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DECL - DECLARATION

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April Carrington

**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR
ROLLINGDALE**

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

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE
FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH
CAROLINA.**

Prepared by and return to:
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3733 National Dr., Suite 100
Raleigh, NC 27612

Submitted electronically by "Moore & Alphin, PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Durham County Register of Deeds.

**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS FOR
ROLLINGDALE**

THIS DECLARATION is made on the date set forth in the notary acknowledgment herein by **TOLL SOUTHEAST LP COMPANY, INC., A DELAWARE CORPORATION** (hereinafter “Declarant”).

PREAMBLE:

WHEREAS, Declarant is the owner of approximately 6.484 acres of land located in or near the City of Durham, Durham County, North Carolina, which Declarant intends to develop into a planned residential community to be known as Rollingdale (the “Subdivision”); and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area (hereinafter defined) within the Subdivision and for the enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of such property and each owner thereof; and

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has incorporated under North Carolina law as a nonprofit corporation, Rollingdale Community Association, Inc., for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, Declarant declares that the real property described in **EXHIBIT A** to this Declaration, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

Section 1. “Act” shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, as the same may be amended from time to time. Words and terms used in this Article that are defined in the Act but not defined in the

Code (for example, the term “special declarant rights” [N.C.G.S. §47F-1-103(28)]) shall have the meaning contained in the Act.

Section 2. “Annexation Declaration” shall mean and refer to a document, by whatever name, that is recorded for the purposes of subjecting Annexed Property to this Declaration and causing such Annexed Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration, and including any additional covenants, charges, conditions and restrictions contained in such Annexation Declaration.

Section 3. “Annexed Property” shall mean and refer to all real property annexed or subjected (those two terms being used interchangeably herein) to all or any part of the terms of this Declaration after the initial recording of this Declaration in the Registry.

Section 4. “Association” shall mean and refer to ROLLINGDALE COMMUNITY ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns.

Section 5. “Board of Directors” and “Board” (the terms being used interchangeably) shall mean and refer to the board of directors of the Association, and is the “executive board” as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration, the Bylaws and the Act.

Section 6. “Bylaws” shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 7. “Code” shall mean and refer to Unified Development Ordinance, City of Durham, North Carolina, as amended from time to time.

Section 8. “Common Area” shall mean and refer to the real property, together with any improvements thereon, owned (in fee or by easement) or leased by the Association and intended for the common use and benefit of the Owners and occupants of the Properties, however such real property is described on a map or document recorded in the Registry. Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private storm water drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one Lot in the Properties or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the City). Common Area may include all of the following:

- (a) any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);
- (b) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any City utility easement;
- (c) any site or facility designated a common area, common property open space, open space common area, amenity area, or other similar designation on any recorded map of the Properties or in this Declaration;
- (d) any Code-required shared facility or open space for the Properties, except for open space owned by the City;
- (e) any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public maintenance by the appropriate governmental entity, provided, however, that the fact that a street or road has not been

accepted by the applicable governmental entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association shall have the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorneys' fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and

(f) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a governmental entity that is recorded in the Registry, and may include: decorative street signs, subdivision identification signs, landscaping, irrigation facilities, lighting, drain pipes, decorative surfaces, cluster mailbox units, and brick pavers.

Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by the City or other public agency, authority or utility, or another non-profit corporation or entity.

Common Area that is owned by or subject to being maintained by the Association is Common Area, even if it is referred to in this Declaration or in any recorded map of the Properties by some other name or designation.

Common Area, if any, established by the Declarant or the Association for the benefit of fewer than all of the Owners and occupants of the Properties is "Limited Common Area", and such Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Limited Common Area exists are subject to the same provisions as those applicable to Common Area. All references herein or in any recorded plat of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly.

Section 9. "Common Area Easement" shall mean and refer to Common Area as to which the Association has only an easement interest, and not a fee simple interest.

Section 10. "Common Expenses" shall mean and refer to: (i) all expenses of maintenance of Common Area, including repair, restoration and replacement thereof, and including monies allocated to reserve funds; (ii) *ad valorem* taxes and public assessments, if any, levied against the Common Area or other assets owned in fee by the Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained therein by the Association result in additional *ad valorem* taxes on such real property that would not be assessed in the absence of such improvements); (iii) premiums for hazard, liability and other insurance insuring the Common Area or the Association, its officers, directors and employees, if any; (iv) fees and expenses of attorneys, accountants, and other Persons employed by the Association for Association business; (v) expenses declared to be or described as Common Expenses by the Act, the Code or this Declaration, including expenses for Stormwater Control Measures; (vi) expenses determined by the Board or by the Members to be Common Expenses; and (vii) all other expenses incurred by the Association in performing its functions, including operating, management and administrative expenses.

Section 11. "Declarant" shall mean and refer to **TOLL SOUTHEAST LP COMPANY, INC., A DELAWARE CORPORATION**. It shall also mean and refer to any person, firm or corporation to whom or which Declarant may assign or delegate the rights and obligations of Declarant by an assignment

of Declarant's rights recorded in the Durham County Registry.

Section 12. "Declarant Control Period" shall mean and refer to the period of Declarant control of the Association, as provided in §47F-3-103(d) of the Act, and including, without limitation, the time period in which Declarant, by itself, has sufficient voting power to elect members of the Board). The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2043;
- (b) Not later than twelve months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member (at the 9-to-1 ratio provided in Section 2(b) of Article III hereof); *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, a sufficient number of votes (at the 9-to-1 ratio provided in Section 2(b) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or
- (c) Relinquishment or transfer of all special declarant rights as provided in §47F-3-104 of the Act.

Section 13. "Declaration" shall mean and refer to this "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Rollingdale", and all amendments thereto and supplements thereof.

Section 14. "Dwelling" and "Unit" shall mean and refer to any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner. A Dwelling shall be deemed to constitute a Dwelling upon issuance of a certificate of occupancy therefor.

