section 5(a)(i) of Article VI due to denial of access within a fenced area of a Townhome Lot, for example, if the gate is locked or if there is a dog in the fenced area, shall not be a breach of the responsibilities of the Association as required herein. No Townhome Lot Owner may waive or otherwise escape liability for the Association Assessments by denying access to any portion of a Townhome Lot or the contractors or agents of the Association for the purposes described in this Section.

(ii) Exterior Maintenance. The Association may opt to be responsible, but shall not be required to be responsible, for certain exterior maintenance of the Townhome Dwellings, including the painting, repair, replacement, and care of exterior building surfaces (including siding, roofs, gutters, down spouts, and exterior doors installed as part of the initial construction of the Townhome Dwelling), sidewalks, and stoops. During the Declarant Control Period, the Association shall not be responsible for maintenance or repair of doorbells, exterior lighting and exterior electronics. After the expiration of the Declarant Control Period, the Association may opt to be responsible, but shall not be required to be responsible, for maintenance and repair of doorbells, exterior lighting and exterior electronics upon a majority vote of the Members. The Association shall not be responsible for maintenance or repair of glass surfaces or screens or for any improvements not part of the original construction unless the architectural approval granted by the Association for such subsequent improvements specifically provides that the Association will maintain such improvements. Furthermore: (i) the Association shall not be responsible for maintaining any fence installed on any Townhome Lot; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; (iii) the Association shall not be responsible for repair or replacement of any plantings or the exterior of any Townhome Dwelling when such repair or replacement is necessitated by work done by or at the request of any Owner for any utility company or governmental entity; and (iv) the Association shall not be responsible for repairing any damage caused by the negligent or willful act or omission of the Owner of such Townhome Dwelling or such Owner's tenants, subtenants, or family members, or the guests, invitees or contractors of any of them.

(b) Party Walls. Each Townhome Dwelling wall which is built as a part of the original construction of the Townhomes upon the Property and placed on the dividing line between the Townhome Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(i) Sharing of Repairs and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(ii) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(iii) 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 and the Sub-Association Common Area to the extent reasonably necessary to

perform repair, maintenance or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Sub-Association Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Sub-Association Common Area to as nearly the same condition as that which existed prior to commencement of the work as is reasonably practicable. Except in an emergency situation, an Owner entering upon another Owner's Lot as provided herein shall give reasonable oral or written notice to the Owner of the Lot on which such entry is to be made.

(iv) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act or omission, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements and of repairing any damages resulting from such Owner's failure to timely and adequately provided such protection.

(v) 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.

(vi) Certification by Adjoining Property Owner That No Contribution Is Due. If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to make a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, and without charge; provided, however that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. If an adjoining Owner fails to give a certification within ten (10) days of actual receipt of such request, such failure shall be conclusively deemed a certification that no such contribution is due.

(c) Insurance. In addition, the Association may procure and uphold a property insurance policy on the Townhome Lots (ISO Special Form or equivalent) in an amount not less than ninety percent (90%) of the replacement cost of the Townhome Dwellings. If the Association chooses to procure such policy, the policy shall be issued by an insurance company licensed to conduct business in North Carolina and with a current rating of at least "A-" by A.M. Best (if available). Such a policy will convey that each Owner of a Townhome Lot is an insured person with respect to his/her Townhome Dwelling, excluding improvements and betterments, (excluding the personal property of Owner) and his/her proportionate interest in the Townhome Lot. No act or omission by any Owner shall preclude recovery upon the policy. This policy shall be deemed primary in the event of a loss.

## ARTICLE VII RIGHTS OF LENDERS

Section 1. Books and Records. Any owner or holder of a first mortgage on any Lot, or its agent, shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, Bylaws, and the books and records of the Association and, upon written request to the Association, and payment of copying and mailing costs, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. The owner or holder of a first mortgage on any Lot which provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its mortgage relates) shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association, unless said conveyance of real property is *de minimis* and for the sole purpose of correcting an error in title of a Lot. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(e) of said Article IV hereof shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or another governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided,

however, that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners to the Association.

