

FOR REGISTRATION
Sharon A. Davis
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DECLARATION
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Prepared By And Return To:
Lisa M. Logan, Attorney
100 E. Parrish St. Ste. 400
Durham, NC 27701

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
ANCHOR WAY

THIS DECLARATION is made this 30th day of May, 2018 by B. Wallace Design and Construction, L.L.C, the Declarant (herein referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the developer of certain property located in Durham County, North Carolina, commonly known as ANCHOR WAY (as defined below, and also referred to as the "Property") and defined as those parcels accessed by Anchor Way in Durham, North Carolina, and as described as all those certain lots accessible by Anchor Way currently owned by B. Wallace Design & Construction, LLC, and described in Deed Book 7568 at Page 615, and Deed Book 7603 at Page 131, and Deed Book 7603 at Page135, all of the Durham County Registry.

WHEREAS, Declarant desires to create a residential subdivision, and contemplates developing the project in phases consisting of single family attached and detached dwellings; and

WHEREAS, Declarant will convey all Lots (as defined below) which are part of the said Property subject to certain protective covenants, conditions, restrictions, reservations and charges as

hereinafter set forth; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of property values, amenities and conceptual intent of the Property, for the maintenance of Common Properties (as defined below) and improvements thereon as described herein, and accordingly desires to subject the Property, together with such additions and/or deletions as may hereafter be made, to the covenants, restrictions, easements, affirmative obligations, charges and liens as hereinafter set forth (herein called the "Declaration" which is further defined below) each and all of which is hereby declared to be for the benefit of said Property and each and every owner of any and all parts thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities of the Property to create an agency to which shall be delegated and assigned the power and authority of owning, maintaining and administering the Common Properties, administering and enforcing the covenants and restrictions governing said Common Properties, collecting and disbursing all assessments and charges necessary for such activities, and promoting the recreation, health, safety, and welfare of the residents; and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of North Carolina as a nonprofit corporation known as ANCHOR WAY HOMEOWNERS ASSOCIATION, INC. for the purpose of exercising the functions described above, and which are hereinafter more fully set forth.

NOW, THEREFORE, in consideration of the premises and covenants set forth herein, Declarant declares that the Property, and such additions and/or deletions thereto as may hereafter be made, is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens hereinafter set forth in this Declaration (sometimes referred to herein as the "Covenants"), and Covenants shall run with the Property and be binding on all persons claiming under and through Declarant, and the Covenants shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1.1. "Association" shall mean and refer to ANCHOR WAY HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, and its successors and assigns.

Section 1.2. "Owner" shall mean and refer to the record owner, whether one of more persons, firms, associations, corporations, or other legal entities, of a fee simple title to any dwelling unit or lot which is part of the Property, including contract sellers, but notwithstanding any applicable theory of a mortgage or deed of trust, shall not mean or refer to the mortgagee or beneficiary as successor or assign, until and unless such mortgagee or beneficiary has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or

tenant of an owner.

Section 1.3. The "Subdivision" or "Property" shall mean and refer to that certain real property commonly known as ANCHOR WAY and defined as those parcels accessed by Anchor Way in Durham, North Carolina, and which is more particularly described as all those certain lots accessible by Anchor Way currently owned by B. Wallace Design & Construction, LLC, and described in Deed Book 7568 at Page 615, and Deed Book 7603 at Page 131, and Deed Book 7603 at Page 135, Durham County Registry (the "Property") and incorporated herein by reference and such additions and/or deletions thereto as may hereafter be brought within or taken from the jurisdiction of the Association as subjected to this Declaration or any Supplemental Declaration.

Section 1.4. "Common Properties" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Members.

Section 1.5. "Common Expenses" shall mean and refer to all sums lawfully assessed by the Association against its Members, including expenses of administration, amenity use and access fees, maintenance, repair or replacement of Common Area land or facilities and/or landscaped rights-of-way, premiums for hazard, liability or other insurance as may be obtained by the Association and all expenses declared to be or described as common expenses by the provisions of this Declaration, and/or other expenses agreed by the Members of the Association to be common expenses of such Association.

Section 1.6. "Amenities" shall mean any recreational facilities constructed for the specific use and enjoyment of residents and guests of the Subdivision.

Section 1.7. "Site" shall mean any plot of land regardless of size as shown on a recorded plat of the Subdivision which has been approved by the Declarant as required by this Declaration.

Section 1.8. "Undeveloped Site" shall mean a Site of the Subdivision not yet developed but intended to contain one or more residential units as provided in the subdivision plan for the Subdivision as approved by the City of Durham, including any additions or deletions thereto.

Section 1.9. "Lot" shall mean and refer to any improved or unimproved parcel of land, with delineated boundary lines, shown upon any recorded subdivision map of the Subdivision, intended for the construction of an attached or detached single family dwelling unit, excluding any Common Properties as defined herein.

Section 1.10. "Landscaped Rights-of-Way" shall mean the project entrance, medians, road shoulders, sidewalks, and other areas within street rights-of-way within the Property that may be landscaped and improved with irrigation systems or lighting, and maintained in accordance with the provisions hereinafter contained.

Section 1.11. "Dwelling Unit" or "Unit" shall mean any attached or detached single family

residence containing sleeping facilities for one or more persons, a kitchen and bathrooms.

Section 1.12. "Member" shall mean and refer to every person or entity entitled to membership in the Association as provided in this Declaration.

Section 1.13. "Declarant" shall mean and refer to B. Wallace Design and Construction, L.L.C., its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development, or if such successors or assigns should acquire more than one lot, whether developed or undeveloped, pursuant to foreclosure or a deed in lieu of foreclosure ("successors" includes any lender with respect to loans obtained by Declarant to develop the Properties).

Section 1.14. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for ANCHOR WAY, as it may be amended and supplemented from time to time as herein provided.

Section 1.15. "Board of Directors" or "Board" shall mean and refer to those persons elected or appointed to act collectively as the Directors of the Association, which is the governing body of the Association.

Section 1.16. "Book of Resolutions" shall mean and refer to the document containing rules and regulation and policies adopted by the Board of Directors.