Section 15. "Governing Documents" shall mean and refer to all of the following: this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations of the Association (including, without limitation, architectural guidelines and parking regulations, if any), Annexation Declarations, and any other covenants applicable to the Properties, as the same may be amended, restated or supplemented from time to time.

Section 16. "Legal Requirements" shall mean and refer to any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the County of Durham, North Carolina, the City, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the Properties, including any branch, department or division of any of the foregoing.

Section 17. "Limited Common Area" shall mean and refer to all Common Area, together with any improvements thereon, owned, leased, used or maintained by the Association for the benefit of fewer than all of the Members or less than all of the Properties, and which has been designated as such by the Declarant or the Association. Limited Common Area may include, for example, private

alleys and Stormwater Control Measures serving less than all of the Properties.

Section 18. “Limited Common Expense” shall mean and refer to all expenses of the type included within the term “Common Expense” but which are related solely and specifically to Limited Common Area. Limited Common Expenses shall be paid out of assessments levied only against the portions of the Properties benefited by Limited Common Area.

Section 19. “Lot” shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of any portion of the Subdivision (regardless of whether the Lot has been subjected to this Declaration as provided in Article II hereof), with the exception of any Common Area and Open Space owned in fee by the Association and any publicly dedicated street rights-of-way shown on such recorded map, and greenway or park lands owned in fee simply by the City. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 20. “Member” shall mean and refer to every Person who or which holds membership in the Association.

Section 21. “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 Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 22. “Person” shall mean and refer to a natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity, and any other entity.

Section 23. “Properties” shall mean and refer to the “Existing Property” described in Article II of this Declaration and any Annexed Property subsequently subject to this Declaration pursuant to said Article II.

Section 24. “Registry” shall mean and refer to as the Office of the Register of Deeds for Durham County, North Carolina (or any successor office in which deeds, plats, easements, mortgages, and deeds of trust for the Properties are recorded). All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry.

Section 25. “Single-Family Home” shall mean and refer to an attached single-family Dwelling.

Section 26. “Stormwater Agreement” (which term includes any other agreement, maintenance manual or other document, by whatever name, relating to Stormwater Control Measures) shall mean and refer to any agreement required by the Code between or among any combination of the City, the Declarant, the Association, and one or more Owners, relating to maintenance of Stormwater Control Measures.

Section 27. “Stormwater Control Measures” shall mean and refer to any one or more of the following that serves or benefits any part or all of the Properties or is required by the Code or other Legal Requirement in connection with any part or all of the Properties, whether located in the

Properties or outside of the Properties: (i) storm water drainage easements (also referred to herein as “storm water easements” or “drainage easements”) that are shown on plats of the Properties recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Area or benefit or serve more than one (1) Lot; and (ii) storm water management facilities for the Properties, including ponds, man-made or natural areas and/or planted or landscaped areas into which storm water drains, or in which storm water is collected or from which it is discharged, drains, pipes, conduits, inlets, channels, dams, ditches, filter, buffers, bio-retention areas, and other equipment, facilities and storm water management measures used for inspecting, monitoring, measuring, collecting, controlling, transporting, conveying, handling, storing, discharging and managing storm water. Except as otherwise provided herein, Stormwater Control Measures are part of the Common Area or Limited Common Area, as applicable, and maintenance of Stormwater Control Measures is a Common Expense or Limited Common Expense, as applicable. References in the Declaration to storm water management include all applicable Stormwater Control Measures and Stormwater Agreements.

Section 28. “City” or “City of Durham” shall mean and refer to the City of Durham, a North Carolina municipal corporation.

Section 29. “Townhome” or “Townhome Dwelling” shall mean and refer to an attached single-family Dwelling.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF THE
ROLLINGDALE COMMUNITY ASSOCIATION, INC.

Section 1. Existing Property. The real property which, at the time of recording of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto.

Section 2. Additions to Existing Property by Declarant. At any time during the Declarant Control Period, additional land may be annexed by the Declarant without the consent of the Members and, therefore, become subject to this Declaration by the recording by Declarant of an Annexation Declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such Annexed Property must be contiguous to property already subjected to this Declaration (or separated from such property only by the right-of-way of a street or road, stream or pond) and further provided that such annexation must be approved by the City. The addition of such Annexed Property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

A supplementary declaration may contain such complementary additions to and modifications of the covenants and restrictions contained in this Declaration, including, without limitation, different voting rights and different annual and special assessments for the Lots or Units so annexed, as Declarant, in its sole discretion, may deem necessary or appropriate to reflect the different character or use of the property added. In no event, however, shall any supplementary declaration revoke, modify or add to the covenants and restrictions established by this Declaration so as to materially and adversely affect any portion of the Properties already subject to this Declaration. A supplementary declaration annexing additional property need only be executed by the Declarant and, if applicable,

by the owner of the property being annexed, and shall not require the joinder or consent of the Association or any of its Members.

Nothing contained in this Article shall be construed to obligate or require Declarant to make any additions to the Properties.

Section 3. Conveyance of Common Area in Annexed Property. Declarant or other owner of the annexed property shall convey to the Association all Common Area located within the newly Annexed Property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

Section 4. Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Properties then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Subdivision, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Subdivision.

Section 5. Good Faith Lender's Clause. Any violation of these covenants, conditions or restrictions shall not affect any lien or deed of trust of record held in good faith, upon any Lot or commercial Unit, which liens may be enforced in due course, subject to the terms of this Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association 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. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two (2) classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Class B Member (as hereinafter defined). Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots". When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot.

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to nine (9) votes for each Lot that it owns (each such Lot being a "Class B Lot"). Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant-owned Lots shall continue to

be treated as Class B Lots for assessment purposes.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its sole discretion, appoint and remove all of the directors and officers of the Association. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members. See §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by rules and regulations adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however that the Association may not suspend an Owner's right to use any Common Area providing access or utilities to his Lot.

(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 upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Durham or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided that such exchange is approved by a vote of the Members entitled to a majority of the votes of the entire membership at a meeting of Members, one of the purposes of which is to vote on the exchange, and, if required, by the City of Durham.

