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NEW HANOVER COUNTY,
MORGHAN GETTY COLLINS
REGISTER OF DEEDS

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Prepared by and return to: Lori P. Jones, P.O. Box 10669, Raleigh, NC 27605

STATE OF NORTH CAROLINA

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR EAST & MASON**

COUNTY OF NEW HANOVER

**THIS DOCUMENT REGULATES OR PROHIBITS THE
DISPLAY OF POLITICAL SIGNS.**

East & Mason Developers, LLC, a North Carolina limited liability company ("Declarant"), does hereby make, declare and establish this Declaration of Covenants, Conditions, and Restrictions for East & Mason ("Declaration"), and hereby subjects the Property hereinafter defined to the terms of this Declaration. The Property is further subjected to Chapter 47F of the North Carolina General Statutes, commonly known as the North Carolina Planned Community Act.

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property located in New Hanover County, North Carolina, which is more particularly described in Article I of this Declaration and is further shown upon the Plat as defined herein (the "Property"); and,

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of development for the benefit of the owners of each portion of the Property, and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and,

WHEREAS, in furtherance of such plan, Declarant has incorporated under the laws of the State of North Carolina, as a non-profit corporation, East & Mason Homeowners Association, Inc., to own, operate, maintain and/or manage, as may be applicable, any Common Areas as are defined herein, and to administer and enforce the covenants and restrictions imposed herein; and,

WHEREAS, Declarant executes this Declaration for the purpose of submitting the Property to the North Carolina Planned Community Act and the provisions of this Declaration;

Submitted electronically by "Jordan Price Wall Gray Jones & Carlton"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the New Hanover County Register of Deeds.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, and conveyed subject to Chapter 47F of the North Carolina General Statutes and the easements, restrictions, covenants, uses, limitations, liens, and obligations set forth below, which shall run with the land and be binding on all parties having any rights, title, or interest in the land or any part thereof, their heirs, successors and assigns.

ARTICLE I PROPERTY SUBJECT TO THIS DECLARATION

The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration and the jurisdiction of the Association is located in New Hanover County, North Carolina, and is more particularly described on Exhibit A which is attached hereto and incorporated herein by reference.

ARTICLE II DEFINITIONS

Section 1. “Alley Lot” shall mean and refer to any Lot which has an entry or exit located on an alley as shown on the Plat. An Alley Lot is a type of Single Family Detached Lot.

Section 2. “Association” shall mean and refer to East & Mason Homeowners Association, Inc., a North Carolina non-profit corporation, and its successors and assigns.

Section 3. “Board” or “Board of Directors” shall mean and refer to the body responsible for administration of the Association, elected as provided for in the Bylaws.

Section 4. “Builder” shall mean and refer to a person or entity other than Declarant who purchases or becomes the Owner of one or more Lots within East & Mason for the purpose of constructing a residential dwelling thereon for sale to a third party.

Section 5. “Bylaws” shall mean and refer to the Bylaws for the East & Mason Homeowners Association, Inc. as they may be amended from time to time.

Section 6. “Common Area” shall mean all real property owned by the Association, if any, for the common use and enjoyment of the Members, including without limitation any private streets, private alleys, sidewalks, stormwater detention devices, mail kiosk, parks, clubhouse, pool, and associated amenities within the community.

Section 7. “Common Expenses” shall mean and include:

- a. All sums lawfully assessed by the Association against its Members;
- b. Expenses related to the administration, maintenance, repair or replacement of the Common Area and any other property for which the Association bears maintenance responsibility per the terms of this Declaration;
- c. Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

- d. Expenses agreed by the Members to be common expenses of the Association;
- e. Ad valorem taxes and public assessments charges lawfully levied against Common Areas;
- f. Utilities used in connection with the Common Area; and
- g. Hazard, liability or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase.

Section 8. “Declarant” shall mean and refer to East & Mason Developers, LLC, and its successors and assigns to whom the rights of Declarant hereunder are expressly assigned in writing.

