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**MASTER DECLARATION  
OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
MAIDA VALE**

Prepared by and return to: Alison R. Cayton of Manning, Fulton & Skinner, P. A.  
Post Office Box 20389, Raleigh, NC 27619-0389

THIS DECLARATION, made on the date hereinafter set forth by MAIDA VALE, LLC, a North Carolina limited liability company, with its principal office located at 2840 Plaza Place, Suite 100, Raleigh, North Carolina, Wake County, North Carolina, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Durham, County of Durham, State of North Carolina, commonly referred to as "Maida Vale", which is more particularly described on Exhibit "A" attached hereto;

WHEREAS, it is the desire and intention of Declarant (as defined herein) to impose on that property described in Exhibit "A" attached hereto restrictions, conditions, easements, covenants, charges, liens and agreements under a general plan or scheme of improvement for the benefit of all property herein described and the future owners thereof and to provide for the same to apply to such additions to the property as may hereafter be brought within the jurisdiction of the Association; and,

WHEREAS, the Property, shall be comprised of tracts for all uses as permitted herein; and

WHEREAS, Maida Vale is a development consisting of the Maida Vale Master Owners Association and other sub-associations which may include any group of Lots in the development of the Property by the Declarant from time to time; and

WHEREAS, this Declaration and the covenants, conditions, restrictions and easements, to the extent applicable, shall apply to the owners of all Lots herein;

NOW, THEREFORE, Declarant hereby declares that all of the Property described on Exhibit "A" shall be held, used, occupied, leased, mortgaged, sold and conveyed subject to the following easements, restrictions, charges, liens, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Articles" shall mean and refer to the Articles of Incorporation for the Maida Vale Master Owners Association, Inc. on file with the North Carolina Secretary of State

Section 2. "Association" shall mean and refer to Maida Vale Master Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns. The Association is the Master Association of Maida Vale development and those sub-associations which may include any group of Lots in the development of the Property by the Declarant from time to time.

Section 3. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 4. "Builder" shall mean the person or entity that constructs the initial improvements on any Lot.

Section 5: "Bylaws" shall mean and refer to the Bylaws adopted by the Maida Vale Master Owners Association, Inc.

Section 6. "City" shall mean City of Durham, North Carolina.

Section 7. "Common Elements" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of all the Owners. Common Elements include but are not limited to: private roads, all entry walls and walls bordering the Property, entryway gatehouse, walking paths, pedestrian access ways, sewer lines and water lines that serve more than one Lot and are located outside any public street or City water or sanitary sewer easement, and includes Open Space, Common Elements and common areas, as may be designated on any subdivision map of the Property or by the Association; Common Elements also include stormwater drainage and stormwater system improvements and easements located on the Property serving any or more than one Lot and are not maintained by any governmental authority. The Common Elements to be owned by the Association is all of that Property other than the Master Plan Lots and the Common Elements owned by any sub-association established by the Declarant.

Section 8. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its Members; and
- (b) Expenses for maintenance of the roads, streets, rights-of-way and any amenities and street islands as provided in this Declaration, including ice and snow removal and clearing of debris from storms or other events; and
- (c) Expenses of administration, maintenance, repair, or replacement of the Common Elements and Limited Common Elements; and
- (d) Expenses declared to be Common Expenses by the provisions of this Declaration or the Bylaws; and
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase; and

(f) Ad valorem taxes and public assessment charges lawfully levied against Common Elements owned in fee by the Association; and

(g) The expense of the maintenance of private drainage and utility easements and facilities located therein which cross the Property, including the Common Elements and that serve both the Property and lands adjacent thereto and the expense of maintenance and repair of stormwater drainage and stormwater system improvements and easements; and

(h) The expense of maintenance of any roads, streets, street islands, easements, amenities, taxes or any other expense item associated with any Common Element not located on the Property but permitted to be used by the Members of this Association by any adjoining landowner, association or other entity pursuant to any cross-easement, cross-access or other agreement with the adjoining land owner; and

(i) Expenses for maintenance of security devices or personnel, including but not limited to a guard at the entryway gatehouse during such times as determined necessary by the Association, should the Association determine that it is in its best interest to obtain security devices or personnel; and

(j) The charges for utilities used in connection with maintenance and use of the Common Elements; and

(k) Expenses for maintenance of all lighting located along the streets and roads and within and along all Common Elements as determined to be necessary by the Association; and

(l) Any other expenses determined by the Board or approved by the Members to be common expenses of the Association.