(f) the rights of Declarant as set forth in Article XI hereof.

Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Durham County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence in Durham County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that Declarant will convey to the Association title to those portions of the Common Area to be owned in fee by the Association and, by and upon recording of a deed for same, the Association shall be deemed to have accepted such Common Area and all improvements thereon. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself, and its respective successors and assigns, an easement over, under, across and through the Common Area so long as any of them own any Lot within the Properties, for the purpose of constructing any improvements on the Common Area and/or the Lots as it or they deem necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, the Master Declaration, restrictive covenants applicable to the Properties, utility, drainage, conservation, greenway and other easements of record or shown on the recorded plats of the Properties, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the City of Durham or other governmental entity, or a public or private utility company.

Section 4. Regulation and Maintenance of Common Area and Common Area Easements. It is the intent of Declarant that the Common Area (whether owned by the Association in fee or by

easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, the Declarant, by recording any plat or map of any phase or section of the Subdivision, grants to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation from Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on or in any Common Area; (4) fill or excavate any Common Area or any part thereof; or (5) plant vegetation on or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

It is the intent of the Declarant that a Common Area Easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized or approved in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area (including Common Area Easements) is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration or rules and regulations adopted by the Association as provided herein or in the Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

(c) Association's Right of Entry for Maintenance of Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner,

by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) special assessments; (4) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (5) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (6) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (7) all other assessments and charges imposed or allowed to be imposed by this Declaration.

The Association has the right at all times to include as part of the assessments or other charges applicable to the Lots and the Owners thereof such amounts as are required to pay all Common Expenses and all financial obligations of the Association imposed by the Code either (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on some or all of the Owners, with the Association having responsibility for collection and payment.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, storm water drainage facilities, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) maintenance of Lots, as provided in Article VI hereof; (iv) payment of taxes and public assessments levied against Common Area owned by the Association in fee; (v) procurement of insurance; (vi) employment of attorneys, accountants and other persons or firms for Association business; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Annual and Maximum Annual Assessment. The Board of Directors shall adopt, as soon as practicable, a budget for the Association for the period that lasts from the creation of the Association until December 31, 2024, and from such budget the Board of Directors will establish the annual assessment for the period of time that lasts from the creation of the Association until December 31, 2024. Beginning on January 1, 2025, and on January 1 of each year thereafter, the Maximum Annual Assessment shall automatically increase by ten percent (10%) over the Maximum Annual Assessment for the previous year. The Annual Assessment may be lower than the Maximum Annual Assessment but the Annual Assessment may not be higher than the Maximum Annual Assessment without a formal amendment to this Declaration. The Annual Assessment for Class B Lots and Lots owned by Declarant shall be zero, provided, however, that any Lot which contains a dwelling occupied by any person as a residence shall be assessed at the Class A rate.

The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Certificate of Payment; Ratification of Budgets. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the amount set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Prior to January 1, 2025, and each year thereafter, the Board of Directors shall adopt a proposed budget for the Association. Within thirty (30) days after the adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment for Class A Lots is not more than ten percent (10%) of the annual assessment for the immediately preceding year, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

The Association shall, upon demand and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or the management company employed by the Association, setting forth whether the assessments (annual, special, and Individual special assessments) for a specific Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments against the Lots (or, as to expenses related to Limited Common Area, the Lots benefitted by such expenses) for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring expenses, *provided that* any such assessment shall have been approved by the Declarant (during the Declarant Control Period) and by not less than two-thirds (2/3) of the votes of the Class A Members present and voting (in person or by proxy) (or, as to a special assessment related to Limited Common Area, at least two thirds (2/3) of the Class A Members against whose Lot the special assessment will be levied) at a meeting of the Members, one of the purposes of which is to vote on the special assessment, and further provided that the special assessment for Class B Lots shall always be zero. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Written notice of any meeting called for the purpose of voting on a special assessment shall

be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting.

Section 6. Individual Special Assessments. The Board of Directors, without vote of the Members, may levy an individual special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Any fine imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall also constitute an individual special assessment against such Owner's Lot. Special assessments and individual special assessments shall constitute a lien to the same extent as other assessments against the Lot.

Section 7. Effect of Nonpayment of Assessments; Remedies. No Owner shall be exempt from liability for any assessment provided for herein by reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be a charge on the Owner's Lot as provided in §47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in §47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

Section 8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to

be subordinate to the lien of any first mortgage or deed of trust.

Section 9. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a Governmental Entity, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no Lot devoted to residential use shall be exempt from said assessments.

Section 10. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on a Lot, a sum of \$1,500.00 shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable or to repay the Assessment Loan. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment. The working capital contribution may be established, increased or decreased in the sole and exclusive discretion of the Board.

Section 11. Assessment Loan. It is anticipated that until Declarant has sold a certain number of Lots (which number has not yet been determined, and which number is referred to herein as the "Break-even Number"), the Annual Assessments collected by the Association will not be sufficient to pay all common expenses on a current basis, but that the anticipated Annual Assessments collected after the Break-even Number of Lots has been sold will exceed common expenses. To fund this shortfall, Declarant reserves the right, but is not obligated, to make a loan (the "Assessment Loan") to the Association, as provided below, until cash flow from the Annual Assessments is sufficient to pay common expenses. If Declarant elects to make the Assessment Loan, then Declarant shall advance to the Association the amount by which the common expenses exceed the Annual Assessments collected for such year. The Association shall have the affirmative obligation to repay the Assessment Loan to the Declarant in accordance with the terms hereof, with no interest thereon except as otherwise provided in this section. The Association shall use proceeds advanced to the Association only to pay the above described shortfall in common expenses. The Association shall repay the Assessment Loan to Declarant in monthly installments or as otherwise determined by Declarant commencing at such time as sales of Lots reach the Break-even Number, until the balance of the Assessment Loan has been repaid to Declarant in accordance with its terms; provided, however, an Assessment Loan shall in no event be repaid to Declarant later than December 31, 2030, unless earlier accelerated due to a default by the Association. After maturity, whether by acceleration or otherwise, if the Assessment Loan remains unpaid, the outstanding balance shall bear interest at the rate of eight percent (8%) per annum compounded monthly. Each Owner of a Lot, by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other conveyance, is hereby deemed to covenant and agree (and such covenant further shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), that such an Assessment Loan is reasonable and was made by Declarant and accepted by the Association in good faith and at arm's length.