Section 9. “Declarant Control Period” shall mean and refer to that period during which Declarant retains sole authority to appoint, remove and replace members of the Board of Directors. The Declarant Control Period shall terminate upon the earliest of the following events: (i) when all the Lots have certificates of occupancy issued thereon and have been conveyed to persons other than a Builder or Declarant; (ii) upon Declarant’s voluntarily surrender in writing of such control; or (iii) on December 31, 2030.

Section 10. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for East & Mason, as it may be amended from time to time.

Section 11. “Lot” shall mean and refer to any plot of land shown upon a Plat, whether or not improvements are constructed thereon, which is intended for residential development, use and occupancy. The term “Lot” shall not include any Common Area.

Section 12. “Member” shall mean and refer to a person subject to membership in the Association per Article IV of this Declaration.

Section 13. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of 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 14. “Plat” shall mean and refer collectively to those plats recorded with the New Hanover County Register of Deeds by Declarant in Plat Book 71, Pages 89-90; Plat Book 71, Page 339; Plat Book 72, Page 27; and Plat Book 72, Pages 246 - 249, and any other plats recorded by Declarant with respect to the Property.

Section 15. “Property” shall mean and refer to that certain real property described on Exhibit A together with such additional property as may be made subject to this Declaration.

Section 16. “Single Family Detached Lot” shall mean and refer to a Lot upon which a single family detached residence is located, which lots include Lots 41 - 170 as shown on the Plat.

Section 17. “Townhome Common Expense” shall mean and refer to a Common Expense benefitting only the Townhome Lots.

Section 18. “Townhome Lot” shall mean and refer to a Lot upon which a single family attached residence is located, which lots include Lots 1 - 40 as shown on the Plat.

**ARTICLE III
PROPERTY RIGHTS**

Section 1. Owner’s Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area and any sidewalks within the subdivision for access, ingress and egress from and to public streets, walkways and parking areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions set forth in this Declaration, as well as the following provisions:

- a. for any period during which any assessment against an Owner’s Lot remains unpaid for thirty (30) days or longer, the right of the Association to suspend the voting rights of the Owner and to suspend other privileges or services provided by the Association, including use of recreational amenities, if any;
- b. for violation of the Declaration, Bylaws, rules or regulations of the Association, the right of the Association to suspend privileges or services provided by the Association, including use of recreational amenities, if any, for a period not to exceed sixty (60) days, and the right of the Association after notice and an opportunity to be heard to impose fines;
- c. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Members;
- d. the right of the Association to borrow money for the purpose of improving the Common Area or any property which the Association is required to maintain by pursuant to this Declaration, and in aid thereof to mortgage the Property, and the rights of such mortgagee in said Property shall be subordinate to the rights of the homeowners hereunder; and
- e. the right of the Association to adopt, publish and enforce rules and regulations as provided in Article VII.

Section 2. Delegation of Use. Any Owner may delegate his or her right of enjoyment in and to the Common Area to the Owner’s family members, tenants, or contract purchasers who reside on the Owner’s Lot.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns that prior to the conveyance of the last Lot, the Declarant will convey fee simple title to any Common Area to the Association, free and clear of all encumbrances and liens, except utility and storm drainage easements and other easements of record.

**ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. 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 (2) classes of voting membership:

- a. **Class A Members.** Class A Members shall be all Owners, with the exception of the Declarant, and 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. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.
- b. **Class B Member.** Declarant shall be the Class B Member and shall be entitled to forty (40) votes for each Lot owned. The Class B Membership shall terminate at the end of the Declarant Control Period. Upon such termination, the Declarant shall become a Class A Member and shall have Class A votes with respect to any Lot owned by it.

Section 3. **Appointment of Board.** During the Declarant Control Period, the Declarant shall have the right to appoint all members of the Board of Directors.

**ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. **Creation of the Lien and Personal Obligation of Assessments.** Declarant for each Lot owned within the Property hereby covenants, and each Owner of any Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual and special assessments, and for each Townhome Lot to pay an additional townhome assessment for those purposes outlined below, such assessments to be established and collected as hereinafter provided. The assessments provided for herein, together with interest, costs and reasonable attorney fees 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, with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot when each assessment was made, and such assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to Common Area shall be shared equally by the Owners of Lots within East & Mason, except as may be specifically set forth in this Declaration. Notwithstanding anything herein to the contrary, Declarant and Builders shall be exempt from paying annual or special assessments for any unoccupied Lot owned by them.

Section 2. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and for (i) payment of the Common Expenses; (ii) the acquisition, improvement and maintenance of Common Area; (iii) the maintenance and repair of any items which are deemed to be the responsibility of the Association under this Declaration, including maintenance and repair associated with Townhome Lots; (iv) the cutting and removal of weeds and grass and the removal of trash and rubbish and any other maintenance necessary for the use and enjoyment of any Common Area, including but not limited to, cost of repairs, replacement and additions; (v) the cost of labor, equipment, materials, management and supervision; (vi) the payment of taxes and public assessments assessed against any Common Area; (vii)

the procurement and maintenance of insurance in accordance with this Declaration; (viii) the employment of attorneys and other professionals to represent and advise the Association when necessary; (ix) the provision of adequate reserves for the replacement of capital improvements including, without limitation, signs, landscaping and any other major expense for which the Association is responsible; and (x) such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for periodic maintenance, repair and replacement of improvements to the Common Area, if any, and for the maintenance, repair and replacement of those portions of the Townhome Lots for which the Association bears maintenance responsibility. Reserves allocated for the maintenance, repair and replacement of the Townhome Lots shall be paid solely by the Owners of Townhome Lots.

Section 4. Annual Assessment – All Lots. The Board of Directors shall assess all Lots on an equal basis for the actual and estimated Common Expenses incurred by the Association, which may include a reasonable reserve for capital repairs and replacements, all as may be determined from time to time by the Board of Directors. Prior to the beginning of each fiscal year, the Board shall adopt a budget which shall estimate all of the Common Expenses of the Association for the upcoming fiscal year, including reserves, and the annual assessment applicable to each Lot shall be based on said budget. The Board may round the assessment to the nearest dollar. The Board shall fix the date of commencement and the amount of the annual assessment against each Lot, to the extent practicable, at least thirty (30) days in advance of the assessment period. From time to time during the fiscal year, the Board may modify the budget. Pursuant to the revised budgets or otherwise, the Board may, upon written notice to the Owners, change the amount, frequency or due dates of the annual assessment, but in no event shall any such assessment be due less than ten (10) days from the date of the notification of such assessment.

Section 5. Townhome Assessment. In addition to the annual assessment provided for in Section 4, Owners of Townhome Lots shall pay a Townhome Assessment. The Board of Directors shall assess all Townhome Lots on an equal basis for the actual and estimated Townhome Common Expenses incurred by the Association, which may include a reasonable reserve for maintenance as required under the Declaration, capital repairs and replacements, all as may be determined from time to time by the Board of Directors. Prior to the beginning of each fiscal year, the Board shall adopt a budget which shall estimate all of the Townhome Common Expenses for the upcoming fiscal year, including reserves, and the annual Townhome Assessment applicable to each Townhome Lot shall be based on said budget. The Board may round the assessment to the nearest dollar. The Board shall fix the date of commencement and the amount of the annual Townhome Assessment against each Lot, to the extent practicable, at least thirty (30) days in advance of the assessment period. From time to time during the fiscal year, the Board may modify the budget. Pursuant to the revised budgets or otherwise, the Board may, upon written notice to the Owners, change the amount, frequency or due dates of the Townhome Assessment, but in no event shall any Townhome Assessment be due less than ten (10) days from the date of the notification of such Townhome Assessment.

