

officers of the Association to make, execute and deliver on behalf of any Owner, as his interest may appear, any and all instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02. Encumbrances. The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes (i) if a two-class voting structure is in effect, upon the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, upon the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association and the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association residing in Members other than Declarant. As long as there are two classes of Membership in the Association, any mortgaging of the Common Area shall require the approval of the Federal Housing Administration.

## ARTICLE 6

### COMMON AREA AND LOT MAINTENANCE

6.01. Maintenance by Association. The Association shall repair and maintain the Common Area and all improvements, utilities and facilities located on the Common Area. The Association's maintenance obligation shall arise upon the filing with the Association by Declarant of a notice of completion of Common Area improvements, or any portion thereof, and the commencement of annual assessments against the Owners.

6.02. Maintenance by Owners. Each Owner, at all times, shall maintain, repair and otherwise be responsible for his Lot and the improvements thereon. Without limiting the generality of the foregoing, and subject to the requirements of Section 14.02 of this Declaration, an Owner shall be responsible for replacement and reconstruction of improvements on his Lot required because of damage or destruction by fire or other casualty. Each Owner shall maintain, repair and replace the surface and subsurface drainage facilities, swales and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the County or other governmental entity. If any Owner, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such drainage facilities, swales and appurtenances as required herein, the Association, at the expense of such Owner, shall maintain, repair and replace such drainage facilities, swales and appurtenances at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement therefor as provided in Section 9.07.

No Structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of such drainage facilities, swales and appurtenances and no Owner shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area as established in connection with the approval of the subdivision map or maps applicable to the Project by the County, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Control Committee and all public authorities having jurisdiction. All such drainage facilities, swales and appurtenances shall at all times be accessible to Declarant until the Project is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities, swales and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities.

6.03. Negligence. The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, shall be the responsibility of and paid for by such Owner.

6.04. Right to Enter. After reasonable notice to the occupant, the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his Lot subject to such right of access of the Association or its agents. By way of illustration, and not limitation, the Association may repair, maintain and replace drainage facilities and/or drainage swales on a Lot.

## ARTICLE 7

### USE RESTRICTIONS

In addition to the restrictions set forth in Article 14 below, the following apply to the Project:

7.01. Residential Use. Except for model homes and construction trailers used by Declarant or a Builder (and their agents), Lots shall be used as a residence for a single family and for no other purpose and no Owner shall use or cause or permit to be used his Lot for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose. The foregoing to the contrary notwithstanding, it shall be expressly permissible for Owners to conduct certain business or commercial activities within their residence which do not conflict with local zoning ordinances, restrictions and regulations. No such activity shall be conducted which shall unduly burden traffic flows within the Property or cause the parking of non-resident vehicles upon the street for

unreasonable or excessive periods of time. By way of example but not limitation, the following uses shall, so long as they conform to the foregoing criteria, be considered acceptable: home day care for a reasonable number of children, infrequent garage sales, music lessons, tutoring, telemarketing, various other telephone related activities, crafts and hobbies that do not create an unusual noise nuisance. It shall be within the discretion of the Board to determine, on a case-by-case basis, which commercial and business related activities will be compatible with the residential nature of the subdivision. Notwithstanding the above provisions, the Restaurant Site is expressly exempted from this provision unless the Restaurant Site is divided into individual residential Lots.

7.02. Unlawful Activity. No unlawful activity shall be conducted on any Lot or in any other part of the Project. Nothing shall be done within the Project that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Project, or that unreasonably interferes with the quiet enjoyment of occupants of Lots. No doorways, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency.

7.03. Parking. Unless otherwise permitted by the Rules and Regulations, no boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle ("Vehicle") shall be parked, stored or left (a) on any undesignated part of the Common Area or (b) on any other part of a Lot unless the same are fully enclosed within the garage located on the Lot, or are kept behind the front setback line of the Lot, as such setback line is depicted on the relevant plat of the subdivision and screened from the view of adjoining Lots and the street by a fence or other structure approved by the Architectural Control Committee. Any such Vehicle shall be parked, stored or left wholly within the garage located upon the Lot or the screened area previously approved by the Architectural Control Committee, except to the extent a garage or such screened area is already occupied to capacity, in which case such vehicle may be parked temporarily [not over 72 hours in any ten (10) day period] in the driveway. This restriction shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant and his agents, vendors and contractors in the conduct of their business prior to Completion of Sales. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Project. No repairs to any automobile or other Vehicle shall be made or performed on any driveway within the Project, except in the case of emergency and except as may be permitted by the Rules and Regulations. Minor maintenance to vehicles may be performed on a driveway so long as such maintenance is limited to, or the equivalent of, oil and other fluid changes, tire rotation, washing and waxing, and similar activities.