Section 12. Declarant's Obligation to Fund Operating Deficits. Until the Association makes a common expense assessment, the Declarant shall pay all common expenses. See §47-F-3-115(a).

**ARTICLE VI
MAINTENANCE OF LOTS AND COMMON AREA**

Section 1. Owner's Responsibility; Remedy for Owner's Failure to Maintain.

Any maintenance on a Lot that is not the responsibility of the Association, whether by the terms of this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Specifically, without limitation, the Owner shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all improvements on his Lot and for the maintenance of any fenced or enclosed privacy area. Each Owner shall be responsible for repair and maintenance of all utility lines, fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to the Owner's Lot which are not publicly maintained.

If an Owner does not perform any required maintenance of his Lot or Dwelling, the Association shall have the right (but not the obligation), through its agents and contractors, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Dwelling erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 2 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific items needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article.

Section 2. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 1 of this Article, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be an individual special assessment against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

Section 3. Access at Reasonable Hours. As provided in Section 4 of Article VIII of this Declaration, the Association, through its duly authorized agents or employees, shall have the right, without notice to the Owner, to enter upon any Lot at reasonable hours on any day to perform any maintenance and repairs to be performed by the Association.

Section 4. Common Area. Except for maintenance responsibilities (i) placed on Owners by the Declaration or Legal Requirements, or (ii) assumed or undertaken by other Persons (for example, the City), the Association shall maintain the Common Area. Without limiting the generality of the foregoing, the Association shall maintain the Stormwater Control Measures within the Subdivision as set forth in Article XIII. The Owner of any Lot on, over or through which any Stormwater Control Measures are located shall include notification of the Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter, and any excessive erosion within any such Stormwater Control Measures. The Owner of a Lot on which Stormwater Control Measures are located shall not obstruct or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all Stormwater Control Measures located on and used exclusively in connection with such Owner's Lot or the improvements thereon, including

guttering, and pipes and drains for transportation of storm water from such Lot into any other Stormwater Control Measures.

Section 5. Association's Additional Responsibility for Townhome 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, including street trees, landscaping, and sidewalks located on each Lot (hereinafter the "Yard Improvements") that are installed by the Declarant or the Association, and any Yard Improvements installed by an Owner 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 Yard Improvements), provided, however, that: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fenced or enclosed privacy area; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity. However, the Association shall also be responsible for maintenance and repair of all retaining walls constructed by the Declarant or the Association on any Lot. In the event that the need for maintenance, repair and/or replacement is caused through the willful or negligent act of an Owner or such Owner's tenants, subtenants, family members, or guests or invitees of any of them, the cost of such maintenance, repair and/or replacement shall be the responsibility of the Owner.

The Board of Directors of the Association or the Members, by the affirmative vote of a majority of the Members of each Class, shall have the right (but not the obligation) to accept certain items, areas or improvements on a Lot for maintenance by the Association, including, but not limited to, Yard Improvements installed by an Owner. Such acceptance shall be in writing and may be subject to such terms and conditions, including, but not limited to, a special assessment or increased annual assessment for that Lot (which, being consensual, need not be approved as provided in Article V hereof), as the Association might establish in such written acceptance.

ARTICLE VII RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year, except that the Association shall not be required to provide the financial statement for the preceding fiscal year if said fiscal year expired less than 75 days prior to the date of the request. (See §47-3-118 of the Act).

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.
- (b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of

owners or holders of first mortgages on the Lots.

(d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing it mortgage.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(d) of said Article IV hereof shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Durham or another Governmental Entity or to a nonprofit entity organized for purposes similar to those of the Association.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however, that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners to the Association.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under the Declaration.

ARTICLE VIII EASEMENTS

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveways, walkways, water lines, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of

this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of ten (10) years from the date hereof, Declarant grants to and reserves for itself, the Association, and their successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the person or entity taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The person or entity taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant. It is anticipated that there shall be encroachments of HVAC units, gas/electric meter bases and utility lines as well as other similar initial improvements made by Declarant. All Lots upon which such encroachments of initial improvements made by Declarant exist are subject to easements appurtenant, over, under, upon and through the area required to allow for access to and maintenance of same.

Section 3. Easement over Common Area. A perpetual, nonexclusive easement over, under and through the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing reasonable access, ingress and egress to, from and over and the use of the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 4. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 5. Easements for Governmental Access. An easement is hereby established over

the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 6. Easements for Private Contractors. The Association shall have the right to assign its rights and delegate its duties to any Person. In the event that the Association employs or engages any Person to provide security within the Properties, perform inspections of improvements, collect garbage, maintain landscaping, or perform any other function, an easement is established over the Common Area and every Lot for the benefit of such contractors for such purposes.

ARTICLE IX ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs), wall or other structure (including play equipment) shall be commenced, constructed, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or re-landscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within forty-five (45) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed \$150.00, for receiving and processing each application and the right (but not the obligation), at the expense of the Owner seeking approval of the Improvements, to employ an engineer or other professional to review the plans for the Improvements. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its sole discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Declarant may, at any time, delegate, in part or in whole, the review and approval authority contained in this Article IX to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three or more persons appointed by the Board. Declarant shall delegate such authority no later than the end of the Declarant Control Period. Except as provided in the next paragraph, any use of the term "Declarant" in this Article IX shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by the Declarant.

Notwithstanding any other provision of this Declaration, including, without limitation, the provisions of the immediately preceding paragraph, Declarant shall have and shall exercise the rights

set forth herein as to a Lot at all times prior to issuance of a certificate of occupancy or other certificate issued by the City or appropriate governmental entity for the Dwelling constructed on a Lot. Neither the Board of Directors nor any Architectural Committee of the Board shall have the right to overturn any decision of Declarant without the prior written consent of Declarant, unless the Declarant no longer exists as a legal entity, in which event the foregoing proscription shall not apply.

