

For Registration Sharon A. Davis  
Register of Deeds  
Durham County, NC  
Electronically Recorded

**2019 Dec 12 03:11 PM**

**Book: 8823      Page: 712**

NC Rev Stamp: \$ 0.00      Fee: \$ 174.00

Instrument Number: 2019046093  
DECL

---

This instrument was prepared by and return after recording to:  
Weatherspoon & Voltz LLP, 3700 Glenwood Avenue, Suite 250, Raleigh, NC 27612

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS FOR THE TERRACES AT MOREHEAD HILLS**

**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**

Submitted electronically by Weatherspoon & Voltz LLP in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Durham County Register of Deeds.

DECLARATION  
OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR  
THE TERRACES AT MOREHEAD HILLS

THIS DECLARATION, made on the 12<sup>th</sup> day of December, 2019, by **Terraces at Morehead Hills, LLC**, a North Carolina limited liability company ("Declarant") with reference to the following facts:

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the City of Durham, County of Durham, State of North Carolina, commonly referred to as "The Terraces at Morehead Hills", which is more particularly described on Exhibit "A" attached hereto ("Property");

WHEREAS, Declarant intends to improve the Property as a planned residential development by dividing such real property into Lots appropriate for attached single-family dwellings and Common Elements for the common use and enjoyment of the Owners of the Lots; and

WHEREAS, Declarant wishes to impose on that Property described in Exhibit "A" attached hereto restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all Property herein described and the future owners of Lots therein; and

WHEREAS, Declarant intends to develop the Property under a common scheme and general plan for its improvement and maintenance; and

WHEREAS, Declarant deems it desirable for the management and administration of the planned development and for the preservation of the values and amenities of the planned development to incorporate The Terraces at Morehead Hills Owners Association, Inc., as a non-profit corporation formed under the laws of the State of North Carolina, for the purposes of administering the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws; and

WHEREAS, this Declaration creates a planned community under the North Carolina Planned Community Act (N.C. Gen. Stat. Chap. 47F); and

WHEREAS, the Property and the Declaration are subject to the following documents that have been recorded in the registry prior to the recording of the Declaration, all of which are incorporated by reference as if fully set out herein: Stormwater Facility Agreement and Covenants recorded in Book 8803, Page 511, Durham County Registry.

NOW, THEREFORE, subject to the rights of Declarant established herein, Declarant

hereby declares that all of the Property described on Exhibit "A" which shall specifically include the Lots, Common Elements and Limited Common Elements (as hereinafter defined) which is a part of the Property, shall be held, occupied, improved, used, mortgaged, transferred, sold, leased, rented and conveyed subject to the following easements, liens, charges, assessments, equitable servitudes, restrictions, covenants and conditions, which are for the purpose of protecting the value, use, enjoyment and desirability of the Property, and which shall run with the title to, the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the use, benefit and enjoyment of each Owner (as hereinafter defined).

## ARTICLE I DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

1.1 Act. "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes as same may be amended from time to time.

1.2 Annual Assessment. "Annual Assessments" or "annual assessments" shall mean and refer to assessments levied on all Lots subject to assessment under Article V to fund Common Expenses for the general benefit of all Lots, as more particularly described in Article V.

1.3 Architectural Control Committee. "Architectural Control Committee" or "ACC" shall mean and refer to the committee of the Association created pursuant to Article VI with authorization over new construction, modifications and alterations in the Property.

1.4 Articles. "Articles" shall mean the Articles of Incorporation of the Association as filed with the Secretary of State, State of North Carolina, as the same may be from time to time amended.

1.5 Association. "Association" shall mean and refer to The Terraces at Morehead Hill Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

1.6 Board. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

1.7 Bylaws. "Bylaws" shall mean the document for governance of the Association as adopted initially by the Board, including any amendments thereto.

1.8 City. "City" shall mean the City of Durham, Durham County in the State of North Carolina.

1.9 City Code. "City Code" shall mean and refer to the Code of Ordinances of the City of Durham, North Carolina.

1.10 Common Elements. "Common Elements" shall mean all real property and any improvements constructed thereon, if any, owned by or held in trust for the benefit of the Association for the common use and enjoyment of its Members, or owned by Declarant and designated for the common use and enjoyment of the Association and its Members, and all improvements and facilities constructed thereon for such purposes, including, but not limited, to (without any obligation by implication of Declarant to construct or install same) any signage, irrigation and/or drainage or detention facilities, pond, dam, fountain, water feature, wells, pumps and related facilities, landscaping, decorative walls, retaining walls, bridges, federal mail delivery cluster box units, lighting, swimming pool, wading pool, green or natural area, walking paths or trails, picnic area, roadway, driveway, parking area, playground, gazebo, private streets and curb and guttering related to same, streetlights, or other amenity, if any, constructed on portions of the Property designated "Common Open Space", "Common Area", "Private Open Space", "Recreation Area", "Amenity Area" or other similar designation on Map(s) of the Property recorded in the Office of the Register of Deeds of Durham County and any City Code required shared facility or open space not conveyed to the City. "Common Elements" shall also include (i) all private streets and private utilities, if any, including any utility line serving more than one lot located outside of public street rights-of-way and public utility easements, (ii) all retaining walls constructed by Declarant on any portion of the Common Elements and all improvements within any private retaining wall established on the Maps of the Property, (iii) any public road, right-of-way or cul-de-sac in the Property which has been dedicated to the public on Map(s) of the Property recorded in the Office of the Register of Deed of Durham but not accepted for public maintenance by the appropriate governmental entity, (iv) storm pipes and any median or planting area and related signage, irrigation facilities and lighting constructed by Declarant within rights-of-way within the Property, (v) any real or personal property which the Association now or hereafter owns, leases or holds possessory or use rights in for the benefit of the Owners and their permittees, (vi) such easement rights for right-of-way and appurtenant easements or licenses as Declarant may declare, acquire or reserve or as are granted to the Association for the benefit of the Owners and their permittees or for the use, care or maintenance of any portion of the Property, including, but not limited to, rights-of-way and appurtenant easements for licenses for landscaping, trees, plantings, irrigation, signage, monuments, lighting, water, sanitary sewer, storm sewer, stormwater drainage and/or retention, communications and/or other utility services, (vii) cluster mailboxes installed by Declarant on the Common Elements or other portion of the Property and (viii) any areas designated as Designated Common Areas as described in Article III, Section 7. Declarant hereby grants to the Association an easement over any road, right-of-way or cul-de-sac within the Property which shall automatically terminate upon dedication to and acceptance for public maintenance by the appropriate governmental entity.

1.11 Common Expenses. "Common Expenses" shall mean and include, the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Governing Documents, but shall not include any expenses for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs for improvements constructed by Declarant unless approved by a majority of the Voting Power of the Association; provided, however, the repair, maintenance and replacement of such infrastructure or other original capital improvements shall be a Common Expense and lease

payments on all leased street lights within the Property shall be a Common Expense. Common Expenses shall include (i) all sums lawfully assessed by the Association against its Members; (ii) the actual and estimated expenses incurred or anticipated to be incurred by the Association for administration, maintenance, repair, or replacement of the Common Elements; (iii) the actual and estimated expenses incurred or anticipated to be incurred by the Association declared to be Common Expenses by the provisions of the Act, or any Governing Document; (iv) premiums for hazard, liability, casualty and such other insurance as the Declaration or the Bylaws may require or authorize the Association to purchase or which the Association is required by law to purchase; (v) ad valorem taxes and assessment charges lawfully levied against the Common Elements owned in fee simple by the Association; (vi) the actual and estimated expenses incurred or anticipated to be incurred by the Association as agreed by the Members to be Common Expenses of the Association; (vii) fees for utilities used in connection with the Common Elements; (viii) fees for services of accountants, attorneys, engineers, managers and other professionals engaged by the Association; (ix) the costs and expenses associated with encroachments within the rights-of-way serving the Property in accordance with any encroachment agreement(s) by and among the Declarant, the Association and the City; (x) unpaid assessments following a foreclosure; (xi) lease payments on all leased street lights within the Property ("Street Lights"); (xii) expenses incurred for trash removal providers engaged by the Association to serve the Property; (xiii) payment to the City under the Stormwater Covenant; (xiv) maintenance of federal mail delivery cluster box units, if installed; and (xv) the cost to maintain any private wastewater collection system (including, without limitation, pumps, wastewater treatment works and/or facilities to provide sanitary sewage disposal) to serve the Property.

1.12 Completion of Sales. "Completion of Sales" shall mean the earlier of (a) the conveyance of all Lots in the Property to purchasers other than a builder or a successor Declarant hereunder, or (b) at such time as Declarant records a notice of termination of sales in the public records of the County.

1.13 County. "County" shall mean and refer to Durham County in the State of North Carolina.

1.14 Declarant. "Declarant" shall mean and refer to Terraces at Morehead Hills, LLC, a North Carolina limited liability company, and any successor and assign to whom Declarant assigns its interest as Declarant hereunder, in whole or in part by instrument recorded in the official records of the County.

1.15 Declaration. "Declaration" shall mean and refer to this Declaration and all amendments or supplements hereto.

1.16 Disposal System. "Disposal System" shall mean the private wastewater collection system (including pumps, wastewater treatment works and/or facilities to provide sanitary sewage disposal).

1.17 Exempt Property. "Exempt Property" is defined in Article V, Section 15 herein.

1.18 Governing Documents. "Governing Documents" shall mean and refer to all of the following, as the same may be amended, restated or supplemented from time to time: the Stormwater Covenant; other agreements with Governmental Authorities; the Declaration; the Articles of Incorporation and Bylaws of the Association; plats (or maps, those terms being used interchangeably herein) of the Property or any portions thereof recorded in the Registry; declarations of restrictive or protective covenants applicable to the Property or any portion thereof; and documents withdrawing portions of the Property from the Declaration. In addition to the foregoing, Governing Documents includes the Rules and Regulations of the Association, Board resolutions, architectural guidelines, all applicable supplemental declarations, and all duly adopted amendments and revisions to any of the foregoing documents.

1.19 Governmental Authority. "Governmental Authority" (or "Governmental Authorities") shall mean and refer to the City, the County of 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 Property or any portion thereof, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

1.20 Insurance Trustee. "Insurance Trustee" shall mean and refer to a national banking association or title company licensed to do business in North Carolina as may be designated by the Association to hold and disburse funds as trustee for the Association and the Owners, as provided in this Declaration.

1.21 Institutional Lender. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, U.S. Department of Veterans Affairs, Federal Housing Authority, Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages.

1.22 Legal Requirement. "Legal Requirement" shall be defined as and includes any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, City, the County, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the Property or any portion thereof, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

1.23 Limited Common Element. "Limited Common Element" shall mean those portions of the Common Elements that serve only a single Lot or a limited number of Lots, and which may include, but specifically is not limited to,

(a) the drainage easements and stormwater facilities serving specific Lots as shown on any Map of the Property or as specifically designated in a supplemental declaration; and

(b) such other features as may be designated by a Map of the Property, in a supplemental declaration or as determined by the Board.

1.24 Limited Common Expenses. "Limited Common Expense" "Limited Common Expense" shall mean and refer to expenses related to Limited Common Elements, including but not limited to expenses for maintenance, repair and replacement of Limited Common Elements, which shall be funded by the assessments provided for herein solely by the Owners of the Lots benefitted thereby.

1.25 Lot. "Lot" shall mean and refer to any plot or tract of land shown upon any Map of the Property, as such map or maps may be from time to time amended or modified, designated for residential use and for separate ownership and occupancy. Declarant 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 of Declarant, as the case may be, and to thereby create additional Lots, eliminate existing Lots or Common Elements, or create additional Common Elements; provided, however, in no event shall the Property contain a greater number of Lots than the number from time to time permitted by the appropriate local governmental authority. 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.

1.26 Map. "Map" shall mean and refer to a recorded boundary, recombination or subdivision plat of all or a portion of the Property recorded in the Registry.

1.27 Member. "Member" shall mean and refer to every person or entity who is a member of the Association.

1.28 Mortgage. "Mortgage" shall mean and refer to a mortgage or deed of trust which constitutes a first lien upon a Lot given to a bank, savings and loan association or other institutional lender for the purpose of securing indebtedness incurred to purchase or improve a Lot.

1.29 Mortgagee. "Mortgagee" shall mean and refer to the holder of the beneficial interest in any Mortgage.

1.30 Notice and Opportunity for Hearing. "Notice and Opportunity for Hearing" means giving at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

1.31 Owner. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any person or entity who holds an interest in a Lot merely as a security for the performance of an obligation or as a tenant.

1.32 Person. "Person" shall mean and refer to any individual, corporation, partnership, limited liability company, association, trustee or other legal entity capable of holding title to real property.

1.33 Property. "Property" shall mean and refer to that certain real property described in Article III below and on Exhibit "A" hereto attached.

1.34 Registry. "Registry" shall mean and refer to the Office of the Register of Deeds of Durham County, North Carolina.

1.35 Rules and Regulations. "Rules and Regulations" shall mean those reasonable and nondiscriminatory rules and regulations as maybe adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Declaration.

1.36 Special Assessment. "Special Assessment" or "special assessment" shall mean and refer to assessments levied in accordance with Article V, Section 6 of this Declaration.

