

BK012078PG01558

WAKE COUNTY, NC 393  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
07/25/2006 AT 15:24:13

BOOK:012078 PAGE:01558 - 01618

**Declaration**  
  
**of**  
  
**COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS**  
  
**for**  
  
**NORTHRIDGE TRACE**

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

*Prepared by:*  
Ellis & Winters LLP (DKB)  
1100 Crescent Green, Suite 200  
Cary, North Carolina 27511  
Post Office Box 33550  
Raleigh, North Carolina 27636

BK012078PG01559

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
NORTHRIDGE TRACE  
TABLE OF CONTENTS**

<b>Number</b>	<b>Description</b>	<b>Page</b>
ARTICLE I.	DEFINITIONS .....	1
ARTICLE II.	PROPERTY SUBJECT TO THIS DECLARATION.....	3
Section 1.	Property Subject to This Declaration .....	3
Section 2.	Other Property .....	3
ARTICLE III.	ASSOCIATION MEMBERSHIP AND VOTING RIGHTS .....	4
Section 1.	Classes of Membership .....	4
Section 2.	Directors Appointed by Declarant .....	4
ARTICLE IV.	ASSESSMENTS.....	4
Section 1.	Reference to Additional Assessment Provisions .....	4
Section 2.	Supplementary Budgets .....	4
Section 3.	Certificate of Payment .....	4
Section 4.	Special Assessments .....	5
Section 5.	No Setoff or Deduction.....	5
Section 6.	Application of Payments.....	5
Section 7.	Date of Commencement of Assessments.....	5
Section 8.	Individual Assessment .....	5
ARTICLE V.	MAINTENANCE & CONVEYANCE OF COMMON AREA TO ASSOCIATION.....	6
Section 1.	Association's Responsibility.....	6
Section 2.	Owner's Responsibility.....	7
Section 3.	Conveyance of Common Area by Declarant to Association.....	7
ARTICLE VI.	USE RESTRICTIONS AND RULES.....	8
Section 1.	General.....	8
Section 2.	Residential Use .....	8
Section 3.	Architectural Standards.....	9
Section 4.	Signs.....	10
Section 5.	Vehicles.....	11
Section 6.	Off Road.....	12
Section 7.	Leasing.....	12
Section 8.	Occupants Bound .....	12
Section 9.	Animals and Pets.....	12
Section 10.	Nuisance.....	12

BK012078PG01560

Number	Description	Page
Section 11.	Unightly or Unkempt Conditions .....	13
Section 12.	Antennas .....	13
Section 13.	Tree Removal .....	13
Section 14.	Drainage .....	13
Section 15.	Sight Distance at Intersections .....	13
Section 16.	Garbage Cans, Woodpiles, Etc. ....	14
Section 17.	Subdivision of Lot .....	14
Section 18.	Guns .....	14
Section 19.	Fences .....	14
Section 20.	Utility Lines .....	14
Section 21.	Air Conditioning Units .....	14
Section 22.	Lighting .....	14
Section 23.	Artificial Vegetation, Exterior Sculpture, and Similar Items.....	14
Section 24.	Energy Conservation Equipment .....	15
Section 25.	Gardens and Play Equipment .....	15
Section 26.	Mailboxes .....	15
Section 27.	Exteriors .....	15
Section 28.	Clothesline .....	15
Section 29.	Exterior Security Devices .....	15
Section 30.	Entry Features .....	15
Section 31.	Storage Sheds, Garages and Other Improvements .....	15
Section 32.	Restrictions on Rentals of Dwellings.....	16
Section 33.	Sewer Systems .....	16
Section 34.	Wetlands .....	16
<b>ARTICLE VII.</b>	<b>INSURANCE AND CASUALTY LOSSES .....</b>	<b>17</b>
Section 1.	Insurance on Common Area .....	17
Section 2.	Liability Insurance.....	17
Section 3.	Declarant .....	17
Section 4.	Premiums .....	17
Section 5.	Miscellaneous .....	17
Section 6.	Individual Insurance.....	19
Section 7.	Damage and Destruction—Insured by Association .....	19
Section 8.	Damage and Destruction—Insured by Owners.....	20
Section 9.	Requirements of Article XVI, Part A, Section 9.....	20
<b>ARTICLE VIII</b>	<b>CONDEMNATION .....</b>	<b>20</b>
<b>ARTICLE IX</b>	<b>ANNEXATION OF ADDITIONAL PROPERTY .....</b>	<b>20</b>
Section 1.	Unilateral Annexation by Declarant.....	20
Section 2.	Other Annexation.....	21
Section 3.	Additional Annexation Provisions.....	21

BK012078PG01561

<b>Number</b>	<b>Description</b>	<b>Page</b>
ARTICLE X.	MORTGAGEE PROVISIONS .....	21
Section 1.	Notices of Action .....	21
Section 2.	Notice to Association .....	22
Section 3.	Applicability of Article .....	22
Section 4.	Amendments by Board.....	22
ARTICLE XI.	EASEMENTS .....	22
Section 1.	Easements for Encroachment and Overhang .....	22
Section 2.	Easements for Use and Enjoyment .....	23
Section 3.	Easements for Access, Utilities and Other Purposes .....	24
Section 4.	Easement for Drainage.....	25
Section 5.	Easement for Entry.....	25
Section 6.	Easement for Maintenance.....	25
Section 7.	Easement for Entry Features .....	25
Section 8.	Construction and Sale Period Easement .....	26
Section 9.	Irrigation Easements .....	27
Section 10.	Fence Easement.....	27
Section 11.	Easements in Favor of Additional Property .....	27
ARTICLE XII.	GENERAL PROVISIONS.....	27
Section 1.	Enforcement.....	27
Section 2.	Self-Help .....	28
Section 3.	Duration .....	28
Section 4.	Amendment.....	28
Section 5.	Partition.....	29
Section 6.	Gender and Grammar.....	29
Section 7.	Severability .....	29
Section 8.	Captions .....	29
Section 9.	Perpetuities.....	29
Section 10.	Indemnification .....	29
Section 11.	Books and Records .....	30
Section 12.	Financial Review .....	30
Section 13.	Notice of Sale, Lease, or Acquisition .....	31
Section 14.	Agreements .....	31
Section 15.	Implied Rights.....	31
ARTICLE XIII.	VARIANCES.....	31
ARTICLE XIV.	LITIGATION.....	31
ARTICLE XV.	CAPITALIZATION OF ASSOCIATION .....	32

BK012078PG01562

Number	Description	Page
ARTICLE XVI.	RALEIGH CITY CODE REQUIREMENTS .....	32
	PART A – DEFINITIONS AND GENERAL REQUIREMENTS .....	32
Section 1.	Definitions.....	32
Section 2.	Applicability.....	39
Section 3.	Conflicts.....	39
Section 4.	Amendment of Declaration.....	40
Section 5.	Assessments .....	40
Section 6.	Membership and Governance .....	43
Section 7.	Permanently Protected Undisturbed Open Space Areas .....	44
Section 8.	Tree Conservation.....	44
Section 9.	Insurance .....	45
Section 10.	Indemnification .....	45
Section 11.	On-Street Parking.....	45
Section 12.	Sight Triangles .....	45
Section 13.	Annexed Property .....	45
Section 14.	Access Easement for Repair of Structures.....	47
Section 15.	Access for Governmental Agencies.....	47
Section 16.	Conveyance or Dedication of Common Areas.....	47
Section 17.	Private Utility Lines.....	47
Section 18.	Landscape Easements .....	48
	PART B—INTENTIONALLY OMITTED .....	48
	PART C—INTENTIONALLY OMITTED .....	48
	PART D—TOWNHOUSE DEVELOPMENT.....	48
Section 1.	Open Space .....	48
Section 2.	Common Party Walls.....	50
	PART E—INTENTIONALLY OMITTED .....	51
	PART F—CITY GREENWAYS.....	51
	PART G—PRIVATE STREETS.....	52
Section 1.	Private Streets .....	52

BK012078PG01563

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
NORTHRIDGE TRACE**

This **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR NORTHRIDGE TRACE** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Pulte Home Corporation, a Michigan corporation ("Pulte").

WITNESSETH:

WHEREAS, Pulte is the owner of the real property described on Exhibit A; and

WHEREAS, Pulte desires to subject the real property described on Exhibit A, and possibly other property, to the provisions of this Declaration to create a residential community.

NOW THEREFORE, Pulte hereby declares that the real property described on Exhibit A of this Declaration, including any improvements which may be (but are not required to be) constructed on that property, is subjected to the provisions of this Declaration. Such real property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, contained in this Declaration. The provisions of this Declaration shall run with the title to the property now or hereafter subjected to this Declaration. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**ARTICLE I.  
DEFINITIONS**

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

"Affiliate" shall mean: (i) any corporation at least fifty percent (50%) of the voting stock of which is owned or controlled by the Declarant, and any partnership, joint venture or limited liability company in which the Declarant has at least a fifty percent (50%) equity interest or an interest in at least fifty percent (50%) of the cash flow from such partnership, joint venture or company; or (ii) any person or entity owning or controlling at least a fifty percent (50%) equity interest in Declarant or an interest in at least fifty percent (50%) of the cash flow from Declarant.

"Areas of Common Responsibility" shall mean the Common Area, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration, any recorded plat, other covenants, contracts, or agreements.

BK012078PG01564

**“Annexation Declaration”** shall have the meaning expressed in Article XVI, Part A, Section 1(b) of this Declaration.

**“Association”** shall mean Northridge Trace Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns. See also Article XVI, Part A, Section 1(d).