Provided, however, that in the event that any such holder of a first deed of trust fails to provide the approval required by this Section 3 within sixty (60) days after the Association has sent a written request for such approval, approval will not be required, and this Section will be deemed to have been fully complied with.

Section 4. Payment of Taxes and Insurance Premiums. The holders of deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under the Declaration.

## ARTICLE VIII EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of roadways, driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities, and for other public and private utility installations are reserved over the Properties for the benefit of Declarant and the Association. The Association may reserve or grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of ten (10) years from the date hereof, Declarant reserves, for itself and its employees, agents, successors and assigns, an easement upon and a right of ingress, egress and regress on, over and under the Properties for the purposes of constructing and maintaining roadways, water, sewer, gas, storm water drainage and retention, telephone, cable television, and electric, and other utility facilities to the extent required by any applicable governmental entity or deemed by the Declarant to be necessary or convenient for the development, use and enjoyment of the Properties and the Common Area and for the conduct of construction, sales and marketing activities. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, relocate utility facilities within said easement and take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and otherwise restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to each Owner whose Lot is affected.

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot within the Properties for the benefit of applicable governmental agencies for installing, removing, and reading water meters, maintaining and replacing water and sewer facilities, and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

Section 3. Owner's Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any Dwelling is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such Dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which existed prior to the commencement of the work as is reasonably practicable. No fence shall be erected within such area adjoining a Dwelling.

Section 4. Association's Easement and Right of Entry. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot to (a) perform its maintenance obligations, and (b) make inspections to ensure compliance with the Association Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Association Documents. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefited Assessment.

Section 5. Easement Over Common Area. A perpetual, non-exclusive easement over the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to and from parking areas and walkways serving the Properties and to and from adjacent public roads.

Section 6. Easements to Serve Other Property. Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and mortgagees, a perpetual easement over the Lots and the Common Area for the purposes of enjoyment, use, access, and development of any property whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

Section 7. Adjoining Areas. Each Owner of a Townhome Lot is hereby declared to have

an easement, and the same is hereby granted by the Declarant, over all adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, or additional settlement or shifting of the building, or any other cause. There shall be valid easements for maintenance of such encroachment, which includes any encroachments created during the original construction of the Townhome Dwelling and related structures on a Townhome Lot, settlement or shifting; provided however, that in no event shall a valid easement for encroachment be created in favor of said Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

## ARTICLE IX ARCHITECTURAL CONTROL

Section 1. Architectural Approval. The Declarant shall have the sole and absolute right to determine the style and appearance of the Dwellings, including, but not limited to, flags, subject to Section 47F-3-121 of the Act, flag poles, flag staffs, fences, walls, buildings, outbuildings, garages, storage sheds, mailboxes, lawn decorations, structures of any type or color thereof, grading, landscaping, patio covers and trellises, plans for off-street parking of vehicles and utility layout, and any other improvements to be built or constructed on any Lot (hereinafter individually and collectively referred to as "Improvements"). Declarant shall have exclusive authority to administer and enforce architectural standards under this Article and to review and act upon all applications for original construction within the Property. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant. Upon the expiration or surrender of such right, the Board may, at its option, either assume such authority or create and appoint an Architectural Review Committee ("ARC") composed of three or more persons appointed by the Board. The ARC shall have no rights or authority until Declarant's authority under this Article is surrendered.

No Improvements (including, without limitation, replacement of any previously existing Improvements) shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration thereof be made (including, without limitation, changing materials or color of any exterior portion of any such Improvements), nor shall a building permit for such Improvements or change be applied for or obtained, until plans and specifications showing the nature, kind, shape, heights, materials, color, built-upon area, and location of same shall have been submitted to and approved in writing by the Declarant or after the Declarant surrenders that right, the Board or the ARC. If the Association or its designee fails to approve or disapprove such proposed Improvements within 60 days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. The Association shall have the right to charge a reasonable fee for receiving and processing each application.