1.37 Special Declarant Rights. "Special Declarant Rights" shall mean, without limitation, the rights as defined in Section 47F-1-103(28) of the Act for the benefit of Declarant and its appointees which are hereby reserved in favor of Declarant, including, but not limited to the following: the right to complete, repair, maintain, replace and operate improvements indicated on Maps of the Property, including, without limitation, utility infrastructure, dwellings and Common Elements improvements; the right to exercise any development right; the right to maintain sales offices, manage offices, models and signs advertising the Property; the right to use easements through the Common Elements and through any Lot or Lots for the purpose of making improvements within the Property and repairing, maintaining, replacing and operating improvements within the Property, provided that following the exercise of such rights, the Property will be restored, and the right to elect, appoint or remove any office or Board member of the Association during the period of Declarant control described in Article IV Section 6.

1.38 Stormwater Covenant. "Stormwater Covenant" shall mean the Stormwater Facility Agreement and Covenants document recorded in Book 8803, Page 511, Durham County Registry, and includes any other document between or among the Declarant, the Association, and the City of Durham, North Carolina relating to Stormwater Control Facilities or the handling of stormwater in the subdivision recorded in the Registry and includes all amendments and supplements thereto.

1.39 Stormwater Control Measures or Stormwater Control Facilities. "Stormwater Control Measures" or "Stormwater Control Facilities" are defined herein and in any Stormwater Covenant as one or more of the following devices and measures, together with associated private drainage easements utilized for conveying stormwater (however identified on a plat, map or in a recorded document) that serves more than one (1) Lot or parts of more than one (1) Lot in the Property and which are located outside of public street rights-of-way and drainage easements accepted into public use by the City, including, but not limited to, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas (and similarly designated areas shown on any



recorded plat of the Property), bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property. Private drainage easements, however identified on a recorded plat or recorded map or in a recorded document, that serve more than one (1) Lot in the Property are deemed to be dedicated to the Association for the benefit of the Property or applicable portions thereof.

Except as otherwise provided herein, Stormwater Control Facilities are part of the Common Elements, and maintenance of Stormwater Control Facilities is a Common Expense. References in the Declaration to stormwater management include all applicable Stormwater Control Facilities and Stormwater Covenants. Exhibit "B" to this Declaration, the Stormwater Facility Agreement and Covenants, Mandatory Provisions for Declaration of Restrictive Covenants attached hereto is incorporated into this Declaration as if fully set out herein.

1.40 Voting Power. "Voting Power" means the total number of votes allocated to Members whose membership at the time the determination of Voting Power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Property.

## ARTICLE II GENERAL PROVISIONS

Section 1. Property. The Property subject to this Declaration and within the jurisdiction of the Association is located in the city of Durham, Durham County, North Carolina, and is described more particularly on Exhibit A attached hereto and incorporated herein by reference.

Section 2. Submission. The Property shall be held, conveyed, hypothecated, encumbered, sold, transferred, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (a) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Property and (b) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Property, shall be binding on and inure to the benefit of each and every Person having or acquiring any right, title or interest in the Property, shall be binding upon and inure to the benefit of the successors in interest of such Persons, and shall inure to the benefit of the Association, its successors and assigns.

Section 3. Incorporation by Declaration. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, as amended from time to time, whether or not the deed makes reference hereto.

Section 4. Compliance with Governing Documents. Each Owner, resident, tenant or guest of a Lot shall strictly comply with the provisions, terms, and conditions of the Governing Documents and decisions and resolutions of the Association and its duly authorized representatives, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

Section 5. Enforcement. The failure of any Owner to comply with the provisions, terms, and conditions of any Governing Document shall entitle the Association, any Owner, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

Section 6. Conflicts: Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act in which event the Declaration shall control. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the City Code, the provisions of the City Code shall control unless the City Code permits the Declaration to override the City Code in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Whenever there exists a conflict among the Governing Documents of the Association, the order in which Governing Documents control is as follows: Stormwater Covenant; other agreements with Governmental Authorities; the Declaration; other Governing Documents, except that as to matters of compliance with the Nonprofit Corporation Act, the Articles shall control. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act, the Nonprofit Corporation Act and the Code shall in all cases control over any construction inconsistent therewith.

The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

Section 7. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

Section 8. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

Section 9. Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Elements or part thereof, and the Association shall have the right and the power to make and receive all payments or other consideration necessary therefore or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney in fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board.

Section 10. Notices. Notices shall be in writing and shall be addressed as follows: (a) if to an Owner, to the address of his or her Lot as listed in the County Tax Office; (b) if to Declarant, to 9660-138 Falls of Neuse Rd #392, Raleigh, NC 27615 with a copy to 4530 E. Thousand Oaks Boulevard, #100, Westlake Village, California 91362; and (c) if to the Association, to 9660-138 Falls of Neuse Rd #392, Raleigh, NC 27615 with a copy to 4530 E. Thousand Oaks Boulevard, #100, Westlake Village, California 91362. The Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to all Owners and to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

Section 11. Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

Section 12. Equal Opportunity Housing. This Property provides equal opportunity housing. Each Lot sold shall be sold without regard to the race, creed, color, national origin, ancestry, religion, marital status, familial status, handicap, age or sex of the purchaser.

Section 13. General Amendments and Termination of Declaration.

(a) **Term**. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated as hereinafter provided.

(b) **Amendments**.

(1) Except as otherwise expressly provided herein, this Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117

of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant.

This Declaration may be amended or modified at any time by the vote or written consent of eighty percent (80%) of the Voting Power of the Association. Provided, however, that the percentage of the Voting Power necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Owners is required pursuant to this Section 13 shall become effective when an instrument executed by the Owners voting for such amendment or modification is filed of record in the Office of the Register of Deeds of Durham County, North Carolina; provided, however, such an amendment or modification, in lieu of being executed by the Owners voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Owners, as provided in this Section 13.

Notwithstanding the terms of the immediately preceding paragraph of this Section 13, during the period of Declarant control, Declarant, without obtaining the approval of any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provisions of this Declaration.

(2) Any action to challenge the validity of an amendment adopted under Section 13(b)(1) must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

(c) **Termination.** Following the expiration of the period of Declarant Control, This Declaration shall remain in force until terminated by the affirmative vote of eighty percent (80%) of the Voting Power of the Association.

(d) **Amendment for Correction.** Notwithstanding the foregoing, Declarant may at any time unilaterally amend this Declaration, and thereafter, the Board of Directors of the Association, may amend this Declaration as shall be necessary, in its opinion, to correct obvious errors and omissions herein.

### ARTICLE III PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Each Owner shall have a non-exclusive perpetual right and easement of use and enjoyment in and to the Common Elements and of access to and from such Owner's Lot over any streets, parking areas and walkways comprising a portion of the Common Elements, which rights and easements shall be appurtenant to and shall pass with the title to such Owner's Lot and subject to the following rights and restrictions:

(a) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an Owner, to charge reasonable fees with respect to the use of Common Element facilities, if any, and to limit the use of said facilities to Owners who occupy a residence in the Property. Common Element facilities include private streets and no fees, other than assessments, shall be charged for those facilities.

(b) the right of the Association to suspend the right of an Owner or any Person to use any Common Element or to suspend an Owner's membership rights in the Association (except drainage rights and rights of access to Lots) (i) for any period during which any fine or any assessment against such Owner's Lot remains unpaid; and (ii) after Notice and Opportunity for Hearing, for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations.

(c) The right of the Association, subject to the provisions of the Act (Section 3-112), to encumber or convey all or any part of the Common Elements.

(d) The right of the Association by action of the Board to grant easements, leases, licenses and concessions through or over the Common Elements.

(e) The right of the Association, subject to the provisions of the Act (Section 3-112), to borrow money to improve, repair, restore and reconstruct the Common Elements and to place liens on the Common Elements and otherwise encumber the Common Elements for such purposes.

(f) The right of the Association to adopt Rules and Regulations governing use and enjoyment of the Common Elements, Limited Common Elements or the Property, and to create Limited Common Elements.

(g) The rights of the Association and of Declarant to the use of easements for ingress and egress over, in, to and throughout the Common Elements.

(h) The rights of the Association and Declarant to establish public or private storm drainage easements, sanitary sewer easements, and any and all other easements over the Common Elements as shown on the Maps.

(i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate.

(j) The right of Declarant, its successors and assigns to make any improvements for any reason they deem proper upon the Common Elements, even after their conveyance to the Association. Although not limiting the scope of this easement, this easement shall include the right of access at all times for its employees, agent, subcontractors, invitees, etc., over the Common Elements and shall include the right to construct, maintain and dedicate any additional drainage easements, general utility easements and any additional sanitary sewer or water line easements across any of the Common Elements. This easement shall terminate upon the Completion of Sales or ten (10) years from the date hereof, whichever occurs last. Provided that following construction,

the Common Elements shall be restored to their former condition as is practicable and in no event shall any security interest, including without limitation, mechanics and materialmen liens, encumber the Common Elements because of the work authorized herein.

(k) The Association has the power and authority to enter into such Stormwater Covenants, encroachment agreements and other agreements with a Governmental Authority, utility providers, and other Persons as are reasonably necessary to enable the Association to maintain the Common Elements, and to perform its obligations under the Declaration. During the period of Declarant control, the Declarant has the power and authority to enter into Stormwater Covenants, encroachment and other agreements with a Governmental Authority, utility providers, and other Persons as Declarant, in its sole discretion, determines, each of which agreements are binding on the Association and all Owners, unless otherwise provided therein.

(l) The right of the Association to enter any Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, if any, and the Owner of such Lot shall permit the Association or its representative to enter for such purpose at reasonable times and with reasonable advance notice.

(m) The Association shall accept from Declarant any and all assignments of Declarant rights and obligations under any part or all of the Declaration, any supplemental declaration, any Stormwater Covenant, any easements, any encroachment agreement with a Governmental Authority, or any other agreement with or permit issued by a Governmental Authority, a utility provider, or any other Person, and any document required to be executed with respect to the Property by a Governmental Authority, including assumption of all Declarant or Association obligations which are contained in such documents and agreements or which are incident to such assignments, as they relate to any Common Element, architectural approvals or other functions or services performed or provided by the Association.

Section 2. Title to the Common Elements. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area depicted on the Maps of the Property to the Association in accordance with applicable Legal Requirements (to the extent such Common Areas can be conveyed in fee simple), free and clear of all encumbrances and liens, except those set forth in this Declaration and utility, greenway and storm drainage easements and other matters of public record in the Registry. In the event a conveyance of the Common Area in fee simple would result in an illegal subdivision, then such Common Area as shown on a Map shall be deemed dedicated to the Association for the benefit of the Association and for the common use and enjoyment of its Members. Following conveyance of Common Area to the Association in fee simple, Declarant shall be entitled to a proration credit for all expenses of the Association incurred by Declarant (including insurance and real estate taxes) which have not theretofore been reimbursed to Declarant. The Common Area shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant. Upon such conveyance, maintenance of the Common Area shall be the responsibility of the Association, including, but not limited to, the maintenance of any stormwater facilities that are part of the Common Area. The maintenance of these stormwater facilities, including the expansion of such facilities as required by the City or otherwise, shall be performed to the standard required by the City or other applicable governing body. Title to the Common Areas, including, without

limitation, all private streets, if any, shall be for the perpetual benefit of the Members, and private or public ownership for any purpose other than for the benefit of the Members is prohibited.

### Section 3. Party Walls.

(a) **General Rules of Law to Apply.** Each wall which is built as part of the original construction of the homes upon the Lots and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of replacement, repair and maintenance of a party wall shall be shared equally by the Lot Owners of the homes which share the wall, in proportion to such use.

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

(d) **Easement and Right of Entry for Repair.** Maintenance, and Reconstruction. Every Lot Owner shall have an easement and right of entry upon the Lot of any other Lot Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Element. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Lot Owner shall restore the adjoining Lot or Lots and Common Element to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

(e) **Weatherproofing.** Notwithstanding any other provision of this Section, a Lot Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

(g) **Certification by Adjoining Lot Owner that No Contribution is Due.** If any Lot Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining property Lot Owner has a right of contribution as provided in this section, request from the adjoining Lot Owner or Lot Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Lot Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining Lot Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

(h) **Arbitration.** In the event of any dispute arising concerning a party wall or under the provisions of this Section, the same shall be settled by arbitration in the manner provided under the Uniform Arbitration Act of North Carolina, as the same may be amended from time to time.

#### Section 4. Tenants.

(a) Any Owner who rents or leases his or her Lot to a tenant shall not be entitled to use and enjoy any common facilities on the Common Elements during the period the Lot is occupied by such tenant.

(b) No Owner shall lease or rent less than an entire Lot. Except with respect to construction trailers or model homes which may be used or occupied by Declarant, the Lots shall not be leased for a period of less than six (6) months (unless a lease is executed for a shorter term in connection with the sale of a Lot by an Owner who is to temporarily occupy such Lot following the closing of the sale thereof). Temporary lodging through services such as AirBnB or other similar services/arrangements shall be permitted so long as any Owner wishing to use their Lot for AirBnB or a similar service or arrangement shall provide prior written notice to the Association and shall have a local representative who can be contacted (and who can respond) if there are any issues with the guests on such Lot under the temporary lodging arrangement.