**“Board of Directors”** or **“Board”** of the Association shall be the appointed or elected body, as applicable, having its normal meaning under North Carolina law. See also Article XVI, Part A, Section 1(e).

**“Bylaws”** shall refer to the Bylaws of the Association.

**“Common Area”** shall have the meaning set forth in Article XVI, Part A, Section 1(h).

**“Community”** and/or **“Property”** shall mean the real property and interests described on Exhibit A and such additions to that property as may be made by Declarant or by the Association pursuant to this Declaration.

**“Community Standard”** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination must be consistent with the Community Standard originally established by the Declarant.

**“Declarant”** shall mean and refer to Pulte Home Corporation, a Michigan corporation, as well as its successors and assigns pursuant to an express assignment or conveyance of any special Declarant rights hereunder to such successor or assign, all of which rights, including Declarant’s voting, easement and development rights, shall be assignable and may be apportioned on a lot-by-lot basis. Any such assignment shall be recorded in the office of the Register of Deeds of the county in which the Community is located. See also Article XVI, Part A, Section 1(j).

**“Declarant’s Development Period”** shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Registry of Deeds for the County in which the Community is located, and continuing until the later of: (i) one (1) year after Declarant shall cease to own any property within the Community; or (ii) for so long as Declarant shall have the unilateral right to subject additional property to this Declaration.

**“Declaration”** shall include this Declaration of Covenants, Conditions, Restrictions and Easements for Northridge Trace, as the same may be supplemented or amended pursuant to any Annexation Declaration or any amendment to this Declaration in accordance with its terms. See also Article XVI, Part A, Section 1(m).

**“Lot”** shall mean and refer to any lot or any separately numbered portion of the Properties shown on any now or subsequently recorded subdivision plat of the Properties intended for use or used as a site for a single-family attached dwelling or townhome and shall include any improvements constructed thereon and **“Lots”** shall refer to all such lots collectively. Declarant

BK012078PG01565

hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an Affiliate, as the case may be, and to thereby create additional Lots, eliminate existing Lots or create additional Common Area. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration. See also Article XVI, Part A, Section 1(r).

**"Mortgage"** means any mortgage, security deed, deed of trust, or similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

**"Mortgagee"** shall mean the holder of a Mortgage. See also Article XVI, Part A, Section 1(u).

**"Occupant"** shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

**"Owner"** shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community; excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation. See also Article XVI, Part A, Section 1(x).

**"Person"** means a natural person, corporation, joint venture, partnership (general or limited), association, trust, or other legal entity. See also Article XVI, Part A, Section 1(y).

## **ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1. Property Subject To This Declaration.** The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in Exhibit A.

**Section 2. Other Property.** Only the real property described in Section 1 of this Article is made subject to this Declaration. However, Declarant may subject all or portions of the additional real property described in Article IX, Section 1 hereof by recording one or more Annexation Declarations.

BK012078PG01566

**ARTICLE III.  
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Classes of Membership.** The Association shall have two classes of voting membership:

**Class A:** The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any Affiliate, during any Period of Declarant Control. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation. When more than one person holds an interest in any Lot, all such persons shall be Members. Class A Members shall be entitled to one (1) vote for each Lot owned.

**Class B:** Declarant shall be the Class B Member and Declarant shall be entitled to three (3) votes for each Lot that is owned by Declarant and/or any Affiliate. The Class B membership shall cease and be converted to Class A membership at such time as Declarant no longer has the right to appoint the members of the Board of the Association pursuant to the provisions of Section 2 of this Article.

**Section 2. Directors Appointed by Declarant.** The Declarant shall have the right to appoint or remove any member or members of the Board or any officer or officers of the Association until such time as the first of the following events shall occur: (a) ten (10) years from the date the Declaration was recorded; (b) the date on which 90% of the lots developed or to be developed as part of the Community (including all present and future phases) pursuant to development plans maintained by the Declarant, as such plans may be revised and amended from time-to-time, have been conveyed to Persons other than Declarant; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by the Declarant need not be Owners or residents in the Community.

**ARTICLE IV.  
ASSESSMENTS**

**Section 1. Reference to Additional Assessment Provisions.** Reference is hereby made to the assessment provisions set forth in Article XVI, Part A, Section 5 of this Declaration. The provisions of this Article supplement the provisions of Article XVI, Part A, Section 5.

**Section 2. Supplementary Budgets.** The ratification of a budget for a specified period of time shall not preclude the adoption of a modified budget by the Board at any time to address increases in Common Expenses or unforeseen or unexpected Common Expenses. Any such budget must be ratified pursuant to the provisions of Article XVI, Section 5(c).

**Section 3. Certificate of Payment.** The Association shall, within ten (10) business days after receiving a written request, furnish a certificate signed by an officer of the Association

BK012078PG01567

setting forth whether the assessments, other charges, and fines on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association, the Board, and the Owner as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.

**Section 4. Special Assessments.** In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved by the Members entitled to cast at least two-thirds (2/3) of the votes of the Association at a meeting of the Members of the Association duly called for the purpose, among others, of voting on the special assessment. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. Any Special Assessment shall be assessed against all Lots in the same proportions as the Shared Budgeted Expenditures.

**Section 5. No Setoff or Deduction.** No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

**Section 6. Application of Payments.** All payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.

**Section 7. Date of Commencement of Assessments.** As to each Lot, assessments shall start on the date of the conveyance of the Lot to a Person other than Declarant. The first annual assessment shall be adjusted according to the number of days then remaining in that fiscal year.

**Section 8. Individual Assessment.** Pursuant to this Section, the Board shall have the power to levy individual assessments for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility):

(a) Expenses of the Association which benefit less than all of the Lots may be individually assessed equitably among all of the Lots which are benefited according to the benefit received; and

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

BK012078PG01568

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future.

**ARTICLE V.  
MAINTENANCE & CONVEYANCE OF COMMON AREA  
TO ASSOCIATION**

**Section 1. Association's Responsibility.** The Association shall maintain in good repair all Areas of Common Responsibility, as follows:

(a) The Association shall maintain, repair, and replace all landscaping and improvements situated on the Common Area. The Association shall also maintain, repair and replace all entry features (including the expenses for water and electricity, if any, provided to all such entry features); operate and maintain street lights (if not maintained and operated by a governmental entity) for the Community, all retaining walls installed by Declarant or the Association within the Community and all storm water facilities and easements serving the Community.

(b) The Association shall maintain all landscaping originally installed by Declarant or by the Association. The Association's responsibilities with respect to maintenance of such landscaping shall be limited to cutting of grass, trimming and replacement of trees, shrubs, hedges, bushes, flowers, and other plantings, from time to time as necessary or appropriate as determined in the Board's sole discretion. Owners of Lots shall not alter such landscaping or landscaping equipment and shall not interfere with the Association's landscaping activities. Should any landscaping be installed by Owners, the Association shall have no responsibility to maintain such landscaping or have any liability for damage to such landscaping which may occur in the course of performing the Association's duties under this Article V, Section 1. In addition, the Association shall not be required to perform any such services with respect to any portion of a Lot that is part of a fenced or otherwise enclosed privacy area.

(c) The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, within or serving the Community, where the Board has determined that such maintenance would benefit the Owners.

(d) The Association shall have the right, but not the obligation, from time to time, as determined by the Board in its sole discretion, to make reasonable modifications to the scope of the services to be provided by the Association.

(e) The Association shall not be liable to any Owner, or any Owner's Occupant, guest, or family member for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of an alleged failure of the Association to take some action or perform some function required to be taken or discomfort arising from the making of repairs or improvements which are the

BK012078PG01569

responsibility of the Association. The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association.

(f) In the event that the Association determines that the need for maintenance, repair, or replacement of property that is to be maintained, repaired or replaced by the Association in accordance with the terms of this Declaration is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance maintained by or on behalf of the Association, in whole or in part, then the Association may perform such maintenance, repair, or replacement at such Owner's sole cost and expense, and assess all costs thereof as an individual assessment against such Owner and such Owner's Lot; provided, however, during Declarant's Development Period, any such action by the Association shall require the Declarant's prior written consent. Such Owner may request a hearing by the Board of Directors, or an adjudicatory panel appointed by the Board, to determine responsibility for the damages if the monetary amounts involved are less than or equal to the jurisdictional amount established for small claims under North Carolina law. The hearing shall afford notice of the charge to the Owner, an opportunity for the Owner to be heard and to present evidence, and a notice of decision by the Board. The Board of Directors or its appointees may not assess liability in an amount in excess of the jurisdictional amount established for small claims under North Carolina law.

(g) The maintenance shall be performed consistent with the Community Standard.

**Section 2. Owner's Responsibility.** Except as provided in Article V, Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community Standard and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may perform such maintenance, repair, or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an assessment levied against the Owner and a lien on such Owner's Lot in accordance with the provisions of Articles IV and XVI hereof.