Section 6. Special Assessments for Capital Improvements. In addition to the annual assessment and Townhome Assessment 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 unbudgeted expenses, expenses in excess of amounts budgeted for Common Expenses, maintenance, construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or of any area or improvement for which the Association bears maintenance responsibility, including fixtures and personal property related thereto. If the amount of any special assessment does not

exceed one hundred percent (100%) of the annual assessment (in the case of all Lots) or the Townhome Assessment (in the case of Townhome Lots), no membership approval shall be required, and instead, the budget may be adjusted per Sections 4 and 5 as applicable to assess such additional amount. Otherwise, any such assessment shall have the assent of two thirds (2/3) vote of each class Members who are 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 10 days nor more than 60 in advance of the meeting setting forth the purpose of the meeting. However, in the event the special assessment is related to the maintenance or repair of the Townhome Lots, the special assessment need only be approved by a two thirds (2/3) vote of the Owners of Townhome Lots who are voting in person or by proxy at the special meeting and notice of such meeting need only be given to the Owners of the Townhome Lots.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on an annual basis. However, the Declarant and Builders shall be exempt from paying annual or special assessments on any non-occupied Lot owned by them.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The assessments provided for herein shall commence as to a Lot when such Lot is conveyed by Declarant or a Builder to a third party. Assessments shall be due and payable in a manner and on a schedule as the Board may provide. 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 Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment of the assessments stated therein.

Section 9. Capital Contribution. Upon the initial conveyance of a Lot to the first Owner thereof other than a Builder or Declarant, the purchaser shall pay to the Association the amount of Seven Hundred Fifty Dollars (\$750.00) which shall be transferred upon closing of the Lot to the Association and held as a working capital fund, to be used in the discretion of the Board. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 10. Amenity Fee. Upon the initial conveyance of a Lot to the first Owner thereof other than a Builder or Declarant, the purchaser shall pay to the Association the amount of Seven Hundred Fifty Dollars (\$750.00) which shall be transferred upon closing of the Lot to the Association to help defray costs of construction of the recreational facilities. Once paid for any Lot, the amenity fee shall be considered paid on behalf of all future Owners for said Lot, such that only one amenity fee may ever be imposed on a single Lot. This amount shall be in addition to, not in lieu of, the annual assessment and working capital contribution.

Section 11. Developer Loan. Purchasers are hereby put on notice of a loan from Declarant to the Association ("Declarant Loan") in the amount of One Hundred Seventy-Six Thousand Seven Hundred Fifty Dollars (\$176,750.00) to help defray costs of construction of recreational facilities that would otherwise not be available to Owners. This loan shall be repaid by the Association to the Declarant, without interest, over a maximum ten-year period in accordance with the terms of said loan. The Declarant Loan shall be listed on all annual budgets and year-end statements of the Association. The Declarant Loan represents a valid and binding debt of the Association which must be repaid from assessments collected by the Association.

Section 12. Effect on Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest legal rate per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or may foreclose the lien against the Lot in the same manner in which a Deed of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the North Carolina General Statutes, or in accordance with Chapter 47F of the North Carolina General Statutes, or pursuant to any other applicable statute. Interests, costs, and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may give or otherwise escape liability for the assessments provided herein by non-use of the Common Area or abandonment of his or her Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

Section 13. Subordination. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage recorded prior to the filing of a claim of lien under this Article and to ad valorem taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 14. Exempt Property. All Common Area, all property dedicated to and accepted by a local public authority, all property owned by a public or private utility for the purpose of providing water to the Lots, and all 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 these assessments.

Section 15. Fines. The Board may impose fines of up to \$100.00 per day (or any higher amount allowed by law) for each violation of this Declaration, the Bylaws of the Association, or any rules and regulations promulgated by the Association, provided that before imposing any fine, the Association shall also provide the offending Owner with an opportunity to be heard regarding the violation. Any fines imposed thereafter shall be a lien against the Owner's Lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of 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 otherwise be legally entitled.

