



FOR REGISTRATION REGISTER OF DEEDS
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DURHAM COUNTY, NC
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Prepared By & Mail To: Burns, Day & Presnell, P.A (JMD), P.O. Box 10867, Raleigh, NC 27605

**NORTH CAROLINA
DURHAM COUNTY**

**DECLARATION OF COVENANTS AND
RESTRICTIONS FOR RUSTICA OAKS SUBDIVISION**

THIS DOCUMENT REGULATES AND/OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA, THE FLAG OF THE STATE OF NORTH CAROLINA AND POLITICAL SIGNS.

This Declaration of Covenants and Restrictions for Rustica Oaks Subdivision (the "Declaration") made on December 31, 2012 by **RUSTICA OAKS DEVELOPMENT, LLC**, a North Carolina limited liability company, (the "Declarant")

RECITALS

Declarant owns all of the Property (as defined below) and wants to subject the Property to the protective covenants, charges, conditions, and restrictions described in this instrument to (i) insure the best use and most appropriate development and improvement of the Property, (ii) protect Owners (as defined below) against such improper use of surrounding lots as will depreciate the value of their lot, (iii) preserve, so far as practicable, the natural beauty of the Property, (iv) guard against the erection of poorly designed or proportioned structures and structures built of improper and unsuitable materials, (v) obtain harmonious color schemes, (vi) encourage and secure the erection of attractive structures with appropriate locations, proper set backs from streets, and adequate free spaces between structures, and (vii) provide for a high type and quality of improvements in the Property and thereby enhance the values of investments made by the Owners **THEREFORE**, Declarant declares that all of the Property, together with such additions as may subsequently be added, shall be held, sold, transferred, conveyed, occupied, and used subject to this Declaration which shall run with the land and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner

1. DEFINITIONS Unless the context clearly indicates otherwise, the following capitalized words and phrases shall have the indicated meanings when used in this instrument

"Act" means the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes), as amended from time to time, or any corresponding provisions of succeeding law

"Additional Properties" means any additional tract or tracts of land which are contiguous to the Property For purposes of this Declaration, land which is separated from the Property by a right-of-way or natural boundary (e.g., streams or pond) shall nevertheless be deemed "contiguous"

"Allocated Interests" means the undivided interests in the Common Elements and votes in the Association allocated to each Lot as determined in accordance with this Declaration The Allocated Interests shall be expressed as a numerical percentage and, except for minor variations due to rounding, the aggregate percentages for all of the Lots at any one time shall equal 100%

"Amenities" means the recreational facilities, if any, constructed on the Common Elements for the common use of the Members At this time, such recreational facilities have not been completed

"Annual Assessments" means the assessments described in **Section 7.2**

"Approved Association Budget" means the Association Budget ratified or deemed ratified by the Owners as contemplated in **Section 7.2**

"Approved TH Budget" means the TH Budget ratified or deemed ratified by the Owners as contemplated in **Section 7.2**

"Articles" means the Association's Articles of Incorporation, as may be amended or restated

"Assessment" means an Owner's share of the Common Expenses or TH Expenses or other charges from time to time assessed against an Owner by the Association pursuant to the terms of this Declaration, including the Annual Assessments, the Special Assessments, Individual Assessments, and other assessments authorized in this Declaration

"Association" refers to that homeowners association entitled "Rustica Oaks Homeowners Association, Inc." and its successors

"Association Budget" refers to each proposed budget for the Common Expenses adopted by the Executive Board

"Builder" means a Person who has purchased a Lot from Declarant for purposes of constructing a Residential Unit on the Lot for sale or lease (i.e., a builder), other than a Person expressly succeeding to the Development Rights as Declarant

"Building Site" is defined in **Section 12.4**

"Bylaws" refers to the Association's bylaws, as may be amended or restated

"Common Area" or **"Common Elements"** means all real property within the Planned Community owned by the Association (other than a Lot), all Improvements constructed on that real property (including the Amenities), and the easements granted to the Association for the common use and enjoyment of the Owners The Common Area/Common Elements to be

owned by the Association shall be described in deeds to the Association and/or designated as such on each Plat Common Area/Common Elements are more specifically described in **Section 3.1.**