In the event that any structure is commenced or constructed in violation of the provisions of this Article, in addition to any other remedy available for such breach including, without limitation, monetary fines for such violation, either Declarant or the Association may seek and obtain injunctive or other equitable relief to prevent construction and/or removal of such unapproved structure. The party prevailing in any action to enforce the provisions of this Article shall be entitled to recover from the non-prevailing party the costs of such action including, without limitation, court costs and attorneys' fees actually and reasonably incurred by the prevailing party.

ARTICLE X USE RESTRICTIONS

Section 1. Use of Lots and Common Area. It is the intent of the Declarant that all Lots shall be used for residential purposes only. Except as permitted by the Code, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that (a) the Declarant, real estate brokers, Owners and their agents may show Lots for sale or lease, and (b) an occupant of a Unit may conduct business activities within the Unit so long as: (i) the occupant obtains Board approval and all necessary governmental licenses and approvals (including, without limitation, a special use permit, if required) for the conduct of such business in the Unit and the business is otherwise owned and operated in compliance with all applicable laws and regulations; (ii) the existence and operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit (and, in particular, no sign advertising or otherwise acknowledging the business is permitted); (iii) the business activity does not involve door-to-door solicitation of residents; (iv) the business activity is not a nuisance, a hazardous or offensive use, or a threat to the security or safety of others; and (v) the business activity does not, in the sole and exclusive discretion of the Board, generate a level of vehicular or pedestrian traffic or the movement or parking of a number of vehicles beyond that of a Unit in which no business is operated. The foregoing shall not preclude occasional garage or yard sales, moving sales, or similar activities, provided that such activities may not be held on any one Lot more than once in any six-month period and, when held, may not exceed two days in duration. Notwithstanding the foregoing, the Declarant shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain spot-lighted model homes which may be open to the public for viewing seven days per week for such hours as the Declarant deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales and construction efforts; and (iv) use any temporary parking facilities located on the Common Area for parking for its employees and invitees.

Section 2. Use of Accessory Structures. No shack, barn, animal pen, lean to, or any other buildings, other than a Dwelling and its garage, shall be erected on a Lot. No structure of a temporary nature may be used temporarily or permanently as a residence. Notwithstanding the foregoing, the Declarant may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of Units.

Section 3. Nuisances. No noxious, illegal or offensive trade or activity shall be carried

on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 4. Animals. No animals, livestock, venomous or poisonous creatures, or poultry of any kind shall be kept on any Lot, except that some domesticated dogs and cats may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the neighborhood. The Board of Directors has the right to determine whether or not a particular animal is a nuisance or a threat to the safety of the Members and to require its removal. No person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot, street right-of-way, or the Common Area.

Section 5. Signs. Except as otherwise required by the City of Durham, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, one sign of not more than six (6) square feet advertising the property for sale or rent, and signs of not more than six (6) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than thirty (30) days before such election and shall be removed within seven (7) days after such election. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

Section 6. Parking.

No Owner or a member of his family, lessee or sub-lessee or guest of an Owner shall: (i) park any vehicle on any Lot or on the street within or adjoining the Subdivision except in a designated paved parking space such as on the Lot's driveway or on an approved parking pad on the Lot (for purposes of this sentence, the paved parking spaces provided for at the community pool are specifically designated for pool use parking and shall not be used for the parking defined under this subsection), provided however that this restriction shall not apply to "one-time events" such as, but not limited to, graduation parties, birthday parties, holiday gatherings, or other similar occasional events; (ii) park or keep on any Lot or street within or adjoining the Subdivision any abandoned, partly dismantled or inoperative vehicle or vehicle not having current registration and inspection stickers displayed; or (iii) park or keep on any Lot or any street within or adjoining the Subdivision any boat or boat trailer, utility or other trailer, recreational vehicle, motor home, camper, bus, commercial vehicle, truck or van, or anything else other than a vehicle normally intended for use as a private passenger vehicle. For the purpose of the preceding sentence, the term "keep" shall mean present for either a period of more than ten (10) hours or overnight, whichever is less.

The Board of Directors shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or

appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, and the cost of towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered or the Owner of the vehicle, as appropriate.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable legal requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Properties.

Section 7. Antennae and Roof Structures. No television, radio or other electrical towers, aeriels, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); and (iii) is integrated with the Dwelling and surrounding landscape.

Section 8. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans so as not to be visible from the street upon which the Unit fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or any other unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to the garage or to an approved screened enclosure area the night of the scheduled pickup.

Section 9. Fences. Any fence or wall installed within the Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in the Declaration. Chain-link fences will not be permitted. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

Section 10. Flags. Flags may not be flown on any Lot, except that a United States or North Carolina Flag, in good repair and no larger than four (4) feet by six (6) feet in dimension, may be flown in the customary manner consistent with the patriotic custom of the United States of America.

Flag poles are not permitted in the Subdivision except that Declarant may install a flag pole(s) at its model home sites to promote the sales and marketing of its homes.

Section 11. Holiday Decorations. Holiday decorations may be placed by an Owner on his Dwelling or Lot no sooner than thirty (30) days prior to the date of the Holiday and must be removed no later than fourteen (14) day after the date of the Holiday.

Section 12. Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall or portable air conditioning units are permitted. No air conditioning or heating apparatus, unit or equipment may be installed on the ground in front of, or attached to, the front wall of any Unit.

Section 13. Swimming Pools. No above-ground swimming pool is permitted on any Lot in the Subdivision, except that a small, inflatable children's wading pool shall be permitted in the back yard of the Lot during the summer only.

Section 14. Street Lighting. Declarant reserves the right to subject the Subdivision to a contract with Duke Energy Progress or other public utility or entity providing for installation and operation of street lighting, which requires a continuing monthly payment to Duke Energy Progress by each residential customer or by the Association.