### Section 2. Architectural Guidelines.

The Declarant, and after the Declarant surrenders this right in writing, the Board or ARC, shall have the right to promulgate and from time to time amend written architectural standards and construction specifications in addition to those set forth above (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications

which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. The Architectural Guidelines shall include an anti-monotony policy that will prohibit Dwellings or accessory structures of similar design and color from being constructed on adjacent Lots. Neither the Declarant, the Board, nor the ARC shall approve any Improvements which it determines, in its sole discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither Declarant, the Association, the Board, or the ARC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, including without limitation, built upon area requirements set forth in any Stormwater Agreements. Neither Declarant, the Association, the Board, or the ARC, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the ARC and its members shall be defended and indemnified by the Association as provided in the Bylaws.

Section 3. Rules and Regulations. The ARC may from time to time recommend to the Board, and the Board may, in its sole discretion, adopt, promulgate, amend and repeal rules and regulations interpreting and implementing the provisions of this Article VIII, including adoption of detailed architectural guidelines and the imposition of a fee or charge for review of proposed improvements or modifications.

Section 4. Variances. The ARC may recommend to the Board, and the Board may, by the vote or written consent of a majority of the members thereof, allow reasonable variances as to the covenants, conditions or restrictions contained in this Declaration, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Property. Variances contained in plans that are inadvertently approved by the ARC as part of the proposed improvements shall not be considered as having been approved unless specifically approved by the Board in accordance with the provisions of this Section.

Section 5. Enforcement. Any construction, alteration or other work done in violation of this Article or the Architectural Guidelines shall be deemed to be nonconforming. Upon written request from Declarant, the ARC, or the Board, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Lot and/or Dwelling to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant, the Association or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, Declarant or the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Guidelines may be excluded from the Property, subject to the notice and hearing procedures contained in the Declaration. In such event, neither Declarant nor the Association, its officers, or directors shall be held liable to any person for exercising the rights granted by this section.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

## **ARTICLE X DECLARANT RIGHTS**

Section 1. Declarant's Rights. Declarant's Rights are those rights reserved for the benefit of Declarant as provided for in the Act and the Association Documents which shall include, without limitation, the following rights:

- (a) To complete improvements on the Properties;
- (b) To maintain models, management offices, construction offices, sales offices, customer service offices, and signs advertising the Properties within any portion of the Common Area Declarant deems appropriate;
- (c) Those rights set forth in Article II of this Declaration;
- (d) To designate any portion of the Property as Common Area;
- (e) To exercise all rights of architectural review and establishment of Architectural Guidelines and all other rights as set forth in Article VIII of this Declaration;
- (f) To construct improvements within portions of the Properties and to operate the same as public or private facilities in the sole discretion of Declarant;
- (g) To appoint, remove and replace the members of the Board;

- (h) To disapprove actions of the Board or any committee during the Development Period;
- (i) To disapprove any amendment or change in any Association Documents during the Development Period;
- (j) To enforce any covenants, restrictions and other provisions of the Association Documents during the Development Period; and
- (k) To amend this Declaration as set forth in Section 3 of Article XIII .

Section 2. Transfer of Declarant Rights. Any or all of Declarant's Rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other persons, provided that the transfer shall neither reduce an obligation nor enlarge a right. No such transfer shall be effective unless it is in a written instrument signed by Declarant and the transferee and duly recorded in the Register of Deeds of Wake County.

Section 3. Modification of Development Plan. Each Owner, by accepting title to a Lot and becoming an Owner, and each other person, by acquiring any interest in the Property, acknowledges awareness that the Subdivision is a planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties, or (b) changes in any conceptual or master plan for the Property, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration (as amended from time to time).

Section 4. Development Easements. Declarant, its employees, agents and designees, specifically reserve a non-exclusive easement over, upon, under and above the Common Area and other portions of the Property (expressly excluding a Dwelling Unit) for any and all purposes deemed reasonably necessary or desirable by Declarant for the development of the Property and any other property including, but not limited to, easements of access, the installation and maintenance of utilities, and easements as may be required from time to time by any governmental agency or pursuant to the Stormwater Agreements. Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing such improvements to the Common Area as it deems appropriate in its sole discretion.