"Common Expenses" means expenses of administration, maintenance, repair, or replacement of the Common Elements and Limited Common Elements as expressly provided in this Declaration, expenses described elsewhere in this Declaration or the Bylaws as "Common Expenses", expenses agreed by the Members to be "Common Expenses", the Association operational costs and management fees, premiums for insurance as the Planned Community Documents may require the Association to purchase, ad valorem taxes and public assessment charges lawfully levied against Common Elements owned in fee simple by the Association, expenses related to any cablevision-type services or other voice/data services provided to the Owners by the Association, and unpaid Assessments. Notwithstanding anything in the preceding to the contrary, "Common Expenses" shall not include TH Expenses

"Community Signs" refers to the signs and monuments (including all associated plants, shrubs, trees, grass, sprinkler systems, lighting and other landscape architectural materials) identifying the Planned Community or a Neighborhood, at large, located within the Common Elements

"County" refers to Durham County, North Carolina

"Declarant" means Rustica Oaks Development, LLC, and its successors and assigns specifically designated as "Declarant"

"Declarant Control Period" means the period commencing on the date of recordation of this Declaration with the County Register of Deeds and continuing until the earlier of (a) December 31, 2022, (b) the date Declarant or its successors no longer owns any of the Property, and (c) Declarant transfers, in writing, the Development Rights to the Association

"Declaration" means this document, as may be amended or restated

"Development Rights" means all rights of control and/or approval granted to Declarant, as Declarant, under this Declaration, including the rights granted under **Sections 4 & 5**

"Executive Board" refers to the Board of Directors for the Association

"Family Members" means the spouse, parents, parents-in-law, brothers, sisters, children, and grandchildren of the designated individual

"First Sale Date" means, with respect to a particular Lot, the date of the first transfer of title to that Lot by Declarant to a Builder or, if no such transfer is made, the issuance date of the certificate of occupancy for the Residential Unit on that Lot

"Foreclosure" means, without limitation, the judicial or non-judicial foreclosure of a Mortgage or the conveyance of the secured property by a deed in lieu of foreclosure of a Mortgage

"Improvements" means any structure of any type or kind, including buildings, homes, outbuildings, parking areas, refuse collection areas, screening walls, retaining walls, fences, hedges, mass plantings, sidewalks, poles, signs, and utility lines and facilities

"Individual Assessment" means an individual assessment assessed by the Executive Board against (i) a single Lot to secure the liability of that Owner to the Association arising from that Owner's breach of any of the provisions of this Declaration, or (ii) one or more Lots as to cover expenses expressly authorized in this Declaration to be assessed against less than all of the Owners. For avoidance of doubt purposes, "Individual Assessment" does not include Annual Assessments or Special Assessments.

"Interest Rate" means a rate of interest at the lesser of (i) the rate set by Executive Board (if one has been set), and (ii) eighteen percent (18%) per annum, as of the date of determination.

"Law" means any local, state, or federal rules, regulations, or laws which may apply to the Planned Community or any Person who maintains an interest in the Planned Community or a Lot, including the Zoning Entity's ordinances, codes, and regulations.

"Limited Common Elements" refers to a portion of the Common Elements allocated by this Declaration or by law for the exclusive use of one or more, but fewer than all, of the Lots, and as more specifically described in **Section 3.2**.

"Lot" means any tract of land, with the exception of the Common Areas, designated for separate ownership or occupancy by an Owner located within the Planned Community. Unless the context otherwise requires, "Lot" shall include each Lot in Use and each Unsold Lot and each SF Lot and each TH Lot.

"Lot in Use" refers to a Lot on and after the earlier of (a) the First Sale Date, and (b) the issuance date of the certificate of occupancy for the Residential Unit on that Lot.

"Majority in Interest" means, with respect to any referenced group of Owners, a combination of any of those Owners who, in the aggregate, own more than fifty percent (50%) of the Allocated Interests owned by all of that referenced group of Owners.

"Member" means every Person who holds membership in the Association as of the date of determination.

"Mortgage" means a mortgage, deed of trust, installment land sales contract, security agreement, or other similar security instrument granting, creating, or conveying a first lien upon a Lot.

"Mortgagee" means the holder, insurer, or guarantor of a Mortgage.

"Neighborhood" refers to the Single-Family Neighborhood, the Townhome Neighborhood, or both as the context requires.