Section 1.17. "Bylaws" shall mean the bylaws of the Association as they now or hereafter may exist.

Section 1.18. "VA" shall mean Veterans Administration, "FHA" shall mean Federal Housing Authority, and "HUD" shall mean Department of Housing and Urban Development.

Section 1.19. "Project" shall mean and refer to the Subdivision.

Section 1.20. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of ANCHOR WAY HOMEOWNERS ASSOCIATION, INC., as same may be amended from time to time.

Section 1.21. "Builder" shall mean any person or legal entity engaged principally in the business of constructing for sale single family residential dwellings to whom Declarant sells or has sold one or more Lots for the purpose of constructing thereon a single family residential dwelling.

ARTICLE II PROPERTY AND PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 2.1. General. Each Lot shall, for all purposes, constitute real property which shall be

owned in fee simple and which, subject to the provisions of this Declaration, maybe owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2.2. Annexation/Removal of Property. The Declarant as the owner from time to time of any property which it desires to subject to this Declaration ("Additional Property"), may do so by filing of record a Supplemental Declaration (herein so called) which shall extend this Declaration to such Additional Property; provided, however, that such Supplemental Declaration, as applied to the Additional Property covered thereby, shall include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration; and if a person or entity other than Declarant desires to add property to the scheme of this Declaration, such property may only be so added if the Declarant and the Association, acting through its Board, give written consent thereto and, if such consents are given, such property shall be considered "Additional Property". If Declarant, in the development process, deems it appropriate for the benefit of the subdivision to remove subsequent phases from the Association, the Declarant has such right under this Declaration.

Section 2.3. Contents of Supplemental Declaration. Each Supplemental Declaration shall set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant and the Association, acting through its Board. In no event, shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the Property or to previously added Additional Property.

Section 2.4. Merger or Consolidation. Upon a merger or consolidation of the Association with another association which is a nonprofit corporation composed of owners of Additional Property, the properties, right and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, right and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association and shall administer the terms and provisions of this Declaration and any applicable Supplemental Declarations, if any, affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the terms and provisions of this Declaration or any Supplemental Declaration pertaining to the Property or any portion thereof except as specifically

provided in this Declaration.

Section 2.5. Members' Easements of Enjoyment. Subject to the provisions of these Covenants and the rules and regulation of the Association, every member shall have a right and easement of use and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall run with the title of every Lot, subject to the following restrictions set forth in Section 8 hereof.

Section 2.6. Delegation of Use. Any Member may delegate in accordance with the By-Laws of the Association, his right of enjoyments to the Common Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on such Members' Lot.

Section 2.7. Title to Common Properties. Declarant shall initially hold title to all Common Properties within the Subdivision. Declarant hereby covenants, for itself, its successors and assigns that it will, from time to time, convey the Common Properties to the Association for the common use and enjoyment of the Owners. The Association hereby covenants and agrees to accept from Declarant all such conveyances of Common Properties. The fee simple title to all such real and personal property designated as Common Property or for public use, together with all rights therein, shall be conveyed to the Association free and clear of all encumbrances prior to HUD insuring the first mortgage or deed of trust in the Subdivision,

Section 2.8. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Common Properties and to mortgage the Common Properties; provided, however, that the approval of at least 67% of the Members shall be required to mortgage or convey all or any part of the Common Properties;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(c) The right to adopt and publish rules and regulations governing common use of the amenities and Common Property;

(d) The right of the Association, as provided in its By-Laws, to suspend the enjoyment of rights of any Member or any tenant of any Member for any period during which any assessment remains unpaid; and for any period not to exceed ninety (90) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment;

(e) The right of the Association to charge Members' guest reasonable admission and other fees for the use of the any Amenities;

(f) The right to grant easements or rights-of-way on, over, across, under and through the common area to any public agency, authority or utility company or cable television system; and

(g) The right of the Association to give, sell or lease all or any part of the Common Properties to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift, sale or lease shall be effective unless authorized by a vote of 67% of the eligible members (including Declarant), cast in person or by proxy, at a duly called meeting and unless written notice of the proposed action is sent to every Member at least twenty (20) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken and a certificate of mailing executed by the Secretary of the Association or the managing agent and such certificate shall be annexed to any instrument affecting the Common Properties, prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

Section 2.9. FHA, VA, FNMA Approval. Any other provision of this Declaration to the contrary notwithstanding, as long as there is a Class B membership, the following actions shall require the prior approval of the Federal Housing Administration, the Veterans Administration or the Federal National Mortgage Association: Annexation of Additional Properties, mergers or consolidations, dedication of Common Properties, mortgaging of Common Properties, and amendment of this Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.1. Members. Declarant, for so long as it shall be an Owner of property or Lots, and every person or entity who is a record owner of a fee simple or undivided fee simple interest in any Dwelling Unit, or Lot that is subject by the Covenants to assessments by the Association shall be a Member of the Association; provided, however, that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit, Lot or Site that is subject to assessment by the Association. Ownership of a Dwelling Unit, Lot or Site shall be the sole qualification for Membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Dwelling Unit, Lot or site in ANCHOR WAY. No owner shall have more than one Membership per Lot, except as expressly provided hereinafter.

Section 3.2. Member Classes and Voting Rights. The Association shall have two (2) classes of voting Members:

Class A. Class A Members shall be all Owners with the exception of the Declarant, until its Class B Membership has converted to Class A Membership. Class A Members shall be entitled to one (1) vote for each Dwelling Unit, Lot or Site in which they hold the required ownership interest.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Dwelling Unit, Lot or Site in which it holds the required ownership interest, provided that the Class B Membership shall cease to exist and shall be automatically converted to Class A membership on the happening of either of the following events, whichever occurs first:

- (a) The Declarant has conveyed all properties (including additional lands to be annexed) to Class A Members.
- (b) Not later than December 31, 2028.

Thereafter, the Declarant may be entitled to one (1) vote per Dwelling Unit or Lot owned by it as in Class A membership.