**Section 3. Conveyance of Common Area and Personal Property by Declarant to Association.** The Declarant may convey to the Association any improved or unimproved real

BK012078PG01570

property, leasehold, easement, or other property interest located within or adjacent to the Community. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Area to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section. Declarant in recording any plat of the Properties may identify thereon certain areas of land as "Open Space," "Common Area," "Common Property," or similar designation. Such designated properties, unless otherwise expressly provided, are expressly not dedicated to the public, but are intended to be conveyed by Declarant to the Association as Common Area. Declarant, however, reserves the right to reconfigure, in accordance with any applicable local governmental ordinances and regulations, all or any portion of such areas and all or any one or more of the Lots shown on any recorded subdivision plat at any time prior to the conveyance of such property by recording a revised subdivision plat of the property and thereby increase or decrease the area of any "Open Space," "Common Area," "Common Property," or similarly designated property and/or increase or decrease the number or size of the Lots shown thereon. Any "Open Space," "Common Area," "Common Property," or similarly designated property conveyed to the Association shall be conveyed subject to all easements and restrictions then of record, including all easements and restrictions herein reserved and established, and the recording of a plat showing such areas shall not limit the rights of Declarant to further restrict such property and to grant and convey easements on, over or upon such property, prior to its conveyance to the Association, or otherwise in accordance with the terms of this Declaration. In addition, the Declarant may convey to the Association any personal property to be used by the Association in connection with Common Area or any services to be provided by the Association pursuant to this Declaration. Such conveyance shall be accepted by the Association and the costs of maintaining such property shall be a Common Expense.

**ARTICLE VI.  
USE RESTRICTIONS AND RULES**

**Section 1. General.** This Article sets out certain use restrictions that must be complied with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration.

**Section 2. Residential Use.** Except as otherwise herein provided with respect to (i) the use of portions of the Properties as sales offices, construction offices and/or model homes and (ii) the maintenance of offices or home businesses, all Lots shall be used for residential purposes exclusively, and no portion of the Properties shall be used except for residential purposes and uses ancillary thereto, including recreational, park and street purposes. Notwithstanding the foregoing restrictions, the Declarant, during Declarant's Development Period, shall have the right to operate and maintain one or more sales offices, construction offices and model homes within the Community. In addition, notwithstanding the foregoing restrictions, an Owner may maintain an office or home business on such Owner's Lot or in any dwelling or other improvement located on the Lot only if: (i) such office or home business is operated by the Owner or a member of the Owner's household residing on the Lot, or by Owner's tenant residing on the Lot; (ii) there are no displays or signs indicating that the Lot or improvement is being used other than as a residence; (iii) such office or business does not generate significant traffic or

BK012078PG01571

parking usage (as determined from time to time in the sole discretion of the Board) by clients, customers or other Persons; (iv) no equipment or other items related to the office or business are stored, parked or otherwise kept on such Owner's Lot outside of the dwelling or other enclosure approved by the Architectural Review Committee; (v) such Owner has obtained from all applicable local governmental authorities, and maintains in effect, all required approvals for such use; (vi) the activity is consistent with the residential nature of the Properties and complies with all applicable federal, state and local laws and ordinances; (vii) no person is employed in such office or home business except for the Owner or the members of the Owner's household residing on the Lot or the Owner's tenant residing on the Lot; and (viii) the Owner has obtained prior written approval from the Board and thereafter registers annually with the Association as long as the operation of the home business continues. As a condition to such use, the Board may require the Owner to pay any increase in the rate of insurance, trash removal, utilities or other costs for the Association or other Owners which result from such use. Garage sales, yard sales and similar activities shall be conducted only in accordance with all applicable federal, state and local laws and ordinances and the rules and regulations, if any, adopted by the Board.

**Section 3. Architectural Standards.** No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. Except for improvements installed by the Declarant, no exterior construction, addition, erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Review Committee to be established by the Board.

(a) The Board may employ architects, engineers, or other persons as it deems necessary to enable the Architectural Review Committee to perform its review.

(b) The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

(c) Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee.

(d) During Declarant's Development Period, the Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee.

(e) If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest,

BK012078PG01572

shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction commenced in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in this Declaration, record in the appropriate land records a notice of violation naming the violating Owner.

(f) Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that such Person or Owner will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any board, or the officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

**Section 4. Signs.** No sign of any kind shall be displayed to the public view on any portion of the Properties except for signs which are approved by Declarant, during Declarant's Development Period, and thereafter, by the Board, and any of the following: (i) signs advertising a Lot for sale or rent by an Owner other than Declarant, provided that only one (1) such sign may be display with respect to any given Lot that is for sale or rent, that the sign is not larger than six (6) square feet and that it is displayed inside the window of the dwelling located on such Lot; (ii) signs advertising Declarant during the construction and/or sales period; and signs advertising any portion of the Properties for sale or rent by Declarant; (iii) signs erected by or on behalf of Declarant, during Declarant's Development Period, and thereafter, by or on behalf of the Association identifying the subdivision name of the Properties or of a phase, section or

BK012078PG01573

subdivision within the Community, or the number or street address of a Lot or Dwelling, or directing Persons as to the location of certain portions of the Properties; (iv) signs erected by or on behalf of Declarant, during Declarant's Development Period, and thereafter, by or on behalf of the Association identifying any portion of the Common Area; and (v) signs required by any applicable governmental authority or a utility provider. All signs maintained on any portion of the Properties must comply with all applicable federal, state and local laws and ordinances.

**Section 5. Vehicles.** The term "vehicles," as used herein, shall include, without limitation, motorhomes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles.

The following provisions shall govern the use, parking and storage of Vehicles within the Community:

(a) Vehicles owned, leased or operated by an Owner or an occupant or his or her tenant, guest, family member or other invitee shall be parked only in the garage or driveway serving the Lot, or in such other paved areas as have been designated by the Board of Directors for parking vehicles. A maximum of two (2) vehicles may be parked outside the garage on any paved area, if any, of a Lot. On-street parking in the Community shall be as determined by the Board of Directors in accordance with this Declaration and shall be subject to such conditions as may be imposed by, the Board of Directors. No garage shall be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below the capacity existing at the time of construction of the initial improvements on the Lot.

(b) Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be prohibited on the Properties, unless completely enclosed in a garage and not visible from adjacent Lots or Common Area property. Stored vehicles which are either obviously inoperable or do not have current operating licenses, license plates or permits, shall not be permitted on the Properties except within enclosed garages. Vehicles that become inoperable while on the Properties must be removed from the Properties or stored completely enclosed in a garage within seventy-two (72) hours of becoming inoperable. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for seventy-two (72) consecutive hours without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the Bylaw or Rules and Regulations adopted by the Board.

(c) Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage.

BK012078PG01574

(d) Notwithstanding the above, any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants in accordance with Article XVI, Part A, Section 11.

**Section 6. Off Road.** No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles and vehicles authorized by the Board.

**Section 7. Leasing.** Except as otherwise herein provided, Lots may be leased for residential purposes. All leases shall have a minimum term of at least twelve (12) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's Lot in accordance with the provisions of Article IV.

**Section 8. Occupants Bound.** All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions, or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied and assessed against the Owner and secured with a lien against such Owner's Lot in accordance with the provisions of Article IV.

**Section 9. Animals and Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets, may be kept by the Owner(s) or occupants of Lots, so long as such pets are kept in compliance with requirement of law applicable to such animal and any rules and regulations promulgated in accordance with the authority herein conferred on Declarant or the Association. No pets shall be kept, bred or maintained for any commercial purpose. All pet animals must be secured by a leash or lead and under the control of a responsible person and obedient to that person's command at any time they are permitted outside a residence on the Lot or Common Area. Each Owner shall be absolutely liable to each and all remaining Owners, their families, guests, and invitees and to the Association, for any and all damage to person or property caused by any such pet brought upon or kept on the Properties by such Owner or by his family, guests, or invitees. The Board of Directors, with the approval of Declarant during Declarant's Development Period, shall have the power to adopt, publish, amend and enforce rules and regulations governing the keeping of pets on the Properties and to establish penalties for the infraction thereof, to the extent such rules and regulations do not conflict with this provision. Such rules and regulations may place reasonable limits on the number and/or size of pets that may be kept by the Owner(s) and occupants of each Lot.

**Section 10. Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or

BK012078PG01575

that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the community. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier, or other sound device, except such devices as may be used exclusively for security purposes or as approved by the Architectural Review Committee, shall be located, installed, or maintained upon the exterior of any Lot unless required by law.

**Section 11. Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

**Section 12. Antennas.** No satellite dishes, antennas, and similar devices for the transmission of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained within the Community, except that Declarant and the Association shall have the right, without the obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Community, and (i) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) 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) antennas designed to receive television broadcast signals ((i), (ii), and (iii), collectively, "Permitted Devices")) shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Lot (generally being the rear of the Lot) at which an acceptable quality signal can be received and is not visible from the street, Common Area, or neighboring property or is screened from the view of adjacent Lots in a manner consistent with the Community Standard and any design guidelines.

**Section 13. Tree Removal.** No trees that are more than four (4) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the Architectural Review Committee.

**Section 14. Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

**Section 15. Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence,

BK012078PG01576

wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

**Section 16. Garbage Cans, Woodpiles, Etc.** All garbage cans, woodpiles, and other similar items shall be stored completely enclosed within the garage that is a part of the residence located on the Lot or located in the rear of the Lot and screened so as to be concealed from view of neighboring streets and property. Any garbage can that is maintained in the rear of a Lot must be capable of being moved to the front of the Lot for collection without trespassing across any other Lot. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except that Declarant may maintain a "burn pit" during development and construction of the Community.

**Section 17. Subdivision of Lot.** No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for the Community as to how the streets and common areas in the Community are laid out.

**Section 18. Guns.** The use of firearms in the Community is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.

**Section 19. Fences.** No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

**Section 20. Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction, and lines installed by or at the request of Declarant.

**Section 21. Air Conditioning Units.** No window air conditioning units may be installed.

**Section 22. Lighting.** Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for approved lighting as originally installed on a Lot.