Section 5. Marketing and Sales. During the Development Period, Declarant and its designees may maintain and carry on upon the Common Area and any property owned by Declarant such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, sales offices, and storage of building materials. Declarant and its designees shall have easements for access to and use of such facilities. Declarant's or any designee's unilateral right to use the Common Area for purposes stated in this section shall not be exclusive and shall not unreasonably interfere with use of such Common Area by Owners.

Section 6. Declarant Approval to Changes in Association Documents. During the Development Period, the Association shall not, without the prior written approval of Declarant, adopt any policy, rule or procedure that:

- (a) Limits the access of Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Area or to any property owned by any of them;
- (b) Limits or prevents Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Area or any property owned by any of them in promotional materials; or
- (c) Impacts the ability of Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for the Subdivision, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Subdivision shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities.

Section 7. Unimpeded Access. The Association shall not exercise its authority over the Common Area (including, but not limited to, any gated entrances and other means of access to the Property) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Property, or over the streets, or over the Common Area within the Property.

Section 8. Additional Declarations/Restrictions. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent during the Development Period. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

## **ARTICLE XI USE RESTRICTIONS**

Section 1. Business Use Prohibited. No trade, business, profession, garage sale, moving sale, rummage sale or other type of commercial activity shall be carried on within any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the properties; and, (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

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

Notwithstanding the foregoing, the Declarant and the agents and employees of Declarant, and a Builder, but only with the prior approval of Declarant, shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain fluorescent-lighted or spot-lighted model homes which may be open to the public for inspection 7 days per week for such hours as the Declarant deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales efforts; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

Notwithstanding the foregoing, Owners and/or occupants may participate in any community-wide garage sale as the Board may approve.

Section 2. Use of Accessory Structures. No tent, shack, barn, car port, metal awnings, metal utility sheds or other building, other than a Dwelling and its garage, shall be erected on a Lot, and used temporarily or permanently as a residence. Notwithstanding the foregoing, the Declarant and, with the approval of the Declarant, a Builder, may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of Units.

Section 3. Maintenance of Improvements. Each Owner shall maintain in good condition and repair all improvements constructed upon such Owner's Lot, including, without limitation, the Dwelling. No Owner shall change the landscaping, exterior design or color of the Dwelling on such Owner's Lot, including the roof thereof, except in compliance with Article VIII hereof.

Section 4. Storage: Clothes Hanging. No Lot or Common Area shall be used for the storage of rubbish. Porches shall be kept free of junk and debris such that they are neat with only plants or porch furniture as approved by the ARC. Outside clothes hanging devices shall not be permitted.

Section 5. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No automobile or other vehicle mechanical repairs or like activity shall be conducted within the Properties other than in a garage and concealed from public view.

Section 6. Lawns. Subject to the Association's maintenance obligations contained in Article VI, Section 5, each Lot shall be maintained in a neat condition by the Owner thereof. In this context, the word "Lot" shall include that portion of the property from the outside of the structure on the applicable Lot to the adjacent paved road surface. All Lots upon which a Unit or Dwelling has been constructed ("Improved Lots") must have grass lawns; no gravel or similar type lawns are permitted. For Improved Lots, "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized and that mulched or pinestrawed areas be regularly re-mulched or re-pinestrawed and kept weeded so that its appearance is in harmony with the neighborhood. No

Owner shall allow the grass on an Improved Lot to grow to a height in excess of six (6) inches, measured from the surface of the ground. For unimproved Lots, "Neat" shall require that the Lot is maintained in a sightly condition, free of debris, rubbish, weeds and high grass and in a prudent and reasonable manner harmonious with that of other Lots within the Subdivision.