"Occupants" means any individual(s) in possession of a Lot, including Owners, Family Members, lessees, guests, and invitees of each of such individual(s).

"Owner" or "Lot Owner" means the record owner, whether one or more Persons, of a fee simple title to any Lot, except those having an interest merely as security for the performance of an obligation.

"Party Wall" refers to each wall which is built as a part of the original construction of a Townhome Unit (including all reconstructions or extensions of that wall) and is placed on the dividing line between the TH Lots.

"Person" means an individual, a trust, an estate, a corporation, a partnership, a limited liability company, an unincorporated association, or other entity

"Planned Community" refers to the residential project known as "Rustica Oaks Subdivision" to be developed on the Property

"Planned Community Documents" means this Declaration, the Articles of Incorporation, the Bylaws, and the Act, collectively and individually

"Plat" refers to all recorded plats describing or identifying the Lots and/or Common Areas for the Planned Community which plats are incorporated into this Declaration by this reference

"Private Streets" means the streets and/or alleys, if any, designated as "private" on the Plat. It is contemplated that Private Streets will only be constructed in the Townhome Neighborhood

"Property" refers to that land located in Durham County, North Carolina and, at least initially, as described on **Exhibit A** attached and as otherwise described on the Plat, together with the improvements constructed thereon and all appurtenant easements, rights and privileges, and any other real property subjected to the Declaration pursuant to the terms of this document

"Residential Unit" refers to the residential structure constructed on a Lot and includes both SF Houses and Townhome Units. Except where the context requires otherwise, this term shall be used interchangeably with "Lot"

"Rules & Regulations" means the rules and regulations governing the Planned Community as adopted by the Executive Board from time to time

"Second Sale Date" means, with respect to a Lot, the earlier of (i) the date of the first conveyance (whether by deed or lease) of the Residential Unit after the First Sale Date (i.e., typically a sale/lease by a Builder to a Person who intends to occupy the unit/house as its residence), and (ii) the date which is twelve (12) months after the issuance of a certificate of occupancy for the Residential Unit on that Lot

"Single-Family Neighborhood" refers to that area encompassing all of the SF Lots located within the Property, which will be more specifically described in the Plats

"Special Assessments" means the assessments described in **Section 7.3**

"SF House" refers to a single-family, detached structure

"SF Lot" refers to a Lot located in the Single-Family Neighborhood

"Surplus Funds" means (i) with respect to the Association, funds collected by the Association pursuant to this Declaration or otherwise which are not needed to pay current Common Expenses or TH Expenses, as the case may be, the funding of a reasonable operating expense surplus for the Association, or the reserves provided for in this Declaration for the Association

"TH Budget" refers to each proposed budget for the TH Expenses adopted by the Executive Board

"TH Expenses" refers to those expenses incurred by the Association exclusively for the benefit of the Townhome Neighborhood (i.e., no benefit to the Single Family Neighborhood), including those expenses incurred under **Sections 8.3.1 & 9.1.3**

"TH Lot" refers to a Lot located in the Townhome Neighborhood

"Townhome Neighborhood" refers to that area encompassing all of the TH Lots located within the Property, which will be more specifically described in the Plats

"Townhome Unit" refers to a single-family attached townhome unit

"Unsold Lot" refers to a Lot which has not been the subject of a First Sale

"Zoning Entity" means the City of Durham or such other governmental entity having zoning jurisdiction over the Property as of the date of determination

Except as specifically provided to the contrary above, these defined terms shall be construed in a manner consistent with the comparable definitions included in the Act

2. SUBMISSION TO ACT. Declarant submits the Property to the provisions of the Act. The Property will be administered in accordance with the provisions of the Planned Community Documents. The Act contemplates that certain of its provisions may be superseded by provisions of Articles of Incorporation, bylaws, a declaration, or other agreement of the Members. It is the intent of the parties that in the event of a conflict among the Planned Community Documents, the Planned Community Documents (other than the Act) shall control and supersede the Act where permitted by law

3. PROPERTY RIGHTS.

3.1. Common Elements or Common Areas The "Common Elements" or "Common Areas" consist of all other parts of the Property, exclusive of the Lots themselves, and include the following