7.04. Signs and Curtains. No Owner shall place on or about any window any metallic foil or other coating, substance or material which similarly acts as a reflector of light and no Owner shall display, hang, store or use any signs, awnings, shades or other articles outside of the dwelling on any Lot other than as may be permitted by the Rules and Regulations or the Architectural Control Committee. Notwithstanding the foregoing, one professional sign of not more than one (1) square foot or one sign of not more than five (5) square feet advertising a Lot for sale or rent may be placed by the Owner on his Lot in

such manner that it will be visible from outside the Lot. The prohibitions in this section shall not apply to Declarant or his agents, who may erect such signs as they deem desirable to promote the sale of Lots.

7.05. Antennas. Except as may be permitted by the Architectural Control Committee, no Owner shall construct, install, erect or maintain any television or radio pole, antenna, aerial, dish, tower or support thereof upon any Lot or improvement thereon except that a TV antenna may be affixed to the chimney of the dwelling. The height of the TV antenna shall not extend 10 feet over the ridge line of the dwelling.

7.06. Laundry. No laundry or wash shall be dried or hung upon the exterior of any Lot or any place visible within the Project from outside such Lot.

7.07. Fences. Except as may be approved by the Architectural Control Committee, no fence or wall shall be erected on any Lot closer to the street than the side street setback or the front of the building facade except for temporary decorative fencing installed by a builder on a model home. Perimeter fencing and privacy fencing around patios, decks or pools, must be approved prior to construction by the Architectural Control Committee and may not exceed six (6) feet in height. Chain link metal fencing is expressly prohibited, except that 2"x 4" mesh may be used with split rail fencing to contain animals within the yard.

7.08. Pets.

(A) No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs, cats, etcetera, shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months in age. All animals outside the confines of a fence shall require a leash and must be accompanied by the Owner of such animal. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience, nuisance or danger to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience, nuisance or danger, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience, nuisance or danger, the Board may require that such animal be removed from the Project.

(B) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area and that Owners are responsible for cleaning up any mess that a pet creates within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing in the Project at the

time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience, nuisance or danger be removed as provided in Section 7.08(A).

7.09. Trash and Vegetation. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers (and organic compost bins approved in advance in writing by the Architectural Control Committee) located in an appropriate area screened and concealed from view. No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Lot or any portion of the Project which would render it unsanitary, unsightly, offensive or detrimental to any property in the vicinity thereof or to the occupants of any property in such vicinity. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Project shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants which die shall be promptly removed. If any Owner, after Notice and Opportunity for Hearing, fails to maintain his Lot as required above in this section, the Association, at the sole cost and expense of such Owner, may maintain said Lot and without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement therefor as provided in Section 9.07. This Section 7.09 shall be applicable only to Lots conveyed to Owners other than Declarant or a Builder. Declarant and any Builder shall be exempt from the provisions of this section but shall have the obligation to take such steps as are reasonable and practical during the course of construction in order to maintain the cleanliness of the area.

7.10. Wells. No well for the production of, or from which there is produced, water, oil, gas or other substance shall be dug or operated anywhere within the Project, except upon the direction and under the authority of the Association. Provided, however, any well(s) dug or operated within the Project in connection with the supply of water pursuant to a community well system by Declarant, his successors and assigns, is hereby excepted from the provisions of this Section 7.10.

7.11. Nuisance. No noxious or offensive activity shall be carried on in or upon any Lot or the Common Area nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Project or unreasonably interferes with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common Area or which would be in violation of any law.