Section 3.3. Voting Right Suspension. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulation and for any period during which any assessment of a member remains unpaid according to the provisions of Article IV.

Section 3.4. Voting. The total vote of the Association shall consist of the sum of the votes of the Class A Members and the votes of the Class B Member present in person or by proxy at a legally constituted meeting at which a quorum is present. The number of votes present at a meeting that will constitute a quorum shall be as set forth in the By-Laws, as amended from time to time. Notice requirements for all action to be taken by the Members of the Association shall be as set forth herein or in the By-Laws, as the same may be amended from time-to-time.

When more than one person holds an interest in any Dwelling Unit, Lot or Site, all such persons shall be Members; and the vote for such dwelling unit or site shall be exercised as they among themselves determine; provided, however, that in no event may more than one vote be cast with respect to any one Dwelling Unit, Lot or Site owned by a Class A member, and in no event shall fractional votes be allowed.

When one or more co-owners signs a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more other co-owners is present and objects to such a vote or, if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote is counted.

A person's or entity's membership in the Association shall terminate automatically whenever such person or entity ceases to be an Owner, but such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Association or this Declaration during the period of such ownership, or impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

Section 3.5. Right of Declarant to Representation on Board of Directors of the Association.

Notwithstanding anything contained herein to the contrary, until December 31, 2028, or until Declarant shall have conveyed all Properties to Class A members, whichever occurs first, Declarant (or its expressed assignee of the right granted in this section) shall have the right to designate and select all 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, 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. Declarant shall have the right, for any reason or for no reason, to remove any person or persons selected by it to act and serve on said Board of Directors and replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed. Any director designated and selected by Declarant need not be an owner. Any representative of Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have pecuniary interest or other interest.

ARTICLE IV COVENANTS FOR ASSESSMENT

Section 4.1. Creation of Lien and Obligation for Assessments. Each Owner of a Lot, other than Declarant or a Builder, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or conveyance, shall be deemed to covenant and agree to all the terms and provisions of these Covenants and to pay to the Association (or to an Independent entity or agency which may be designated by the Association to receive such moneys):

- (a) Annual maintenance assessments or charges for common properties.
- (b) Annual use and access fees for maintenance of any Amenities.
- (c) Annual neighborhood assessments for dwelling unit owners as established by the Board.
- (d) Stormwater assessments and obligations as set forth by the City of Durham's **Stormwater Facility Agreement and Covenants, recorded in Deed Book 8427, Page 151** reference to which hereby fully incorporates said document to these Covenants herein. Additionally, The City of Durham has the right to enforce stormwater assessments in lieu of the Association if necessary. 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 Facilities. 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 Facilities. The Major Reconstruction Fund shall be maintained

in an account that is a separate account from the Association's general account. See **Exhibit A** attached hereto and incorporated herein by reference for further specifics regarding Obligations Regarding Stormwater Facilities.

(e) Special assessments for the purposes set forth in this Article, such assessments to be fixed, established, and collected from time to time as provided in Section 4.4 below. Special individual assessments as may be assessed by the Board of Directors as fines for violation and non-compliance. The Board may impose fines against any Dwelling Unit or Lot and such fines shall be treated as a "Special Individual Assessment" otherwise due to the Association, and as such will be a lien against the Owner's Dwelling Unit or Lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fines. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner(s) shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner. Fines shall be as follows:

- (1) First non-compliance or violation: a fine not in excess of Fifty Dollars (\$25.00).
- (2) Second non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).
- (3) Third and subsequent non-compliance, or violation or violations that are of a continuing nature: a fine not in excess of Twenty-Five Dollars (\$25.00) per day for each day of continued violation or noncompliance.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used for the purposes of enforcing and carrying out the terms and provision hereof and of any Supplemental Declaration, carrying out the duties of the Board, the purposes of the Association and promoting the recreation, health, safety and welfare of the residents of the Property and for the improvement, maintenance, and operation of the Common Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereof, and for the costs of labor, equipment, materials and management supervision thereof. The Special Assessments shall be used for the purposes set forth in Sections 4.4 and 4.5.

Section 4.3. Annual Assessments. For the calendar year 2018, the annual assessment for "common properties" maintenance shall be One Hundred Twenty Dollars (\$120.00) for each Dwelling Unit or recorded Lot for which a building permit has been issued, except as otherwise provided herein, the exact amount of which shall be determined from time to time by the Board of Directors. On or before December 31 of each year during the term hereof, the Board shall set the amount of the annual assessment for the ensuing year for each dwelling unit or lot, taking into consideration, among other things, the style and type of dwelling unit or Lot, the size and scope of the then current development, number of developed Lots, anticipated maintenance costs for all common properties, the cost to maintain and operate amenities, and any extra cost or expenses

associated with the attached dwelling units, an estimate of new sales activity and the future needs of the Association. The amount of the annual assessment for each dwelling unit or Lot as set by the Board shall be determined by calculating the estimated costs and expenses to be incurred by the Association to maintain all Common Properties and project amenities, for the year in question, as such amount is reasonably estimated by the Board (and which estimated amount may include a reasonable contingency fund); estimate any offsets to these costs that may be available by charging Member or guest "Use and Access" fees to the amenities and then dividing this net amount by the number of dwelling units or Lots in the Property sold to Class A Members, such that the regular annual assessment for each dwelling unit or Lot shall be the same. Additionally, the attached dwelling units or Lots may be subject to an extra neighborhood assessment, as determined by the Board of Directors, to cover cost unique to them as a special attached product type. The Annual Assessment shall be due and payable as provided in this Article. Notwithstanding anything herein to the contrary, the Board of Directors can increase the amount of the Annual Assessment by up to 50% in any given calendar year. Any increase of 50% or more in one calendar year shall also require the approval of at least 67% of the Members present at a duly called meeting at which a quorum is present.