- (a) All of the Property, exclusive of the Lots
- (b) All areas designated as "open space", "private open space", "common area", "private recreation facility", or "common elements" on the Plat
- (c) Improvements (e.g. buildings, landscaping structures, signs, and the like) located on or under Common Elements, including the Amenities and Community Signs, other than those owned by a governmental entity or utility
- (e) Easements running in favor of the Association described in this Declaration or in separate, recorded easements granted to the Association
- (f) All equipment and installations existing for common use in the Planned Community (including water lines, sewer lines, storm drainage facilities, etc.) which are located outside any Zoning Entity utility easement and/or public street right-of-way and are not otherwise dedicated to a governmental entity or utility, or

3.2. Limited Common Elements Limited Common Elements shall mean and include those areas and facilities of the Common Elements reserved for exclusive use of less than all of the Lots, as identified on the Plat or in this Declaration. Where a Limited Common Element is reserved for a single Lot, that Owner (i) is granted an exclusive and irrevocable license to use and occupy those Limited Common Elements associated with its Lot and (ii) shall, at its own expense, be responsible for the maintenance and repair of its Limited Common Elements. Where a Limited Common Element is reserved for more than one (1) Lot (e.g., those Common Elements only serving the Townhome Neighborhood) (i) those Owners are granted an exclusive and irrevocable license to use and occupy those Limited Common Elements associated with its Lots, and (ii) the Association shall be responsible for the maintenance and repair of those Limited Common Elements and shall assess the applicable Lot Owners, accordingly. The following are specifically identified as Limited Common Elements:

(a) The Private Streets which are located exclusively in the Townhome Neighborhood,

(b) any private sewer lines, water lines, drainage lines or the like shown on the Plat and which exclusively serve the Townhome Neighborhood,

3.3. Title to Common Elements Subject to the rights of certain Owners to the Limited Common Elements, Declarant shall convey fee simple title (subject to this Declaration, current and subsequent years' ad valorem taxes, and rights-of-way, restrictive covenants and easements of record) in the Common Area to the Association. That conveyance of title to the Common Area shall be done prior to the Second Sale Date for the first lot sold in the applicable phase of the Planned Community.

3.4. Allocated Interests The Allocated Interests for each Lot shall be the same and shall be proportionate to the total number of Lots in the Planned Community, as that number may vary from time to time. The Allocated Interests for an individual Lot shall be determined by taking the number one (1) and dividing that number by the total number of Lots included in the Planned Community as of the date of determination. In the event of a withdrawal or addition of Lot(s) from/to the Planned Community as permitted by the Planned Community Documents, the Allocated Interests for all of the Lots shall be recalculated in accordance with the above formula. Except for such reallocations, the Allocated Interests shall not be changed except with the unanimous consent of all of the Owners of all of the Lots and with the consent of all of the Mortgagees.

3.5. Owners' Easement of Enjoyment Subject to the rights of certain Owners to the Limited Common Elements, every Owner shall have a right and easement of use and enjoyment in and to the Common Elements (the "Owners' Easement"), including specifically an easement for access, ingress, and egress from and to public streets, common parking, and walkways. The Owners' Easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

3.5.1. Subject to all applicable governmental ordinances, the Association's right to dedicate or transfer all or any part of the Common Elements to any public agency, authority, utility, or non-profit corporation. No such dedication or transfer shall be effective unless an instrument signed by eighty percent (80%) of the Allocated Interests agreeing to the dedication or transfer has been recorded in the County Register of Deeds. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and egress to public streets and walkways.

3.5.2. The Association's right, in accordance with the Planned Community Documents, to borrow money for the purpose of improving the Common Elements and to mortgage the

Common Elements to secure those borrowings, provided the mortgage is subordinate to the Owners' Easement

3.5.3. The Association's right to impose and enforce the Rules & Regulations which may restrict the use and enjoyment of the Common Elements

3.5.4. The Association and, during the Declarant Control Period, Declarant shall have the authority to grant and/or establish upon, over, under, and across the Common Elements further easements (including those provided in this Declaration) as are required for the convenient use and enjoyment of the Property

3.5.5. Subject to all applicable governmental ordinances, the right of the Association to charge reasonable admission and other fees for the use of any Amenities