7.12. Satellite Dishes or Discs. No radio or television transmission or reception towers, antennas or discs shall be erected on a Lot other than customary antenna as set forth in Section 7.05 and small, unobtrusive mini-antennas or discs approved in advance in writing by the Architectural Control Committee. In no event shall free standing transmission or receiving towers or discs or dishes be permitted unless Declarant determines, in its sole discretion, to construct a television antenna or disc for the purpose

of community wide television cable service assuming no such service is available by other private or public companies providing such service. Declarant has no obligation to construct community wide television cable services.

7.13. Swimming Pools. No swimming pool shall be erected or installed on a Lot except as may be permitted by the Architectural Control Committee. Under no circumstances shall above ground swimming pools be authorized by the Architectural Control Committee.

7.14 Floor Space. The floor area of each home constructed on a Lot shall be not less than sixteen hundred (1,600) square feet for a one-story home and eighteen hundred (1,800) for a story and one-half or two-story home; provided, however, that the aforesaid square footage requirements shall be based on interior heated floor space exclusive of basements, garages, porches, decks, balconies and overhangs.

7.15. Declarant's and Builder's Rights. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant and Builder, their agents, employees and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant and Builder, their agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Project as a residential community and for the sale, rental or other disposition of Lots in the Project. The rights of Declarant and Builder, their agents, employees and contractors shall include, without limitation:

(A) The right and easement of ingress in, over and upon the Common Area for the purpose of performing on any part or parts of the Project acts deemed necessary, advisable or convenient for the completion and improvement of the Project as a residential community and for the sale, rental or other disposition of Lots;

(B) The right to erect, construct, maintain, demolish or remove structures and other improvements on any Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Project as a residential community and for the sale, rental or other disposition of Lots;

(C) The right to use Lots and improvements owned by Declarant or Builder as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Project;

(D) The right and easement of ingress and egress in, over, under, across and upon the Lots and the Common Area for the purpose of installing, maintaining, repairing and replacing a cable television system or satellite television system. Moreover, the identical right and easement is hereby reserved to the Association, provided that the Association may exercise such right only (i) if a 2-class voting structure is in effect, approval by the vote or written consent of the majority of the Voting Power of each class

of Members or (ii) if a 2-class voting structure is not in effect by the vote or written consent of the majority of the total Voting Power of the Association. In any case, whether such right is exercised by the Declarant or the Association, in order to connect to such system, the Owner of the Lot must pay the connection fee charge therefore by the company providing the cable or satellite service.

The rights of Declarant and Builder under this section shall terminate one (1) year after the Completion of Sales. Amendment of this section shall require (1) if a two-class voting structure is in effect, the vote or written consent of seventy-five percent (75%) of the Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, the vote or written consent of both seventy-five percent (75%) of the total Voting Power of the Association and of the total Voting Power of the Association residing in Members other than Declarant and Builder. Further, no amendment of this section can be made without the written approval of Declarant and Builder.

7.16. Right to Enter. Any governmental agency, including, but not limited to the County, its agents, and employees, shall have the right of immediate access to the Common Area at all times if necessary for the preservation of public health, safety and welfare.

7.17. Subdivision Entrances. Declarant, for himself, his heirs, successors and assigns, reserves an easement over the following land:

That portion of Lot 1 and any portions of other lots designated "30' x 30' Landscape Easement" or "20' Landscape Easement" (or different language with similar meaning) on any recorded map of the Project

for the construction, maintenance, repair and replacement of subdivision entrance signs, fences, irrigation and lighting systems, and for the purpose of landscaping the area around the signs. The Owners of said Lots shall maintain the area around the signs not maintained or landscaped pursuant to this easement. No fences, structures, driveways, plantings, swings or other objects, temporary or permanent, shall be permitted in such easement without the Declarant's or Association's prior written consent. Declarant may assign this easement to the Association. The reservation of this easement imposes no obligation on Declarant, its successors and assigns, to continue to maintain the landscaping and entrance signs.