**Section 23. Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee.

BK012078PG01577

**Section 24. Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.

**Section 25. Gardens and Play Equipment.** No vegetable garden or play equipment shall be erected on any Lot without the prior written consent of the Architectural Review Committee, and any such items must be located between the rear dwelling line and the rear lot line. Permanently mounted basketball goals are prohibited. When not in use any temporary basketball goal shall be stored fully enclosed in a garage or otherwise fully screened from the view of adjacent Lots or any street within the Community utilizing screening that has been erected in accordance with the provisions of this Declaration requiring Architectural Review Committee review and approval.

**Section 26. Mailboxes.** All mailboxes located on Lots shall be of a similar style approved by the Architectural Review Committee. Replacement mailboxes may be installed after the type has been approved in writing by the Architectural Review Committee.

**Section 27. Exteriors.** Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee.

**Section 28. Clothesline.** No exterior clotheslines of any type shall be permitted upon any Lot.

**Section 29. Exterior Security Devices.** No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs less than 6" by 6" placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

**Section 30. Entry Features.** Owners shall not alter, remove, or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee.

**Section 31. Storage Sheds, Garages and Other Improvements.** Construction, installation, or placement of a storage shed, tree house, play house, detached garage, or a building separate from the main dwelling on the Lot is not permitted on any Lot. No space within any garage may be converted to living space, but will remain as required parking.

Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls, or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the Community, shall be permitted on any Lot without the prior written consent of the Architecture Review Committee or its designee.

BK012078PG01578

**Section 32. Restrictions on Rentals of Dwellings.** It is contemplated by this Declaration that any dwelling now or hereafter constructed on a Lot (a "Dwelling") generally is intended for use and occupancy by the Owner of the Lot. Accordingly, and notwithstanding anything to the contrary herein, the term "residential purposes and uses ancillary thereto" as used in Section 2 of this Article specifically excludes the leasing of a Dwelling, in any one or more of the following instances:

(a) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and has no future intent to do so;

(b) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and who enters into a lease with a tenant that gives the tenant the option to purchase the Dwelling during, or at the end of the term of the lease: or

(c) by an Owner where the primary purpose of the ownership of the Dwelling is for commercial purposes in that the Dwelling is intended, primarily for lease to tenants and not for occupancy by the Owner as the Owner's primary residence.

Provided however, and notwithstanding the foregoing restrictions on leasing of Dwellings, any model home may be leased to or by Declarant.

**Section 33. Sewer Systems.** As long as reasonably adequate sanitary sewer service is supplied to a Lot by applicable governmental authorities, no private sewage system shall be permitted on that Lot.

**Section 34. Wetlands.** Portions of the Properties may have been determined to meet the requirements for designation as a regulatory wetland. Notwithstanding anything to the contrary that may appear herein or in any other restrictive covenants applicable to such portions of the Properties, any subsequent fill or alteration of any portion of the Properties that has been determined to be a regulatory wetland under applicable laws of the United States, the State of North Carolina, Wake County, or the City of Raleigh shall conform to the requirements of applicable wetland rules adopted by the United States or the State of North Carolina and in force at the time of the proposed alteration. The intent of this Section is to prevent additional wetland fill except as allowed under applicable federal, state and local laws and ordinances, so the Owner of any such portion of the Properties should not assume that a future application for fill or alteration of a wetland will be approved. The Owner of any portion of the Properties subject to any such future application shall report the name of the development (in this case, Northridge Trace), together with the name of the particular phase, section or subdivision within the Properties, if any, in any application pertaining to wetland rules. The provisions of this Section are intended to ensure continued compliance with wetland rules adopted by the United States, the State of North Carolina, Wake County, or the City of Raleigh and this covenant may be enforced by the United States, the State of North Carolina, Wake County, or the City of Raleigh. The provisions of this Section shall run with the Properties and be binding on all Owners of any part or all of the Properties and all persons claiming under them.

BK012078PG01579

**ARTICLE VII  
INSURANCE AND CASUALTY LOSSES**

**Section 1. Insurance on Common Area.** The Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements whether or not located on the Common Area which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts. Such insurance may, in the discretion of the Board, include coverage for personal property owned by the Association.

**Section 2. Liability Insurance.** The Board shall obtain a general commercial liability policy applicable to the Common Area covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million dollars (\$1,000,000.00). If available, the Board is authorized to obtain directors' and officers' liability insurance coverage.

**Section 3. Declarant.** The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

**Section 4. Premiums.** Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

**Section 5. Miscellaneous.** All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further identified below. Such insurance shall comply with these provisions:

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

(b) Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners,

BK012078PG01580

Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

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

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

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

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

(3) That no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

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

(5) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(6) That no policy may be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association.

(f) Worker's Compensation Insurance; Fidelity Bonds. In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to nonrenewal, or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National

BK012078PG01581

Mortgage Association, and the U.S. Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

**Section 6. Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner of a Lot covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If "all-risk" coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association acquires insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner as an individual assessment and shall be a lien on such Owner's Lot.

**Section 7. Damage and Destruction -- Insured by Association.**

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

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least eighty percent (80%) of the Owners otherwise agree; provided, however, during Declarant's Development Period, Declarant must also agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not

BK012078PG01582

exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

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

In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

**Section 8. Damage and Destruction -- Insured by Owners.** The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter.

**Section 9. Requirements of Article XVI, Part A, Section 9.** The provisions above shall supplement and shall not supercede the requirements of Article XVI, Part A, Section 9.

**ARTICLE VIII.  
CONDEMNATION**

In the event of a taking by eminent domain of any portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least eighty percent (80%) of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor. The provisions of this Declaration applicable to Common Area improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

**ARTICLE IX.  
ANNEXATION OF ADDITIONAL PROPERTY**

**Section 1. Unilateral Annexation By Declarant.**

(a) The Declarant shall have the unilateral right, privilege, and option from time to time until ten (10) years after the recording of this Declaration to subject to the provisions of this Declaration any portion of the real property described on Exhibit B,

BK012078PG01583

attached hereto and incorporated herein by this reference, and any property which is adjacent to any portion of the Properties. For the purpose of determining whether property is "adjacent," the rights of way of public or private roads or utilities, as well as rivers and streams, and the like shall be deemed not to separate otherwise adjacent property. Annexation may be accomplished by filing for record, in the county in which the property to be annexed is located, an Annexation Declaration describing the property being subjected. Any such annexation shall be effective upon the filing for record of such Annexation Declaration unless otherwise provided therein. Declarant shall have the right, in connection with the annexation of other property, to modify the terms of this Declaration as it may apply to the annexed property, as long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected.

(b) The rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

**Section 2. Other Annexation.** Subject to the consent of the owner(s) thereof and the consent of the Declarant (during Declarant's Development Period), upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration describing the property to be annexed and filed for recording in the land records of the county in which the Community is located. An Annexation Declaration shall be signed by the President of the Association whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Annexation Declaration, unless a later effective date is provided therein.

**Section 3. Additional Annexation Provisions.** Any annexation must also comply with the additional annexation provisions set forth in Article XVI, Part A, Section 13 of this Declaration.

## **ARTICLE X. MORTGAGE PROVISIONS**

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

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and

BK012078PG01584

address of such holder, insurer, or guarantor and the legal description of the encumbered Lot, therefore becoming an "eligible holder"), will be entitled to timely written notice of :

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided that, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and

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

**Section 2. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 3. Applicability of Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

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

## **ARTICLE XI. EASEMENTS**

**Section 1. Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

BK012078PG01585

**Section 2. Easements for Use and Enjoyment.**

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

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

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

(3) The right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, or for construction, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Area; provided that, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community. Any such Mortgage on the Common Area shall be subject to approval by the persons entitled to cast at least eighty percent (80%) of the votes of the Association and by the Declarant during Declarant's Development Period. Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements, or privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community;

(4) The right of the Association to dedicate or grant licenses, permits, or easements over, under, and through the Common Area to governmental entities for public purposes;

(5) The right of the Association, acting through the Board without Member, Mortgagee or agency approvals, to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Area which are not

BK012078PG01586

inconsistent with and do not unreasonably interfere with the intended use of the Common Area and otherwise for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded in the Registry of Deeds for the County in which the Community is located;

(6) The right of the Association to dedicate or transfer any real property interest in all or any portion of the Common Area subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved in writing by the persons entitled to cast at least eighty percent (80%) of the votes of the Association and by Declarant during Declarant's Development Period, and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances;

(7) The right of the Association, acting through the Board, to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area, and specifically including the right to establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting the Community, which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Board; and

(8) The easements, conditions and restrictions herein reserved and established for the benefit of the Declarant, the Association and others.

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

**Section 3. Easements for Access, Utilities and Other Purposes.** There is hereby reserved and established in favor of the Declarant and the Association blanket non-exclusive easements upon, across, above, and under all property within the Community, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving all or any portion of the Community or any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof (whether or not such additional

BK012078PG01587

property is added to the Community), and for such other purposes that are not inconsistent with and do not unreasonably interfere with the intended use of such property. This easement shall include, without limitation, access, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service the Community or any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 thereof (whether or not such additional property is added to the Community). It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such access, utility or service. Should any party furnishing or receiving any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement.

**Section 4. Easement for Drainage.** Declarant hereby reserves a perpetual easement across the Community for the purpose of altering drainage and water flow across the Community. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in the Community. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at his or her sole expense.