Section 4.4. Special Assessment. In addition to the annual assessment authorized by Section 4.3 hereof, the Board may, without a vote of the membership, levy in any assessment year or years, one (1) special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of an Association owned improvement including the necessary fixture and personal property related thereto, acquisition of property, cost of construction of capital improvements to the common areas, or for carrying out other purposes and/or duties and obligations of the Association as stated in its Articles of Incorporation or as stated herein. If a special assessment shall exceed Seventy-Five Dollars (\$75.00) per Unit, or is proposed more than one time per calendar year, it shall require the approval of the Members of the Association, to be obtained at a duly convened regular or special meeting at which a quorum exists and which is called at least in part to secure this approval. Approval shall be by an affirmative vote of at least fifty-one percent (51%) of the votes present in person or by proxy. Special Assessments shall be collectible in such a manner as the Board of Directors shall determine. Special Assessments shall be assessed pursuant to this Section 4 against the dwelling units and owners thereof and the Lots and owners thereof on a pro rata basis in the same manner as described in Section 3 above.

Section 4.5. Emergency Special Assessments. The Association may levy an emergency special Assessment when, in the sole determination of the Board of Directors, there is potential danger of damage to persons or property. Such emergency special Assessments may be utilized to pay for preventative, protective or remedial construction, reconstruction, improvements, repairs or replacements. Events justifying emergency special Assessments include, but are not limited to, hurricanes, floods, and fires. Emergency special Assessments shall be collectible from Members in such a manner as the Board of Directors shall determine. Such emergency special assessments are separate and apart from the special assessment referred to in Section 4.4.

Section 4.6. Commencement Date of Annual Assessment. The annual assessment provided for

herein shall commence as to each Lot on the day on which such Lot is conveyed to a Person other than Declarant or a Builder and shall be due and payable in such manner and on such schedule as the Board may provide. Annual assessments and any outstanding special assessments shall be adjusted for each Lot according to the number of months then remaining in the then fiscal year of the Association.

Section 4.7. Due Date of Assessments. Annual assessments shall be due and payable on an annual basis on the first day of January of each year. The first installment of the annual assessment shall become due and payable on the day of conveyance to a person other than Declarant or Builder and shall be prorated according to the number of days remaining in the annual period. Special Assessments shall be due when so provided by the Board of Directors at the time of assessment.

Section 4.8. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Dwelling Units and Lots within a particular class of membership, except that, notwithstanding anything within this Declaration to the contrary, Declarant and Builders shall be not be required to pay any Special or Emergency Assessment levied against any Dwelling Unit or Lot owned by it until it is sold to a Class A Member. A Builder shall not be required to pay annual assessments. The Declarant shall not be required to pay Annual Assessments.

Section 4.9. Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the Assessment against all Dwelling Units, Lots or Sites for each assessment period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall, upon demand, and for a reasonable charge, at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid; provided, however, that no Owner shall be entitled to receive more than one (1) certificate for each payment. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 4.10. Effect of Nonpayment of Assessment. Any Assessment not paid within thirty (30) days after the due date shall incur a late charge in the amount of ten dollars (\$10.00) and, if such Assessment is not paid within forty-five (45) days after the due date, then such Assessment and applicable late fee, shall become delinquent. After the forty-fifth (45th) day, there shall be added to the Assessment and late fee interest thereon at the rate of eighteen percent (18%) per annum or the highest rate of interest permitted by law from the due date, and the cost of collection thereof as hereinafter provided shall become a charge and continuing lien on the Lot and all improvements thereon. If said Assessment is not paid within sixty (60) days after the due date, the Association may file a lien against the said Dwelling Unit, Lot or Site, and may thereafter bring an action at law against the Owner personally or foreclose the lien against the Dwelling Unit, Lot or Site, and there shall be added to the amount of such Assessment the costs of collection, including reasonable attorneys' fees and expenses, and interest as provided above.

No Owner may waive or escape liability for the Assessments provided for herein by non-use of the Common Properties or abandonment of his Dwelling Unit, Lot or Site. Each Owner, by his acceptance of a deed to a Dwelling Unit, Lot or Site hereby expressly vests in the Association, its agents, successors and assigns, the right and power to bring all actions against such Owner who shall be personally liable for the payment of such charges as a debt, and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. The lien provided for in this action shall be in favor of the Association and shall be for the benefit of all other Owners.

Section 4.11. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with late fees and interest as provided herein and the cost of collection, including reasonable attorney's fees, become a continuing lien and charge on the Dwelling Unit, Lot or Site owned by the defaulting Owner and improvements thereon covered by such Assessment, as of the Assessment due date, which shall bind such Dwelling Unit, Lot or Site and improvements then in the hands of the Owner, and the defaulting Owner's heirs, devisees, personal representatives, successors, and assigns. The said annual and special Assessments, together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the Dwelling Unit, Lot or Site against which such Assessment is made. Each such Assessment, together with such interest thereon and cost of collection therefor as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Dwelling Unit, Lot or Site at the time when the assessment fell due. In the case of co-ownership of a Dwelling Unit, Lot or Site, all such co-owners shall be jointly and severally liable for the assessment. Except as hereinafter provided, the aforesaid lien shall be superior to all other liens and charges against such Dwelling Unit or Lot and improvements thereon. The Board shall have the power to subordinate the aforesaid assessment lien to any other lien, and such power shall be entirely discretionary with the Board. To evidence the aforesaid assessment lien, the Board may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Dwelling Unit or Lot and any improvements thereon covered by such lien and a description of the Dwelling Unit or Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Office of the Clerk of Superior Court of Durham County, North Carolina. Such lien for payment of assessments shall attach with the priority set forth above from the date that such payment becomes delinquent and may be enforced by the foreclosure of the defaulting Owner's Dwelling Unit, Lot or Site and improvements thereon by the Association in like manner as a deed of trust with power of sale on real property subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the assessments and/or for foreclosure of the aforesaid lien judicially or may seek other available remedy or relief. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the Association's costs, expenses, and reasonable attorney's fees incurred. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

Section 4.12. Subordination To The Lien Of Mortgages. The lien for the assessments provided for herein, together with any interest or late charges thereon, shall be subordinate to the lien of any first mortgage or deed of trust or equity line mortgage or deed of trust now or hereafter placed upon any Dwelling Unit, Lot or Site subject to assessment. Sale or transfer of any Dwelling Unit, Lot or Site shall not affect the assessment lien; however, sale or transfer of any Lot pursuant to mortgage 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Mortgagees shall not be required to collect assessments. Failure to pay assessments shall not constitute a default under any insured mortgage or deed of trust.