Section 7. Failure to Maintain. If an Owner fails to maintain the Lot or the improvements thereon, the Association, after giving such Owner at least ten (10) days' written notice, shall be authorized to undertake such maintenance at the Owner's expense. By accepting title to his Lot, each Owner shall be deemed to grant access upon the Owner's Lot and Dwelling for such purpose and such entry shall not constitute a trespass. If such maintenance is undertaken by the Association or Declarant, the charge therefore and all costs of enforcement and collection shall be secured by a lien against the Lot as provided in Article V hereof.

Section 8. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of cats, dogs, and other household pets may be kept provided they are kept within the residence and are not kept, bred, or maintained for any commercial purposes or become a nuisance to the neighborhood. No person owning or having custody of an animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's dwelling, and the Owner shall be responsible for cleaning up all droppings from their animals. The Association shall have the right to expel animals from the community for the Owner's continuing violations of the Association Documents. The Board shall also have the right to expel dogs from the community for excessive barking which in the Board's opinion is a nuisance to other Owners.

Section 9. Signs. Except as otherwise required by the City of Raleigh or Wake County, no sign of any kind shall be displayed to the public view on any portion of any Lot without prior approval from the Association. The only signs that may be approved are: (i) One sign of not more than ten (10) square feet in size advertising the Lot for sale and (ii) One sign of not more than ten (10) square feet in size expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within seven (7) days after such election. No sign of any kind shall be displayed in or on the Association Common Area without the prior written consent of the Association. Signs advertising a Unit or Dwelling for lease or rent may not be displayed on any portion of a Lot or placed for public view within a Unit or Dwelling. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Association Common Area in connection with the development and sale of the Properties.

Section 10. Water Retention Areas. The Association shall be responsible for maintaining the portions of the storm water drainage system which are within the Common Area, including the water quality and quantity standards of the approved plans, to the extent required by law and as required by the Stormwater Agreements. A drainage easement is hereby dedicated to the Association for the purpose of maintaining the storm water system to meet water quality and quantity design standards of the approved plans and any future governmental laws, rules or regulations.

Section 11. Vehicles, Boats and Trailers. No truck or vehicle used primarily for commercial purposes (other than those temporarily present on business), no vehicle in inoperable condition, no unlicensed vehicle, no recreational vehicle, no camper, no boat and no trailer may be parked within the Properties, unless kept inside a garage and concealed from public view. No parked vehicle shall be covered by a "car cover" or other similar covering unless kept inside a garage and concealed from public view. For the purpose of the preceding sentence, the term "kept" shall mean present for either a period of more than ten (10) hours or overnight, whichever is less. In order to preserve the aesthetics of the development, whether or not, a boat, trailer, or vehicle of any type is adequately concealed from public view shall be determined by the Board of Directors in its sole discretion. The Association shall have the right to tow or remove any boat, trailer, or vehicle of any type which is parked within the Premises or kept on any Lot in violation of this section, at the owner's expense, and the owner of each Lot, by acceptance of their deed, does grant to the Association such an easement on, across, and upon their Lot as may be necessary to enforce the provisions set out in this section. No vehicle of any kind may be parked on any streets within the Properties. The Association and the Declarant (during the Declarant Control Period) may have vehicles towed in violation of this Section and the cost of such shall be the responsibility of the owner the vehicle.

Section 12. Walls, Fences, and Hedges. Fences shall be allowed in rear yards only, with a maximum height of six feet and may be constructed of wood, black metal or white vinyl only (no chain link). All walls, fences, planters and hedges shall be controlled strictly for compliance with this Declaration and architectural standards established by the Declarant or the ARC. The design, materials and placement of all walls, fences and hedges must be approved by the ARC prior to construction pursuant to the approval requirements of Article VIII, Section 1, of this Declaration.