7.18 Landscape and Easement Areas. Declarant, for himself, his heirs, successors and assigns, reserves an easement over the following land:

Any portions of Lots designated "Landscape and Easement Areas" or "20' Landscape Easement" (or different language with similar meaning) on any recorded map of the Project and any medians located in the Project

for the construction, maintenance, repair and replacement of irrigation and lighting systems, berms, plantings and landscaping within the Landscape and Easement Areas. The Owners of said Lots shall maintain the area not maintained or landscaped pursuant to this easement. No fences, structures, driveways, plantings, swings or other objects, temporary or permanent, shall be permitted in such easement without the Declarant's or Association's prior written consent. Declarant may assign this easement to the Association. The reservation of this easement imposes no obligation on Declarant, its successors and assigns, to continue to maintain the plantings and landscaping.

## ARTICLE 8

### MEMBERSHIP AND VOTING RIGHTS

8.01. Governing Body. The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Project, as provided by this Declaration and the Bylaws.

8.02. Membership. Membership in the Association shall be composed of and limited to Owners. Each Owner, including Builder and Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon termination of ownership, an Owner's Membership shall automatically terminate and be automatically transferred to the new Owner of the Lot.

8.03. Voting. The Association shall have two classes of voting Membership:

Class A. "Class A Members" shall be all Owners with the exception of Builder and Declarant; provided, however, that Builder and Declarant shall become a Class A Member when their Class B Membership ceases as provided hereinafter. Class A Members shall be entitled to one (1) vote for each lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the vote of a co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

Class B. "Class B Members" shall be Declarant and Builder and shall be entitled to three (3) votes for each Lot owned; provided that Declarant's and Builder's Class B Memberships shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier: (i) the conveyance of seventy-five percent (75%) of all Lots within the Project to Owners other than Declarant or a Builder, or (ii) seven (7) years after the first Lot is conveyed to an Owner for use as that Owner's residence.



8.04. Suspension of Voting Rights. Voting rights attributable to an ownership interest in a Lot shall be suspended throughout the term of any default under this Declaration by an Owner of such Lot.

8.05. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any Members of the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to transpire outlined in Section 8.03 concerning the termination of the Class B Member status of Declarant and Builder; or the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant, if he then owns one or more Lots; and a special meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. 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 as provided in this Section.

8.06. Re-establishment of Class B Member. In the event that after the conversion of Class B Membership to Class A Membership the general plan of development contemplated by Declarant is expanded to include Additional Land contiguous to Town Heights, and an annexation of said lands into Town Heights is recorded, the prior termination of Class B Membership shall not prevent the re-establishment of Class B Membership by reason of Declarant's Builder's ownership of additional Lots, which additional Lots, when added to Lots already owned by Declarant and Builder, are sufficient in number when multiplied by three (3), to exceed the number of Class A votes held by Owners other than Declarant and Builder.

## ARTICLE 9

### COVENANTS FOR ASSESSMENTS

9.01. Covenant to Pay Assessments; Lien. Declarant, Individual Owners and any Builder, for each Lot owned by them, shall pay, and every Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay, to the Association such regular annual assessments or charges and such special assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. The amount of any such annual or special assessment plus

any other charges thereon, such as interest, late charges and costs (including attorneys' fees), as such may be provided in this Declaration, shall be and become a lien upon the Lot assessed when the Association causes to be recorded in the official records of the County a notice of assessment, which notice shall state:

(A) The amount of such assessment and such other charges thereon as may be authorized by this Declaration.

(B) A description of the Lot against which the same has been assessed;  
and

(C) The name of the record Owner of the Lot assessed.

Such notice shall be signed by an authorized representative of the Association. Upon payment of such assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The lien provided for herein shall be prior to all other liens recorded subsequent to the recordation of such notice of assessment. The lien may be enforced by foreclosure in accordance with North Carolina law, or in any other manner permitted by law. The Association shall have power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same.

9.02. Personal Obligation. Each regular annual or special assessment, together with any late charges, interest collection costs and reasonable attorneys' fees, shall be the personal obligation of each person or entity, other than any Mortgagee, who held an ownership interest in the Lot at the time such assessment was levied. If more than one person or entity held an ownership interest in the Lot at such time, such Lot shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or non-use of common facilities or of the Common Area or by abandonment or leasing of his Lot.