3.5.6. As provided in this Declaration, the Association's right to suspend the voting rights and its right to use any Amenities by any Owner, its Family Members, guests, etc., for any period during which any Assessment against its Lot remains unpaid. The right to use the Amenities may also be suspended for a period, not to exceed one hundred twenty (120) days, for the infraction of the Associations Rules & Regulations, provided, however, that if the infraction is continuing in nature, the suspension may be enforced until such infraction is cured

3.6. Delegation of Use Any Owner may delegate, in accordance with the Planned Community Documents, its right of enjoyment to the Common Elements and Amenities to Family Members and tenants who reside at its Residential Unit and, subject to any applicable Rules & Regulations, to its guests

3.7 Association Access. The Association or its respective designee shall have the right of access to any Lot during reasonable hours of the day and, in the event of emergencies, at any time (i) as necessary to make inspections, repairs, replacements, or improvements to the Common Elements and Limited Common Elements, or (ii) to abate any violation of Law

4. DEVELOPMENT RIGHTS.

4.1. Development Rights During the Declarant Control Period, Declarant reserves the following development rights for the entire Property (a) To add real estate to the Property in accordance with the terms of this Declaration, (b) To add Common Elements, (c) to relocate Unsold Lots within or withdraw real estate still titled in Declarant's name from the Property, (d) To construct and maintain any sales office, management office, or model on any of the Unsold Lots or on any of the Common Elements shown on the Plats, (e) To alter the size of any Unsold Lot, recombine or merge two or more Unsold Lots, and subdivide any Unsold Lot but no further subdivision of any Lot shall be made without the prior consent of the Zoning Entity, (f) To convey, or cause to be conveyed, ownership in the Amenities to the Association, (g) Subject to the terms of the Bylaws, to appoint and remove any Executive Board member, and (h) other rights described in NCGS §47F-1-103(28)

4.2. Exercise Declarant, in its sole discretion, and from time to time during the Declarant Control Period, may exercise any or all of the Development Rights. During the Declarant Control Period, no amendment to or modification of the Development Rights may be made without Declarant's prior, written consent, which it may arbitrarily withhold. After the expiration of the Declarant Control Period, any and all Development Rights shall be exercised by the Executive Board or as otherwise designated by the Association

4.3. Assignment Declarant reserves the right to assign the Development Rights to any Person which acquires title to all or any portion of the Property. The assignment shall not be effective unless it is in writing (specifically describing the Development Rights being assigned), signed by Declarant, is accepted, in writing, by the assignee, and recorded with the County Register of Deeds. If at any time the Development Rights have expired without an assignment by Declarant, Declarant will be deemed to have assigned the Development Rights to the Association.

4.4. Delegation Declarant may, from time to time, delegate any or all of its Development Rights to such agents as it may nominate and on such terms as it chooses.

5. ANNEXATION OF ADDITIONAL PROPERTIES.

5.1. Annexation by Members Except as provided in **Section 5.2**, Additional Properties may be added and annexed to the Property only if sixty-seven percent (67%) of the Allocated Interests approve the annexation, provided that no annexation may be made during the Declarant Control Period without Declarant's prior written consent.

5.2. Annexation by Declarant Declarant may, from time to time during the Declarant Control Period, annex all or any portion of the Additional Properties to the Property and add additional Lots within those Additional Properties to the Planned Community without the consent of the Members. Declarant shall not be required to annex any particular portion(s) of the Additional Properties or annex them in any particular order. The annexation will be accomplished by the recording of the appropriate Plat and Declaration of Annexation as required by the Act, duly executed by Declarant, describing the lands annexed and Lots created. No other action or consent shall be necessary. Subsequent to recordation of the Declaration of Annexation and the new Plat, Declarant shall deliver a copy of the recorded Declaration of Annexation and new Plat to the Association. Notwithstanding the preceding to the contrary, Declarant's right to annex shall be subject to the following restrictions: (a) any liens relating to the annexed property must not adversely affect the rights of existing Owners or the priority of the Mortgagees, and (b) in any event, all prior period property taxes and assessments assessed against the annexed property must be paid or otherwise satisfactorily provided for prior to the annexation.

5.3. Governmental Approval Notwithstanding the language of **Sections 5.1** and **5.2** to the contrary, any addition or annexation of Additional Properties must, to the extent legally required, be approved by the Zoning Entity.