**Section 5. Easement for Entry.** In addition to the other rights reserved and established in favor of Declarant and the Association, the Declarant and the Association each shall have the right (but not the obligation) to enter upon any property or Lot within the Community for emergency, security, and safety reasons. This right may be exercised by the Declarant, the Association their respective designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

**Section 6. Easement for Maintenance.** Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and the Association across such portions of the Community, determined in the sole discretion of the Declarant and the Association, as are necessary to allow for the maintenance required or permitted by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**Section 7. Easement for Entry Features.** There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction, landscaping, and

BK012078PG01588

maintenance of entry features and similar streetscapes for the Community, over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such entry features and the right to grade the land under and around such entry features.

**Section 8. Construction and Sale Period Easement.** Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, during Declarant's Development Period, Declarant reserves an easement across such portions of the Community as Declarant may reasonably deem necessary for any or all of the purposes hereinafter set forth. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

(a) The right of access, ingress, and egress for vehicular and pedestrian traffic, and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community;

(b) The right to tie into any portion of the Community with driveways, parking areas, and walkways;

(c) The right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services;

(d) The right (but not the obligation) to construct recreational facilities on Common Area;

(e) The right to carry on sales and promotional activities in the Community;

(f) The right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area;

(g) The right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development, and sales activities; and

(h) Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not

BK012078PG01589

be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

**Section 9. Irrigation Easements.** There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds, lakes, and other bodies of water located within the Community for irrigation purposes, subject to any applicable governmental restrictions.

**Section 10. Fence Easement.** Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

**Section 11. Easements in favor of Additional Property.** Declarant hereby reserves and establishes such easements on, across and over the Common Elements as shall be reasonably necessary for (i) the exercise by Declarant or any Affiliate of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof, and (ii) the development by Declarant or any Affiliate, their respective successors and assigns, of any portion of the additional property that may be annexed pursuant to the provisions of Article IX, Section 1 hereof should Declarant elect not to annex all or any portion of such additional property, including without limitation easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Properties and easements for drainage and for the use of all utility lines, fixtures and/or their connections located within the Common Area for the purpose of providing drainage, water, light, power, telephone, sewage and sanitary service to the such additional property.

## **ARTICLE XII. GENERAL PROVISIONS**

**Section 1. Enforcement.** Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, and the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and any such restrictions which may be placed in the deed to such Owner's Lot, if any. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration shall prevail. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws, or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner. To determine fines and sanctions against Owners, a hearing shall be held before the Board of Directors or an adjudicatory panel appointed by the Board. The Owner shall be given notice of the charge, an opportunity to be heard and to present evidence, and a notice of decision by the Board. If a fine is imposed it may not exceed one hundred (\$100.00) for the violation and for each day after the notice of decision that the violation continues. Such fines shall be assessments secured by a lien.

BK012078PG01590

If a sanction is imposed it may continue without further hearing until the violation is cured. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of lien, a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines, and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

**Section 2. Self-Help.** In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing, or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles stored or parked in violation of this Declaration or the Bylaws may be towed after reasonable notice. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

**Section 3. Duration.** The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law. If North Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provision shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of two-thirds (2/3) of the Lots and the Declarant (during Declarant's Development Period) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.

**Section 4. Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided that, any such amendment shall not materially adversely affect the substantive rights of any

BK012078PG01591

Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

In addition to the above, this Declaration may be amended:

(a) During Declarant's Development Period, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of Lots to which at least sixty-seven percent (67%) of the votes of the Association are allocated; and

(b) Following the expiration of Declarant's Development Period, upon the affirmative vote or written consent, or any combination thereof, of the Owners of Lots to which at least seventy-five percent (75%) of the votes of the Association are allocated.

Notwithstanding the above, no amendment relating to or conflicting with the provisions of Article XVI hereof shall be permitted without prior written consent of the City Attorney or his/her Deputy in accordance with Section 4 of Part A of Article XVI hereof.

**Section 5. Partition.** The Common Area shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

**Section 6. Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**Section 7. Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

**Section 8. Captions.** The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

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

**Section 10. Indemnification.** To the fullest extent allowed by applicable North Carolina law, the Association shall indemnify every officer of the Association and director of the

BK012078PG01592

Association against any and all expenses, including, without limitation, attorneys' fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. This indemnification shall also include attorneys' fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

**Section 11. Books and Records.**

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

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.

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

**Section 12. Financial Review.** A review of the books and records of the Association shall be made annually in the manner as the Board may decide; however, after having received the Board's financial statements, the persons entitled to cast at least a majority of the votes of the Association, may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

BK012078PG01593

**Section 13. Notice of Sale, Lease, or Acquisition.** In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

**Section 14. Agreements.** Subject to the prior approval of Declarant (during Declarant's Development Period), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**Section 15. Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

### **ARTICLE XIII.**

#### **VARIANCES**

Notwithstanding anything to the contrary contained herein, the Declarant and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws, and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community. Notwithstanding the above, no variances shall be granted from the terms of Article XVI, the applicability of which may only be altered by amendment of this Declaration.

### **ARTICLE XIV.**

#### **LITIGATION**

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the persons entitled to cast at least eighty percent (80%) of the votes of the Association. This Article shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

BK012078PG01594

**ARTICLE XV.  
CAPITALIZATION OF ASSOCIATION**

Upon acquisition of record title to a Lot by the first Owner other than Declarant, a contribution in an amount equal to \$500.00 ("Working Capital Assessment") shall be made by or on behalf of the purchaser to the Association. The Working Capital Assessment shall be in addition to, not in lieu of, any annual or special assessments. The Working Capital Assessment shall be payable at closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The Working Capital Assessment referred to in this paragraph is payable only one time, and will not be charged to subsequent purchasers of a Lot once paid.

**ARTICLE XVI  
RALEIGH CITY CODE REQUIREMENTS**

**PART A  
DEFINITIONS AND GENERAL REQUIREMENTS**

**Section 1. Definitions.** As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise (when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital letters in order to have the defined meaning). Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in Section 3 of this Part A (for example, words and terms defined by the Code and used in this Declaration have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

(a) "Act" is defined as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as (G.S. 47F, with the particular section number following the G.S. 47F reference (for example, G.S. 47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

BK012078PG01595

(b) "Annexation Declaration" is defined as a document, by whatever name denominated, that is recorded for the purposes of annexing Annexed Property to this Declaration and causing such Annexed Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and including any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

(c) "Annexed Property" is defined as all real property annexed or subjected (those two terms being used interchangeably herein) to any part or all of the terms of this Declaration following the initial recording of this Declaration in the Registry.

(d) "Association" is defined as the nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for the Properties. Sub-Association (if applicable) is defined as a nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for a portion of, but not all of, the Properties. There may be one or more Sub-Associations (if applicable) with respect to the Properties. An example of a Sub-Association is a property Owners association for a townhouse development that is part of a cluster unit development which has an Association for the cluster unit development. All references herein to an Association that is, in fact, a Sub-Association, are deemed corrected accordingly.

(e) "Board" is defined as the board of directors of the Association, and is the Executive board as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

(f) "City" or "City of Raleigh" is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.

(g) "Code" is defined as the Raleigh City Code of Ordinances as it exists from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

(h) "Common Area" is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Properties, however such real property is described on a plat or document recorded in the Registry. Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one (1) Lot in the Properties or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the City). Common Areas include all of the following:

BK012078PG01596

(1) any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);

(2) Stormwater Control Measures;

(3) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any City utility easement;

(4) any site or facility designated a common area, common property open space, open space common area, amenity area, or other similar designation on any recorded plat or map of the Properties, or in this Declaration;

(5) any Code-required shared facility or Open Space for the Properties, except for Open Space owned by the City;

(6) any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public Maintenance by the appropriate Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorney's fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and

(7) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers.

Common Area that is owned by or subject to being Maintained by a Sub-Association is Sub-Association Common Area, even if it is referred to in this Declaration or in any recorded plat of the Properties as Common Area instead of Sub-Association Common Area. Common Area, if any, established by the Declarant or the Association for the benefit of fewer than all of the Owners and occupants of the Properties is Limited Common Area, and such Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Limited Common Area exists are subject to the same Code provisions as those applicable to Common Area. All references herein or in any recorded plat of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly. Sub-Association Common Area, if any, owned by or subject to being Maintained by a Sub-Association for the benefit of fewer than all of the Owners and occupants of the applicable portion of the

BK012078PG01597

Properties is Sub-Association Limited Common Area, and such Sub-Association Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Sub-Association Limited Common Area exists are subject to the same Code provisions as those applicable to Sub-Association Common Area. All references herein or in any recorded plat of the Properties to Limited Common Area or Sub-Association Limited Common Area that is, in fact, Common Area or Sub-Association Common Area, are deemed corrected accordingly.

(i) "Common Expense" is defined as all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, and the Governing Documents and including specifically, but without limitation, all of the following: (Expenses for the Maintenance of Limited Common Area are Limited Common Expenses, which is a subcategory of Common Expense.)

- (1) All sums lawfully assessed by the Association against its Members;
- (2) Expenses of the Common Area and administration, inspection and Maintenance of the Common Area;
- (3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;
- (4) 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;
- (5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;
- (6) *Ad valorem* taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;
- (7) Fees or charges for utilities used in connection with the Common Area;
- (8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (9) Allocations to reserve funds;
- (10) Payments owed to the City pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the City by the Declarant;

BK012078PG01598

(11) Fees for services engaged by the Association;

(12) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other Governmental Entity;

(13) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;

(14) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and

(15) Expenses agreed by the Members to be Common Expenses of the Association.

(j) "Declarant" is defined as Pulte Home Corporation, a Michigan corporation, its successors and assigns.