9.03. Use of Assessments. Regular annual or special assessments paid by Declarant, Builder and other Owners shall be used to pay for operation, maintenance, preservation, enhancement, repair and improvement of the Common Area, Entrance Monument Easements, Landscape and Easement Areas (and the Public Roads as provided in Section 1.34 hereof), other purposes reasonably related to the foregoing and to promote the recreation, health, safety and welfare of the Owners. In addition, such assessments shall also be used to pay the cost of administration of the affairs of the Association, including payment of applicable taxes, including local property taxes, and for the preservation of the Association's existence, to the extent properly allocable to the performance and exercise of the Association's duties and powers under this Declaration. The foregoing is intended as an authorization to the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

9.04. Reserve Funds. The Board shall establish and maintain reserves in accordance with standard accounting practices and procedures for Common Area replacements and maintenance in the initial budget of the Association. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in at least the amount of reserves established in the initial budget unless a lower level of reserves is approved by the vote or written consent of a majority of the Voting Power of (i) if a two-class voting structure is in effect, by the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, by the vote or written consent of a majority of the total Voting Power of the Association. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without (i) if a two-class voting structure is in effect, by the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, by the vote or written consent of a majority of the total Voting Power of the Association, except that if the Board determines that funds held in reserve for a particular purpose exceed an amount reasonably required as a prudent reserve for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund established by the initial budget of the Association and expended for the purpose for which such other reserve fund has been established.

9.05. Regular Assessments.

(A) The initial regular annual assessment for each Lot for the first assessment year shall be a maximum of \$\_\_\_\_\_ per Lot owned by a Class A Member and \$\_\_\_\_\_ per Lot owned by a Class B Member or a Builder; provided, however, that if the first assessment year shall have fewer than twelve months, the foregoing amounts shall be proportionately reduced. The regular annual assessment (prorated for the number of months remaining in such assessment year) may be increased by the Board to an amount equal to the previous year's annual assessments times the greater of (1) ten percent (10%) or (2) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84=100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. If the annual assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the annual assessments may be increased by that amount in a future year, by a vote of the Board of Directors, without a vote of the Members.

(B) The Board shall fix the amount and due date of the regular annual assessment on a yearly basis at least sixty (60) days in advance of each assessment year; provided, however, that the ratio of the assessment established for Lots owned by Class A Members to the assessment established for Lots owned by a Class B Member or a Builder shall always be three (3) to one (1), prorated for partial years due to ownership

changes during the year, and further provided that the Board may not impose a regular annual assessment which is more than allowed under Paragraph 9.05(a) above without (i) if a two-class voting structure is in effect, by the vote or written consent of a majority of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, by the vote or written consent of a majority of the total Voting Power of the Association and the Voting Power of the Association residing in Members other than Declarant and Builder. Written notice of the regular annual assessment shall be sent to every Owner who is not present at the time the regular annual assessment is so fixed, provided, however, lack of such notice shall not excuse any Owner from payment of assessments. If the Board fails to so fix the regular annual assessment, the assessment applicable for the previous assessment year shall remain in effect until the Board shall fix a new regular annual assessment. Regular annual assessments shall be payable annually on the first day of each January or at such other time as the Board may fix. The Association shall, upon demand, and for a reasonable charge, furnish to any person having a legitimate interest a certificate signed by an officer of the Association stating whether the regular annual assessment and special assessments, if any, on a specified Lot have been paid and, if not, the amount due.

9.06. Special Assessments. In addition to the regular annual assessments authorized herein, the Board may levy, in any assessment year, a special assessment against all Owners applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property on or comprising a part of the Common Area; provided, however, any such assessment shall be in the ratio of three (3) to one (1) for Lots owned by Class A Members and Class B Members, respectively, as provided in Section 9.05 above, and further provided in any fiscal year, special assessments which exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of both the Voting Power of the Association and the Voting Power of the Association residing in Members other than Declarant and Builder.

9.07. Assessment as Remedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations.

9.08. Allocation of Assessments. Except as otherwise provided in this Declaration and except for the reduced assessments on Lots owned by Class B Members or a Builder, all regular and special assessments shall be levied equally against all Owners.