Section 4.13. Exempt Property. The following property, individuals, partnerships and corporations subject to this Declaration shall be exempted from Assessments, as well as any charges thereon and lien created herein:

- (a) Properties conveyed to public utilities as part of a grant of utility easements;
- (b) All properties exempt from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemptions;
- (c) All Common Properties as defined herein; and
- (d) All properties dedicated to, and accepted by, a local public municipality or authority.

Section 4.14. Annual Budget. By majority vote of the directors, the Board of Directors shall adopt an annual budget for the subsequent year of operation, which shall provide for allocation of expenses in such a manner that the obligations imposed by these Declarations and any and all Supplementary Declarations will be met.

Section 4.15. Omission of Assessments. The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

ARTICLE V ARCHITECTURAL CONTROL

Section 5.1. The ANCHOR WAY Homeowner's Association Architectural Control Committee ("ACC") shall have exclusive jurisdiction over all original construction modifications, additions or alterations made on or to lots, structures or dwelling units and the open space appurtenant thereto. The ACC shall promulgate design and development guidelines and specific architectural standards for all properties within the Subdivision. The ACC may provide different

requirements and guidelines for different types of Lots within the Subdivision and may permit exceptions be made by the ACC for architectural merit. The Architectural Control Committee shall consist of one (1) or more persons designated by the Declarant. At such time as Declarant no longer owns any real property within the subdivision, or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant, the rights, powers, duties and obligations of Declarant regarding the ACC shall automatically be transferred to the Association. At that time, the Board shall appoint three (3) or more persons as members of the ACC. (This Article may not be amended without the Declarant's written consent so long as the Declarant owns any real property subject to this Declaration or subject to annexation to this Declaration.)

This article shall not apply to the activities of Declarant or its assigns.

Except for the dwelling structures constructed on Lots by the Declarant or its assignee in accordance with the Declarant's general plan of development, which dwelling structures shall be exempt from the following approval process, no building, sign, fence, outside lighting, hedge, wall, walk, antenna, clothesline or other structure or planting, landscaping or tree removal shall be considered, erected or planted until the plans and specification showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to the topography and finished ground elevation shall have been submitted to and approved in writing by the ACC. The ACC shall have the right to refuse to approve any plans and specifications, which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the ACC shall consider the suitability of the proposed building, improvements, structure or landscaping and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ACC shall fail to specifically approve or disapprove the plans and specification submitted in final and complete form within forty-five (45) days after the monthly application cutoff date, such plans and specification shall be deemed approved.

There is specifically reserved unto the ACC, the right of entry and inspection upon any Lot for the purpose of determination by the ACC whether there exists any construction of any improvement which violate the terms of any approval by the ACC or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference.

The ACC and the Board of Directors is specifically empowered to enforce the provisions of this Declaration by imposing fines through special individual assessments, any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees in connection therewith.

The Association, Declarant, ACC or any officer, employee, agent, director or member thereof shall

not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specification, that it will not bring any action or suit against the Association, Declarant or ACC to recover any such damages.

Review and approval of any application pursuant to this article is made on the basis of aesthetic considerations only and the ACC shall not bear any responsibility for insuring the structural integrity or soundness of approved construction or modification, nor for insuring compliance with local building codes or other governmental requests.

Section 5.2. If in the event information submitted to the ACC is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information.

Section 5.3. Unless specifically excepted by the ACC, all improvements for which approval of the ACC is required under this Declaration shall be completed within a reasonable time from the date of commencement of said improvements, and such time shall not be in excess of six (6) months from the date of commencement.

Section 5.4. Separate and apart from any owner's requirement to meet town and county setback requirements, the ACC shall in all cases have the right to determine and designate additional building set back lines necessary to conform to the general plan of ANCHOR WAY, in order to preserve the integrity of the Property and the Subdivision Plan. In this respect the ACC's judgment and determination shall be final and binding.

Section 5.5. A majority of the ACC may take any action of the committee and may designate a representative to act for it. In the event of death, disability or resignation of any member of the ACC, the Declarant or the Board of Directors shall designate a successor in accordance with Article V, section 1.

Section 5.6. The ACC may adopt additional guidelines along with rules and regulations as it deems necessary to carry out its functions and purposes hereunder, provided all such rules and regulations are not in conflict with this Declaration, shall be approved by the Board of Directors and made a part of this Association's Book of Resolutions.

Section 5.7. The Association may impose reasonable fees and charges upon Owners applying for Architectural Control approval to enable it to carry out its functions.

Section 5.8. In an instance where a structure has been erected, or the construction thereof is substantially advanced, in such manner that the same violates the restrictions contained in this Declaration or any other covenants which the ACC has the power to enforce, or in such manner that the same encroaches on any easement area or setback line, the ACC reserves the right to release the

property from the restriction which it violated and to grant an exception to permit the encroachment by the structure over the setback line or on the easement area, so long as the ACC, in the exercise of its sole discretion, determines that the release or exception will not materially and adversely affect the health, safety and appearance of the Properties.

The ACC has the right, but not the obligation, to grant waivers for minor deviations and infraction of this Declaration. The granting of any waiver for any portion of the Properties may be given or withheld in the ACC's sole discretion and a prior grant of a similar waiver shall not impose upon the ACC the duty to grant new or additional requests for such waivers.

ARTICLE VI USE RESTRICTIONS

Section 6.1. Rules and Regulation. The Board of Directors of the Association shall have the power to formulate, publish and enforce by means of fines or penalties, reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Properties and for violations of these Covenants. No rule or regulation proposed by the Board of Directors shall in any way limit the right of the Declarant to develop the Property.