Subject to the foregoing restrictions, Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of the Governing Documents and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of the Governing Documents. No Owner shall place a "For Rent" sign or other such similar sign on its Lot to advertise the Lot for rent.

(c) In the event an Owner shall rent or lease his or her Lot such Owner shall immediately give to the Association in writing:

- (1) the name of the tenant and the Lot rented or leased;
- (2) the current address of such Owner;
- (3) a true and complete copy of the lease or rental agreement; and
- (4) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

(d) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and Special Assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.



(e) With respect to any tenant or any person present on any Lot other than the Owner and the members of the Owner's immediate family permanently residing with the Owner on the Lot, if such Person shall materially violate any provision of the Declaration, the Articles, the Bylaws, or the Rules and Regulations, or shall create a nuisance or an unreasonable and continuous source of annoyance to the Owners or shall willfully destroy Common Elements or personal property of the Association, then upon written notice by the Association such Person shall be required to immediately leave the Property and if such Person does not do so, the Association is authorized to commence an action to evict such Person and, where necessary, to enjoin such Person from returning. The expense of such action including attorneys' fees may be assessed against the applicable Owner and collected as a special assessment pursuant to Article V, Section 8 hereof. The foregoing is in addition to any other remedy available to the Association. The Association shall provide notice to the Owner of a leased Lot concurrently with any notices sent to the tenant of such Lot, and such Owner shall have the right to participate in any hearing or eviction proceeding. The right of eviction provided for herein shall be included in all leases or rental agreements between an Owner and a tenant, but the omission from a lease or rental agreement of such provision shall not affect the Association's right to evict as permitted herein.

(f) See also Article VII, Section 27.

Section 4. Reciprocal Easements. There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Elements as may be adjacent thereto and between adjacent Lots for the flow of rainwater from gutters and downspouts, including, without limitation, the conveyance of stormwater through pipes and related stormwater facilities constructed by Declarant on the exterior of the units on the Lots, the repair of air conditioning units, the repair of fences and similar improvements, lawn maintenance and trash removal (including the transport of sanitary containers for pick up by the applicable disposal service); provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Elements or any adjacent Lot. If any Common Element or Lot improvement (including air conditioning units) encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed by Declarant, or reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance and replacement within the same area shall exist. If any Lot encroaches upon the Common Elements as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, an easement for the encroachment and for its maintenance shall exist so long as it remains. In addition, Declarant hereby reserves unto itself, its successors and assigns, and hereby grants to the Association and establishes a perpetual alienable easement and right on, over and through the reciprocal easements herein described for the purpose of providing services, at this time known or unknown, to the Lots, Common Elements or Limited Common Elements, including any areas of responsibility that are required by the terms of this Declaration to be completed by Declarant or Association.

Section 5. Utility Easements. Any easements for installation, maintenance, replacement, use or repair of public utilities or drainage or detention facilities which are dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way

shall be kept free of buildings, and within such easements no structure, fence, planting or other improvement shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, replacement, use or repair of such public utilities or drainage or detention facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. Notwithstanding anything contained herein to the contrary, any such easement dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way shall be maintained by the Owner(s) of any affected Lot(s) to the extent so encumbered by said easement, including all storm drainage facilities as shown on the Map, except as otherwise indicated by such Map or unless maintenance has been assumed by the Association or any public utility or governmental entity having jurisdiction thereover. All such easements described in this Section 5 at all times shall be accessible to Declarant until the Property is completed and at all times shall be accessible to all Persons installing, repairing, using or maintaining such utilities and drainage facilities.

All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage (including the Disposal System) and television cables, running from the main trunk line or service location to any Lot must be underground. Until the date that is one (1) year after the Completion of Sales, the Declarant reserves unto itself, its successors and assigns, a perpetual alienable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utility lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to the Property on, in, under and over the private streets or roads and over any Lot, and over such areas as are so identified on any Map of the Property or shown on any site plan or construction drawings for the Property on file with and approved by the City. In addition, the Association may cut, in the above described easements, as well as anywhere else as required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along streets fronting property lines, Declarant reserves the right to install, maintain and repair pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association upon the Completion of Sales. Any easements first established on property not owned by the Declarant must be consented to by the Owner of such property and evidenced on the Map or in recorded instrument creating the easement.

The Declarant may, but shall not be required to, release any of the easements reserved herein as to any Lot for which it deems such easement is unnecessary for the efficient development and operation of the Property.

Section 6. No Subdivision of Lots; No Time-Sharing. Other than that effected by Declarant in preparing and recording Maps, or in revising recorded Maps, there shall be no further: subdivision or partition of any Lot nor shall any Owner other than Declarant, or any other person acquiring any interest in a Lot seek any partition or subdivision thereof unless the Association consents to such subdivision or partition as evidenced on a Map. There shall be no time-sharing or other co-ownership which allows multiple Owners sequential possessory interests in a Lot.

Section 7. Designation of Common Elements. Declarant may designate certain real property, including portions of one or more Lots, and any improvements situated thereon, including, without limitation drainage facilities and retaining walls constructed by Declarant, as Common Elements by describing such real property in a document recorded in the Durham County Registry ("Designated Common Elements" or "Designated Common Areas"). The Association shall be responsible for maintaining the Designated Common Areas and all costs associated with the maintenance, repair, and replacement of such improvements thereon shall be Common Expenses and shall be recovered by Annual Assessments or Special Assessments levied by the Association. Pursuant to the terms of Article III, Section 1 of the Declaration, the Association shall have the right of access over and upon the Lots as necessary in connection with any maintenance, repair or replacement of such Designated Common Elements or Designated Common Areas as required hereunder.

Section 8. Sale of Common Elements. Except as otherwise provided in this Declaration and except as provided in the Act, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall, or may be, effected.

Section 9. Enforcement. Unless otherwise limited by the terms and provisions of the Act, the Association shall be authorized to impose sanctions for violations of the Governing Documents. Sanctions may include reasonable monetary fines not to exceed \$100.00 per day for each day more than five (5) days after decision that the violation occurs and suspension of the right to vote and to use any facilities within the Common Elements after Notice and Opportunity for Hearing (excepting drainage rights and rights of access to Lots). In addition, the Association, through the Board, after Notice and Opportunity for Hearing, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations of the Governing Documents or to abate nuisances. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Governing Body. The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Property, as provided by the Governing Documents.

Section 2. Membership. Membership in the Association shall be composed of and limited to Owners. Each Owner, including 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.

Section 3. Voting. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of Declarant; provided, however, that Declarant shall become a Class A Member when its 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 interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited. 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 any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot. In the event that two or more Lots are recombined to form one Lot, the owner of the new Lot shall only be entitled to one vote for the new Lot.

Class B. Class B Member shall be Declarant which shall be entitled to ten (10) votes for each Lot owned; provided that Declarant's Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) the Completion of Sales; or (b) ten (10) years after the first Lot is conveyed to an Owner for use as a residence.

Section 4. Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not vest until the Annual Assessment against that interest has been levied by the Association as provided in Article V; provided, however, that Voting Rights shall be immediately vested with respect to the approval of any amendments to this Declaration.

Section 5. Declarant Voting Rights. Declarant shall have the right to cast votes attributable to Lots owned by Declarant on all matters submitted to a vote of the Members.

Section 6. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles, or in the Bylaws, Declarant hereby retains the right to designate and select all of the Members of the Board of Directors of the Association and any officer or officers of the Association, whether or not an Owner, until ninety (90) days after the first of the events to transpire outlined in Section 3 of this Article IV concerning the termination of the Class B Member status of Declarant or the surrender by Declarant of the authority to appoint and remove directors and officers by an express document relinquishing such rights executed and recorded by Declarant. Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board and any officer or officers of the Association and to replace such person or persons with another person or other persons to act and serve in the place of any members or members so removed for the remainder of the unexpired term of any member or members so removed. 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 it 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, which contracts and agreements, to the extent they are not bona fide or are unconscionable, may be terminated by the new Board of Directors upon not less than ninety (90) days' notice to the other party in accordance with Section 47F-3-105 of the Act. 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. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board of Directors which Declarant is not entitled to designate or select shall be elected by the Members of the Association. The Declarant shall be entitled, at its sole discretion, to assign all or part of its rights under this Declaration to the Association prior to the conversion of Class B membership to Class A membership.

Section 4. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association.

#### ARTICLE V COVENANT FOR ASSESSMENTS

Section 1. Covenant to Pay Assessments: Lien. Declarant, for each Lot owned by Declarant, hereby covenants to pay, and every Owner 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 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 Assessment 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 or the Act, shall be and become a lien upon the Lot assessed as provided in Section 47F-3-116 of the Act when such annual or special assessment remains unpaid for a period of thirty (30) days or longer and the Association causes to be recorded in the office of the clerk of superior court in the County a claim of lien, the content of which is provided in the Act.

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 cancellation of claim of lien stating the satisfaction and the release of the lien thereof. The lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien except for (i) tax liens for real Property taxes on the Lot, (ii) assessments on any Lot in favor of any municipal or other governmental body and (iii) the lien of any Mortgage or the lien of any other encumbrance recorded before the docketing of the claim of lien in the office of the clerk of court. The lien may be enforced by foreclosure in accordance with North Carolina law, or in any other manner permitted under the Act or by law. The Association shall have power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same. Before filing a claim of lien against any Lot, the Association shall make reasonable and diligent efforts to ensure that its records contain the Owner's current mailing address and make a written demand to the defaulting Owner for payment of the delinquent assessments, together with late charges, interest, reasonable collection costs and reasonable attorneys' fees, if any. The Owner shall be notified in writing of the Association's intent to seek payment of attorneys' fees and court costs in accordance with Section 47F-3-1 16(e) of the Act.

The claim of lien shall be subordinate to the lien of any first mortgage or the lien of any other encumbrance recorded before the docketing of the claim of lien in the office of the clerk of court. The sale or transfer of any Lot shall not affect the lien except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure of a first mortgage or any bona fide, good faith proceeding in lieu thereof shall extinguish the lien as to payments which became due prior to the sale or transfer. Such unpaid Assessments shall be deemed Common Expenses collectible from all Owners, including the purchaser at foreclosure. In addition, no sale or transfer shall relieve the Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 2. Personal Obligation. Each Annual Assessment 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 held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment respecting such Lot shall be both joint and several. No Owner may exempt himself or herself from payment of assessments, or installments, by waiver of the use or non-use of Common Elements or of any other portion of the Common Elements or by abandonment or leasing of his or her Lot.

Section 3. Use of Assessments. Annual Assessments or Special Assessments paid by Declarant and other Owners shall be used to pay the Common Expenses of the Association (including those for the Disposal System). The foregoing is intended as an authorization of the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

Section 4. Reserve Funds. The Board shall establish and maintain reserves in accordance with standard accounting practices and procedures for Common Element replacements and maintenance and the initial budget of the Association. In addition, the Board shall establish and maintain a reserve account to provide for future maintenance and replacement of private streets and alleys servicing the Lots, if any, and the Stormwater Budget Line Items as mandated pursuant to the Stormwater Covenant, which requires a separate line item for "Major Reconstruction Fund". Similarly, the Board shall establish and maintain a reserve account to provide for future maintenance and replacement of the Disposal System as mandated pursuant to the Declarant's Operational Agreement with the State of NC, which requires a separate fund within the budget for maintenance, repair and replacement of the Disposal System. Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in the discretion of the Board unless a different level of reserves is approved by the vote or written consent of a majority of the Voting Power of the Association or as specifically provided in the Stormwater Covenant with respect to the Major Reconstruction Fund. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be expended for any other purpose without the vote or written consent of a majority of the 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 funds may be allocated for any other expense of the Association at the Board's discretion. Notwithstanding the foregoing, the Stormwater Covenant shall control with respect to the establishment, maintenance and use of the Major Reconstruction Fund, and the Operational Agreement shall control with respect to the establishment, maintenance and use of the funds for the Disposal System.

Section 5. Regular Annual Assessments.

(a) The Annual Assessment for each Lot owned by a Class A Member for the first assessment year shall be a maximum of \$1,500; provided, however, that if the first assessment year shall have fewer than twelve (12) months, the foregoing amounts shall be proportionately reduced. The Annual Assessment for each Lot owned by a Class B Member shall be zero; provided, however, Declarant shall be obligated to fund any budget deficit pursuant to Section 13 of this Article V.

(b) From and after the first year of Annual Assessments, the Board shall adopt a proposed budget, considering all current costs and expenses of the Association, any accrued debts, and reserves for future needs and fix the amount of the Annual Assessment as to each Lot for the then current calendar year and shall thereafter adopt a proposed budget for each subsequent calendar year at least thirty (30) days prior to January 1 of such calendar year. The Association shall send written notice of the amount of the Annual Assessment and a summary of the proposed budget, as well as the amount of the payment due, to each Owner within thirty (30) days after the adoption by the Board of such budget. To the extent required by North Carolina General Statutes Section 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes Section 47F-3-103(c), or other applicable law, the Board shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be voted on at any such meeting is within the maximum increase limits set forth in subsection (c) below, the budget is ratified unless at such meeting Members exercising all of the Voting Power in the Association reject the budget. If the proposed budget to be voted on at any such meeting exceeds the maximum increase limits set forth in subsection (c) below, the budget is ratified unless at such meeting Members exercising a majority of the Voting Power in the Association reject the budget. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments.