Section 15. Mailboxes. No mailboxes, other than the community standard cluster mailbox units specified and installed by the Declarant in central locations throughout the Subdivision, shall be placed or maintained on any Lot, unless otherwise required by the United States Post Office or the City of Durham.

Section 16. Play Equipment. Recreational playground equipment may be placed in the rear yard of a Lot provided that its type, style, size, material, color, and location are first approved as provided in Article IX of the Declaration.

Section 17. Garages. No garage on any Lot may be enclosed for living spaces, but shall remain a garage for parking of vehicles of the Owner of the Lot.

Section 18. Rental of Units.

a. Any lease or sublease must be for at least thirty (30) days, in writing, and contain the following provision:

“Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Rollingdale, recorded in the Durham County Registry. Tenant acknowledges that he has received a copy of such Declaration and the rules and regulations of the Association and is familiar with the provisions of same.”

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease.

b. In addition to any and all lease restrictions that may be part of this Declaration or the rules and regulations contained in the Bylaws, further restrictions for leasing of Units are as follows: (i) no Unit may be leased for transient or hotel purposes, i.e. AirBnB or the like; (ii) no Unit may be subleased; (iii) a Unit Owner may not lease less than the entire Unit; (iv) Unit Owners may only lease

to natural persons (not entities); and (v) the Subdivision shall comply with any and all leasing/owner occupancy requirements of FNMA, FHLMC, FHA, HUD or VA.

c. The Unit Owner and his tenant shall not both be permitted to use the recreational amenities, if any, at the same time. It shall be the responsibility of the Unit Owner to notify the Association whether the Unit Owner or the tenant shall be permitted to use the recreational amenities.

Section 19. Fines. The Board of Directors, in accordance with the Bylaws, shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration and/or the rules and regulations hereafter promulgated by the Board pursuant thereto. Any monetary fine or penalty shall be deemed an Individual special assessment against the Lot of the Owner against whom such fine or penalty is assessed.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner (including the Declarant) shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Section 2. Term; Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the outstanding votes; provided, however, that Declarant's rights hereunder may not be amended or altered without the prior written consent of Declarant. No amendment shall be effective unless it has been recorded in the office of the Register of Deeds of Durham County.

Notwithstanding the foregoing, Declarant, without the consent or joinder of any Person, may amend this Declaration during the Declarant Control Period for the limited purposes of correcting clerical or typographical errors, clarifying any ambiguous provisions hereof, or complying with any statute, ordinance, rule, regulation or interpretation of any Governmental Entity. Furthermore, the Declarant, without the consent of any other Person, may amend this Declaration during the Declarant Control Period so long as such amendment does not adversely affect title to or use of any Owner's Lot or any Owner's use of the Common Area.

Section 3. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant during the Declarant Control Period, and thereafter by the Association, and, if required, by the City of Durham. Subdivision or recombination of any Lot(s) may, as appropriate, increase or decrease the number of votes in the Association.

Section 4. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the restrictive covenants and other use restrictions applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed an Individual special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

The Association shall have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 5. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon is taken by power of eminent domain or is damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house. Notwithstanding anything to the contrary contained herein, for so long as the Declarant controls the Executive Board,

the Declarant reserves the right to include the insurance obligations of the Association within a master insurance program controlled by the Declarant.

Section 6. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable and made with an entity not affiliated with the Declarant.

Section 7. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF ROLLINGDALE COMMUNITY ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of Rollingdale Community Association, Inc., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [describe the action approved] was approved by at least _____% of the Members as required by the Declaration and Bylaws of the Association.

[President/Secretary]

Section 8. Number and Gender. Whenever the context requires, the singular shall include the plural, and *vice versa*, and one gender shall include all.

Section 9. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 10. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Declaration and shall not be deemed to nullify or affect any other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local laws, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 11. Conflicts. In the event of a conflict between any provision of this Declaration

and the Master Declaration, the more restrictive provision shall control. In the event of a conflict between this Declaration and the Articles of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control.

Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. Chapter 55A), and the City of Durham Code shall in all cases control over any construction inconsistent therewith. The provisions of the Act and the Nonprofit Corporation Act shall in all cases control any conflicting provisions of the Code.

Section 12. Rule Against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto and §47F-3-102(1) of the Act. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Declaration violates any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

Section 13. Warranty. Limited Warranty for Common Area Facilities. Declarant will cause to be provided to Lot Owners and the Association an express limited warranty (the “Limited Warranty”) by which Declarant warrants that the Common Area Facilities, if any, described in the Limited Warranty will meet the standards of performance during the warranty periods (i.e., a limited one-year warranty on certain materials and workmanship; a limited two-year warranty on certain systems; and a limited ten-year warranty on certain structural elements) set forth in the Limited Warranty. The Limited Warranty is the sole and exclusive warranty provided to the Association by the Declarant. The limited express warranties contained in the Limited Warranty are specific and detailed as to the scope of the Association’s warranty coverage. **To the extent allowed by law, all other warranties, express or implied, including, but not limited to, any statutory warranties or implied warranties of habitability, merchantability, good quality, workmanship, design and construction in a good, fit, and workmanlike manner, fitness for its intended purpose, or fitness for a particular purpose as well as any implied warranties that the Common Area Facilities are free from faulty materials, are free from any defect resulting from noncompliance with building codes or standards, or were constructed according to sound engineering standards are hereby expressly disclaimed and waived including with respect to latent defects.**

a. **Release.** As set forth in the Limited Warranty, upon completion of repairs to a warranted item or upon payment to the Association in lieu of repairs pursuant to the Limited Warranty, the Association shall sign a full release of Declarant’s obligation for the deviation from the standard of performance set forth under the Limited Warranty and any related damage. Unless otherwise agreed to by the Association, the release shall apply only to the claim that is resolved by the repair or payment (as the case may be) and does not prevent the Association from making a claim under the Limited Warranty for any other deviation from the standards of performance for other claims during the warranty periods.

b. **Limitation of Liability.** The Declarant’s liability with respect to the warranties set forth in this Section, whether in contract, tort, statute, negligence or otherwise, is limited to the remedies provided in the Limited Warranty.