Section 6.2. Use of Properties. No Lot shall be used except for residential purposes, except that nothing herein shall preclude the use of any Lot for providing a recreational area for the individual Lot owners as a group, or for use by Declarant or Builders as a sales office or Model Home. No building shall be erected, altered, placed or permitted (except by Declarant) to remain on any Lot other than approved attached or detached single family residences in accordance with the original development plan.

(a) Outside clothes lines shall not be permitted within the Subdivision.

(b) No commercial signs, with the exception of a "For Sale" or "For Rent" sign no more than twenty four inches (24") in width and eighteen inches (18") in height, shall be erected or maintained on any Lot. Such signs as allowed hereunder, being temporary in nature, shall not be subject to any set back requirement. Declarant and/or Declarant's assigns shall be authorized to erect and maintain temporary signs without limitation as to size for the sales and construction offices and for marketing of ANCHOR WAY and to erect and maintain decorative fencing at any sales or construction office.

© No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other things used for building purposes shall be stored on any Lot (except by Declarant or his assignee) in an exposed location except for the purpose of construction on such Lot, and in such case shall not be stored on such Lot for longer than the length of time reasonably necessary for the completion of the construction in which same is to be used.

(d) No exposed above-ground tanks will be permitted for storage of fuel, water or any other substance. Aboveground swimming pools will not be permitted. In-ground swimming pools will be

permitted if previously submitted and approved by the Architectural Control Committee.

(e) Nothing shall be kept in, and no activity shall be carried on in any dwelling structure or a Lot or on the Common Properties which will increase the rate of insurance for the Common Properties. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his dwelling structure or on the Common Properties which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any Lot or on any portion of the Common Properties. All garbage receptacles, containers and enclosures shall be located at the rear or side of the dwelling structure on a Lot out of view from the street such structure faces.

(f) Except with the prior written consent of the ACC, no trailer, tent, shack, barn, or other outbuilding shall be erected or placed on any Lot covered by these covenants.

(g) No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum building set back line except upon approval by the ACC. No fence shall be used without prior written approval of the ACC. Chain link fences are prohibited.

(h) No accessory building of any nature whatsoever (including but not limited to detached garage, storage building, dog houses, greenhouses) shall be placed on any Lot without prior written approval of the ACC, and the ACC shall have the sole discretion relating to the location and type of accessory building which shall be permitted on any Lot.

(i) Each Owner shall keep his building site free of tall grass, undergrowth, dead trees, trash and rubbish and properly maintained so as to present a pleasing appearance. In the event an Owner does not properly maintain his building site as above provided, in the opinion of the ACC, the Board of Directors may have the required work done and shall assess against the Owner and/or the Lot the costs thus incurred, plus a twenty percent (20%) service charge, in addition to any fines charged for such violation.

(j) Satellite dishes will be allowed in accordance with FCC standards, upon prior written approval of the ACC.

(k) Decorative lawn ornaments must be approved in writing by the ACC prior to installation on any Lot.

Section 6.3. Parking Rights. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of all motor vehicles owned by such Owner, and Owners of Lots are requested to park their vehicles in their driveways and garages. Owners of Lots shall not be permitted to park boats, trucks, trailers, campers and all other similar property on the streets in the development, and such property shall be parked in a garage or area screened from the street and approved by the ACC. In no case shall recreational vehicle parking be allowed in front of or beside a house unless adequately screened from view of the street and adjoining Lots. No inoperative or abandoned

vehicle of any type, shall be parked or stored on any Lot or on the streets in the development.

Section 6.4. Hobbies and Activities. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of any Lot or Common Properties.

Section 6.5. Required Land Area. No single family residential Lot may be subdivided (except by Declarant) by sale or otherwise so as to reduce the total area thereof below that as shown on any recorded subdivision map of the Property. Any owner of more than one (1) contiguous Lot may apply to the ACC for permission to combine such Lots as one site for a Single-Family Residence; and, upon written consent of the ACC, said contiguous Lots shall then be defined as a "Lot" for purposes of this Declaration, except that such Lots shall continue to be treated as separate and distinct Lots for the purposes of voting and Assessments. The Owner of such Lots shall be required to comply with the side yard setback set forth herein, except such requirement will apply to the outside side yard setback of the combined lots.

Section 6.6. Animals and Pets. No stable, dog run, poultry house or yard or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any Lot without the express written permission of the Board of Directors of the Association. However, a reasonable number of household pets as determined by the Board of Directors of the Association shall be permitted, provided they are not raised for commercial purposes.

Section 6.7. Prohibited Activities. Noxious, offensive or loud activities shall not be carried out upon any Lot. Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Each Owner shall keep and maintain his Lot in a neat, orderly and well-kept manner. Home businesses are allowed if such business does not create a nuisance or excessive visitor traffic to the Lot. Any such home business must receive written Board approval prior to such business being established.

Section 6.8. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Properties shall be observed. In the event of any conflict between any provision of such governmental code, regulation, restriction, or provision of this Declaration, the more restrictive provision shall apply.

ARTICLE VII INSURANCE AND CASUALTY LOSSES

Section 7.1. Insurance. The Association, by and through its Board of Directors or its otherwise duly authorized agents, shall have the authority to obtain and shall obtain, if available at reasonable cost, insurance for all insurable improvements on the Common Properties against loss or damage by fire, flood or other hazards, including extended coverage of vandalism and malicious mischief.

This insurance, if available at reasonable cost, shall be in an amount sufficient to cover the full replacement cost of repair or reconstruction in the event of damage or destruction from any such hazard. The Association shall also obtain a comprehensive public liability policy covering the Common Properties, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, along with a fidelity bond for all officers and employees having control over the receipt and disbursement of Association funds and Worker's Compensation to the extent necessary to comply with applicable laws. All such coverage obtained by the Board shall be written in the name of the Association as trustee for each of the members and the premiums for all such insurance contemplated hereunder shall be common expenses of the Association.

Section 7.2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

- (a) If the damage or destruction for which the proceeds are paid is repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment for such repairs or reconstruction. Any proceeds remaining after such costs of repair or reconstruction to the Common Properties shall be retained by and for the benefit of the Association.
- (b) If it is determined that the damage or destruction of Common Properties for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association.