(c) For and after the first year of Annual Assessments, and thereafter, the Board, by a vote in accordance with the Bylaws, without a vote of the Members (unless required under N.C. General Statutes Section 47F-3 103(c) or other applicable law, in which case the procedures set forth in subsection (a) above shall apply), may increase the Annual Assessment each year by a maximum amount equal to the previous year's Annual Assessment times ten percent (10%) (the "Maximum Annual Assessment").

(d) From and after the first year of Annual Assessments, the Annual Assessment may be increased above the Maximum Annual Assessment amount by a vote of a majority of the Voting Power, plus the written consent of Declarant (so long as Declarant owns any part of the Property).

(e) The Board may fix the Annual Assessment at an amount not in excess of the Maximum Annual Assessment, subject to the procedures set forth in subsection (b) above if

applicable. If the Board shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"), subject to the procedures set forth in subsection (b) above, if applicable. In no event shall the sum of the Annual Assessments and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth herein.

Section 6. Special Assessments. In addition to the Annual Assessment authorized herein, the Board may levy, in any assessment year, Special Assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a Common Element and the private roadways servicing same; provided, however, Special Assessments which exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without the vote or written consent of eighty percent (80%) of the Voting Power of the Association.

Notwithstanding the foregoing, the Board may levy a special assessment for additional funds necessary for the construction, repair and maintenance of the Disposal System as Special Assessments in the event the annual amount allocated under the Common Expenses is insufficient for cost related to the Disposal System. There shall be no limit on the amount of any Special Assessments for the Disposal System, and such Special Assessments may be made at any time.

Section 7. Allocation of Assessments. All Annual Assessments and Special Assessments shall be levied equally against all Owners except:

(a) Annual Assessments levied on Lots owned by a Class A Member shall be a maximum of \$1,500.00 per annum for the first assessment year as adjusted for subsequent years in accordance with Section 5 of this Article V; Annual Assessments levied on Lots owned by a Class B Member shall be zero; provided, however, Declarant shall be obligated to fund any budget deficit pursuant to Section 13 of this Article V; and

(b) Adjustments for Limited Common Elements. Limited Common Expenses shall be assessments charged and payable by Lot Owners benefitted by the Limited Common Elements on an as needed basis depending on the nature of the expense incurred.

Section 8. 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 or her Lot or his or her residence into compliance with the provisions of the Governing Documents.

Section 9. Commencement of Assessments. Time of Payment. The Annual Assessments provided for herein shall commence as to all Lots on the first day of the month next following the conveyance of the first Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence. The first assessment year shall be the period commencing on the date Annual Assessments commence and ending on the December 31 next following. The Annual Assessment for the first assessment year shall be prorated from the amounts 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. The Annual Assessments provided for herein shall commence as to each Lot at the time of recording of a deed from the Declarant of a Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in annual, semiannual, quarterly or monthly installments. Unless the Board otherwise provides, the Annual Assessments shall be paid monthly in arrears. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

Section 10. Revised Assessments. Subject to the provisions of Section 5 of this Article V, if at any time during the course of any year the Board shall deem the amount of the 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 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.

Section 11. Delinquent Assessments: Fines. Any assessment not paid within thirty (30) 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 Article III, Section 9 may be imposed in an amount not to exceed the greater of (i) ten percent (10%) of the amount of the unpaid Assessment, or (ii) twenty dollars (\$20.00) per month. The Association may bring a 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 (except drainage rights and rights of access to Lots) 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.

Section 12. Capital Contributions. Notwithstanding any provision contained herein or in any other document or instrument to the contrary, every Owner (other than a successor Declarant) who purchases a Lot from Declarant shall pay to the Association at the time of the closing of such purchase a non-refundable capital contribution fee in the amount of \$1,000.00, which amount shall be paid to the Association as a contribution towards operating expenses and/or for the maintenance, repair, construction and replacement of capital assets and improvements to the Common Elements and the Property ("Capital Contribution"). It is expressly provided herein that such Capital Contributions shall not be held for the benefit of the Owner paying such amount at closing, shall not be required to be held in an interest-bearing account, shall not be required to be held as a separate fund, and shall not reduce an Owner's obligation to pay Annual Assessments or Special

Assessments. On each subsequent sale of the Lot, the buyer of the Lot shall be required to pay to the Association the Capital Contribution. The Board may adjust the amount of the Capital Contribution from time to time.

Section 13. Declarant's Obligation to Fund Budget Deficit. Declarant shall satisfy all obligations for Annual Assessments on Lots which it owns by funding the budget deficit during the period of Declarant control described in Article IV, Section 6. The budget deficit is the difference between the amount of Annual Assessments levied on Class A Member-owned Lots, plus any other income received during the calendar year, and the amount of the Association's actual expenditures during the calendar year, including reserve contributions. Upon the expiration of the period of Declarant control, Annual Assessments on Lots owned by Declarant shall be zero and, in the event a deficit results, the Association, and not Declarant, shall be responsible for such deficit and its funding.

Any such deficit funding will, in the Declarant's sole discretion, be (A) a contribution to the Association, (B) in-kind services or (C) an interest-free loan to the Association. The amount and character (contribution, advance or loan) of such payment by the Declarant will be conspicuously disclosed as a line item in the budget and will be made known to the Owners. The payment of such a subsidy in any year will under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant. Any such subsidy payment by the Declarant may be made in-kind.

Section 14. Reserves for Stormwater Repair and Reconstruction. The budget of the Association shall at all times contain a line item for routine maintenance of any stormwater detention or retention facility located on the Common Elements and a separate line for the repair and reconstruction of such stormwater facilities.

Section 15. Exempt Property. "Exempt Property" is defined as all portions of the Property included within any of the following categories:

- (1) Common Elements;
- (2) Portions of the Property owned by, or dedicated, conveyed, or granted to and accepted by, the City or a utility for a public purpose or in connection with the provision of utility services, including property within the right-of-way of publicly-dedicated streets and roads; and
- (3) A portion of the Property that is used for public education and instruction and owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina or any other governmental entity or agency.

Except as otherwise provided in this paragraph, Exempt Property shall not be subject to the assessments under the Declaration. Provided, however: (i) Exempt Property under the foregoing subsection (2) on which a dwelling unit is located is subject to the assessments under the Declaration; (ii) Exempt Property under the foregoing subsection (3) on which a dwelling unit

is located is subject to the assessments under the Declaration; or (iii) unless a portion of the Property otherwise qualifies as Exempt Property, a Lot on which an easement dedicated, granted, or conveyed to the City or a utility is located, is not exempt from assessments. The Owner of any Exempt Property that is not subject to assessments shall have no membership or voting rights in the Association associated with the ownership of such Exempt Property.

Unless and until such time, if any, as it loses its exempt status, all Exempt Property owned by, or subject to an easement to, the City or a utility provider, including all Exempt Property within publicly dedicated street rights-of-way, and all Exempt Property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina and used for public education and instruction are exempt from all of the provisions of the Declaration, except for any easements over such Exempt Property reserved in the Declaration by or for the Declarant, the Association, the City or any other Person, and except for all rights and benefits accruing to such Exempt Property under the Declaration and zoning conditions of the Property, including, without limitation, the rights and benefits to use the open space and tree conservation areas within the Property.

Exempt Property that loses its status as exempt (e.g., property within a publicly-dedicated street right-of-way that has been closed as a public street or property formerly owned by the City or a tax-exempt charitable or nonprofit organization for public education and instruction which has been conveyed to a Person whose status does not qualify for the exemption) shall be classified either as a Lot or Common Element as determined in the reasonable discretion of the Declarant, during the period of Declarant control, and thereafter by the Board, and shall be subject to all of the terms and provisions of the Declaration in the same manner and to the same extent as other Lots and Common Elements.

Section 16. Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

## ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Architectural Control. No improvements, alteration, change in paint color, excavation, change in grade, or other work which in any way alters the exterior of any portion of the Property or the improvements located thereon from their natural or improved state shall be commenced, erected, or maintained and no building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered or removed without the prior written consent of Declarant or the Board, as applicable. Any repairs made to the exterior of property must conform to the existing improvements.

No building, swimming pool, spa, statuary, flag pole, mailbox, basketball goal or other sports equipment (permanent or portable), fence, wall, gazebo, or any other structure or improvement shall be placed, erected, commenced, constructed, demolished, rebuilt or altered upon any Lot or attached or affixed to any improvement upon any Lot or upon the Common Element nor shall any exterior addition to or change or alteration of a residence building be made, including, but not limited to, additions or alterations to any deck, fence, wall, driveway, or patio, planting or clearing and cutting of trees, color or painting of the exterior (other than maintenance to and touch-up painting to preserve the original exterior paint) or change of the type of exterior finish, the installation of aerials, satellite dishes, flags or awnings or the addition of any exterior attachment (such as a storm door) until an application, including plans and specifications showing the nature, kind, shape, height, materials, finishes, colors and location of the same (including floor plans and elevations) (the "Plans"), shall have been submitted in triplicate to and approved in writing by the ACC; provided, however, that no such approval shall be required for alterations solely to the interior of any residential structure. The Board may require a reasonable fee to accompany each application for approval. The ACC shall have the absolute and exclusive right to approve or disapprove Plans in its sole discretion and may approve or disapprove Plans based on purely aesthetic reasons, which in the sole discretion of the ACC shall be deemed sufficient. Absent an approval from the ACC the proposed alteration or improvement may not be commenced. **THE RESTRICTIONS HEREIN CONTAINED SHALL HAVE NO APPLICATION TO THE DEVELOPMENT, IMPROVEMENT, MAINTENANCE AND REPAIR OF THE PROPERTY BY DECLARANT OR BY THE ASSOCIATION, AND NEITHER THE BOARD NOR THE ARCHITECTURAL CONTROL COMMITTEE SHALL HAVE ANY POWER OR AUTHORITY TO REVIEW OR REQUIRE MODIFICATIONS TO THE PLANS FOR CONSTRUCTION OR INSTALLATION OF IMPROVEMENTS BY DECLARANT.**

The installation of antennae and of satellite dishes or disks shall be permitted on a Lot if accomplished in strict compliance with the limitations and conditions imposed by the Telecommunications Act of 1996, as amended from time to time, but no antenna or disk which is in any dimension larger than prescribed by the Telecommunications Act of 1996 or which is not installed in accordance with the advance notice requirements and location guidelines of the Telecommunications Act of 1996 may be installed or maintained on any Lot except with the prior written approval of the ACC.

The installation of solar panels or other "green energy" improvements ("Green Energy Improvements") to the roof or exterior of a dwelling located on a Lot shall be permitted in accordance with N.C. General Statutes §22B-20 after approval by the ACC. Upon any such approval for the installation of Green Energy Improvements, the Owner of such Lot, its successors and assigns, shall thereafter be responsible for the installation, maintenance and repair of the Green Energy Improvements and any and all damage caused to the dwelling on the Lot or to adjacent dwellings, if applicable, during the installation, maintenance or repair of such Green Energy Improvements, and, as a condition to such approval, Declarant and/or the ACC may require the Owner of the subject Lot to enter into a license or other agreement relative to same. The Association shall not be responsible for the installation, maintenance or repair of Green Energy Improvements installed by an Owner.

Section 2. Architectural Control Committee.

(a) **Membership:** Right of Declarant to Act as the Architectural Control Committee with Respect to Initial Construction.

(i) The ACC shall be composed of three (3) persons (who need not be Members of the Association) appointed by the Board. A majority of the ACC may designate a representative to act for it. In the event of death, resignation, or removal by the Board of any member of the ACC, the Board shall have full authority to designate a successor. Unless otherwise approved by the Association, neither the members of the ACC nor its designated representative shall be entitled to any compensation for services performed pursuant to this Section. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the ACC and a list of the names and addresses of any designated representatives of the ACC, and such a list shall be available in the principal office of the Association to any Owner upon request.

(ii) Notwithstanding the foregoing, as to the initial construction of improvements on any Lot (the "Initial Construction of Improvements"), the Declarant shall serve as the ACC responsible for the review, approval, and monitoring of construction of improvements. Any requests for modifications or alterations of improvements in fact constructed on a Lot or for the construction of additional improvements on a Lot shall be the responsibility of the ACC, which need not be the Declarant if it so directs, but, if not the Declarant, Declarant shall have the right to approve or disapprove any decisions made by the ACC upon fifteen (15) days written notice to the ACC and the applicable Owner following the thirty (30) day period for the ACC's decision. The rights of the Declarant pursuant to this section shall cease upon the Completion of Sales. Prior to the Completion of Sales, the Declarant may at any time relinquish, either temporarily or permanently, its rights to review, approve and monitor the Initial Construction of Improvements.