Section 9. "Consumer-Occupant Lot Owner" referred to herein is a Lot Owner who purchases a Lot from the Declarant or a Builder and occupies the residence on the Lot.

Section 10. "Declarant" shall mean and refer to Maida Vale, LLC, a North Carolina limited liability company, its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in writing in whole or in part, and subject to such terms and conditions as Declarant may impose, or any owner of the Property or Lots or remainder of those resulting from the sale of the Property, Lots or the remainder thereof at foreclosure when held by Declarant or the successor to the rights of Declarant or resulting from the transfer in lieu of foreclosure.

Section 11. "Declarant Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Durham County, North Carolina, and continuing until the later of (i) such time as Declarant shall no longer have the right to annex any additional property pursuant to the provisions of Article V, Section 2 hereof; or (ii) such time as Declarant shall no longer own any portion of the Property for the purpose of Development or sale.

Section 12. "Limited Common Elements" 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, driveways, walkways, parking areas or areas serving only specified Lots, brick retaining walls located on or adjacent to any part of a Lot, and such other similar areas as may be designated by a subdivision map of the Property or by the Association.

Section 13. "Lot" shall mean and refer to any separately numbered portion of the Property shown on any now or subsequently recorded subdivision plat of the Property intended for use or used

as a site for any single-family attached or detached dwelling, patio (zero lot line) home, townhome or condominium unit and shall include any improvements constructed thereon, and "Lots" shall refer to all such lots collectively. 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.

Section 14. "Master Plan" shall mean and refer to the plan(s) for the Property and any additional property now or hereafter approved by the appropriate local governmental authority and

Section 15. "Master Plan Lot" shall mean and refer to any separately numbered portion of the Property shown from time to time on the Master Plan intended for use or used as a site for any single-family attached or detached dwelling, patio (zero lot line) home, townhome or condominium unit and shall include any improvements constructed thereon and "Master Plan Lots" shall refer to all such lots collectively.

Section 16. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 17. "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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 18. "Person" shall mean and refer to any individual, corporation, limited liability company, partnership, association, trustee or other legal entity.

Section 19. "Property" shall mean and refer to that certain real property hereinbefore described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Elements together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Common Elements, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational or other similar facility situated upon the Common Elements;

(b) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Element facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of Members entitled to cast at least eighty percent (80%) of the votes of each class of Members of the Association, to dedicate or transfer fee title to all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances;

On any instrument of dedication, sale, transfer, easement, lease right of way or other disposition of real or personal property, the Secretary of the Association shall certify that eighty percent (80%) of the votes of each class of members have approved the action evidenced by the instrument, and that certificate shall be conclusive that the execution and delivery of such instrument was properly authorized by the Association and its members and shall be relied upon and binding as to any third party or as to any grantee, its successor and assigns; provided, however, conveyances for general service utility purposes as specified in the Declaration may be made without consent of the members, and the Association may execute an instrument of conveyance therefore without such certification;

(d) the right of the Association to limit the number of guests of Members;

(e) the right of the Association, with the assent of the Members entitled to cast two-thirds (2/3) of the votes of each class of Members to borrow money for the purpose of improving the Common Elements and facilities and in aid thereof to mortgage the Common Elements, provided that the rights of such mortgagee in the Common Elements shall be subordinate to the rights of the Members and the Association hereunder;

(f) the right of the Association, to participate in an equal exchange of land, as permitted by local government ordinances. The vote of the association shall be eighty percent (80%) of the votes of each class of Members;

(g) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Elements and to create Limited Common Elements.

(h) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of use and enjoyment and rights of ingress, egress and access, as specified above, to the initial Common Elements and Common Elements established on all lands included in subsequent phases.

(i) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Elements for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall interfere with or obstruct drainage rights in favor of, utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Elements or cause any Lot or any remaining Common Elements to fail to comply with applicable laws, regulations or ordinances and no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded.

Section 2.     Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of use and enjoyment to the Common Elements and facilities to the Members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3.     Title to the Common Elements. While reserving the right to build and own facilities on the Common Elements and to charge reasonable fees for use of said facilities, the Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Elements located within the Property to the Association, free and clear of all encumbrances and liens, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements. The Association shall be deemed to accept such Common Elements for ownership and maintenance as necessary.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1.     Every record Owner of a Lot which is subject to assessment shall be a Class A Member of the Association. Class A Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

Section 2.     The Association shall have two classes of voting membership:

Class A.       Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except for Declarant or any Affiliate, prior to the conversion of Class B membership to Class A membership. The foregoing is not intended to include persons or entities that hold an interest in a Lot merely as security for the performance of an obligation. Class A Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment by the Association. 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. 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.