(k) "Declarant Annexation Date" is defined as the last date and time on which the Declarant has the right to annex real property to this Declaration without the consent or joinder of any Person other than the City, which date is 5:00 p.m. on the date that is ten (10) years following the date of recording of this Declaration (or, if no date is entered in the blank space, is 5:00 p.m. on the date that is seven (7) years following the date of the recording of this Declaration). The timeliness of an Annexation Declaration is determined by the date of its recordation as stamped by the Registry notwithstanding its date of execution.

(l) "Declarant Control Period" is defined as any period of Declarant control of the Association, as provided in 47F-3-103(d) of the Act and established in this Declaration (which may include a vote allocation that gives Declarant, by itself, sufficient voting power to elect members of the Board).

(m) "Declaration" is defined as the document, however denominated, which contains this Article, together with all exhibits and amendments to the document.

(n) "Fiscal Year" is defined as the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

(o) "Governing Documents" is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; Annexation Declarations; and other declarations of restrictive or protective covenants applicable to the Properties; and all Sub-Association documents (with respect to those portions of the

BK012078PG01599

Properties subject to such Sub-Association documents), as the same may be amended, restated or supplemented from time to time.

(p) "Governmental Entity" is defined as the City, the Counties of Wake and Durham, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Entity or entities is/are applicable.

(q) "Include" or "Including" is defined as being inclusive of, but not limited to, the particular matter described, unless otherwise clearly obvious from the context.

(r) "Lot" is defined as any numbered or lettered portion of the Properties, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is not any of the following: dedicated street rights-of-way; Common Area; Open Space owned in fee simple by the Association; greenway or park lands owned in fee simple by the City.

(s) "Maintain," "Maintenance," "Maintaining," or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation. Provided, however, this definition is not applicable to Section 8 of Part A of this Article.

(t) "Member" is defined as each Person who or which holds membership in the Association.

(u) "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust, and the terms mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

(v) "Open Space" is defined as open space areas shown on preliminary subdivision plans filed with the City and delineated on any recorded plat of the Properties or the open space areas required by the Code or by the conditional use zoning of the Properties for the perpetual benefit of the Owners. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code. Under the Code, Open Space may be owned by the Association, a Sub-Association, or by the City. Open Space owned by the Association or a Sub-Association is Common Area or Sub-Association Common Area, as appropriate.

BK012078PG01600

(w) "Operating Deficit" is defined as the difference between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements.

(x) "Owner" is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any Person who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

(y) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the City), or other entity.

(z) "Properties" is defined as all of the real property subject to any part or all of the terms of this Declaration. The amount of acreage of the Properties at the time of the recording of this Declaration is 9.96 acres.

(aa) "Registry" is defined as the office of the Registry of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Properties are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Properties is situated.

(ab) "Stormwater Agreement" is defined as any agreement recorded in the Registry among the Declarant, the Association, and the City, or between the Declarant and the City, or between the Association and the City, relating to Stormwater Control Measures for the Properties or any part thereof, and includes all amendments and supplements to such agreements. A Stormwater Agreement with the City includes the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution Contract and the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Lump Sum Replacement Contribution Contract (those names being subject to change from time to time under the Code).

(ac) "Stormwater Control Measures" or "Stormwater Control Facilities," such terms being used interchangeably herein and in the Stormwater Agreement, is defined as one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff

BK012078PG01601

and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and City drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures are Common Area or Limited Common Area, or Sub-Association Common Area or Sub-Association Limited Common Area, as applicable.

(ad) "Stormwater Operations Maintenance Manual and Budget" is defined as that manual; however named, attached to and incorporated into the Stormwater Agreement as an exhibit for the Maintenance of Stormwater Control Measures and the payment of the costs thereof.

**Section 2. Applicability.** The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the City, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

**Section 3. Conflicts.**

(a) Some or all of the Properties may be subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents.

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all Annexation Declarations are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Provided, however, any provision of this Declaration or any Annexation Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration or an Annexation Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

BK012078PG01602

(c) The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, any Annexation Declaration or any other Governing Documents.

(d) The provisions of this Declaration control over any inconsistent provisions of any other Governing Documents, except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the Articles shall control.

**Section 4. Amendment of Declaration.** Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment. When City approval of an amendment is required by the Code or by a provision of this Declaration (including this Article), City approval shall be evidenced by the signature of the Raleigh City Attorney or his/her Deputy on the recorded original or copy of the amendment. Any amendment of this Article of this Declaration must have prior City approval. Any amendment of this Article or any other provision of this Declaration that requires City approval is void *ab initio* if recorded without the required City signature.

**Section 5. Assessments.**

(a) Obligation for Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) stormwater assessments created and established pursuant to Part B of this Article; (4) special assessments; (5) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (6) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (7) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (8) all other assessments and charges imposed or allowed to be imposed by this Declaration.

The Association at all times has the right to include as part of the assessments or other charges applicable to the Properties and the Owners thereof such amounts as are required to pay all Common Expenses and all financial obligations of the Association imposed by the Code either (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on some or all of the Owners, with the Association having responsibility for collection and payment to the City.

BK012078PG01603

(b) Purpose of Assessments. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which it applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board. All budgets of the Association shall be proposed in good faith and with the intent to cover all reasonably necessary Common Expenses for the applicable Fiscal Year of the Association, including monies allocated for reserve funds.

(c) Budgets; Amount of Assessments. The Association is at all times empowered to levy assessments against the Lots and the Owners of Lots within the Properties for the payment of Common Expenses.

Notwithstanding the foregoing, for calendar year 2006, the annual assessment per Lot is Nine Hundred Sixty Dollars (960.00). The "Maximum Annual Assessment" for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members 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 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; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, 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 any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

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

(d) Effect of Non-Payment; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

BK012078PG01604

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be charge on the Owner's Lot as provided in G.S. 47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in G.S. 47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

(e) Classes of Membership. This Declaration may allow different classes of membership in the Association and may allow different levels of annual assessments and other assessments to be imposed for different classes of membership.

(f) Declarant's Obligation to Fund Deficits; Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots owned by Declarant, in an amount equal to aggregate of

BK012078PG01605

the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

(g) Certificate of Payment. The Association shall, within ten (10) business days after receipt of a written request from an Owner or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the assessments and other charges against a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

**Section 6. Membership and Governance.**

(a) Membership. The Declarant and every Owner within the Properties shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. The foregoing is not intended to include any Person that holds an interest merely as security for the performance of an obligation. Upon termination of ownership, an Owner's membership with respect to the transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot.

(b) Members' Rights of Use. Each Member and lawful occupant in the Properties shall have a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right rights of ingress and egress to and from all Common Areas throughout the Properties, subject to such rules and regulations as are allowed under the Governing Documents to be imposed by the Association and subject to suspension of use rights allowed in the Governing Documents; provided that no suspension of rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by G.S. 47F-3-107.1 of the Act. But, the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

(c) Voting Rights. Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. If a Lot is owned by multiple Owners, the votes allocated to that Lot shall be cast only in accordance the agreement of a majority in interest of the multiple Owners unless

BK012078PG01606

otherwise provided in the Governing Documents. A majority agreement is conclusively presumed if only one of the multiple Owners casts the votes allocated to that Lot, unless any of the other Owners of the Lot protest such co-Owner's vote promptly to the Person presiding at the meeting.

(d) **Proxies.** Votes may be cast in person or by proxy. All proxies must be dated, duly executed by the Owner, and delivered to the Secretary of the Association or to the property management company authorized by the Board to receive proxies prior to the opening of the meeting for which it is first intended to be used. No proxy shall exceed a term of eleven (11) months from its date except as otherwise provided in the Act. Revocation of a proxy shall be made by actual notice to the Person presiding over the Association meeting.

(e) **Quorum.** Except as otherwise provided in the Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Governing Documents, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

**Section 7. Permanently Protected Undisturbed Open Space Areas.** Within any permanently protected undisturbed open space areas shown on any recorded plat of the Properties, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code), any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse permit from the City. Permanently Protected Undisturbed Open Space may or may not be Open Space as defined in this Declaration.

**Section 8. Tree Conservation.** The Association shall have a conservation easement for the planting of trees and for the protection and Maintenance of the trees situated within any tree conservation areas shown on any recorded plat of the Properties. No tree disturbing activity, as defined in Part 10, Chapter 2 of the Code, shall be permitted in tree conservation areas in violation of the Code. Any tree disturbing activity undertaken in tree conservation areas or in permanently protected undisturbed open space areas shown on recorded plats of the Properties without a permit from the City or otherwise in violation of the Code is a violation of the Code and may result in significant financial consequences to the Owner and to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of both the City and of the Association, enter tree conservation areas to perform active tree protection measures (as defined in the Code), to plant trees, to remove dead or diseased trees, or to plant replacement trees, provided, however, that Association consent shall not be required, unless

BK012078PG01607

otherwise required by other provisions of this Declaration or Governing Documents, if the tree conservation area in which the Owner desires to perform active tree protection measures or plant trees, remove dead or diseased trees and to plant replacement trees is located on that Owner's Lot.

**Section 9. Insurance.** Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall procure and Maintain (i) hazard insurance on the Common Area, insuring against all risk of loss commonly insured against, including fire and extended coverage of peril, and (ii) liability insurance, in an amount of not less than one million dollars (\$1,000,000.00), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use ownership or Maintenance of Common Area. The Association shall obtain and Maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial for the protection or preservation of the Common Area and other property of the Association or otherwise is in the best interests of the Association. The premiums for such insurance shall be a Common Expense paid from the annual assessments as established pursuant to this Declaration.

**Section 10. Indemnification.** No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from its liabilities as an Owner under this Declaration and other Governing Documents.