(b) **Procedure.** At least sixty (60) days prior to the commencement of any construction on a Lot, the Plans for such Lot shall be submitted to the ACC. Approval shall be subject to such regulations and architectural standards as may from time to time be promulgated by the ACC. Within thirty (30) days after receipt of the Plans and any other requested information, the ACC shall notify the Owner of the Lot in writing as to whether the Plans have been approved. Unless a response is given by the ACC within thirty (30) days from receipt of all required information, the Plans shall be deemed approved. The response of the ACC may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time period for further ACC response shall only commence upon receipt of the requested additional information. No construction shall be commenced until either the fifteen (15) day time period for Declarant's approval has passed or Owner has received Declarant's approval if the ACC is not the Declarant and Declarant still has the rights as outlined in Section 2(a)(ii) of this Article VI. If an approval with conditions is granted and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot, and the conditions imposed shall become a part of the approved Plans. No improvements shall be constructed except in strict conformity with the approved Plans. The ACC shall have the right to monitor construction of improvements and investigate compliance with the approved Plans and is hereby granted the right to enter upon any Lot in order to do so.

Any Owner who submits Plans to the ACC and disagrees with the finding of the ACC may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following its receipt of notice of denial. The Board shall review the Plans and hold a meeting to hear the case with the Owner and the ACC or its representative. At such meeting the ACC or its representative shall present to the Board specific reasons why the Plans were denied, and the Owner or his agent may present information challenging the findings of the ACC. The decision of the ACC shall only be overridden by a majority vote of the Board. Notwithstanding the foregoing, an Owner shall have no right to appeal decisions by the Declarant acting as the ACC with respect to the Initial Construction of Improvements or to approvals by the ACC which are disapproved by the Declarant pursuant to Section 2(a)(ii) of this Article VI.

The Association may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and related documents are submitted to the ACC. The ACC shall have the right, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the ACC in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot and shall be in addition to any fees due for processing any requests for approval.

All notices required to be given under this Section 2(b) of Article VI shall be given in writing and delivered by hand, mailed with prepaid postage or deposited with an overnight carrier (e.g. Federal Express, UPS, etc.). If the ACC denies an application, the ACC shall specify the particular grounds upon which denial of such application is based. If the ACC approves the application, one set of Plans, marked approved (or approved with specified conditions), shall be retained by the ACC, and the remaining two sets of Plans shall be returned to the applicant.

Section 3. Maintenance of Construction Activities. During the construction of any improvement to a Lot, the Lot, roads, landscaping and Common Elements or Limited Common Elements adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Any damage to the street, curb, sidewalk or to any part of any Common Elements, Limited Common Areas or utility system caused by an Owner or an Owner's builder shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

Section 4. Timely Completion. When construction of any Lot, structure, improvement, or addition thereto has begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that all phases of work, including execution of the landscape plan, be complete within six (6) months of the date of ACC approval. In the event that completion is delayed beyond six (6) months from the date of ACC approval and provided the Owner is notified within thirty (30) days of the expiration of the six (6) month construction period, the ACC may, upon unanimous vote of the committee, rescind the original approval and require that the Owner resubmit Plans for approval.

Section 5. Reconstruction of Residences. In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original plans; provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the ACC to reconstruct or repair his or her residence in accordance with revisions in the Plans. The ACC shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Property in a manner generally consistent with the plan and development thereof.

Section 6. Limitation of Liability. Review and approval of any application pursuant to this Article VI is made on the basis of aesthetic considerations only and the ACC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

Section 7. Enforcement. Any construction, alteration, or other work done in violation of this Article VI shall be deemed to be nonconforming. Upon written request from the Board, the ACC or the Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the nonconforming Lot and collected as a special assessment pursuant to Article V, Section 8 hereof.

Any contractor, subcontractor, agent, employee, or other permittee of an Owner who fails to comply with the terms and provisions of this Article may be excluded by the Board from the Property. In such event, neither the Association, its officers, or directors shall be held liable to any person for exercising the rights granted by this Section 7 of Article VI.

In addition to the foregoing, the Board shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article VI and the decisions of the ACC.

Section 8. Miscellaneous. Any requests for waivers or approvals regarding the restrictions set forth above must be submitted in writing to the ACC, and a written response shall be issued with thirty (30) days of such request. The ACC, or their appointed agents, shall have the right, at their election, but shall not be so required, to enter upon any of the Lots to evaluate any pending inquiry or request.

## ARTICLE VII USE RESTRICTIONS

In addition to the architectural control restrictions set forth in Article VI above, the use restrictions contained in this Article VII also apply to the Property.

Section 1. Rules and Regulations. The Association shall have the right to adopt, publish and enforce Rules and Regulations governing the Property, the use and enjoyment of the Common Elements, and any facilities thereon, and the personal conduct thereon of the Owners or other Persons, their guests, invitees, members of their families or households and tenants. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws. Rules and Regulations and any changes thereto shall be effective upon Board approval and shall be posted in a conspicuous location within the Property or mailed to each Owner addressed to the Owner's address last appearing in the books of the Association, postage prepaid, within thirty (30) days of Board approval.

Section 2. Use of Property. Except as otherwise provided in this Declaration, Lots shall be used for single-family attached dwelling units, including accessory structures and uses, and recreational use related to such residential use and for no other purpose. The Association shall not interfere with any Owner's freedom to determine the composition of his/her household, except that it may enforce reasonable occupancy limits. Except with respect to construction trailers or model homes which may be used or occupied by Declarant, no Owner shall use or cause or permit to be used his or her Lot for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose. The foregoing 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 ordinance 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. 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.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

### Section 4. Animals.

(a) No animals shall be raised, bred or kept on any Lot or the Common Elements, 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 indoor pets, such as dogs and cats, shall not exceed a total of three (3) in number except for newborn offspring of such household pets which are under six (6) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an



unreasonable annoyance, inconvenience or nuisance, including, but not limited to a complaint that an Owner's animal is being neglected, improperly treated, or not properly restrained upon such Owner's Lot, or if upon Common Elements, nor properly leashed, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and may require the complainant to present evidence of unreasonable annoyance, inconvenience or nuisance at the hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Property. At no time shall animals be allowed to be chained or tied in the Common Elements. Each Owner shall also be responsible for cleaning up the feces of its animals both on its Lot and on the Property.

(b) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including (if not already mandated by applicable laws of the City) rules requiring that all animals be kept on a leash when in the Common Elements and/or that animals be restricted to designated areas within the Common Elements. 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 Property 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 or nuisance be removed as provided in Section 4(a) of this Article VII.

Section 5. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Common Elements which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements.

Section 6. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain such portion of the Property.

Section 7. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot except as provided for in Article VII, Section 2 hereinabove, except that the Declarant or its agents may maintain a sales or rental office on the Property and construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Property.

Section 8. 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 nor shall an Owner place newspapers or bed sheets in any window. Except as otherwise required by the City, no sign of any kind shall be displayed to the public view on any Lot other than one sign of not more than three (3) square feet advertising a Lot for sale and signs of not more than three (3) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not

be placed on a Lot earlier than forty-five (45) days before such election and shall be removed within two (2) days after such election. Signs advertising a Lot for rent are prohibited. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the ACC. Notwithstanding the foregoing, Declarant or its agents shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Elements in connection with the development and sale of the Lots.

Section 9. Fences, Walls and Hedges, Statues, Yard Art. No fence or fencing type barrier of any kind, other than existing fencing and fencing installed by Declarant, shall be placed, erected, allowed or maintained upon any portion of the Property unless plans therefore have been approved, in advance, by the ACC pursuant to the provisions of Article VI. Chain link fencing is expressly prohibited. No hedge, shrubbery, or other planting, nor other plant screening shall be installed on any Lot except with the prior written permission of the ACC.

Section 10. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements or Limited Common Elements except at the direction or with the express written consent of the Association.

Section 11. Common Elements and Limited Common Elements Use. The Common Elements and Limited Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Property, subject to the Rules and Regulations that may be adopted by the Association pursuant to its Bylaws.

Section 12. Parking. No vehicles of any type shall be parked on the street rights of way within the Property, except temporarily and not on an overnight basis. To enhance the streetscape in the Property, it shall be required that each Owner park its vehicles in its' garage or driveway on the Lot. All garages shall be used primarily for the storage of vehicles. No vehicles of any type shall be parked or stored on any part of a Lot other than in the garage or driveway of such Lot. No vehicles of any type shall be parked on the sidewalk or grass on any Lot. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Property, except in the case of emergency and except as may be permitted by the Rules and Regulations. No vehicle of any type which is abandoned or inoperative shall be stored or kept on any part of the Common Elements or on any Lot, and no automobiles or other mechanical equipment may be dismantled or parts thereof stored on any said Lot. No boats, trailers, campers, motorhomes, tractor trailers shall be parked on any Lot, on the Common Elements, or on any right of way of any roads or streets within the Property or adjoining the Property by any Lot Owner, its family members, tenants or contract purchasers, except inside an enclosed garage located on a Lot; provided, third-party delivery and maintenance vehicles are permitted on a temporary basis.

The prohibition in this Section 12 of Article VII shall not apply to contractor's trucks and vehicles during the construction of any dwelling, garage or accessory building, it being clearly understood that contractor's trucks and vehicles shall be permitted to park on the roads and streets within the Property during the day while construction is ongoing until completion of any dwelling, garage or accessory building. No contractor vehicles or trucks may remain parked overnight on any street. An Owner shall be responsible for repairing any damage to the road right of way due

to traffic from construction, social or other events undertaken or sponsored by that Owner. Vehicles displaying advertising must be parked in a garage.

An Owner, his household, tenants or guests shall not park any vehicle in any undesignated portion of the Common Element, on the street rights of way (except as permitted in designated spaces) or on the alleyways within the Property. Owners shall be subject to sanctions if the parking regulations are violated. Sanctions may include reasonable monetary fines not to exceed \$100.00 for each day more than five days after decision that the violation occurs per day and suspension of the right to vote and to use any facilities within the Common Elements after Notice and Opportunity for Hearing (except drainage rights and rights of access to Lots). In addition, the Association, through the Board, after notice to the Owner, shall have the right to exercise self-help to cure violations, including the towing of vehicles at the Owner's expense. The Association shall have the right to require the Owners to register the license plate number of any vehicle of the Owner or any member of its household with the Association.

Section 13. Underground Storage Tanks. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other toxic product will be allowed anywhere in the Property.

Section 15. Detached Structures and Guest Facility. No accessory buildings or detached structures shall be placed, erected, allowed or maintained upon any Lot unless installed by Declarant, without obtaining prior written approval from the ACC.

Section 16. Delivery Receptacle. No mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or located on any Lot unless and until the size, location, design and type of material for the receptacle shall have been approved by the ACC. The mail delivery for the development may be via the Federal Post Office mandated cluster box unit delivery system, and if so, Declarant shall install one (1) or more cluster mailboxes with a mail box assigned to each Lot. The Association shall be responsible for the maintenance and repair of the cluster mailboxes and the costs of such maintenance and repair shall be a Common Expense. Declarant reserves the right to install such cluster mailboxes on one (1) or more of the Lots or other portion of the Property and hereby reserves a Common Element easement across any such Lots upon which such cluster mailboxes are installed for the repair and maintenance of the cluster mailboxes as required hereunder. If any cluster mailboxes are installed upon a Lot, a Common Element easement for such improvements and for the repair and maintenance for such improvements shall exist.

Section 17. Antennae. As provided in Article VI, except for such as are covered by, and installed in strict compliance with, the requirements of the Telecommunications Act of 1996, as amended, no Owner shall construct, install, erect or maintain any outside television or radio pole or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner or permitted by an Owner to remain on his or her Lot, without the express written approval of the ACC.

Section 18. Construction Limitations. During construction, all vehicles involved, including those delivering supplies, must enter the Lot on a driveway only as approved by the

Board so as not to damage unnecessarily trees, street paving and curbs. During construction, builders must keep the homes, garages, and building sites clean and free of debris. All building debris, stumps, trees, etc., must be removed from each Lot by builder as often as necessary to keep the house and Lot attractive. Such debris shall not be dumped in any area of the Property.

Section 19. Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be carried on or conducted on the Property.

Section 20. Drying Areas. Clotheslines or drying yards shall not be located upon any Lot.

Section 21. Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

Section 22. Artificial Vegetation. Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Property. Exterior sculpture, fountains, and similar items are subject to the prior approval of ACC.

Section 23. Recreational and Other Equipment. No recreational equipment (including but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be placed in the front yard of a Lot except that a basketball goal may be located in a driveway. No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition and shall be maintained in good condition.

Section 24. Solar Collectors. See Article VI.

Section 25. Hot Tubs. No hot tubs or related equipment shall be permitted on a Lot, except as may be approved by the ACC.

Section 26. Trash Receptacles. Each Lot Owner shall provide receptacles for garbage in a screened area or garage not generally visible from the road (except for the periods immediately preceding and subsequent to pick up by the applicable disposal service).