5.4. Title to Common Elements Fee simple title (subject to this Declaration, current and subsequent years ad valorem taxes, and rights-of-way, restrictive covenants, and easements of record) in the Common Area included within the Additional Properties annexed into the Planned Community shall be conveyed to the Association. That conveyance of title shall be done prior to the Second Sale Date for the first Lot sold within that annexed property.

6. MEMBERSHIP AND VOTING RIGHTS. Ownership of a Lot shall be the sole qualification for membership in the Association. When more than one Person holds an ownership interest in any one Lot, all such Persons shall be Members. The Executive Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Voting by Members shall be in accordance with the applicable provisions set forth in the Bylaws.

7. COVENANT FOR ASSESSMENTS

7.1 Purpose of Assessments The Assessments shall be used exclusively for funding all Common Expenses, TH Expenses, and other costs, expenses, damages, repairs, and liabilities reasonably incurred by the Association in fulfilling the purposes of this Declaration, and reserves for these purposes

7.2. Annual Assessments

7.2.1. The annual assessments to be assessed the Owners shall be set on a calendar year basis (the "Annual Assessment Period") and may be collected on a monthly, quarterly, or yearly basis as determined by Executive Board There shall be an annual assessment for (a) Common Expenses and any other expenses included in the Approved Association Budget, which shall be charged to each Owner of a SF Lot which is a Lot in Use and each Owner of a TH Lot which is a Lot in Use, and (ii) TH Expenses and any other expenses included in the Approved TH Budget, which shall be charged to each Owner of a TH Lot which is a Lot in Use, (collectively, the "Annual Assessments") The Annual Assessments shall commence as of the date declared by Executive Board (the "Commencement Date") Liability for the Annual Assessments for the first calendar year shall be adjusted according to the number of days remaining in that calendar year as of the applicable Commencement Date Each Lot that is a Lot in Use as of Commencement Date shall begin paying the applicable Annual Assessments in the amount(s) determined under the next Section Until that time, Declarant shall pay all Common Expenses and TH Expenses As to a Lot not a Lot in Use as of the Commencement Date, the applicable Annual Assessments shall commence as to that Lot as of the date it becomes a Lot in Use and that first Annual Assessment(s) shall be adjusted according to the number of days remaining in that calendar year

7.2.2. On or before January 1st of each year, the Executive Board shall adopt a proposed Association Budget and a proposed TH Budget These proposed budgets shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period), the anticipated Common Expenses or TH Expenses, as the case may be, for the Association for that same period, and any surplus or deficit in those Annual Assessments from the prior years Within thirty (30) days after adoption of both proposed budgets, the Executive Board shall send each Owner a copy of the Association Budget and, if the Owner is a TH Owner, a copy of the TH Budget and notice of a scheduled meeting of Owners to consider the ratification of those budgets The date of that meeting shall be not less than ten (10) nor more than thirty (30) days following mailing of the notice of the meeting If the proposed the Association Budget proposes an increase over the prior year's Annual Assessment of less than twenty percent (20%), that budget shall be deemed ratified unless ninety percent (90%) of the Allocated Interests of all of the Lots in Use vote to reject the proposed Association Budget at that meeting If the proposed Association Budget proposes an increase over the prior year's Annual Assessment of twenty (20%) or more, that budget shall be deemed ratified only if approved by the vote of a Majority in Interest of the Allocated Interests of all of the Lots in Use present at that meeting If the proposed TH Budget proposes an increase over the prior year's Annual Assessment of less than twenty percent (20%), the that budget shall be deemed ratified unless ninety percent (90%) of the Allocated Interests of all of the TH Lots which are Lots in Use vote to reject the proposed TH Budget at that meeting If the proposed TH Budget proposes an increase over the prior year's Annual Assessment of twenty (20%) or more, that budget shall be deemed ratified only if approved by the vote of a Majority in Interest of the Allocated Interests of all of the TH Lots which are Lots in Use present at that meeting *(For avoidance of doubt purposes, only TH Lot Owners may vote on the adoption of the proposed TH Budget)* If the Executive Board fails or delays in timely proposing a particular budget failure for any Assessment Period or, if proposed, a particular proposed budget is not ratified, the last Approved Association Budget or Approved TH Budget, as the case may be, shall continue in effect until such time as the applicable proposed budget is subsequently