Class B.       The Class B Member shall be the Declarant and shall be entitled to six (6) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase. The 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)     when the total votes outstanding in Class A membership equal or exceed the total votes outstanding in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (b) below, the Master Plan is amended to add additional Master Plan Lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to six (6) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase) greater than those of the Class A membership, or
- (b)     ten (10) years from the date of recordation of this Declaration

**Section 3.** Prior to conversion of the Class B membership to Class A membership, Declarant shall have the right to designate and select all of the Members of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors 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 of the Board of Directors so removed for the remainder of the unexpired term of any member or members of the Board of Directors so removed. Any Board of Directors member designated and selected by Declarant need not be a resident of the Property. 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.

**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 and according to the provisions of Article II, Section 1(b) herein.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1.** **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction or reconstruction of improvements. The annual, individual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late payment charges, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy an individual assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

**Section 2.** **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the paying of Common Expenses to promote the recreation, health, safety, and welfare of the Owners of Lots; and, in particular, but not limited to, for the acquisition, improvement and maintenance of the Common Elements, services, amenities and facilities, street islands, and for the use and enjoyment of the Common Elements, including but not limited to, the cost of repairs,

replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Elements, the providing for security to the Property, the procurement and maintenance of insurance in accordance with the Declaration and Bylaws or as deemed appropriate by the Board, the payment of cable service, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

**Section 3. Amount of Assessment.**

(a) **Initial Maximum Assessment.** To and including December 31, 2006, the maximum annual assessment shall not exceed \$3,900.00 per Lot.

(b) **Increase by Association.** From and after January 1, 2007, the annual assessment effective for any year, initially \$3,900.00, per year (including 2006) may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of twelve (12%) percent or the percentage increase reflected in the U. S. City Average, Consumer Price Index -United States and selected areas for urban wage earners and clerical workers, all items, most recent index and percentage changes from selected dates, (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for that twelve-month period ending the immediately preceding October 1. The percentage increase shall be based on the maximum annual assessment for the prior year, or if the Association has not chosen to implement an increase for one or more years, the increase provided in this Section 3 (b) may, at the option of the Association, be based on the annual assessment that would be effective had the increase been implemented each year prior to the year of the actual increase. Any budget providing for an increase not requiring a vote pursuant to subsection (c) below, is ratified unless ninety percent (90%) of the total vote of each class of Members vote to reject the budget at a duly called meeting. The Board of Directors, at its option may declare that a special "Refurbishment Assessment" be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Refurbishment Assessment shall be in an amount not to exceed \$2,000.00) per Lot and may be levied no more than once every five (5) years from the date of the recording of this Declaration. The Refurbishment Assessment shall be used to pay for the cost of enhancing, refurbishing or repairing portions of the Common Elements.

(c) **Increase by Members.** From and after January 1, 2007, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) **Criteria for Establishing Annual Assessment.** In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the amounts provided in Subsection (b) of this Section 3 without the consent of Members required by Subsection (c) of this Section 3.

(e) **Board Authority.** The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.



(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, in its sole discretion Declarant may either make a loan to the Association for funds to cover the expenses not otherwise covered by the assessment hereunder, or it may pay any Association expenses not otherwise covered by the assessment hereunder.

(g) Attorney's Fees. There shall be an approval by the majority of the votes of the members prior to making a special assessment for attorney's fees or prior to incorporating attorneys fees (other than those typically incurred in the normal management of the Subdivision) into the annual budget on which the annual assessment is based.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment 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 capital improvement upon the Common Elements, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, and the cost to purchase Lots and dwellings at foreclosure sales of Association liens, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvements upon the Common Elements. This assessment may not be used for any other purposes including litigation involving the Association.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and any Limited Common Elements which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than 10 days nor more than 50 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast forty percent (40%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or other periodic basis established by the Board.

Section 8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital. The Annual Assessments provided for herein shall commence as to any Lot on the first day following the sale of that Lot from the Declarant or Builder to a Consumer-Occupant Lot Owner, or the date of rental of a Lot from a Builder to a Consumer-Occupant Lot Owner. All Lots in subsequently annexed properties, similarly, shall be subject to assessment. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The

Board of Directors shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, upon the closing of (a) the closing of the initial sale of a Lot from Declarant or a Builder to a Consumer-Occupant Lot Owner, and (b) upon the closing of the sale of a Lot from an Owner in a resale transaction, the purchaser of the Lot shall, pay to the Association a sum equal to two (2) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the Lot Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

**Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed twelve (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant the provisions of Chapter 47F of the North Carolina General Statutes.

**Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes.** The lien of the assessments provided for herein shall be subordinate to the lien of any such institutional first mortgage and ad valorem taxes and public assessments levied on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 11. Exempt Property.** Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

**Section 12. Foreclosure of liens for unpaid assessments.** In any action brought by the Board to foreclose on a Lot because of unpaid assessments, the Lot Owner shall be required to pay a reasonable rental for the use of his Lot, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all Lot Owners, or on behalf of any one or more individual Lot Owners, if so instructed, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover money judgment for unpaid assessments may be maintainable without foreclosing or waiving the lien securing the same.

**Section 13. Assessments upon sale or transfer of a Lot.** No Lot Owner shall be liable for the payment of any part of the Assessments assessed against his Lot subsequent to a consummated sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Lot. A purchaser of a Lot shall be jointly and severally liable with the seller for the payment of the Assessments assessed against such Lot prior to the acquisition by the purchaser of such Lot, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser therefor. Provided, that a first-lien mortgagee or other purchaser of a Lot at a foreclosure sale of such Lot shall not be liable for, and such Lot shall not be subject to, a lien for the payment of Assessments assessed prior to such foreclosure sale, and such unpaid assessed Assessments shall be deemed to be Common Expenses collectible from all of the Lot Owners, including such purchaser, his successors and assigns.

## ARTICLE V

### ANNEXATION OF ADDITIONAL PROPERTY AND STORMWATER OBLIGATIONS

**Section 1.** Annexation of additional property, except as provided in Section 2 of this Article V, shall require the assent of two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of proxies entitled to cast forty percent (40%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the votes of the Class A membership or two-thirds (2/3) of the votes of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat.

**Section 2.** If within twenty (20) years of the date of recordation of this Declaration in the office of the Durham County Register of Deeds, the Declarant should develop such other lands as Declarant or Affiliate or member of Declarant may hereafter acquire contiguous to the additional land, which additional land has been subjected to this Declaration, such land may be annexed by the Declarant without the consent of Members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the Members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association. For purposes of determining contiguity of property, the rights-of-way of public or private roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise contiguous property.

Declarant may amend this Declaration at the time of annexation of additional lands as pursuant to the provisions of this Article V, Section 2. Declarant shall have the right to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration.

**Section 3.** Annexation of additional lands shall be accomplished by recording in the Office of the Register of Deeds in the county in which the Property is located, a Declaration of Annexation, duly executed by the Declarant, if the Declarant has the right to annex pursuant to

Section 2 above, (and by the landowner of the annexed tract or the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Property on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances.

**Section 4.** The Property is subject to specific restrictions on stormwater facilities, as presently set forth in agreements recorded in Book 5091, pages 158-175, Durham County Registry (the "Stormwater Agreements"), which Declarant was required to execute to obtain necessary governmental approvals. The stormwater facilities described in the Stormwater Agreements are part of the Common Elements. Pursuant to such Stormwater Agreements, the Association must maintain stormwater facilities as set forth therein. Pursuant to the requirements of Section 3 and 4 of those Stormwater Agreements:

- (a) the requirements of those Agreements shall receive the highest priority for expenditures by the association except for City and County Assessments, ad valorem property taxes, insurance, and any other expenditures which are required by law to have a higher priority;
- (b) A separate fund shall be maintained by the Association for the reconstruction and repair of the stormwater facilities, separate from the funds for routine maintenance of the facility and from all other Association funds;
- (c) The reconstruction and repair fund shall contain at all time the dollar amount reasonably determined from time to time by the Director of Public Works to be adequate to pay for the probably reconstruction and repair cost for a three-year period; such fund shall be listed as a separate line in the Association's budget, and such funds shall be kept in an FDIC-insured account or by another entity acceptable to the Director of Public Works; Upon a 2/3<sup>rd</sup> vote of the Members (pursuant to the voting provisions of Article III of this Declaration), special assessments shall be charged to each Owner of a Lot;
- (d) To the extent permitted by law, the Association shall not enter into voluntary dissolution unless the stormwater facilities are transferred to another party who has executed a substitute stormwater facilities agreement.
- (e) The Association shall maintain a bond, surety, or similar instrument in the amounts required by the Stormwater Agreements, and the Association shall take all appropriate actions required to assume existing bonds, sureties, or similar instruments and to release the Declarant therefrom.