Section 27. Rentals/Leasing. Collectively, the Lots shall not be less than sixty-five percent (65%) owner-occupied, or no more than thirty-five percent (35%), collectively, may be occupied by person(s) other than the Lot Owner. Any Lot Owner who plans to lease a Lot, must notify the Association prior to leasing the Lot to ensure that occupancy restrictions will not be exceeded. Once confirmed by the Association that the occupancy limits have not been exceeded, the Lot Owner must notify the Association of the name of lessee and the effective date of occupancy at least ten (10) days prior to such occupancy, which notification shall include a copy of the executed lease. If the proposed lease is permitted and approved, a copy of these Rules and Regulations shall be furnished to the lessee by the Association upon notification by the Lot Owner of the lessee's name and effective date of occupancy. The terms of the lease shall be subject to the provisions of

the Declaration, the Bylaws and the Rules and Regulations and any failure of a lessee or sub-lessee to comply with the terms of such documents shall be a default under such lease. No Lot Owner shall lease a Lot for less than a six (6) month term. Violations of the Rules and Regulations as set forth in this Declaration by any tenant(s), their families, or guests will result in enforcement action against the owner(s) of the Unit. For purposes of this Declaration, a "Lease" shall be defined as the regular, exclusive occupancy of a Lot by any person(s), other than the Lot Owner, for which the Lot Owner receives any consideration or benefit, including but not limited to, a fee, service, property or gratuity.

## ARTICLE VIII COMMON ELEMENT AND LOT MAINTENANCE

Section 1. Maintenance by the Association. The Association shall repair and maintain the Common Elements and any improvements, utilities and facilities located on the Common Elements. The Association may, but shall not be obligated to, provided enhanced landscaping and maintenance to those areas and medians located within the rights-of-way for streets located within the Property. Any maintenance or enhancement called for herein shall be subject to the applicable Governmental Authorities' rules and regulations. The cost of such repair and maintenance shall be a Common Expense.

The Declarant is responsible for construction of streets and roads within the Property. The Association shall undertake the management, operation, maintenance, repair, servicing, replacement and renewal of all private streets and private utilities constituting Common Elements and all improvements thereon. The Declarant shall be responsible for and maintain all public streets and roads within the Property until such roads are accepted for maintenance by the applicable Governmental Authority or until such streets and roads are accepted for maintenance by the Association. Following any irrevocable acceptance of the streets and roads for maintenance as public rights of way by applicable governmental entities, the Association shall maintain such streets and roads to the extent such activities are not performed by the applicable governmental entities. Maintenance for private streets shall be the responsibility of the Association along with the maintenance of any private easements. The Property and Lots will be served by municipal sewer and water, and gas, which shall all be separately metered.

Section 2. Limited Common Elements. The following limited Common Elements shall be repaired, maintained or replaced by the Association, with the cost charged as a Limited Common Expense to the Lots benefitted thereby and as determined by the Board:

- (a) the stormwater facilities located within drainage easements serving specific Lots as shown on any recorded plat of the Property or as specifically designated in a supplemental declaration; and
- (b) such other features as may be designated by a Map of the Property, in a supplemental declaration or as determined by the Board

Section 3. Lot Maintenance by Owners. Except as provided in Section 1 of this Article VIII, all repair, maintenance and replacement of the improvements and utilities located upon a Lot

Owner's Lot shall be the responsibility of the Lot Owner thereof, including all replacement and repair necessitated by fire or other casualty against which the Lot Owner is required to maintain insurance under the provisions of Article IX hereof. Without limiting the generality of the foregoing, and subject to the requirements of Article VII, Article IX, Section 11 and Article VI, Section 5 of this Declaration, a Lot Owner shall be responsible for replacement and reconstruction of improvements on his or her Lot required because of damage or destruction by fire or other casualty. Such maintenance by a Lot Owner shall include but is not limited to the following:

- (a) Prompt removal of all litter, trash, refuse and wastes;
- (b) Maintenance of flowers and plants;
- (c) Maintenance of exterior lighting and other mechanical facilities that benefit only the Owner's Lot;
- (d) the foundation drains for the Lot;
- (e) all interior portions of the improvements which shall need repair, including bathroom and kitchen fixtures, light fixtures or other electrical or plumbing equipment, utility pipes, lines and fittings serving the Lot;
- (f) the heating and air conditioning systems servicing said Lot;
- (g) Each Owner shall be responsible for interior pest control, and each Owner is encouraged to water the grass, plants, trees and landscaping on or immediately adjacent to its Lot in areas that are not otherwise irrigated;
- (h) In the event an Owner elects to install any landscaping improvements on its Lot (which landscaping improvements must be approved by the ACC as provided herein), the maintenance of such landscaping improvements shall be the sole responsibility of such Owner; and
- (d) Each Owner shall perform the foregoing responsibilities in a manner that does not reasonably disturb or interfere with the reasonable enjoyment by the other Owners of their portions of the Property.

If any Owner fails to perform any of the foregoing maintenance responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required maintenance. If any such Owner fails to perform the required maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's portion of the Property and perform such maintenance without any liability to any Person for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required maintenance and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Owner an invoice therefor. If the Owner fails to reimburse

the Association as required, the Association shall have the same rights and remedies for collection of the amount as provided in Article V, Section 11 herein for collection of Assessments.

Section 4. 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, the Owner's family, guests, or invitees, shall be the obligation of such Owner and shall be added to and become a part of the assessment to which such Lot is subject.

Section 5. Right to Enter. After reasonable notice to the occupant (except in the case of an emergency in which no notice shall be required), 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 or her Lot subject to such right of access of the Association or its agents.

Section 6. Easements for Governmental and Private Utility Operator Access. An unobstructed easement for ingress, egress, regress, and access to the Property is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies and/or private utility operators for installing, removing, and reading water meters; owning, operating, maintaining, and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety, health and welfare, including, without limitation, law enforcement, fire protection, animal control, garbage collection, and the delivery of mail.

Section 7. Sign and Landscape Easement. Declarant, for itself, its successors and assigns, including but not limited to the Association, hereby reserves easements over any portion of any Lot designated as "Private Sign & Landscape Easement," "Landscape Easement," "Sign Easement," "Landscape and Sign Easement", "Buffer Easement" or other similar designation on Map(s) of the Property recorded in the public records of the County, for installation, construction, operation and maintenance of landscaping, berms, retaining walls, drainage facilities, private utilities, lighting and sprinkler systems, if any, monuments, fencing, signage and other improvements as installed by Declarant on such areas. No fences, structures, driveways, plantings, swings or any other objects, temporary or permanent, shall be permitted in such easements other than those initially installed by Declarant, or its designated successor, without Declarant's prior written approval or, after all Lots are occupied by Owners, the Association's prior written approval. The Association shall at all times have the right of access for its employees, agents and subcontractors over the above-described easement areas for the purpose of constructing, improving, repairing, replacing, landscaping, planting, mowing and otherwise maintaining the area and amenities within such easements. The owners of any Lot containing any portion of these easements shall maintain the area not maintained or landscaped by the Declarant or the Association. The reservation of this easement imposes no obligation on Declarant, its successors and assigns, or the Association, to continue to maintain the planting, retaining walls, landscaping or other improvements located within the described easements.

Section 8. Professional Management. In the-event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the

Common Elements, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract for cause or without cause upon thirty (30) days' written notice without payment of a termination fee.

## ARTICLE IX INSURANCE

Section 1. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds, requires certain provisions for property and liability insurance and governs repairs made with insurance proceeds. In the event the insurance requirements of this Article IX conflict with, or fail to incorporate, the provisions of Section 47F-3-113 of the Act, the provisions of the Act shall apply and govern. The establishment of an amount of insurance greater than required by the Act is not a conflict.

Section 2. Insurance to be Maintained by the Association. The following insurance coverage shall be obtained and maintained in full force and effect by the Association:

(a) **Common Elements.** All insurance policies upon the Common Elements shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of Owners.

(b) **Coverage.** All buildings and improvements upon the Common Elements and all personal property of the Association included in the Common Elements or otherwise owned by the Association shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (1) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;
- (2) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and
- (3) Such policies shall contain clauses providing form waiver of subrogation.

(c) **Liability.** Public liability insurance (including contractual liability coverage) shall be secured by the Association with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) aggregate for bodily injury and property damage, including loss of use, and shall include an endorsement to cover liability of the Owners as a group to a single Owner. If necessary, Workers' Compensation and Employer's Liability insurance shall be secured by the Association so as to comply with the laws and regulations of the State of North Carolina. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary, including, but not limited to, directors and officers errors and omissions insurance



coverage. The Association shall cause Declarant to be named as additional insureds on the above-referenced insurance policies.

(d) Fidelity bonds for those officers or employees having control over Association funds. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

Section 3. Insurance to be Maintained by Owners. Each Owner shall procure and maintain fire and extended coverage insurance as follows:

(a) **Coverage.** Each Lot and improvements upon a Lot (including Limited Common Elements benefiting that Lot) shall be insured in an amount equal to one hundred percent (100%) insurable replacement value. Such coverage shall provide protection against:

- (1) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;
- (2) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and
- (3) Such policies shall contain clauses providing for waiver of subrogation.

(b) **Liability.** Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand and No/100 Dollars (\$300,000.00) per occurrence.

All such policies shall name the Declarant and the Association as additional insureds as their interests appear and copies of said policies and renewals thereof shall be furnished to the Declarant and the Association. Upon failure by any Owner to promptly obtain the required coverage, naming the Declarant and the Association as additional insureds, or to pay the premiums due on such policy, the Association may, but is not required to, obtain the required coverage, naming the Declarant and the Association as additional insureds, and add the cost of the premium and all other costs of obtaining such coverage to the annual assessment against the subject Lot. Such cost shall be due and payable on or before the first day of the calendar month following payment of same by the Association.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

Section 4. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense and shall be included as part of the Annual Assessments described in Article V above.

Section 5. Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Insurance Trustee under this Declaration. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(a) Proceeds on account of damage to Common Elements are to be held for the Association.

(b) If applicable due to insured casualty occurring on the Common Elements, proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

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

Section 6. Distribution of Insurance Proceeds by the Insurance Trustee. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:

(a) **Expense of the Trust.** All expenses of the Insurance Trustee shall be first paid or provisions made therefore.

(b) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost of repairs to the Common Elements and, if applicable due to insured casualty occurring on the Common Elements, proceeds on account of damage to Lots shall be paid to defray the cost of repair to the Lots. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners as provided in Section 5(b) of this Article IX.

Section 7. Subrogation. Each insurer shall waive its right to subrogation under any policy maintained by the Association pursuant to this Article against any Owner or member of Owner's household.

Section 8. Act or Omission of Owner. No act or omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under any of the policies maintained by the Association pursuant to this Article.

Section 9. Other Insurance. If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary insurance.

Section 10. Issuance of Certificates; Cancellation. Any insurer that has issued an insurance policy under Section 2 of this Article IX shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or Mortgagee. Any insurer issuing an insurance policy under this Section 2 of this Article IX may not cancel or refuse to renew the policy

until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner and each Institutional Lender to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

Section 11. Obligation to Rebuild. Any portion of the Property for which insurance is required under Section 3 of this Article IX shall be promptly and diligently repaired, replaced, and restored by the Owner thereof, unless (i) this Declaration is terminated, or (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance. Any portion of the Property for which insurance is required under Section 2 of this Article IX which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) this Declaration is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) the Owners decide not to rebuild by an eighty percent (80%) vote of the Voting Power of the Association (excepting private streets which are required to be repaired under applicable provisions of the City Code). The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense, and the cost thereof may be recovered by one or more Special Assessments levied by the Board equally against all Owners. If any portion of the Common Element is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Element shall be used to restore the damaged area to a condition compatible with the remainder of the Property and (ii) the remainder of the proceeds shall be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Common Element liabilities of all the Lots.

## ARTICLE X RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Interpretation. In the event of any provision of this Article is inconsistent with or contrary to any other provisions of this Declaration, the provisions of this Article shall control.

Section 2. Notices. Any Institutional Lender of any Lot, by written notice sent by registered mail or certified mail addressed to the Association setting forth the Lot encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of (a) any default which is outstanding for sixty (60) days or longer by the Owner of such Lot in the performance of his or her obligations under or in compliance with the provisions of the Governing Documents, (b) any substantial damage to or destruction of the Common Elements, including the improvements located thereon, or, if known to the Association, any substantial damage to or destruction of a Lot, including the improvements located thereon, and (c) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or of any Lot or portion thereof.

Section 3. Institutional Lender's Rights to Information. Upon written request to the Association, an Institutional Lender is entitled to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Property; and (c) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

Section 4. Damage and Destruction Rights. In the event of substantial damage to or destruction of any Lot or improvements to a Lot or any part of the Common Elements no provision of any document establishing the Property shall entitle the Owner of a Lot or other party to priority over such Institutional Lender with respect to the distribution to such Owner of any insurance proceeds.

Section 5. Condemnation Rights. If any Lot or portion thereof or the Common Element or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, no provision of any document establishing the Property shall entitle the Owner of a Lot or other party to priority over such Institutional Lender with respect to the distribution to such Owner of the proceeds of any award or settlement.

Section 6. Right of First Refusal. Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Institutional Lender acquiring such Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

Section 7. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any Institutional Lender who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against the Lot which have accrued prior to the time such Institutional Lender or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Lot; and provided further, that except as otherwise provided in this Section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

Section 8. Payments by Institutional Lenders. Any Institutional Lender, after at least ten (10) days' prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Institutional Lenders, delinquent taxes, liens or assessments which may be or become a charge against the Common Element, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Element and in the event of a lapse of such

a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Institutional Lender making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

Section 9. Consent of Institutional Lender. With respect to any provision in this Declaration requiring the consent or written approval of an Institutional Lender, any Institutional Lender who does not respond within thirty (30) days' request by the Association for such consent or written approval shall be deemed to have approved such request.