Section 13. Antennae and Roof Structures. No radio or other electrical towers, aerials, antennae, or other devices of any type for the reception or transmission of radio broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon. Notwithstanding the foregoing, (i) antennae or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) antennae or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennae or satellite dishes designed to receive television broadcast signals which are less than one meter in diameter shall be permitted, *provided that* any such antenna or satellite dish is placed in the least conspicuous location on the Lot in which an acceptable quality signal can be received and is screened from the view of adjacent Dwelling Units, streets and Common Area in a manner consistent with the Architectural Guidelines, and is approved by the Declarant or the ARC pursuant to Article VIII of this Declaration. The Association shall be empowered to adopt rules governing the types of antennae and satellite dishes that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

Section 14. Visual Obstructions at the Intersections of Streets. No object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways within the triangular area formed by the junction of street curb lines and a line connecting them at points

twenty-five (25) feet from the junction of the street curb lines (or extensions thereof) shall be placed, planted or permitted to remain on any corner lots.

Section 15. Leased Units. An Owner may lease his Unit; provided, however, that:

- a) No Dwelling may be leased for a period of less than six (6) months;
- b) All leases for any Dwelling Unit shall be in writing signed by the Owner and the tenant and a true executed copy of the lease shall be provided to the Association prior to the occupancy by the tenant of such Dwelling Unit.
- c) All leases shall be in such form, and contain such provisions, as approved by the Board, including provisions (a) requiring the tenant to comply with the Association Documents (an example of such provision is set for the below), (b) providing that the failure of any tenant under a lease to comply with the Association Documents shall constitute an event of default under the lease, and (c) providing that the Board may exercise any and all remedies for a default under the Association Documents against the Owner and the tenant under the lease including, without limitation, the right to remove a tenant from possession of a Dwelling Unit by judicial process or otherwise

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions, Easements, and Restrictions for Old Poole Place, recorded in the applicable public registry for Wake County, North Carolina. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

- d) The Board may also adopt additional reasonable rules and regulations regarding leasing.

Section 16. Basketball Nets. An Owner may place a basketball net on his Lot provided that it is within his Lot's driveway.

Section 17. Intentionally Deleted.

Section 18. Seasonal or Holiday Decorations. Holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be removed from each Lot or residential dwelling within a reasonable period of time after such holiday passes. The ARC has the sole discretion to determine what is a reasonable period of time for seasonal or holiday decorations to exist after the holiday passes and its determination shall be final.

Section 19. Window Coverings. All drapes, curtains or other similar materials hung at windows so as to be visible from outside the home shall be of a white or neutral background material.

Section 20. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any sites shall be clear, white or non-frosted lights or bulbs. Light wattage and placement shall be approved by the ARC.

Section 21. Service Utilities, Fuel Tanks, Wood Piles, Trash. All service utilities, fuel tanks, wood piles and trash and garbage containers are to be enclosed within a fence, wall or plant screen of a type and size approved by the Declarant or the ARC, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision.

Section 22. Flags. Except as may be permitted by the Architectural Review Committee, no Owner shall construct, install, erect, or maintain upon any Lot any flag (including flags of the United States of America or the State of North Carolina) or freestanding flagpole (provided, flags [including the United States of America or the State of North Carolina] may be displayed using a bracket or other approved device mounted to a dwelling so long as the size of the flag displayed does not exceed a standard size as same may be determined by the Architectural Review Committee).

Section 23. Rights of way. If any Owner places any improvement or structure in the right-of-way, then if requested by the North Carolina Department of Transportation or the Declarant or the Association or any governmental regulatory agency, the Declarant or the Association shall have the right to remove such improvement or structure even if ARC had approved installation of such improvement or structure.

Section 24. Above Ground Swimming Pools. No above ground swimming pool shall be erected, constructed, placed or permitted to remain on any Lot.

Section 25. Outdoor Fires/Burning. Outside burning of trash, leaves, debris or other materials is prohibited. Owners may burn wood in an outdoor fire pit, provided the fire pit must first be approved by the Declarant, Board, or ARC, as applicable. The restrictions contained in this Section 26 shall not apply to Declarant.

Section 26. Solar Panels. Solar panels, solar collectors and similar photovoltaic equipment must be approved by Declarant during the Declarant Control Period and the thereafter by the ARC.

Section 27. Dumpsters. Dumpsters are for use only by Townhome Lot Owners.