Section 7.3. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may levy a special Assessment, as provided for herein, to cover the deficiency.

ARTICLE VIII CONDEMNATION

In the event that all or any part of the Common Properties shall be taken by condemnation (or conveyed in lieu of or under threat of condemnation) the award made for such taking shall be payable to the Association as trustee for Owners, to be disbursed as follows:

- (a) If the taking involves the portion of the Common Properties on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Properties to the extent such plans are available in accordance with plans approved by the Board of Directors of the Association.
- (b) If the taking does not involve any improvements on the Common Properties or in the event that a decision is made not to repair or restore such improvements, or if there are net funds remaining after any such restoration or replacement is completed, then

such award of net funds shall be disbursed to the Association and used for such purposes as the Board of Directors may determine.

ARTICLE IX DECLARANT'S RIGHTS

Notwithstanding any provisions contained in the Declaration to the contrary, Declarant shall have the following rights described in this Article, and the following restrictions described in this Article shall remain in effect.

(a) Declarant may maintain and carry on, or may delegate such rights to Build, upon portions of the Common Properties such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model units, and information centers, and the Declarant shall retain an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots or Units owned by the Declarant and any clubhouse or community center which may be owned by the Association, as sales office, models or information centers with parking for visitors.

(b) No person or entity shall record any Declaration of Covenants, Conditions and Restrictions, or similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration or similar instrument approved by recorded consent be null and void until signed by the Declarant.

(c) The Board of Directors of the Association shall have no authority to, and shall not, undertake any action which shall:

- (1) decrease the level of maintenance services of the Association performed by the initial Board as specified in the Articles of Incorporation of the Association;
- (2) change the membership of the ACC or diminish its powers as stated herein;
- (3) alter or amend any Declaration, any subsequent amendment thereto, the Articles or By-laws of the Association;
- (4) modify, amend or alter the subdivision plat;
- (5) terminate or waive any rights of the Association under this Declaration;
- (6) convey, lease, mortgage, alienate or pledge any easements or Common Property of the Association;
- (7) terminate or cancel any easements granted hereunder or by the Association;
- (8) terminate or impair in any fashion any easements, powers or rights of the Declarant hereunder;
- (9) restrict the Declarant's right of use, access and enjoyment of any of the Property, or

- (10) cause the Association to default on any obligation under any contract of this Declaration, unless the Declarant consents in writing to the prohibited action. The Declarant's consent shall be exercised by its appointee on the Board or other person designated to so act by the Declarant.

Any or all of the special rights and obligation of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right of the Declarant beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Durham County, North Carolina.

This Article may not be amended without the express written consent of the Declarant; provided, however, the Declarant's rights contained in this Article shall terminate upon the earlier of (a) December 31, 2028 or (b) the recording by Declarant of a written statement that all sales activity in ANCHOR WAY has ceased and the Declarant's right have been assigned to the Board of Directors of the Association.

ARTICLE X EASEMENTS

Section 10.1. Blanket Easement. There is hereby created a blanket easement upon, across, over, and under all of said Property subject to this Declaration for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on said property, and to affix and maintain electrical and/or telephone equipment under the roofs and exterior walls of said Common Properties. An easement is further granted to all police, fire protection, garbage collectors, ambulance, and all similar persons to enter upon the streets and Common Properties in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management companies selected by the Association to enter in or to cross over the Common Properties provided for herein.

Section 10.2. An easement over, through and to adjacent Lot(s) is reserved and establishes in favor of Declarant and all Owners for the purpose of maintaining any Dwelling Unit located closer than ten (10) feet from a Lot line. This easement shall be used only as and when necessary to facilitate such maintenance at any time on a Lot by Declarant or an Owner. In each instance, the person exercising these easement rights shall use its/his best efforts to minimize any soil or land disturbance activities and shall restore the land to substantially the same condition as existed prior to such maintenance work. Should any person fail to restore the land to substantially the same condition as existed prior to the maintenance work, the Owner(s) of adjacent Lot(s) may restore the land to the required condition and that person shall indemnify the Owner(s) of the adjacent Lot(s) for the reasonable expense of incurred in performing the restoration. In addition, should the adjacent Lot owner(s) be required to institute legal proceedings to collect the said restoration costs, they shall also

be entitled to collect the reasonable costs and expenses thereof, including attorney's fees. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said Property except as initially approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable documents, Declarant (or the Association after the termination of Class B Membership or in the event the easement crosses property owned by the Association) will have the right and authority to grant such easement on said property without conflicting with the terms hereof. The easement provided for in this Article shall in no way affect other recorded easements on said Property.

Section 10.3. Utilities. An easement is hereby established for the benefit of all applicable government agencies over all Common Properties and over an area five (5) feet behind the curb line of any street or roadway within this property hereby or hereafter established for the setting, removal, and reading of electrical lines, water meters, the maintenance and replacement of water, sewage, and drainage facilities, fire fighting, law enforcement, garbage collection and the delivery of mail.

Section 10.4. Easement to Correct Drainage. All Lots and the Common Properties shall be subject to an easement for the correction of drainage crossing said properties. If a drainage problem cannot be corrected after reasonable effort by the Declarant or a Builder, then there is hereby created and there shall be and there shall remain a valid easement for such drainage and for the maintenance of same.

Section 10.5. Easement to Durham County. An easement is hereby established in favor of Durham County for municipal, state or public utilities serving the area, their agents and employees on all Common Properties hereby or hereafter established for setting, removing, and reading utility meters, maintaining and replacing utility or drainage connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

Section 10.6. Ingress and Egress. If ingress or egress to any Lot is through any part of the Common Properties, any conveyance or encumbrance of the Common Properties shall be subject to such Lot Owner's easement for ingress and egress.