## ARTICLE XI EMINENT DOMAIN

Section 1. Eminent Domain. Notwithstanding any provision contained herein to the contrary, in the event of a taking of all or any portion of a Lot or all any portion of the Common Elements by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act. If all or any portion of the Common Elements is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees and the Association as provided in the Act.

Section 2. Repair, Restoration, Reconstruction. If only a portion of a Common Element is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Element to a complete architectural unit, to the extent such repair, restoration and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Element 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 XII INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify any and all persons who may serve or whom have served at any time as directors or officers of the Association against any and all expenses, including amounts paid upon judgments, counsel fees and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they, or any of them, are made parties, or a party, which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or an officer of the Association, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in any action, suit, or proceeding guilty of willful and intentional negligence or misconduct in the performance of his or her duties to the Association. Provided, however, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

The provisions hereof shall be in addition to and not exclusive of any and all other rights to which any director or officer may otherwise be entitled under any law, Bylaw, agreement, vote of Association Members or otherwise. In the event of death of any officer or director, the provisions hereof shall extend to such person's legal heirs, representatives, successors and assigns. The foregoing rights shall be available whether or not such person or persons were in fact directors or officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit or action is based on matters which antedate the adoption of this Declaration.

#### ARTICLE XIII EXCULPATION

It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly, against Declarant or any of its officers, members, managers, employees, agents, attorneys, heirs, executors, legal representatives, successors or assigns (collectively, the "Declarant Related Parties") for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such proceeding shall not be entitled to take any action to procure any money judgment against any of the Declarant Related Parties.

[PAGE INTENTIONALLY BLANK - SIGNATURE AND NOTARY FOLLOW]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration as of the date first above set forth.

**DECLARANT:**

Terraces at Morehead Hills, LLC  
a North Carolina limited liability company

By:   
Printed Name: John Florian  
Title: Manager

---

State of North Carolina  
County of Wake

I certify that the following person personally appeared before me this day, acknowledging to me that s/he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: John Florian, Manager.

Date: 12/12/19

  
Notary Public

Amanda S. Miller  
Printed Name

[official seal]

My commission expires: 8/30/2021



m:\users\beth\clients\morehead hills senior apartments lp\terraces at morehead townhomes\declaration and bylaws\terraces at morehead declaration (v10 - 11.27.19).docx

EXHIBIT "A"  
LEGAL DESCRIPTION

BEING all of Lot 1A as shown on that plat entitled "Final Subdivision Plat of Morehead Hills Senior Apts, LP" by Coulter, Jewel & Thames, P.A., dated August 6, 2018 and recorded in Plat Book 199, Pages 275 and 276, Durham County Registry.



EXHIBIT "B"  
 STORMWATER FACILITY AGREEMENT AND COVENANTS MANDATORY  
 PROVISIONS FOR DECLARATION OF RESTRICTIVE COVENANTS

Obligations Regarding Stormwater Facilities

The Property includes one or more stormwater management facilities (hereafter "Facility/ies") that is/are the perpetual responsibility of the Association. Such Facilities are the subject of a Stormwater Facility Agreement and Covenants ("Stormwater Agreement") between Declarant, the Association, and the City of Durham ("the City") that is binding on the Association. The Stormwater Agreement is recorded in Deed Book 8803, Page 511 Durham County Register of Deeds. The Property subject to that Stormwater Agreement is the "Property" referred to in Exhibit A on the prior page. The Stormwater Facilities must be maintained in accordance with City Requirements, which include all ordinances, policies, standards, and maintenance protocols and in accordance with the recorded Stormwater Agreement. In particular the City's current "Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham" (available at the time of recording this document at <http://durhamnc.gov/DocumentCenter/View/2239> and the operation and maintenance manual prepared specifically for the Facility/ies contain requirements that apply to the Association's Facilities.

Nothing in the foregoing Declaration or any subsequent modifications of the Declaration may reduce the Association's or Lot Owners' obligations with regard to the Facility/ies. Such additional covenants may increase the obligations or provide for additional enforcement options.

The Stormwater Facility/ies and their location are as follows:

- i. one underground sand filter (SF) designed to have a drainage area of 1.73 acres and a design treatment volume of 3,301 cubic feet.

In addition to the above obligations, the Association's obligations with regard to the Facilities are:

1. **Inspections/Routine Maintenance.** In accordance with City Requirements, the Association shall cause the Facility/ies to be inspected i) annually; and, ii) after major storm events that cause visual damage to the Facility; and iii) upon notification from the City to inspect. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect certified by the City who shall document those things mandated under City Requirements. The inspection shall occur annually during the month in which the Facility/ies as-built certification was accepted by the City, which month may be determined through contact with the City of Durham Department of Public Works, Stormwater Division. The inspection shall be reported to the City as further described below.

2. **Repair and Reconstruction.** The Association shall repair and/or reconstruct the Facility/ies as it determines is necessary, and, at a minimum, as set forth in City Requirements or as directed by the City to allow the Facility/ies to function for its intended purpose, and to its

design capacity. The Association shall provide written reports regarding major repair or reconstruction to the City in accordance with City Requirements.

3. **Stormwater Budget Line Items & Funding.** The dues of the Association shall include amounts for upkeep and reconstruction of the Facilities which shall be included in dues charged to Lots or members from the point that Lots or members are charged dues for other common purposes. The Association shall maintain two (2) separate funds in its budget for the Facility/ies. The first, the "Inspection and Maintenance Fund," shall be for routine inspection and maintenance expenditures and shall be used for annual inspections, maintenance, and minor repairs. The funds for this purpose may be maintained as part of the Association's general account. The second fund, the "Major Reconstruction Fund," shall be a separate, increasing reserve fund that will build over time and provide money for major repairs to and eventual reconstruction of the Facility/ies. The Major Reconstruction Fund shall be maintained in an account that is separate account from the Association's general account as described below. At a minimum, the Association shall, annually, earmark \$4,532.00 from its collected dues for the Inspection and Maintenance Fund and \$1,243.00 for the Major Reconstruction Fund. These minimum amounts shall be increased annually by 3% per year over the prior year's amount. The Association may set a higher amount in its discretion, or if directed by Durham Director of Public Works after an examination of the Facility/ies. The Association shall set dues at a sufficient amount to fund each of the two line items in addition to the Association's other obligations. The Association may compel payment of dues through all remedies provided in these Covenants or otherwise available under law.

4. **Assessments/Liens.** In addition to payment of dues, each Lot shall be subject to assessments by the Association for the purpose of fulfilling the Association's obligations under this Article and under the Stormwater Agreement. Such assessments shall be collected in the manner set forth in these Covenants. As allowed under NCGS§47F, or successor statutes, or, for condominiums, as allowed under NCGS 47C, or successor statutes, all assessment remaining unpaid for 30 days or longer shall constitute a lien on the Lot. Such lien and costs of collection may be filed and foreclosed on by the Association. In addition, the Association's rights may, in the discretion of the City, be exercised by the City, as a third-party beneficiary of the recorded Stormwater Agreement and/or as Attorney in Fact for the Association, as provided in Section 7 of the recorded Stormwater Agreement.

5. **Stormwater Expenditures Receive Highest Priority.** Notwithstanding any contrary provisions of the covenants of which this Article is a part, to the extent not prohibited by law, the inspection, maintenance, repair, and replacement/reconstruction of the Facility/ies shall receive the highest priority (excluding taxes and assessments and other statutorily required expenditures) of all Association expenditures.

6. **Separate Account for Major Reconstruction Fund; Engineer's Report.** The Association shall maintain the Major Reconstruction Fund for the Facility/ies in an account separate from the Association's general account. The Association shall use the Fund only for major repairs and reconstruction of the Facility/ies. No withdrawal shall be made from this fund unless the withdrawal is approved by two Association officials who shall execute any documents allowing such withdrawal. Prior to withdrawing funds from this account, the Association shall (i) obtain a written report from an engineer approved in accordance with City Requirements regarding

repairs or reconstruction needed and approximate cost of such repair or reconstruction; and (ii) submit such report to the Director of the City's Department of Public Works, and notify the Director of the repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Major Reconstruction Fund. In the event of an emergency, withdrawal and expenditure of funds may be made after telephone notification to the Stormwater Services Division of the Department.

7. **Annual Reports to City.** The Association shall provide to the City annual reports in substance and form as set forth in City Requirements. This annual report shall be signed by an officer of the Association, who shall attest as to the accuracy of the information in such report. If prepared by a professional management company hired to manage the Association's affairs, the report shall so indicate. The Officer's signature and attestation shall be notarized. At a minimum each report shall include:

- i. the annual Facilities inspections report described in section (1) above;
- ii. a bank or account statement showing the existence of the separate Major Reconstruction Fund described in Section (6) above and the balance in such fund as of the time of submission of the report;
- iii. a description of repairs exceeding normal maintenance that have been performed on the Facility/ies in the past year, and the cost of such repairs;
- iv. the amount of Association dues being set aside for the current year for each of the two stormwater funds – the Inspection and Maintenance Fund and the Major Reconstruction Fund.

8. **Facility/ies to Remain with Association; Lot Owners' Liability.** To the extent not prohibited by law, the Facility/ies shall remain the property of the Association and may not be conveyed by the Association. In the event the Association ceases to exist or is unable to perform its obligations under this Agreement, all Lot Owners as defined in the Stormwater Agreement referenced above, excluding the Lots owned by the Association, shall be jointly and severally liable to fulfill the Association's obligations under this Agreement. Such Lot Owners shall have the right of contribution from other owners with each Lot's pro rata share being calculated as Lot Owner's proportional obligations are otherwise defined in these Covenants. The City may also exercise the rights described in Section 7 of the recorded Stormwater Agreement and other remedies provided by law.

9. **City Rights; Liens Against Owners.** In addition to rights granted to the City by ordinance or otherwise, the City shall have the following rights, generally summarized below, and more explicitly set forth in the Stormwater Agreement referenced above:

- a. Direct the Association in matters regarding the inspection, maintenance, repair, and /or reconstruction of the Facility/ies;
- b. If the Association does not perform the work required by ordinance, by these covenants, and by the Stormwater Agreement referenced above, do such work itself, upon 30 days' written notice to the Association.

- c. Access the Facility/ies for inspection, maintenance, and repair, crossing as necessary the lot(s) on which the Facility/ies are located and all other private and public easements that exist within the Property subject to these covenants.
- d. Require reimbursement by the Association of the City's costs in inspecting, maintaining, repairing, or reconstructing the Facility/ies, as provided in the Stormwater Agreement referenced above.
- e. Enforce any debts owed by the Association as described in the Stormwater Agreement referenced above against Lot Owners if such debts are not fully paid by the Association. The debt may be allocated to Lot Owners as provided in the other sections of this Exhibit B, and may be made a lien on each owner's property, may be added to each owner's utility bills, and may result in foreclosure, as provided in Section 7 of the Stormwater Agreement referenced above.

10. **No Dissolution.** To the extent not prohibited by law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a person who has been approved by the City and has executed a Stormwater Agreement with the City assuming the obligations of the Association. Under the Stormwater Agreement referenced above, individual Lots and Lot Owners continue to be liable for the Facility/ies in the event the Association is dissolved without a new Stormwater Agreement between the City and a responsible party that is assuming the Association's obligations.

11. **No Amendment.** Without the prior written consent of the City, which may be given by the Durham City Manager, and notwithstanding any other provisions of the Declaration, the Association may not amend or delete this Exhibit B (with the exception of supplementing its provisions in a more detailed manner to better describe members' or Lot Owners' obligations regarding each other).

12. **Stormwater Agreement Supersedes.** The Stormwater Agreement referenced above supersedes any limiting provisions contained elsewhere in other parts of the Declaration. However, provisions of the Declaration may supplement the obligations of the Association as set forth in that Agreement, and/or the obligations of and remedies against individual Lot Owners or members bound by the Declaration.

**BYLAWS**  
**OF**  
**THE TERRACES AT MOREHEAD HILLS OWNERS ASSOCIATION, INC.**

**ARTICLE I**  
**NAME AND LOCATION**

Section 1.      Name. The name of the corporation is The Terraces at Morehead Hills Owners Association, Inc. (the “Association”), as formed pursuant to the Articles of Incorporation filed with the North Carolina Secretary of State on January 3<sup>rd</sup> 2020 (the “Articles”).

Section 2.      Location. The principal office of the Association shall be located in Los Angeles County, California. The registered office of the Association may be, but need not be, identical with the principal office.

**ARTICLE II**  
**DEFINITIONS**

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions, Easements and Restrictions for The Terraces at Morehead Hills executed by Terraces at Morehead Hills, LLC, and duly recorded in the Office of the Register of Deeds for Durham County, North Carolina, as amended from time to time (hereinafter referred to as the “Declaration”).