ARTICLE XII

BINDING ARBITRATION AND DISPUTE RESOLUTION

Section 1. Compliance and Default.

a. Each Lot Owner shall be governed by and shall comply strictly with the terms, covenants, conditions and restrictions of the Act, this Declaration, the Bylaws and the Rules and Regulations adopted pursuant thereto, and the same as they may be amended from time to time.

b. The Executive Board shall have the power to adopt, amend and enforce compliance with such reasonable Rules and Regulations relative to the operation, use and occupancy of the Lots and the Common Elements consistent with the provisions of this Declaration and the Act, including, but not limited to such enforcement procedures and penalties for violations as the Executive Board shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, from time to time, by means of appropriate resolutions duly approved by the Executive Board in accordance with the Bylaws. A copy of such Rules and Regulations and copies of any amendments thereto shall be delivered or mailed to each Lot Owner or occupant of a Lot promptly after the adoption thereof and shall become binding upon all Lot Owners, their successors in title and assigns, and occupants.

c. Failure of any Lot Owner, other than the Declarant to the extent permitted by the Act, to comply with any provisions of the Act, this Declaration, the Bylaws or any Rules and Regulations shall entitle the Association or the other Lot Owners to the remedies provided in this Declaration and the Act, and also to the following relief, none of which remedies shall be exclusive of any other remedies:

(i) To sue for the recovery of damages or for injunctive relief, or both, subject to compliance with Section 2, if applicable, and Section 3 of Article XII.

d. The failure of the Declarant, Executive Board, or any Lot Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Bylaws or the Rules and Regulations, shall not constitute a waiver of the right to do so thereafter.

Section 2. Agreement to Encourage Resolution of Disputes Without Arbitration/Litigation.

a. The Association, the Declarant, all Owners and all Persons subject to this Declaration (and any Person not otherwise subject to this Declaration who agrees to submit to this Article) (collectively, "Bound Parties" and each a "Bound Party"), agree to attempt to resolve disputes against other Lot Owners, the Declarant and/or the Association without the emotional and financial costs of arbitration/litigation (as applicable). Accordingly, each Bound Party agrees not to file arbitration/suit (as applicable) against another Lot Owner, the Association and/or the Declarant in any tribunal with respect to a Claim described in subsection (b), unless and until he has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 3(a), (b), and (c) in a good faith effort to resolve the Claim. The provisions of this Section 2 and Section 3 shall not apply to any efforts of the Association to collect Assessments or other amounts owed to the Association from any Owner (but not including Declarant).

b. As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) The interpretation, application, or enforcement of this Declaration, the Bylaws and/or any Rules and Regulations;

(ii) The rights, obligations, and duties of any Bound Party under this Declaration, the Bylaws and/or Rules and Regulations;

(iii) The design or construction of improvements within the Community, including, without limitation, any improvements located within Common Elements; and/or

(iv) Any actions taken or untaken by the Executive Board or by the Declarant.

The foregoing notwithstanding, the following shall be considered Claims and shall be subject to the binding arbitration procedure set forth in Section 3(d) of this Article, but shall not be subject to the procedures set forth in Section 3(a), (b) or (c) of this Article:

(i) Any action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the arbitrator may deem necessary in order to maintain the status quo and preserve the ability to enforce the provisions of this Declaration;

(ii) Any suit as to which the applicable statute of limitations would expire within ninety (90) days of giving the Notice required by Section 3.a of this Article, unless the party or parties against whom the Claim is made agree in writing to toll, or extend, the Claim's statute of limitations to comply with this Article.

The foregoing notwithstanding, the following shall not be considered a Claim unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 3 of this Article: Any suit that does not include Declarant and/or the Association as a party if such suit asserts a Claim that would constitute a cause of action independent of the Declaration.

Section 3. Dispute Resolution Procedures.

a. Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and Declarant (if the Declarant itself is not the Respondent and is still selling Lots in the Community) stating plainly and concisely:

(i) The nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) The legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) The Claimant's proposed resolution or remedy; and

(iv) The Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

b. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

c. Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by Declarant if Declarant is not a party to the Claim or, if Declarant is a party to the Claim, to an independent agency providing dispute resolution services in the County in which the Property is located. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within thirty (30) days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file arbitration as set forth below.

Each Bound Party shall bear its own costs hereunder, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

d. Binding Arbitration. If parties to such Claim cannot resolve the Claim as set forth in sub-Section (c) above, or the Claim is exempt from the above resolution process as set forth in Section 2.b above, then such Claims shall be resolved by binding arbitration. Each Bound Party shall bear its own costs hereunder, including attorney's fees and each Bound Party shall pay an equal share of the arbitrator's fees.

(i) Such binding arbitration shall be before a single arbitrator selected through the American Arbitration Association ("AAA"), unless a single arbitrator is otherwise mutually agreed upon by the Respondent(s) and Claimant(s). Absent a mutual agreement to the contrary, the arbitration shall be conducted in accordance with its Expedited Procedures of the Commercial Arbitration Rules, which rules can be viewed at www.adr.org. If AAA is unable to arbitrate a particular Claim, then that Claim shall be resolved by binding arbitration by a single arbitrator selected through AAA's successor or an equivalent organization, or by any other single arbitrator mutually agreed upon by the parties. **The arbitrator may not preside over any form of representative, collective or class proceeding, all of which are hereby expressly waived and precluded by this paragraph. Absent agreement of the parties, no arbitration between the parties or any claims asserted in an arbitration between the parties shall be consolidated with another arbitration for any purposes.** Notwithstanding anything in the Commercial Arbitration Rules to the contrary, and except as provided for in the Act or as provided for in state or federal statutory law that may not be waived, in no event shall any Bound Party be entitled to recover its attorney's fees or costs in any arbitration.

(ii) The provisions of this sub-Section shall be governed by the provisions of the Federal Arbitration Act, 9 U.S.C. §1, et seq.