## ARTICLE VI

### ARCHITECTURAL CONTROLS

No site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements, including

but not limited to, buildings, storage sheds, fences, signs, mailboxes, walls, bulkheads, screens, landscaping, plantings, equipment, or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, roof shingles, location and elevations of the proposed improvements, landscaping or plantings shall have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography, an Architectural Committee composed of three (3) persons appointed by the Declarant so long as there is a Class B membership, or, if no Class B membership, then appointed by the Board. Provided however, at the Declarant's option, the Declarant may retain the ability to appoint the members of the Architectural Committee after Class B membership has terminated until such time as the construction of the initial improvements has been completed on all Lots. In the event the Architectural Committee fails to approve such submission made by any Lot Owner within thirty (30) days after said plans and specifications have been received by the Committee, approval will be deemed to have been denied. Any plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing or any prior approval by the Committee.

Upon request, the Association, on behalf of the Architectural Committee, shall provide any Owner with a letter stating that any such work, plans and specifications, landscaping or plantings have been approved, and the letter may be relied upon by third parties.

Approval or disapproval by the Architectural Committee of such plans, location or specifications may be based upon any grounds, including purely aesthetic and environmental, which in the sole discretion of the Committee, it shall deem sufficient. Neither the Association, Board, nor the Architectural Committee shall be responsible for any defects in the plans and specifications submitted to it or in any structure erected or improvements made on any Lot.

The Board and the Architectural Committee, or their appointed agents, shall have the right, at their election, but shall not be so required, to enter upon any of the Lots during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications.

The Architectural Committee shall have the power to grant, and may allow, variances of, and adjustments of, the restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however, that variances or adjustments are done in conformity with the intent and purposes hereof; and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other Lots in the immediate neighborhood. Variances and adjustments may be of the height, size, and setback requirements, but shall not be limited thereto. No variance shall be permitted if it violates governmental minimum standards.

In the event of the grant of any variance in the restrictions established herein, the Association on behalf of the Architectural Committee shall execute a document acceptable in substance to the Association attesting to such grant and the specific nature thereof in form suitable for recording, so that the Lot Owner may record the document in the Registry of the County in which the Lot is located. Such document shall be prepared at the cost of the Lot Owner and shall be binding upon the Association, its successors and assigns, and other Lot Owners and may be relied upon by third parties to evidence the variance approval.

Any purchaser of a lot or institution financing a lot shall rely on the foregoing statement.

The more specific requirements of any protective covenant applicable to any subdivision on the Property shall prevail.

## ARTICLE VII

### USE RESTRICTIONS

**Section 1. Rules and Regulations.** The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

**Section 2. Use of Property.** No portion of the Property (except for a temporary office of the Declarant and building models used by Declarant) shall be used except for residential purposes and for purposes incidental or accessory thereto.

No trade or business of any kind shall be conducted upon any Lot or part thereof, except (a) Declarant or its agents may use any unsold Lots for sales or display purposes, (b) Declarant may maintain a sales or rental office on the Property, and (c) as may be approved by the Board of Directors in its sole discretion, on a case-by-case basis after petition by an Owner. Provided however, that any such approved business must be conducted entirely within the confines of the house or garage of an Owner and must not create, among other things, a nuisance to the neighbors, or create among other things, excessive noise, traffic, odors or unpleasant appearances. Once permission is granted by the Board of Directors for such a business, the Board of Directors automatically retains the right to terminate approval of such business for violation of the above conditions or any other conditions stated in the Board's initial approval and the Owner shall terminate such business within thirty (30) days after receipt of notice from the Board.

**Section 3. Restrictions on Rentals.** Leasing of dwellings for any of the following purposes is hereby prohibited:

- (a) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and had no future intent to do so;
- (b) by an Owner who has not regularly occupied the Dwelling as the Owner's primary residence and who enters into a lease with a tenant that gives the tenant the option to purchase the Dwelling during, or at the end of the term of the lease;
- (c) by an Owner where the primary purpose of the ownership of the Dwelling is for commercial purposes in that the Dwelling is intended primarily for lease to tenants and not for occupancy by the Owner as the Owner's primary residence

Notwithstanding the foregoing, the Declarant, or Affiliate may lease any Dwelling owned by Declarant for a period not to exceed one (1) year in connection with the sale of a Lot.