ARTICLE VI ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. General Provisions.

- a. Declarant shall retain control of the Architectural Review Committee until a certificate of occupancy has been issued on the last Lot in the subdivision unless, prior to that time, Declarant shall voluntarily assign in writing the rights, powers, duties and obligations of the Architectural Review Committee to the Association. When the final certificate of occupancy has been issued on the last Lot in the subdivision, the rights, powers, duties and obligations of the Architectural Review Committee shall automatically transfer to the Association.
- b. During Declarant's control of the Architectural Review Committee, the Architectural Review Committee shall consist of one (1) or more persons designated by the Declarant. At such time as the rights, powers, duties and obligations of the Architectural Review

Committee shall be transferred or assigned to the Association:

- i. The Architectural Review Committee shall consist of three (3) or more individuals appointed by the Board on an annual basis, and such appointed members of the Architectural Review Committee may be members of the Board.
 - ii. The Board may remove members of the Architectural Review Committee appointed by the Board at any time with or without cause.
 - iii. In the event of the death, resignation or removal by the Board of any member of the Architectural Review Committee, the Board shall have full right and authority to designate and appoint a successor to complete the unexpired term of such deceased, resigned or removed member.
- c. No building, sign, fence, hedge, wall, walk, landscaping, ornaments, statues, flags, playsets, recreational structures, grading, site improvement or other improvements or structures shall be constructed, erected, placed upon or planted on a Lot, nor shall any alteration of a Lot or improvement take place, until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished product have been approved by the Architectural Review Committee, in writing, as to conformity and harmony of external design with the existing structures in the subdivision, including, without limitation, with respect to topography and finished ground elevation. The Architectural Review Committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for safety, appearance, aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the Architectural Review Committee shall consider the suitability of the proposed building, improvement, structure or landscaping and materials in relation to the surrounding area and the effect thereof on adjacent or neighboring property.

The Architectural Review Committee may establish and amend standards and guidelines which may establish, define, and expressly limit what structures or improvements will be approved within the Property, including, but limited to, with respect to architectural style, exterior color or finish, roofing material, siding, driveway material, landscape design, and construction technique. These standards shall be utilized in review of architectural applications by the Architectural Review Committee. In addition, the Architectural Review Committee may promulgate requirements regarding the kinds, types, and detail to be included in the plans and specifications for proposed projects and specific requirements for the construction process (e.g., construction entrances, fencing, debris removal, sediment control).

- d. In the event the Architectural Review Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form, within thirty (30) days after written request for final approval or disapproval, such plans and specifications shall be deemed approved.
- e. There is specifically reserved unto the Architectural Review Committee, the right of entry and inspection upon any Lot for the purpose of determination by the Architectural Review Committee whether there exists any construction of any improvement which

violates the terms of any applicable covenants, conditions, or restrictions. The Architectural Review Committee and the Board of Directors are specifically empowered to enforce the provisions of this Declaration by 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, expense, and reasonable attorneys' fees in connection therewith.

- f. The Association, Declarant, Architectural Review Committee or any other officer, employee, director, or member thereof shall not be liable for damage 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 specifications, that it will not bring any action or suit against the Association, Declarant, or Architectural Review Committee to recover any such damages.
- g. Members of the Architectural Review Committee shall not be entitled to any compensation for services performed pursuant to this Article.
- h. The Architectural Review Committee may require the deposit of a construction escrow deposit in a reasonable amount as determined by the Architectural Review Committee for purposes of ensuring funds are available to clean, repair, or replace any Common Areas impacted by construction, including, but not limited to the cleaning and repair of streets, curbs, sidewalks, landscaping, vegetation, signs, street lights, drainage measures, trails; to perform Lot clean up and debris removal in the event the Owner fails to maintain the Lot; to repair existing erosion control measures and install new erosion control measures to correct deficiencies caused by construction on the Lot; and to address all other damage arising from or related to construction being performed on the Lot.