Section 28. Parking. Parking on the street or rights-of-way shall be prohibited for a period of longer than 24 hours. There shall be no parking for greater than 5 minutes in the area adjoining the dumpster and mail kiosk areas. The Declarant or the Association shall have the right to enforce these provisions and create more restrictive parking regulations.

Section 29. Deviations. Declarant at its sole discretion, is hereby permitted to approve deviations to restrictions in Article XI in instances where in its judgment, such deviation will not adversely affect the development of the Property as a whole. Such approvals must be granted in writing and, when given, will automatically amend these restrictions for that certain Lot only.

## ARTICLE XII

### STORMWATER AGREEMENTS RESPONSIBILITIES AND COVENANTS

Section 1. Administration of the Stormwater Agreements. The oversight, supervision, management and administration of the Stormwater Agreements shall be the sole responsibility of the Association. The Association's duties with respect to the Stormwater Agreements shall be carried out in accordance with the terms and conditions of the Association Documents and the Stormwater Agreements. The Architectural Review Committee shall review plans for Improvements for compliance with the built-upon area limits set forth in this Declaration. The plans submitted by Owners must include all proposed built-upon area. Any approvals given by the ARC do not relieve the Owner of the responsibility to comply with any permitted built-upon area restrictions set forth in the Stormwater Agreements and this Declaration.

Section 2. Transfer to and Acceptance by Association. If any Stormwater Agreements are issued to Declarant, Declarant shall transfer the Stormwater Agreements and Declarant's responsibilities thereunder to the Association. The Association shall accept the transfer from Declarant of the Stormwater Agreements and the responsibilities thereunder.

Section 3. Association Indemnification. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine, suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant as the responsible party under the Stormwater Agreements. The Association shall indemnify and hold Declarant harmless from any loss, cost, claim, fee, fine suit, damage or expense, including reasonable attorneys' fees, incurred by Declarant in the defense of any action against Declarant from and after the date Declarant tenders transfer of the Stormwater Agreements to the Association. From and after the transfer of Declarant's responsibilities under the Stormwater Agreements and from and after transfer of the Stormwater Agreement from Declarant to the Association, the oversight, supervision, management and administration of the Stormwater Agreement shall be the sole responsibility of the Association

Section 4. Easement for Upkeep and Enforcement. The Association hereby is granted and conveyed an easement over, under and upon each Lot for the purpose of access to and upkeep of all Stormwater Facilities and to enforce all requirements of the Stormwater Agreements. In the event Declarant annexes additional property into the Property, the Association shall have, and hereby is granted and conveyed, an easement over, under and upon each annexed Lot for the purpose of access to and maintenance of all Stormwater Facilities located upon such additional property and to enforce all requirements of the Stormwater Agreements.

Section 5. Stormwater Covenants. To ensure ongoing compliance with the Stormwater Agreements and any other applicable stormwater regulations, the following covenants and restrictions are hereby imposed upon the Property:

(a) Owners shall not construct any improvements on their Lots or the Common Area or otherwise use any portion of the Property in a manner that violates the terms of the Stormwater Agreements.

(b) The maximum allowable built-upon area per Lot is 5,000 square feet. This allotted amount includes any built-upon area constructed within the property boundaries of a Lot and that portion of the right of way between the front Lot line and the edge of the pavement of any street

abutting such Lot. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include a raised, open deck, or the water surface of swimming pools.

(c) In the event an Owner or Builder damages the Stormwater Facilities, the Association may perform such work to repair or replace the Stormwater Facilities and assess all costs incurred by the Association against the Lot and the Owner or Builder in accordance with Article V, Section 6.

Section 6. Each Owner of a Lot which borders a water retention area, drainage easement or drainage swale area shall be responsible to maintain any portion of that Owner's lot lying within a retention area, drainage easement, or drainage swale area in compliance with the Stormwater Agreements and free of debris but shall not remove any wetlands species or do anything that would affect adversely water quality within the water retention area. No structure of any type shall be permitted within the water retention areas, drainage easements or drainage swale areas. Swimming and bathing in water retention areas are prohibited. Docks or other structures shall not be erected in water retention areas without the prior written consent of the Association. All other uses of water retention areas shall be subject to the prior written approval of the Association and such rules and regulations as the Association may adopt from time to time.