9.09. Commencement of Assessments. The regular annual assessments provided for herein shall commence as to all Lots in any particular Phase on the first day

of the month following the month in which a Lot in that particular Phase is conveyed by Declarant or a Builder to an Owner other than a Builder for occupancy. The first assessment year shall be the period commencing on the date regular annual assessments commence and ending on the December 31 next following. The regular annual assessment for the first assessment year shall be prorated from the amount fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. Assessments of Lots within each Phase of the Project which is annexed in accordance with the provisions of Article 16 below shall commence on the first day of the month next following the conveyance of the first Lot to a purchaser other than a Builder.

Notwithstanding the provisions in 9.01, 9.05 and 9.09 hereof, the Declarant may at his election, postpone, in whole or in part, the date on which the assessment shall commence, provided that the Declarant maintains the Common Areas, Entrance Monument and Landscape and Easement Areas for which no assessment is being collected during the period of such postponement.

9.10. Revised Assessments. Subject to the provisions of Section 9.05, if at any time during the course of any year the Board shall deem the amount of the regular annual assessment to be inadequate or over adequate by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting, to revise the regular annual assessment for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the month next following the date of adoption, and additional amounts payable shall be due (or refunds of overages shall be made by the Association) at such time as determined by the Board.

9.11. Delinquent Assessments; Fines. Any assessment not paid within ten (10) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided in Section 4.09 shall be ten percent (10%) per annum while the assessment or fine is delinquent.

An additional one hundred dollars (\$100.00) shall be charged for each lien placed upon a Lot as evidenced by a notice of assessment recorded in the official records of the County.

No charge may be imposed more than once each month for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. When an assessment is paid more than ten (10) days after the due date of the assessment, late charges shall accrue from the first day following the due date

of the assessment. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after Notice and Opportunity for Hearing, the Association may suspend a delinquent Owner's Membership rights in the Association while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorneys' fees.

9.12. Subordination of the Lien to First Mortgages. The lien of assessments, including interest, late charges and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due.

## ARTICLE 10

### INSURANCE

#### 10.01. Duty to Maintain Insurance.

(A) The Association shall have the duty and the authority to maintain fire and extended coverage casualty insurance on the Common Area in an amount not less than the full insurable value thereof (based upon current replacement cost), and liability insurance with limits in and amounts adequate, under standards in the insurance industry existing from time to time, to protect the Association and the Owners in the event of property damage, personal injury or death occurring in or about the Project. The Board shall have the authority to settle or enforce on behalf of the Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Association.

(B) All policies of insurance carried by the Association or the Owners shall include a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees if such waiver can be obtained at reasonable cost.

(C) Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit development projects established by the Federal National Mortgage Association and Government National Mortgage Association, so long as either is a Mortgagee or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by the Federal National Mortgage Association or Government National Mortgage Association.

10.02. Proceeds of Insurance. The proceeds of casualty insurance carried by the Association shall be paid as follows:

(A) If such proceeds do not exceed Fifty Thousand Dollars (\$50,000), the proceeds shall be paid to and held by the Association as trustee for the Owners, Declarant and Mortgagees for disbursement in accordance with the provisions of this Declaration; and

(B) If such proceeds exceed Fifty Thousand Dollars (\$50,000), the proceeds shall be paid to and held by the Insurance Trustee in trust for the Association, Owners, Declarant and Mortgagees, for disbursement in accordance with the provisions of this Declaration.

Except as otherwise provided herein, casualty insurance proceeds shall be used for repair, replacement or reconstruction to the extent required to effectuate repair, replacement or reconstruction.

## ARTICLE 11

### DAMAGE AND DESTRUCTION

11.01. Damage to Lots. Restoration and repair of damage to any Lot and improvements thereon shall be made by and at the expense of the Owner thereof.

11.02. Minor Damage and Major Damage Defined. Damage or destruction to the Common Area where the estimated cost of repair, restoration or reconstruction does not exceed Fifty Thousand Dollars (\$50,000) is referred to in this Declaration as "Minor Damage. Damage or destruction to the Common Area where the estimated cost of repair, restoration or reconstruction exceeds Fifty Thousand Dollars (\$50,000) is referred to in this Declaration as "Major Damage."

11.03. Minor Damage. If Minor Damage occurs, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area or improvements which have been damaged or destroyed and, if necessary, collect from the Insurance Trustee any proceeds of insurance as received in accordance with Section 10.02. The difference, if any, between the insurance proceeds payable by reason of such Minor Damage and the cost of such repair, restoration and reconstruction may be recovered by one or more special assessments levied by the Board equally against all Owners.