Section 2. Maintenance by the Association – Common Area. The Association shall maintain all Common Area and improvements thereon. The Association's maintenance responsibility shall include, but is not limited to, maintenance, repair and replacement of the entrance signs and any associated landscaping, irrigation or lighting; all stormwater control devices serving more than one Lot, whether located within a private drainage easement on a Lot or on the Common Area (which may include inspections by a third party and/or a licensed engineer as required by applicable state or local ordinance, law or regulation); the clubhouse, pool and associated improvements; the central mailbox unit serving the Property and associated parking spaces (if any); and the street lights and electricity to said lights to the extent not maintained by a public utility or local government. The Association shall have no maintenance or repair responsibility related to any Lot, including any improvements thereon, unless such responsibility is specifically assumed by the Association or set forth in this Declaration. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the subdivision, where the Board has determined that such maintenance would benefit all Owners.

Section 3. Maintenance of Lots. In addition to maintenance of the Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, and landscaping (hereinafter the "Yard Improvements") installed by the Declarant or Association on a Townhome Lot, and any Yard Improvements installed by an Owner on a Townhome Lot with the prior written consent of the Association (but only to the extent that such consent

specifically provides that the Association will maintain such added landscaping); provided, however, the Association's responsibility shall not include maintenance, repair, or replacement of Yard Improvements located inside a locked fence or other inaccessible area; any maintenance, repair, or replacement of Yard Improvements necessitated by work done by or at the request of any Owner or any utility company or governmental entity; or replacing any plant, shrub or tree or other planting for any reason. The Association shall provide the foregoing yard maintenance services on a schedule approved by the Board, in the Board's sole discretion.

The Association shall also be responsible for certain exterior maintenance and repair of the residences located on a Townhome Lot which is necessitated by ordinary wear and tear, as follows: the power-washing, painting, repair and replacement of exterior building surfaces (such as hardiplank or cement siding); the painting and/or staining of exterior trim; and the repair and replacement of roofs, gutters, and downspouts. It is the specific intent of this Section that the Association's maintenance responsibilities should extend only to maintenance and repair necessary to prevent and repair damage caused by normal wear and tear and aging, and not to reconstruct or repair damage caused by casualty losses (whether or not covered by insurance), negligent or intentional acts, acts of God, or similar events.

Except for the maintenance responsibilities allocated to the Association in this Declaration with respect to the Townhome Lots, each Lot Owner at such Owner's sole cost and expense shall maintain such Owner's Lot, including all improvements thereon, in a safe, clean and attractive condition, including without limitation all of the following:

- a. Prompt removal of all litter, trash, refuse and waste, and storage of trash bins and containers in a location approved by the Architectural Review Committee;
- b. For Single Family Detached Lots, seeding, fertilizing and watering of all lawns and mowing, edging, clipping, sweeping, pruning, raking and otherwise caring for all lawns on a regular basis, including, any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such portion of the Lot and not maintained by any governmental entity, sometimes referred to as a "devil strip";
- c. For Single Family Detached Lots, pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians, do not cause unsightly or unkempt conditions and do not trespass onto the property of others, including any street tree located within the road right of way adjacent to the boundary line of the Owner's Lot;
- d. For Single Family Detached Lots, removal and replacement of dead or diseased street trees located within the street right of way adjacent to the Owner's Lot.
- e. For Single Family Detached Lots, removal of dead or diseased trees, shrubs and other plant material on the Lot, and care, removal, and replacement of any street tree located within the road right of way adjacent to the boundary line of the Owner's Lot;
- f. Maintenance of flower and plant gardens;
- g. Maintenance of exterior lighting and mechanical facilities;
- h. Maintenance of parking areas and driveways;