**ARTICLE XIII  
GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or an 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 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. Amendment. During the Development Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make or purchase mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing.

Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote of, or written agreement signed by, Owners of Lots to which at least sixty-seven percent (67%) of the total votes in the Association are allocated, and Declarant's written consent during the Development Period.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Amendments to this Declaration shall become effective upon recordation in the office of the Register of Deeds of Wake County unless a later effective date is specified therein. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege during the Development Period.

Section 4. Interpretation. Headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing any provision hereof. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the word "including" shall mean "including, without limitation". This Declaration and the provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina.

Section 5. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded plat, except by or with the consent of the Declarant and, if required, by the appropriate governmental authority.

Section 6. Declarant's Right To Change Development. With the approval of the appropriate governmental authority, and subject only to such terms and conditions as said authority may impose, Declarant shall have the right, without consent or approval of the Owners, to create Lots and Units, add Common Area, and reallocate Lots or Units within the Properties. Declarant may convert any Lot or Lots or any other property subject to these restrictions to use as a roadway and/or road right-of-way.

Section 7. Right to Dedicate Streets. In the event that the streets and roadways providing access to the Old Poole Place Subdivision are accepted as public roads by the North Carolina Department of Transportation, then and in that event, the Declarant and/or the Association may petition the North Carolina Department of Transportation to accept the streets and roadways within the Old Poole Place Subdivision as public roads. Declarant shall maintain the streets until such time as the streets are accepted for maintenance by the appropriate governmental authority.

Section 8. Rules and Regulations: Enforcement. The Board shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owners of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have, the Association may impose sanctions for a violation of the Association Documents subject to the notice of hearing, evidence, and appeals procedures set forth in §47F-3-107.1 of the Act, which sanctions may include, without limitation, reasonable monetary fines not to exceed One Hundred Dollars (\$100.00), provided that an additional fine of up to One Hundred Dollars (\$100.00) per day may be imposed for each day more than five (5) days after the decision that the violation occurs, which shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use the Common Area and any facilities thereon.

In addition, as provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Area and recreational facility within the Properties if the Owner is more than 30 days delinquent in paying any assessment or other charge due to the Association.

The Association shall at all times have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the Architectural Guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed in its name by its duly authorized officer, as of the date set forth in the notary acknowledgment below.

*[signature on following page]*

DECLARANT  
HABITAT FOR HUMANITY OF WAKE COUNTY, INC.,

By: Beth Tyner Jones (SEAL)

Name: Beth Tyner Jones

Title: Board Chair

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: ~~XXXXXXXXXXXX~~ Beth Tyner Jones

Date: 9/25/2023

Daiba P Tozay  
Signature of Notary Public

DAIBA P TOZAY  
Notary's printed or typed name

My commission expires: 11-29-2026

(Official Seal)

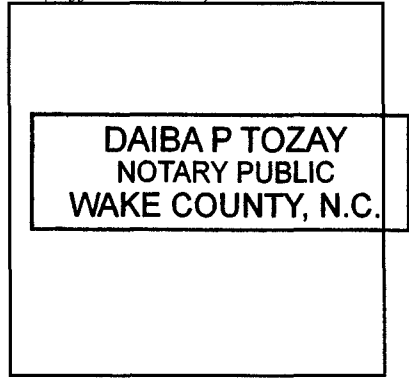


EXHIBIT A

Being all Lots 1-10 and 13-56 shown on the map entitled "Old Poole Road Habitat Subdivision Phase 1 ROW Dedication, Easement & Tree Conservation Areas and Phase II Lot 501 Private Drainage Easement Plat" by Dan Gregory, PLS, recorded in Book of Maps 2022, Pages 2359-2363, Wake County Registry.