**Section 4. 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 5. Animals.** No animals, birds, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes

and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners. No pet shall be allowed to make an unreasonable amount of noise. Pets shall be under leash at all times when walked or exercised in any portion of the Common Elements, and the owner of such pet shall clean up after such pet. Upon the written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion, whether for purposes of this Section 5, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors shall have the further right to fine any Owner for the violation of these pet restrictions by such Owner, and the Owner shall be liable to the Association for the cost of repair of any damage to the Common Elements caused by the Owner's pet. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due to which such Dwelling and its Owner are subject.

**Section 6. 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 7. 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 8. Structural Integrity.** Nothing shall be done in, to, or upon any of the Common Elements which will impair the structural integrity of any building, or other improvement or portion of the Common Elements or which would impair or alter the exterior of any building, improvement or portion thereof, except in the manner provided in this Declaration.

**Section 9. Signs.** No Lot Owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or any portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant and any Lot Owner, or their respective agents, may place "For Sale" signs on any Lots for sale or rent and in suitable places on the Common Elements approved by the Association; provided, however, that during the development of the Property and the initial marketing of Lots, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. Such permitted signs shall be placed in the approximate center of a Lot and six feet from the road curb. No sign shall be nailed to trees.

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

**Section 11. Common Elements Use.** The 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 any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

**Section 12. Parking.** No boats, trailers, campers, motorhomes, trucks, commercial vehicles or tractors 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 or in a specified storage area established by the Association or except as otherwise may be permitted by Rules and Regulations of the Association. Delivery and maintenance vehicles, which are not owned by a Lot Owner are permitted. Notwithstanding the foregoing, this prohibition 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 until completion of any dwelling, garage or accessory building, for so long as construction is being diligently pursued by the contractor.

**Section 13. Mobile Homes, etc.** No mobile home or modular home shall be placed upon any Lot at any time, nor any trailer, recreational vehicle, tent, or other structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or storage units on the Common Elements used by the contractor during the construction of a dwelling, garage or accessory building, for so long as construction is being diligently pursued by the contractor and it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

**Section 14. 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 Board or the Architectural Committee of a Sub-Association.

**Section 15. Antennae.** Exterior radio and television antennae, aerials, disks and dishes for reception of commercial broadcasts shall not be permitted on any Lot and no other aerials, disks and dishes (for example, without limitation, amateur short wave or ship to shore) shall be permitted on any Lot without permission of the Board as to design, appearance and location or pursuant to Regulations issued for that purpose and except as otherwise mandated by applicable law.

**Section 16. 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 17. Drying Areas.** Clotheslines or drying yards shall not be located upon any Lot without the prior written consent of the Board, which consent may be conditioned or withheld in the sole discretion of the Board, or as set forth in Regulations established for that purpose.

**Section 18. Unsightly Growth.** No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain thereon, including vacant parcels.

**Section 19. Maintenance.** Subject to any other applicable terms of this Declaration, and unless specifically stated to be an obligation of the Association pursuant to this Declaration, the Owner of each portion of the Property, at such Owner's sole cost and expense, shall maintain its portion of the Property, including improvements thereon, in a safe, clean and attractive condition at all times, including but not limited to the following thereon:

- (a) Prompt removal of all litter, trash, refuse and wastes;
- (b) Lawn Maintenance on a regular basis, including Landscape Easements, Sign



Easements and Landscaped Rights-of-Way if requested by the Association or according to the terms of any recorded easement agreements should they exist;

(c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material; provided trees shall not be pruned or removed within areas designated as "Tree Save" areas without the prior consent of the Architectural Committee pursuant to the provisions of Article VI hereinabove;

(d) Maintenance of flower and plant gardens;

(e) Maintenance of exterior lighting and mechanical facilities;

(f) Maintenance of parking areas and driveways;

(g) Maintenance of all Improvements thereon;

(h) Maintaining adequate soil erosion controls;

(i) Maintenance of storm water drainage easements and portions of the Property served by storm water drainage easements, as required by this Declaration; and

(j) To the extent not adequately maintained by the applicable governmental authority, the Association or a public utility provider, maintenance of the sidewalk, driveway, driveway apron and utility laterals serving each Owner's portion of the Property, even if located in the Common Elements. Each Owner also shall provide snow and ice removal for any sidewalks located adjacent to such Owner's portion of The Property.

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 amounts as provided in Article IV, Section 9 herein for collection of Assessments.

Section 20. Fuel Tanks. Above-ground and below-ground fuel tanks are prohibited on any portion of the Property.

Section 21. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