**ARTICLE III**  
**MEETINGS OF MEMBERS**

Section 1.      Annual Meetings. The first annual meeting of the Members shall be held on a date to be determined by the Board, and each subsequent regular annual meeting of the Members shall be held on the anniversary of the first annual meeting and each year thereafter, at a time to be determined by the Board; provided, however, the Board shall have the right, upon not less than ten (10) nor more than sixty (60) days’ prior notice to the Members, to change the month, date and time of any annual meeting. If the day for the annual meeting of the Members is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday.

Section 2.      Special Meetings. Special meetings of the Members may be called at any time by (a) the President or by the Board or (b) the holders of at least twenty-five percent (25%) of all the votes entitled to be cast on any issue to be considered at a proposed special meeting upon the delivery to the Association’s Secretary of one or more signed and dated written demands describing the purpose or purposes for which it is to be held. Any such special meeting called by the Members in the manner described in (b) above shall be held within thirty (30) days after the delivery of such written demand by the holders of at least twenty-five percent (25%) of the votes entitled to be cast at such meeting.

Section 3.      Place of Meetings. All meetings of the Members shall be held at such place, within Durham County, North Carolina, as shall be determined by the Board.

Section 4.      Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Association’s Secretary or other person authorized to call the meeting, by first class, registered or certified mail, not less than ten (10) days nor more than sixty (60) days before the date of

such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 5. Membership in the Association. Each and every Owner of a Lot shall automatically become and be a Member. In addition, for so long as Declarant owns any part of the Property, Declarant shall be a Member.

Section 6. Classes of Membership. The Association shall have two (2) classes of membership as follows:

Class A. Class A Members shall be all Owners with the exception of Declarant; provided, however, that Declarant shall become a Class A Member when its 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 interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited. 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 any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot. In the event that two or more Lots are recombined to form one Lot, the owner of the new Lot shall only be entitled to one vote for the new Lot.

Class B. Class B Member shall be Declarant which shall be entitled to ten (10) votes for each Lot owned; provided that Declarant's Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) the Completion of Sales (as defined in the Declaration); or (b) ten (10) years after the first Lot is conveyed to an Owner for use as a residence.

Section 7. Quorum and Voting. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, fifty percent (50%) of the votes entitled to be cast by all classes of the Members shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws; if, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Association's Secretary. Every proxy shall be revocable.

Section 9. Action by Members. Except as may be otherwise specifically set forth in the Declaration, the Articles or these Bylaws, the vote of a majority of all votes entitled to be cast by all classes of the Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Members. Notwithstanding the above, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Members shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Property or any part thereof; or (2) assert a claim against or sue Declarant.

Section 10. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by him of the time and place thereof except where a Member attends a meeting for the express purpose of objecting to the transaction of

any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Section 11. Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's record book.

Section 12. Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these Bylaws or the Articles.

#### ARTICLE IV BOARD OF DIRECTORS

Section 1. Number and Appointment. The business and affairs of the Association shall be managed by a Board of no less than one (1) director who is appointed by Declarant so long as Declarant owns any Lot or other portion of the Property, and by a Board of no less than three (3) directors elected by the Members as provided by these Bylaws thereafter. The directors need not be Members. Notwithstanding the foregoing, the Declarant may choose, in its sole discretion, to relinquish its right to appoint the members of the Board prior to the time that it owns no portion of the Property, whereupon the Members shall thereafter elect the members of the Board in accordance with these Bylaws.

Section 2. Initial Directors. The initial directors shall be appointed by the Declarant. Such initial directors shall serve from the date upon which the Declaration is recorded in the Office of the Register of Deeds of Durham County, North Carolina, until such time as their successors are duly appointed or elected and qualified.

Section 3. Election. Except as otherwise provided in this Article, including Section 1 hereof, directors shall be elected at the annual meeting of the Members and said election shall be by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles, these Bylaws and the Declaration. Cumulative voting shall not be permitted.

Section 4. Term of Office. Each director shall hold office for the term for which he or she was appointed or elected, or until his or her death, resignation, retirement, removal, disqualification or until his or her successor is appointed or elected and qualified. Subject to Section 1 of this Article IV, at the first election of directors, the Members shall elect one (1) member of the Board for a term of three (3) years, who shall be the person receiving the largest number of votes, one (1) member of the Board for a term of two (2) years, who shall be the person receiving the second largest number of votes, and one (1) member of the Board for a term of one (1) year, who shall be the person receiving the third largest number of votes. At all annual elections thereafter but subject to Section 1 of this Article IV, director(s) shall be elected by the Members to succeed the director(s) whose term(s) then expire(s), and thereafter each director's term shall be three (3) years. Nothing herein contained shall be construed to prevent the election of a director to succeed himself. Votes shall be tallied at the meeting where they are so cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting.

Section 5. Removal. Subject to Section 1 of this Article IV, any elected director may be removed from the Board, with or without cause, by a majority vote of the Members. In the event of the death, resignation or removal of a director, his or her successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. The Members may elect a director at any time to fill any vacancy not filled by the directors or, if applicable, not appointed by the Declarant.

Section 6. Compensation. No director shall receive compensation for any service he or she may render to the Association; however, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

## ARTICLE V MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Meetings of the Board shall be held on a regular basis as often as the Board sees fit on such days and at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to such action is signed by all of the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board and serve until a new President is elected.

Section 6. Participation by Conference Telephone. Any one or more directors may participate in a meeting of the Board by means of a conference telephone or similar communications device that allows all directors participating in the meeting to simultaneously hear each other during the meeting, and such participation in a meeting shall be deemed presence in person at such meeting.

Section 7. Open Meetings. All Meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless expressly authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, contract negotiations and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

## ARTICLE VI POWERS OF THE BOARD

The Board, for the mutual benefit of the Members and the Owners, shall have the following specific powers and rights (without limitation of other powers and rights the Board may have):

- (a) To enter into or assume agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Elements or portions thereof;
- (b) To make reasonable rules and regulations for the use and operation of the Common Elements and to amend them from time to time;



- (c) To enter into or assume agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Elements and/or the Association;
- (d) To enter into or assume agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Elements and/or the Association;
- (e) Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws, to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Members see fit; provided; however, until such time as Declarant no longer owns any portion of the Property, the Board may not mortgage any portion of the Common Elements without the prior written approval of Declarant;
- (f) To enter into or assume contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association;
- (g) To the extent permitted in the Declaration and these Bylaws, to sue or defend in any court of law in behalf of the Association;
- (h) To levy assessments in accordance with the provisions of the Declaration;
- (i) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property of the Association and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;
- (j) To exercise for the Association all powers, duties and authority vested in or delegated by the Declaration, these Bylaws, or the Articles to the Association and not reserved to the Members or Declarant by other provisions of the Declaration, these Bylaws or the Articles;
- (k) To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;
- (l) To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;
- (m) To retain the services of legal and accounting firms;
- (n) To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;
- (o) To the extent permitted in the Declaration and these Bylaws, to enforce the provisions of the Declaration and any rules made thereunder or hereunder and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules;
- (p) To contract with any third party or any Member (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms of the Declaration and these Bylaws, or to assume any such contract entered into by Declarant, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Association;

(q) To grant all necessary easements and rights-of-way over and across the Common Elements when in its sole discretion it deems such an action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sewerage and other utilities and drainage facilities; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;

(r) To convey fee simple title to all or any part of the Common Elements when in its sole discretion it deems such an action to be necessary and appropriate; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not convey any portion of the Common Elements without the prior written approval of Declarant;

(s) To contract with any third party, including any other property owners association, for the sharing of costs of maintaining Commons Elements, or to assume any such contract entered into by Declarant;

(t) To take any and all other actions, and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations under the Declaration or these Bylaws or for the operational protection of the Association; and

(u) To adopt reasonable rules from time to time governing conduct of Owners and other Persons occupying or otherwise located on the Property.

Notwithstanding anything contained herein to the contrary, none of the above-described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Members.

## ARTICLE VII OFFICERS AND THEIR DUTIES

Section 1.      Officers. The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2.      Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 3.      Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his or her death, resignation, retirement, removal, disqualification, or his or her successor is elected and qualifies.

Section 4.      Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5.      Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.      Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7.      Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8.      Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 9.      Duties. The duties of the officers, unless otherwise stated by a resolution of the Board, are as follows:

(a)      President: The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds, promissory notes and other written instruments and may co-sign all checks;

(b)      Vice President: The Vice President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board;

(c)      Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, shall keep the corporate seal of the Association and affix it on all papers requiring said seal, shall serve notice of meetings of the Board and of the Members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board; and

(d)      Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board, shall sign all checks and promissory notes of the Association, shall keep proper books of account, and shall prepare an annual report to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

## ARTICLE VIII COMMITTEES

Subject to Section 1 of Article IV of these Bylaws, the Board shall appoint a Nominating Committee as provided in Section 3 of Article IV of these Bylaws. In addition, the Board shall appoint other committees from time to time as deemed appropriate in carrying out its purpose.

## ARTICLE IX BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours and upon reasonable advance written notice, be subject to inspection by any Member. The Declaration, the Articles and the Bylaws shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE X ASSESSMENTS

As described more particularly in, and subject in all respects to, the Declaration, each Member is obligated to pay to the Association, among other assessments, charges and amounts, Annual Assessments and Special Assessments, all of which are secured by a continuing lien upon each Lot. Any Assessments which are not paid when due shall be delinquent. Any Assessment not paid within thirty (30) days after the date due shall be delinquent. If an Assessment is delinquent, the Assessment shall be subject to a late charge to cover administrative expenses incurred. Late charges on delinquent assessment and fines levied are more particularly described in Declaration. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same or foreclose the lien against the portions of the Lot and Improvements thereon owned by the defaulting Owner as of the Assessment due date. Additionally, the late charges, costs of collection and reasonable attorneys' fees related to any such action or foreclosure shall be added to the amount of such Assessment, all as more particularly described in the Declaration. No Owner may exempt himself or herself from liability for Assessments or waive or otherwise escape liability from the Assessments by non-use of the Common Elements or abandonment of his or her property.

The Disposal System (as defined in the Declaration) will be maintained and operated in conformity with law and the provisions of the permit for construction, operation, repair and maintenance of the Disposal System and its related facilities. The entire Disposal System will receive the highest priority for expenditures of the Association except for Federal, State, and local taxes and insurance. The Disposal System shall be maintained out of the Annual Assessments, and a separate fund shall be created under the Annual Assessments that are allocated solely for the repair, maintenance and replacement of the Disposal System. If the Annual Assessments allocated for the Disposal System are not adequate, then Special Assessments may be levied for the costs thereof. There shall be no limit on the amount of such Special Assessments, and they maybe levied at any time.

## ARTICLE XI CORPORATE SEAL

The Association may have a seal. If the Association elects to have a seal, it shall be circular in form having within its circumference the name of the Corporation, the state of its incorporation, the year of its incorporation, and the word "SEAL."

## ARTICLE XII AMENDMENTS

Subject to the limitations hereinafter contained, these Bylaws may be amended or modified at any time by a vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, that any amendment or modification to these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. In addition, Declarant, without obtaining the approval of any other Member or any other Owner or Owners other than Declarant, may make amendments or modifications to these Bylaws which either (a) do not involve a change which materially adversely affects the rights, duties or obligations specified herein or therein or (b) apply only to the portions of the Property then owned by Declarant. Provided, however, that the U.S. Department of Veterans Affairs (if it is then guaranteeing any Mortgage secured by any Lot) and/or the U.S. Department of Housing and Urban Development (if it is then insuring any Mortgage secured by any Lot) shall have the right to veto material amendments to these Bylaws for as long as the Class B membership shall not have terminated.

ARTICLE XIII  
OBLIGATIONS WITH RESPECT TO STORMWATER FACILITY

Upon transfer of the stormwater facility to the Association, the Association shall be responsible for the requirements set forth in Exhibit "B" of the Declaration recorded in Book 8823, Page 712, Durham County Registry.

ARTICLE XIV  
MISCELLANEOUS

Section 1. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Bylaws or the Articles, the Declaration shall control.

Section 3. In no event shall the Association enter into voluntary dissolution without having made adequate provision for the continued property maintenance, repair and operation of the Disposal System. Such provision can be satisfied by transferring the Disposal System and facilities to a person, corporation or other entity acceptable to and approved by the Environmental Management Commission of the State of North Carolina (or any successor agency).

ARTICLE XV  
LIABILITY LIMITS; INDEMNIFICATION OF  
DIRECTORS, OFFICERS AND OTHERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him or her in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he or she shall be adjudged in such

action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

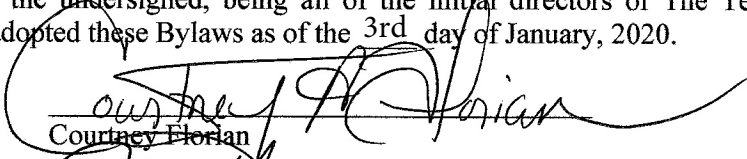
The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, these Bylaws, agreement, vote of Members or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

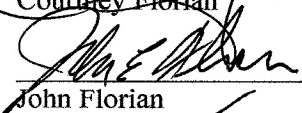
The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XIV, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

IN WITNESS WHEREOF, the undersigned, being all of the initial directors of The Terraces at Morehead Hills Owners, Inc., have adopted these Bylaws as of the 3<sup>rd</sup> day of January, 2020.

  
Courtney Florian

  
John Florian

  
Justin Florian