- i. Ensuring proper drainage of the Lot so as to prevent soil erosion;
- j. Repairing and painting (or other appropriate external care) and otherwise caring for the dwelling and all other structures located on the Lot, including without limitation all windows, doors, decks, porches, stoops, stairs, steps, walkways and patios;
- k. Maintenance, repair and painting of all fences, retaining walls, and other improvements or structures on the Lot;
- l. Maintenance of all drainage easements, utility easements and other easements located on a Lot that are not specifically allocated by this Declaration to be the responsibility of the Association, and maintenance, repair, and replacement of any wastewater disposal systems and components thereof, whether located on a Lot or a septic easement;
- m. Preventing and correcting unclean, unsightly or unkempt conditions of Lots and all improvements thereon, including keeping all Lots clean and free of garbage, junk, trash, debris, non-operable vehicles and apparatus, and any substance or conditions that might contribute to an unsightly condition, health hazard or the breeding and habitation of snakes, rats, insects or other wildlife or pests; and
- n. Maintenance, repair, and replacement of that portion of the individual household water line for which the utility will not assume maintenance responsibility, whether located on a Lot or Common Area.

The Board of Directors may adopt and enforce additional rules and regulations related to required maintenance upon the Lots.

Section 4. Additional Maintenance Provisions. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Owner's family, guests, lessees, invitees or contractors, and is not covered and paid for by insurance maintained by the Association, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

If the Board of Directors determines that any Owner has failed or refused to discharge properly any of Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, if such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot. The remedies provided in this Section shall be in addition to, and not in lieu of, other remedies provided in this Declaration for a violation of the Declaration.

Section 5. Dwelling Size; Setbacks; Design Requirements.

- a. All yard and setback requirements shall comply with applicable local government or county setback regulations, as well as any setback requirements depicted on the Plat.
- b. Vinyl siding and synthetic stucco are prohibited.
- c. Gutters and downspouts made of or utilizing galvanized material are prohibited.
- d. All fencing must be approved by the Architectural Review Committee; provided, however, no chain link fencing shall be permitted.
- e. Driveways must be constructed of concrete, brick, stamped tinted concrete, pavers made of cast concrete, or pavers made from natural materials. Tinted concrete with a broom finish may be used, subject to approval of the Architectural Review Committee, when combined with aprons, borders, patterns, or accents made of brick, stamped tinted concrete, or pavers. Asphalt driveways are prohibited.

Section 6. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat or as otherwise set forth in recorded easement agreements. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage channels in the easements. Such easement areas of each Lot and all improvements on it shall be maintained continuously by the owner of the Lot.

Section 7. Walks, Drives, Parking Areas, and Utilities. All of the Property, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 8. Encroachments. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, fences and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same.

Section 9. Additional Easements. The Lots shall be subject to, and Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, and subcontractors authorized by Declarant, the Association, the Members, and the successors-in-title of each:

- a. **Easements Shown on Plat.** Each Lot shall be subject to all easements, borders, buffers and the like which are shown and depicted on the Plat as affecting and burdening such Lot. The Association shall be responsible for maintaining any sign easements depicted on the Plat.

- b. Entry. Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration and for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot that endangers any building or structure on another Lot or on the Common Area.
- c. Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over, under or across such Lot, including any runoff or carryover of water from one Lot to another, provided that such cross-Lot drainage condition was created by Declarant.
- d. Street Lighting. Declarant reserves the right to subject the property to installation of street lighting, which cost for such operation, maintenance and repair of said lighting may be a Common Expense or may be charged by the applicable utility directly to Lot Owners as determined by the utility.
- e. Common Area Easements. The Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it such further easements as are requisite for the convenience, use and enjoyment of the Property. In addition, there is hereby reserved unto the Declarant and its agents and employees an easement and right of ingress, egress and regress across all Common Area now or hereafter owned by the Association for the purpose of construction of improvements within the Properties.