Section 10.7. Utilities for Common Properties. As consideration for the conveyance of the Common Properties and as consideration for the right, entitlements and benefits granted to and conferred upon the Association under and by virtue of this Declaration, the Association covenants and agrees to accept the responsibility for payment of any and all fees, charges and expenses arising by virtue of the use of water provided to and used in connection with any of the Common Properties and by virtue of the use and operation of the street lights installed and erected within the Common Properties from and after the date of such acceptance. Such costs of fees, charges and expenses paid by the Association shall be charged ratably to the Owners as an Assessment according to the provisions of this Declaration.

**ARTICLE XI
GENERAL PROVISIONS**

Section 11.1. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and shall be to the benefit of every Owner of a Lot in the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of thirty-five (35) years from the date this Declaration is recorded. At such time, the easements, covenants, condition and restrictions herein may be extended for additional period(s) of ten(10) years each by majority vote of the Owners of the Lots, and the right of the Owners to extend such covenants and restrictions shall exist as long as such a desire is expressed by a majority vote of said Owners. Owners may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall have been given to all Owners not less than ten (10) nor more than thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting.

Section 11.2. Amendment. Subject to the limitations hereinafter contained, this Declaration or any Supplemental Declaration may be amended or modified at any time by a vote of 67% of the total eligible votes of the membership of the Association as defined in Articles herein, with both classes of the membership voting together. Members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members not less than ten (10) nor more than thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting. Notwithstanding anything contained hereinabove, it is understood and agreed that the consent of Declarant in writing to any amendment or modification hereof or of any Supplemental Declaration must first be obtained if such amendment or modification is to be effected prior to December 31, 2028.

In addition, Declarant may make minor amendments or modification hereof which do not involve a change which materially affects the rights, duties or obligations specified herein provided it first obtains the approval (by vote at a duly called meeting) of the holders of 67% of the eligible votes of the Association (with both Classes of voting Members voting together). Any amendment or modification effected pursuant to this section shall become effective when an instrument is filed for the record in the Office of the Register of Deeds of Durham County, North Carolina, with the signatures of the requisite number of Owners (and the signature of Declarant, if such amendment or modification is to be effected prior to December 31, 2028). The foregoing shall not limit the right of Declarant under Article II, Section 5 above.

In addition to the foregoing rights, Declarant may (at Declarant' s option) amend and modify this Declaration and any Supplemental Declaration without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause this Declaration or any such Supplemental Declaration to comply with the requirements of FHA/VA/Fannie Mae or any other similar agency.

Section 11.3. Enforcement. Each Owner is empowered to enforce this Declaration. Enforcement

of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charges or lien and in no event shall any delay in such enforcement be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof.

Section 11.4. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases shall become or be illegal, null or void.

Section 11.5. Notice. Whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. It is the Owner's responsibility to notify the Association of any changes in Owner's name and/or mailing address.

Section 11.6. Titles. The titles, hearings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 11.7. Exchange of Common Area. Notwithstanding any provision herein to the contrary, it is expressly provided that the Association may convey to Declarant or exchange with the Declarant, as well as any other member, for fair market value, any portion of the Common Properties previously conveyed to the Association, as provided in the Articles of Incorporation of the Association. Any such conveyance may be subject to prior HUD/VA approval.

Upon such conveyance, the area conveyed shall cease to be Common Properties and shall cease to be subject to the provisions of this Declaration relating to the Common Properties. Any area purchased by the Association pursuant to the foregoing provision shall become Common Properties and subject to the provisions of this Declaration relating to the Common Properties. (The following hypothetical situation is by way of illustration but not of limitation: Due to a surveying error an undesirable drainage area is designated for the location of dwelling units or sites. Under this provision, Declarant and Association exchanged deeds so that the dwelling units or sites may be relocated within the Common Properties and the area previously designated for dwelling units or sites is converted to Common Properties.)

Section 11.8. Governing Law. This Declaration and the affairs of the Association shall be governed by the laws of the State of North Carolina, and in particular, the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes (the "Act"). In the event of any

irreconcilable conflict between the Act, this Declaration, the Bylaws of the Association or the Articles of Incorporation of the Association, the provisions of the Act shall control, followed by the provisions of this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, and the owner of those certain lots accessible by Anchor Way currently owned by B. Wallace Design & Construction, LLC, and described in Deed Book 7568 at Page 615, and Deed Book 7603 at Page 131, and Deed Book 7603 at Page 135, all of the Durham County Registry, has caused this Declaration to be executed on the day and year first above written.

B. WALLACE DESIGN AND CONSTRUCTION, LLC

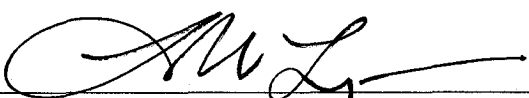


Gary Wallace - Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

I, Lisa M. Logan, a Notary Public of the County of Durham and State of North Carolina, do hereby certify that Gary Wallace, Manager of B. Wallace Design and Construction, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

In witness whereof, I have hereunto affixed my hand and seal this 30th day of May, 2018.



Notary Public
Lisa M. Logan

LISA M. LOGAN
Notary Public, North Carolina
Durham County
My Commission Expires
May 05, 2023

EXHIBIT A

TO
STORMWATER FACILITY AGREEMENT AND COVENANTS

MANDATORY PROVISIONS FOR DECLARATION OF RESTRICTIVE COVENANTS

IV, 4.1(d)
ARTICLE (fill in)

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 at DB 8427 Page 151, Durham County Register of Deeds. The Property subject to that Stormwater Agreement is the "Property" referred to in this Article. 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 remaining Article of these Restrictive Covenants filed by Declarant as part of this Declaration or any subsequent modifications of this 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 wet detention pond (WP) with a drainage area of 4.18 acres, a design storm surface area of 8,627 square feet and a design storm storage volume of 12,485 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 **\$2,720.00** annually from its collected dues for the Inspection and Maintenance Fund and **\$639.00** from its collected dues for the Major Reconstruction Fund. These minimum amounts shall generally be increased annually by 3%, more or less, per year over the prior year's amount. The Association will be required to set a higher amount 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 these Covenants, 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 these Restrictive Covenants, the Association may not amend or delete this Article 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 Articles of these Covenants. However, such Articles 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 these Covenants.