(iii) Each Bound Party agrees that Declarant may include in any arbitration Declarant's claims against its design professionals, contractors, subcontractors and suppliers for contribution, indemnity or any other contractual or common law relief.

(iv) **EACH BOUND PARTY HEREBY WAIVES THE RIGHT TO A PROCEEDING IN A COURT OF LAW (INCLUDING WITHOUT LIMITATION A TRIAL BY JURY) FOR ANY CLAIMS OR COUNTERCLAIMS BROUGHT HEREUNDER.**

e. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file arbitration without the need to again comply with the procedures set forth in 17.03(a) – (c) of this section.

Section 4. Resolving Disputes Under the Limited Warranty Involving Common Area Facilities. The Association and Declarant must use the procedures set out in the Limited Warranty to resolve any and all disputes that the Association may have with the Declarant involving the Limited Warranty. This includes, without limitation, following the mandatory mediation and mandatory, binding arbitration provisions set forth in the Limited Warranty.

ARTICLE XIII **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 subject to the Durham City Code, Chapter 70, Article X, Section 70-743 (Inspection, Maintenance, Repair, and Reconstruction) and is binding on the Association. The Facilities, associated easements, and stormwater notes are or will be shown on a plat(s) recorded with the Durham County Register of Deeds. The Property subject to the above section of the Durham City Code 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. 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/Owners-Maintenance-Guide-for-Stormwater-BMPs-PDF?bidId=> and the operation and maintenance manual prepared specifically for the Facility/ies containing 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: one wet detention pond (WP) with a drainage area of 4.52 acres, a design storm surface area of 10,594 square feet and a design storm storage volume of 7,213 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 licensed 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 \$2,836.00 from its collected dues for the Inspection and Maintenance Fund and \$670.00 for the Major Reconstruction Fund. These minimum amounts shall be increased annually by 3% per year over the prior year's amount. The Association may set a higher amount in its discretion, or if directed by Durham Director of Public Works after an examination of the Facility/ies. The Association shall set dues at a sufficient amount to fund each of the two line items in addition to the Association's other obligations. The Association may compel payment of dues through all remedies provided in these Covenants or otherwise available under law.
4. **Assessments/Liens.** In addition to payment of dues, each Lot shall be subject to assessments by the Association for the purpose of fulfilling the Association's obligations under this Article. 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 and/or as Attorney in Fact for the

Association.

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. At a minimum each report shall include:

- i. the annual Facilities inspections report described in section (1) above;
- ii. if requested by City, 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;
- iii. if requested by City, 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;
- iv. if requested by City, 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, all Lot Owners, excluding the Lots owned by the Association, shall be jointly and severally liable to fulfill the Association's obligations. 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 rights described in the Durham City Code 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:

- 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 or by these covenants, 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.
- e. Enforce any debts owed by the Association 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.

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 formal acceptance with the City assuming the obligations of the Association. Individual Lots and Lot Owners continue to be liable for the Facility/ies in the event the Association is dissolved without an approved 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 Public Works Director, 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.

[signature appears on following page]

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized officer, as of the date set forth in the notary acknowledgment below.

DECLARANT:

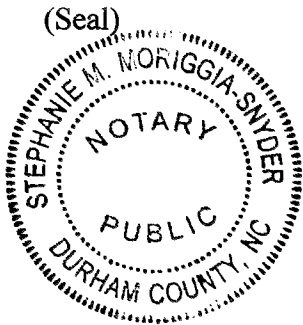
TOLL SOUTHEAST LP COMPANY, INC.,
a Delaware corporation

By: 
Edward B. Pease, Division President

STATE OF NORTH CAROLINA -- WAKE COUNTY:

I, the undersigned, a Notary Public of Wake County, North Carolina, certify that Edward B. Pease, personally appeared before me this day and acknowledged that he is the Division President of **TOLL SOUTHEAST LP COMPANY, INC.**, a Delaware corporation, and that he, as Division President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 5th day of February,
2024.



Stephanie M. Moriggia-Snyder
Notary Public
Stephanie M. Moriggia-Snyder
Printed Name

My Commission Expires: 3/17/2027

Exhibit "A"

All that certain lot or parcel of land situated in the City of Durham. Patterson Township, Durham County, North Carolina and more particularly described as follows:

FIRST TRACT: BEGINNING at a stake on the east side of N.C. Highway 54 at the southwest corner of Lot 26, and running thence along and with the south line of said lot North 67 degrees East 724 feet to a stake in a branch; thence South 14 degrees East 176 feet to a stake; thence South 17 degrees West 80 feet to a stake, northeast corner of Lot 28; thence along and with the north line of said lot South 67 degrees West 659.4 feet to a stake on the east side of Highway 54; thence along and with the east side of Highway 54 in a northerly direction 240 feet to a stake, the point of Beginning, containing 3.8 acres, more or less, and Being lot 27 of the Oscar B. Penny Farm as per plat and survey now on file in the Office of the Register of deeds of Durham County in Plat Book 24 at Page 17, to which reference is hereby made for a more particular description of same. See Plat Book 38 at Page 148.

Property Address: 606 West NC Hwy 54, Durham, NC
REID No: 143643

SECOND TRACT: BEGINNING at stake on the east side of N.C. Highway 54 at the southwest corner of Lot 27, and running thence along and with the south line of said Lot North 67 degrees East 659.4 feet to a stake at a branch; thence South 17 degrees West 260 feet to a stake; thence South 53 degrees 30 minutes West 264 feet to a stake, corner of Lot 29; thence along and with the north line of said lot South 67 degrees West 258 feet to a stake on the east side of N.C. Highway #54; thence along and with the east side of said Highway in a northerly direction 263 feet to a stake, the point of Beginning, containing 3.3 acres, more or less, and being Lot 28 of the Oscar B. Penny Farm as shown in Plat Book 24 at Page 17, on file in the Durham County Register of Deeds, to which reference is hereby made for a more particular description of same. See Plat Book 38 at Page 148.

Property Address: 602 West NC Hwy 54, Durham, NC 27713
REID No: 143644