11.04. Major Damage. In the event of any Major Damage to or destruction of any portion of the Common Area by fire or other casualty:

(A) The Board shall as soon as reasonably practicable obtain such information as it deems necessary to make an informed judgment about whether to proceed with the repair, restoration or reconstruction of the Common Area so damaged

or destroyed, which information may include: (i) obtaining firm bids from two (2) or more responsible and licensed general contractors for the repair, restoration and reconstruction of the Common Area so damaged or destroyed in accordance with the original plans and specifications to the extent reasonably practicable; and (ii) obtaining an Appraisal setting forth an opinion as to the value of the Common Area as it then exists together with an opinion of the increment in value, if any, which would accrue if the Common Area or some portion thereof were razed.

(B) No later than one hundred eighty (180) days after the occurrence of Major Damage, the Board shall hold a special meeting of Members after notice as provided in the Bylaws. Such notice shall include a summary of the Appraisal (if any) and of the bids for repair, restoration and reconstruction (if any), the amount of insurance proceeds payable to the Association as a result of such damage and destruction, and the amount of the special assessment, if any, necessary to make any difference between the insurance proceeds and the total cost of repair, restoration and reconstruction.

(C) Unless within two hundred forty (240) days after the occurrence of such Major Damage, (i) if a two-class voting structure is in effect, sixty-seven percent (67%) of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, sixty-seven percent (67%) of the Association agree by vote or written consent and a majority of all Mortgagees (based upon one (1) vote for each Mortgage owned) agree in writing that such repair, restoration or reconstruction of the Common Area improvements which have been damaged or destroyed shall not take place: (a) the Association shall promptly contract for and complete such repair, restoration or reconstruction in accordance with plans and specifications approved by the Board; and (b) the difference, if any, between the insurance proceeds and the total cost of repair, restoration and reconstruction shall be recovered by a special assessment levied by the Association equally against all Owners.

(D) Funds collected and held by the Insurance Trustee shall be disbursed by the Insurance Trustee for the purpose of repair, restoration or reconstruction (if any) in accordance with the terms and conditions of such contract or an agreement between the Association and the Insurance Trustee. Funds from any special assessment shall be delivered to and held in trust by the Insurance Trustee and shall be held and disbursed for repair, restoration and reconstruction in the same manner as insurance proceeds. The Insurance Trustee may invest and reinvest funds held by it in a manner consistent with its duties as trustee. The Insurance Trustee shall be entitled to a reasonable fee for its services.

(E) If Major Damage occurs and it is determined in accordance with this Section 11.04 that the Common Area or any portion thereof shall not be repaired, restored or reconstructed, the Board shall cause an Appraisal to be made (if such Appraisal has not previously been obtained) and the Appraisal shall be made available to the Owners and Mortgagees. The Association shall then sell the Common Area or any portion thereof, for and on behalf of all Owners upon such terms and conditions and for such price as may be



approved by a majority of the Board and ratified (i) if a two-class voting structure is in effect, by the vote or written consent of a majority of the Voting Power of each class of Members, or, (ii) if a two-class voting structure is not in effect, by the vote or written consent of a majority of the total Voting Power of the Association. For such purposes, the Board shall be and hereby is irrevocably appointed attorney in fact to act on behalf of all Owners to sell the Common Area or any portion thereof upon such terms and conditions and for such price as shall have been ratified and approved by the Members and to do such acts incidental to the sale and to incur such expense as in its opinion will increase the value of the Common Area for the purpose of sale or as may be deemed necessary or convenient in connection with the sale, including but not limited to, the razing of any or all improvements. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. In connection with the sale of the Common Area or any portion thereof, the Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any Owner, as his interest may appear, any and all instruments, certificates and documents, including, but not limited to, maps, plans, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be necessary or convenient for the sale. The Board shall be authorized to incur fees for legal and accounting services, appraisals, engineering, examination of title and other expenses reasonably related to the sale.