**Section 11. On-Street Parking.** Any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

**Section 12. Sight Triangles.** No sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two feet and eight feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists, shall be placed within any area designated on a recorded map of the Properties as a sight triangle or other similar designation. An easement over sight triangles is reserved for the benefit of the Declarant, the Association, and the City, and their respective agents and contractors for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or the Owner of the Lot with respect to the obstruction removed from the site triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Properties previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

**Section 13. Annexed Property.** Real property which was not part of the City-approved development, or real property that was part of the City-approved development but which was not subjected to this Declaration at the time of its initial recording, may be annexed to this Declaration and made part of the Properties as Annexed Property, provided that all of the following conditions are met with respect to the real property to be annexed:

BK012078PG01608

- (a) the Annexed Property is contiguous to the Properties or directly across a street from the Properties;
- (b) any development of the Annexed Property is first approved by the City;
- (c) annexation of such Annexed Property meets any other applicable requirements of this Declaration; and
- (d) contemporaneously with either the development of the Annexed Property or the recording of the plat of the Annexed Property, whichever first occurs, an Annexation Declaration shall be recorded in the Registry.

No Annexation Declaration shall be valid without the prior written approval of the Raleigh City Attorney or his/her deputy. Evidence of such approval shall be indicated by the signature of the City Attorney or his/her deputy on the recorded original or copy of the Annexation Declaration. Any Annexation Declaration recorded without the required City approval is void *ab initio*. An Annexation Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Annexed Property and as are not inconsistent with the general scheme of this Declaration. Each Annexation Declaration shall state that title to the Common Area that is included within the Annexed Property shall be conveyed to the Association no later than the time of the conveyance of the first Lot within the Annexed Property, and any Open Space in the Annexed Property shall be conveyed in fee simple without any encumbrances except drainage, greenway, utility and conservation easements and this Declaration. Open Space in the Annexed Property is subject to all Code and Declaration provisions relating to Open Space. Each Annexation Declaration shall state the amount of the Stormwater Assessment for Lots in the annexed Property when required by Part B, Section 6 of this Article.

Annexation of the Annexed Property shall be effective upon the later of the recording of the Annexation Declaration in the Registry or such later date as specified in the Annexation Declaration, and the Annexed Property described therein shall be subject to all of the provisions of this Declaration to the extent made applicable by the Annexation Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration and other Governing Documents of the Association. Each Owner of a Lot in Annexed Property shall be a Member of the Association, and the Annexed Property and each Owner of any portion thereof shall be subject to assessment by the Association in accordance with the terms of this Declaration, the Annexation Declaration, other Governing Documents, the Code, and the Stormwater Agreement, as applicable. The Association shall have the duties, responsibilities and powers set forth in this Declaration and other Governing Documents with respect to Annexed Property. Except as may otherwise be expressly provided in this Declaration or any Annexation Declaration, the Properties, including the Annexed Property, shall be managed and governed by the Association as an entirety. Assessments for Common Expenses

BK012078PG01609

collected from Owners in the Annexed Property may be expended by the Association for Common Expenses anywhere in the Properties without regard to the particular phase, area or subdivision from which such assessments came.

**Section 14. Access Easement for Repair of Structures.** A perpetual access easement over an adjoining Lot hereby is established in favor of each Owner or tenant of a residence or business, and the contractors of such Owner or tenant, whose residence or business is located closer than five (5) feet from an adjoining Lot line, for the purpose of allowing the residence or business to be Maintained. No fence, wall, storage shed, or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the residence or business.

**Section 15. Access for Governmental Agencies.** A non-exclusive, perpetual right of access over all Lots and Common Areas (including private streets, if any) in the Properties is hereby established for the benefit of Governmental Entities for installing, removing and reading water meters. Maintaining and replacing water and sewer facilities, fire lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and the delivery of mail.

**Section 16. Conveyance or Dedication of Common Areas.** All Open Space shall either be conveyed to the Association in fee simple without any encumbrances except this Declaration, drainage, greenway, utility and conservation easements of record at the time of conveyance, and the lien of real property taxes not yet due and payable, or conveyed to the City as allowed or required under the Code. All other Common Area shall either be conveyed to the Association in fee simple (or by deed of easement, license or lease) without any encumbrances except this Declaration, drainage, greenway, utility and conservation easements, and restrictions of record at the time of conveyance, and the lien of real property taxes not yet due and payable, or conveyed to the City as allowed or required under the Code. Common Areas may be conveyed to the City free of part or all of the provisions of this Declaration, as determined by the Declarant and the City. Title to Common Areas shall be conveyed to the Association or to the City no later than the time of the conveyance of the first Lot within the applicable phase of the Properties. The Association shall accept all Common Areas, including the improvements installed thereon by the Declarant, deeded to it and/or dedicated to it on any recorded plat of the Properties, whether or not the conveyance or dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Properties.

**Section 17. Private Utility Lines.** Any water or sewer line that serves more than one Lot and which is either located outside of any public street right-of-way or outside of any City utility easement shall be owned and Maintained by the Association as Common Area. In no case shall the City or the State of North Carolina be responsible for Maintaining any such private utility line or be responsible for the consequences for any blockage, backflow, break or leak in said utility line. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lots within the Properties. Accordingly, the City shall not be responsible for failing to provide regular or emergency utility services to any cluster unit development, unit Ownership (condominium) development, group housing development,

BK012078PG01610

townhouse development, or manufactured home park or their occupants when such failure is due to inadequate design or construction, blockage, backflow, leakage, inadequate maintenance, or any other factor within the control of the Declarant, the Association, or the Owners or occupants of the Properties.

The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration. Provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

**Section 18. Landscape Easements.** The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement removes or causes any of the shrubs or trees within the slope easement to die or become unhealthy (as defined in Part 10 Chapter 2 of the Code), it shall be the responsibility of the Association to replace the shrubs and trees in accordance with the minimum applicable quantity, size and spacing requirements of the Code within one hundred and eighty (180) days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association. Notwithstanding the foregoing, no Governmental Entity shall be required to obtain the consent of the Association when working within slope easements, greenway easements or construction easements.

**PART B and PART C  
INTENTIONALLY OMITTED**

**PART D  
TOWNHOUSE DEVELOPMENT  
(CODE SECTIONS 10-2109, 10-3072 and 10-3073)**

Any portion of the Properties that is part of a "townhouse development," as that term is defined in the Code, is subject to all of the following. A townhouse development may be, but is not required to be, part of a cluster unit development. Any townhouse development that is part of a cluster unit development is also subject to the provisions of the Code applicable to cluster unit developments (some of which may be identical to the following provisions), except as otherwise provided in the Code:

**Section 1. Open Space.** In addition to other provisions of this Article (see e.g., Part A, Sections 6, 16 and 17), all Open Space is subject to the following:

BK012078PG01611

(a) Townhouse Open Space. Townhouse Open Space and private streets used for the exclusive benefit of townhouse residents are Limited Common Area or Sub-Association Common Area when the townhouse development is part of a cluster unit development containing other housing types.

(b) Preservation. Open Space and private streets shall be preserved for the perpetual benefit of the Owners of the Lots within the Properties, and shall be restricted against private or public Ownership for any other purpose, except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage, conservation and greenway easements.

(c) Exchange. Open Space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of Open Space for other properties when all of the following are met:

(1) written notice of the exchange is given to each Member of the Association;

(2) after the notice is given, those members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;

(3) the exchanged properties and other considerations are of like value and utility;

(4) the acreage and configuration of the remaining Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and

(5) the exchange is approved by the Planning Director of the City.

(d) Dissolution. If the Association is dissolved, the Open Space shall first be offered to the City, and if accepted, deeded to the City.

(e) Recreation. Recreational uses located in Open Space and other Common Areas shall comply with the provisions of Code Section 10-2072 related to recreational use related to a residential development, other than a single-family dwelling unit. Membership fees shall not be charged to non-members of the Association for any recreation facility located in a residential zoning district unless the facility is owned by a non-profit entity and a special use permit is first obtained from the Raleigh Board of Adjustment in accordance with Code Section 10-2144(b), "Recreational Use Restricted to Membership - Not for Profit."

(f) Mortgaging of Open Space. Open Space may be subjected to a security interest with the written approval by those Members having the minimum percentage of

BK012078PG01612

votes in the Association required by the Act or any greater percentage required by this Declaration, and provided that the rights of the mortgagee are subordinate to the rights of the Owners and the Association.

**Section 2. Common Party Walls.** All common party walls between individual residences shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

(a) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable Maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(e) The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

BK012078PG01613

(1) An Owner who desires to sell a residence, or the prospective purchaser of such residence, may request the Owners of each other residence which shares that common party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such common party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a residence which shares a common party wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that residence and with respect to third parties.

(g) Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences or businesses to the extent reasonably necessary to repair, restore, Maintain or reconstruct the common party wall. Such repair, restoration, Maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences or businesses damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

**PART E  
INTENTIONALLY OMITTED**

**PART F  
CITY GREENWAYS  
(CODE SECTIONS 10-3003 and 10-3022)**

Notwithstanding any other provision of this Declaration, without the prior written consent of the City, none of the following is allowed in any City-owned greenway or greenway easement: grading; excavation; dredging; the addition or removal of soil or other materials; the erection of buildings, signs, fences, drainage devices or structures; or any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code). The City, in its sole discretion, at any time and from time to time, may erect paved or unpaved trails, trail markers, and place litter receptacles and other convenience facilities, within the greenway boundaries. The City, in its sole discretion, may adopt and amend regulations concerning the use of greenway (including, by way of example, limiting hours of operation), which shall be equally applicable to the general public and to the Owners and their occupants and guests.