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 each Lot and the Common Area.

Section 2. **Use of Property.** No portion of the Property (except for temporary offices of the Declarant and/or any model used by Declarant) shall be used except for single family residential purposes and for purposes incidental or accessory thereto. No trade or business or commercial activity shall be carried on, in or upon any Lot at any time except with the written approval of the Board, which the Board may grant so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or Bylaws, does not create a disturbance, and does not unduly increase traffic flow or parking congestion. The Board may promulgate rules and regulations regarding permitted business activities. Leasing of a Lot in accordance with the provisions of this Article VII shall not be considered a business or business activity.

Section 3. **Condition of Property.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot, and the Board of Directors shall have the authority to establish community standards regarding the same. No portion of the Property, including any Lot, shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. There shall not be maintained any plants or animals or device or thing of any sort

whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property.

Section 4. Animals. No animals, insects, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that up to three (3) dogs, cats or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes. Owners are limited to having a maximum of three (3) pets at any one time.

At no time shall any household pet be allowed to run free. All pets shall be leashed when off the Owner's Lot. Pets shall not at any time be left tied or chained on any Lot. No doghouses, kennels, or runs are allowed. Owners are responsible for promptly removing any pet waste deposited in the Common Area or on another Owner's Lot and must keep every pet owner must keep his or her own Lot in a clean and sanitary manner, including the removal of pet waste as needed. The following breeds shall not be allowed on the Property, including on a Lot: Pit Bulls or Pit Bull Terriers, Rottweilers, Doberman Pinschers, or Staffordshire Terriers, or any mixed breed animal that contain any of the foregoing breeds. The Association shall have the right to promulgate additional rules and regulations governing pet ownership that may further limit the number, size, type and conduct of pets.

For purposes of this section, the term "household pet" or "pet" shall not include any exotic animal or animal for which a permit must be obtained from a local, state or federal government to legally keep such animal, nor shall the term include chickens, pigs, horses, goats, sheep, cows, or other type of traditional livestock of any size, including pygmy and miniature varieties, whether or not the same are considered to be a pet by the owner thereof.

Section 5. Dwelling Specifications. No building shall be erected, altered, placed, or permitted to remain on any Single Family Detached Lot other than one (1) detached single-family dwelling not to exceed three (3) stories in height, a private garage, and (with the approval of the Declarant or Architectural Review Committee) an accessory building or structure for storage or other appropriate use. No building shall be erected, altered, placed, or permitted to remain on any Townhome Lot other than one (1) attached single-family dwelling not to exceed three (3) stories in height and a private garage. No Lot shall be subdivided or recombined without the express consent of the Architectural Review Committee and the applicable local government authority, except that Declarant reserves the right to subdivide or recombine any Lot or Lots.

Section 6. Leasing. An Owner may let or rent his entire residence, but no portion of any residence shall be leased separately from the rest of the residence. Lots may be leased only for residential purposes. All leases must be in writing and shall have a minimum term of at least twelve (12) months. There shall be no subleasing. All leases shall require that the tenant acknowledge receipt of a copy of the Declaration, the Bylaws, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing, and the lease shall provide that the violation of any provision of this Declaration, the Bylaws, or rules and regulations of the Association shall be a breach of said lease, subjecting the tenant to termination of the lease and eviction. The Board may enact additional reasonable rules and regulations regarding the leasing of Lots, including, without limitation, a requirement that leases be registered with the Association and that tenant contact information and vehicle information be provided to the Board. No Lot or residence located thereon may be used for transient housing, for hotel purposes, or as a bed and breakfast or for temporary rental (such as with Airbnb, VRBO, or similar enterprise). No leasing or rental signs are permitted.

Section 7. Temporary Structures. Except as otherwise set forth herein, no trailer, tent, shack, pod, barn, outbuilding, storage container or other temporary structure shall be erected or placed on