(F) After payment of expenses directly relating to the sale of the Common Area and properly payable out of the escrow at the closing of sale, the Insurance Trustee shall receive the remaining sale proceeds and shall disburse such proceeds, together with any insurance proceeds it holds, as follows:

(1) To pay any outstanding expenses of the Association or of the Insurance Trustee relating to the sale of the Common Area, including but not limited to, costs of Appraisal, collection of insurance proceeds, compensation of the Insurance Trustee, engineering, legal and accounting expenses, costs of preparing the Common Area for sale and other related expenses; and

(2) To pay equally to the respective Owners in the Project; provided, however, that an equitable adjustment shall be made in the distribution to provide for any Owner's liability to the Association, including but not limited to, liability for unpaid assessments and charges.

## ARTICLE 12

### EMINENT DOMAIN

12.01. Eminent Domain. If all or any portion of the Common Area is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all affected Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the affected Owners, Mortgagees

and the Association as the Court may determine. A condemnation award which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each affected Owner shall be allocated first to the repair, restoration and reconstruction of any remaining portion of the Common Area and then any excess shall be distributed equally among the affected Owners (or any Mortgagee of an affected Owner to the extent such mortgagee is entitled to such Owner's share of the proceeds). If requested by the court, an Insurance Trustee shall be employed to make disbursement of the award.

12.02. Repair, Restoration, Reconstruction. If any portion of a Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a special assessment levied equally against all Owners.

## ARTICLE 13

### INSPECTION OF IMPROVEMENTS

#### 13.01. Inspection of Improvements.

(A) Declarant may notify the Board when the Common Area improvements (including landscaping) have been completed for a particular Phase or some portion thereof. Declarant shall request that the architect who designed the Common Area improvements or other qualified engineers or architects inspect the Common Area improvements as to which Declarant has given such notice. The person(s) selected by Declarant is (are) referred to herein as the "Expert" (whether one or more). Declarant shall pay the reasonable compensation of the Expert.

(B) The Expert shall inspect the Common Area improvements as to which Declarant has given notice of completion and requested inspection. Declarant and the Board may accompany the Expert during the inspection. The inspection shall be limited to a visual inspection, and improvements shall not be uncovered. The Expert shall not be responsible for identifying latent defects. Promptly after the inspection is completed, the Expert shall submit a written report (the "Report") to Declarant and the Board specifying the respects, if any, in which the improvements do not conform to the plans and specifications therefor and are defective, and if there are no such defects, the Report shall state that the improvements conform to the plans and specifications therefor. The Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent defects, if any, the improvements have been constructed in accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any defects specified in the Report and except with

respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.

(C) Declarant shall correct any defects specified in the Report, and the Expert shall reinspect such improvements within thirty (30) days after Declarant's request. Such reinspection shall be performed in the same manner as provided for the first inspection. Promptly after the reinspection is completed, the Expert shall submit another written report (the "Reinspection Report") to Declarant and the Board specifying the defects specified in the Report which have not been corrected, if any, and if all such defects have been corrected the Reinspection Report shall state that the improvements conform to the plans and specifications therefor. The Reinspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent defects, if any, the improvements have been constructed in accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any defects specified in the Reinspection Report, and except with respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.

(D) Additional inspections and Reinspection Reports shall be made, if necessary, all in accordance with and with the same effect as provided hereinabove.

(E) If the improvements to be inspected are landscaping improvements, then notwithstanding anything to the contrary contained herein the Expert shall be a horticulturalist or landscape architect. In all other respects, the provisions of this section shall apply to the inspection of landscaping improvements.

(F) Within ten (10) days after all defects have been corrected, as evidenced by a Report or Reinspection Report, the Board shall accept the improvements in writing.

## ARTICLE 14

### ARCHITECTURAL CONTROL COMMITTEE

14.01. Establishment. Declarant shall establish an Architectural Control Committee (the "A.C.C." or "Committee") to perform the architectural review functions set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the A.C.C., including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The A.C.C. shall consist of not less than three (3) nor more than five (5) Members, each serving one-year terms, with such alternate Members as the Declarant may deem necessary. Declarant shall appoint all of the original Members of the A.C.C. and shall continue to appoint all members of the A.C.C. until Declarant and Declarant's appointed Builders no longer own any Lots, at which time the Board of the Association shall have the power to appoint all of the members of the A.C.C. The appointees of the