BK012078PG01614

**PART G**  
**PRIVATE STREETS**  
**(CODE SECTION 10-3074)**

**Section 1. Private Streets.** Pursuant to Code Section 10-3074(b) and (c), all of the following are applicable to private streets in the Properties:

(a) In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or to the occupants of same when such failure is due to lack of access to such areas due to inadequate design, construction or blocking of access routes, inadequate Maintenance, or any other factor within the control of the Declarant, the Association, the Owners or the occupants of the Properties.

(b) In no case shall the City or the State of North Carolina be responsible for Maintaining any private street. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lot within the Properties, in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

(c) The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration; provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

BK012078PG01615

IN WITNESS WHEREOF, the Declarant herein, hereby executes this instrument under seal this the 20<sup>th</sup> day of July, 2006.

DECLARANT:

PULTE HOME CORPORATION, a Michigan corporation

By: Stephen P. Schlageter  
Stephen P. Schlageter, Div. President

STATE OF North Carolina

COUNTY OF Wake

I, Jennifer A. Dunbar, Notary Public, certify that Stephen P. Schlageter personally came before me this day and acknowledged that he is Division President of PULTE HOME CORPORATION, a Michigan corporation, and that he, as Division President, being authorized to do so, executed the foregoing on behalf of the corporation.

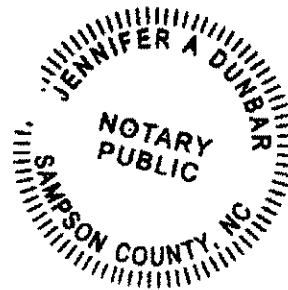
WITNESS my hand and official seal, this the 20<sup>th</sup> day of July, 2006.

Jennifer A. Dunbar  
Signature of Notary Public

Printed Name: Jennifer A. Dunbar

Date of Expiration of Commission:  
May 8, 2011

[NOTARY PUBLIC STAMP OR SEAL]



BK012078PG01616

**EXHIBIT A**

**Property Subject to this Declaration:**

All of that property designated "STETSON CIRCLE, Variable Width Private Roadway" and "RACINE WAY, Variable Width Private Roadway" and shown on Sheet 3 of 7 of the plat entitled "Subdivision Plat for 'NORTHRIDGE TRACE' PHASE ONE" and recorded in Book of Maps 2006, Page 1389, in the Office of the Register of Deeds, Wake County, North Carolina ("Sheet 3"); and all of Lots 1-18, inclusive, as shown on Sheet 3; and that portion of Lot 100, as shown on Sheet 3.

**AND:**

All of that property designated "RACINE WAY, Variable Width Private Roadway" and shown on Sheet 4 of 7 of the plat entitled "Subdivision Plat for 'NORTHRIDGE TRACE' PHASE ONE" and recorded in Book of Maps 2006, Page 1390, in the Office of the Register of Deeds, Wake County, North Carolina ("Sheet 4"); and all of Lots 19-24, inclusive, as shown on Sheet 4; together with a non-exclusive easement on, over and upon those portions of Lot 100 shown on Sheet 4 that are reasonably necessary to allow Lots 19-24, inclusive, access to and from Racine Way, including the placement and maintenance of private drives in such locations as Declarant may determine, and to allow for placement and maintenance of utilities and drainage facilities serving Lots 19-24, inclusive, in such locations as Declarant may determine; provided, however, Declarant expressly reserves the right to further subdivide that portion of Lot 100 shown on Sheet 4 to create additional townhome lots in such locations as Declarant may determine (which locations may include areas in which utilities and drainage facilities have been located) and the foregoing easement(s) shall in no way interfere with or limit such right of Declarant.

BK012078PG01617

**EXHIBIT B**

Property that may be annexed by Declarant:

All or any portion of the property identified as "LOT 1, AREA = 433,859 S.F. OR 9.960 ACRES" and shown on the plat entitled "RECOMBINATION SURVEY FOR NORTHRIDGE TRACE" recorded in Book of Maps 2006, Page 921-922, in the Office of the Register of Deeds, Wake County, North Carolina.

BK012078PG01618



BOOK:012078 PAGE:01558 - 01618

---

**Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.**

---



**Wake County Register of Deeds  
Laura M. Riddick  
Register of Deeds**

**This Customer Group**  
\_\_\_\_\_ # of Time Stamps Needed

**This Document**  
\_\_\_\_\_ New Time Stamp  
\_\_\_\_\_ # of Pages

22.004-1/20/06

WAKE COUNTY

LEASING RESOLUTION  
FOR NORTHRIDGE  
TRACE HOMEOWNERS  
ASSOCIATION, INC.

WHEREAS, the Declarant caused to be recorded the Declaration of Covenants, Conditions, Restrictions and Easements for Northridge Trace filed with the Wake County Registry on 25 July 2006 at Book 12078, Page 1558 (“Declaration”); and

WHEREAS, the Northridge Trace Homeowners Association, Inc. (“Association”) was incorporated as a non-profit corporation on or about 25 September 2006 in order to administer the affairs of the community subject to the Declaration; and

WHEREAS, N.C.G.S. § 47F-3-102 provides that the Board has the power to adopt, amend, publish and enforce reasonable rules and regulations;

WHEREAS, the Board for the Association deems it advisable to adopt, publish and enforce reasonable rules and regulations pertaining to leasing in the community; and

NOW THEREFORE, the Board of Directors for the Association hereby promulgates the following rules with respect to leasing rules in the community:

1. All Owners leasing their Lot shall provide written notice of the lease within thirty (30) days of the adoption of this Rule.
2. All Owners shall provide a signed acknowledgement that the tenant has received a copy of the Declaration, Bylaws and Rules and Regulations of the Association.
3. No Owner shall lease or rent the home on its Lot, or any portion thereof, except as may be permitted by these Rules and Regulations. All leases shall have a minimum term of at least twelve (12) months. Owners must submit all written leases to the Board to ensure compliance with Article VI, Section 7 of the Declaration upon request.

The foregoing resolution was adopted at a meeting of the Board of Directors on March 28, 2018.

APPROVED:

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

BAGWELL HOLT SMITH P.A.

ATTORNEYS AT LAW

111 CLOISTER COURT, SUITE 200

CHAPEL HILL, NORTH CAROLINA 27514

TELEPHONE: (919) 401-0062

FACSIMILE: (919) 403-0063

www.bhspa.com

MICHAEL R. GANLEY, PARTNER\*  
MGANLEY@BHSPA.COM

\*LICENSED IN NC & SC

**April 19, 2019**  
Via Electronic Mail

Northridge Trace Homeowners Association, Inc.  
Attn: Board of Directors  
c/o RealManage  
8480 Honeycutt Rd, Suite 241  
Raleigh, NC 27615

**Re: Northridge Trace HOA – Maintenance Responsibilities**

To Whom It May Concern:

My name is Michael Ganley, and I am the attorney for Northridge Trace Homeowners Association, Inc. (the “HOA”). The purpose of this letter is to give some background and clarity to the issue of the scope and extent of the maintenance responsibilities of the HOA. Your property manager, Community Association Management, requested that I prepare a maintenance responsibility chart to ensure that it mirrors the North Carolina Planned Community Act as codified in N.C.G.S. § 47F, and the provisions contained within the Declaration of Covenants, Conditions, Restrictions and Easement for Northridge Tract of record at Book 12078, Page 1558, Wake County Registry (the “Declaration”), along with all subsequent amendments, if any, and other governing documents of the subdivision.

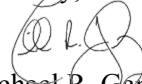
Below is the reviewed and approved Maintenance Responsibility Chart for the HOA:

ITEM	HOA	OWNER	AUTHORITY	NOTES
Common Area	x		Article V, Section 1(a)	"The Association shall maintain...all landscaping and improvements situated on the Common Area."
Doorbell		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Doors		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Driveways		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Entry Features	x		Article V, Section 1(a)	"The Association shall also maintain...all entry features..."
Exteriors/ Siding		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Fireplaces & Chimneys		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Foundations and Structure		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Gutters, downspouts, extenders & splash pans		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
HVAC		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Interiors		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Landscaping – HOA Installed	x		Article V, Section 1(b)	"The Association shall maintain all landscaping originally installed by Declarant or by the Association...limited to cutting of grass, trimming and replacement of trees, shrubs, hedges, bushes, flowers, and other planting."

ITEM	COA	OWNER	AUTHORITY	NOTES
Landscaping – Owner Installed	x		Section 6	"Limited Common Areas and Facilities shall mean and include...rear yard..."
Mail Kiosk	x		Article V, Section 1(a)	"The Association shall maintain...all landscaping and improvements situated on the Common Area."
Mail Kiosk – individual keys & boxes		x	US Post Office Regulations	"Per US Post Office, Owner must go to the post office to get new keys."
Party Walls		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Patios		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Retaining Walls	x		Article V, Section 1(a)	"The Association shall also maintain...all retaining walls installed by Declarant or the Association..."
Roof		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Street Lights	x		Article V, Section 1(a)	"The Association shall also maintain...street lights..."
Stormwater	x		Article V, Section 1(a)	"The Association shall also maintain...all stormwater facilities..."
Utility Lines		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."
Windows		x	N.C.G.S. § 47F-3-107	"Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon."

Thank you for allowing me to assist you in this complex process, and you can feel free to contact me if you have any further questions.

Sincerely,



Michael R. Ganley  
Attorney at Law