ratified or deemed ratified as provided in this Section. There shall be no requirement that a quorum be present at the meeting. The Approved Association Budget shall be the basis for calculating the Annual Assessment to be charged for each Lot which is a Lot in Use at any time during that Assessment Period and the Approved TH Budget shall be the basis for calculating the Annual Assessment for the upcoming Annual Assessment Period to be charged for each TH Lot which is a Lot in Use at any time during that Assessment Period. The Executive Board shall calculate the amount of the Annual Assessments for each Owner of a Lot in Use and send a notice of that amount to each Owner of a Lot in Use as required under this Declaration. No failure or delay of the Executive Board to prepare or propose a particular budget for any Assessment Period or the failure of a particular budget to be ratified shall operate as a waiver, modification, or release of the Owners' obligation to pay Assessments otherwise to be charged during that Assessment Period.

7.2.3. After the Commencement Date, Declarant may, but shall not be obligated to, loan the Association money to the extent that Annual Assessments paid by the Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution.

7.3. Special Assessments In addition to the Annual Assessments, the Association may, from time to time, levy special assessments (each a "Special Assessment") for the purpose of defraying in whole or in part the cost of any unexpected expense. Except as provided in **Section 7.4**, Special Assessments shall be charged to each Lot without regard to whether or not it is a Lot in Use. A Special Assessment may only be assessed at a meeting duly called for this purpose upon the vote of Owners holding not less than sixty-seven percent (67%) of the Allocated Interests of all of the Lots, and an Owner's pro rata share of each Special Assessment shall equal its Allocated Interests percentage as of the date the Special Assessment is approved by the Owners.

7.3.4. Notwithstanding anything in this **Section 7.3** to the contrary, until its Second Sale Date, a Lot in Use shall only be responsible for one-sixth of the Annual Assessment otherwise due.

7.4. Uniform Rate of Assessment Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots in Use or Lots, as the case may be, subject to the following:

(a) Executive Board may levy an Individual Assessment as expressly provided elsewhere in this Declaration (e.g., **Section 9**),

(b) Any Common Expense or portion thereof benefitting fewer than all of the Lots shall be assessed exclusively against those Lots benefitted on a uniform basis,

(c) The TH Expenses shall be assessed exclusively against the TH Lots on a uniform basis,

(d) Assessments to pay a judgment against the Association may be made only against the Lots in the Planned Community at the time the judgment was entered, in proportion to their Allocated Interests,

(e) If any Common Expense is caused by the negligence or misconduct of any Owner or Occupant, the Executive Board may assess that expense exclusively against that Owner's Lot as an Individual Assessment,

(f) If Allocated Interests are reallocated, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Allocated Interests,

(g) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be equally assessed against the Lot(s) to which that Limited Common Element is assigned, and

(h) Individual Assessments do not have to be assessed on a uniform basis

7.5. Lien of Assessments/Exempt Property

7.5.1 Each Owner of a Lot by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to agree to pay the Assessments to the Association as provided in this Declaration. Assessments, together with interest at the Interest Rate thereon and the costs of collection (including reasonable attorney fees), shall be a lien on the applicable Lot from the due date for the Assessment as provided under the Act, continuing until paid in full, as well as a personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Owner's successors in title unless expressly assumed by the successor.

7.5.2. No Owner shall be exempt from liability for the payment of Assessments by waiving the use or enjoyment of any or all of the Common Elements or by abandoning its Lot. No Owner shall be entitled to a decrease in, or abatement of, the Assessments for any inconvenience or discomfort arising from (i) the failure or interruption of any utility or other services, (ii) the making of repairs or improvements to the Common Elements or any Lot, or (iii) any action taken by the Executive Board or the officers of the Association to comply with Law. All Lots dedicated to and accepted by a local public authority and the Common Elements shall be exempt from the Assessments.

7.6. Notice/Due Dates Written notice of a Special Assessment, Individual Assessment, or a change in any Annual Assessment shall be sent to every Owner subject thereto at least thirty (30) days in advance of its due date. The due date for an Annual Assessment or Individual Assessment shall be established by Executive Board and the due date for a Special Assessment shall be established by the Owners. The Association shall, within ten (10) business days of a written demand for such, furnish a certificate in writing (the "Assessment(s) Confirmation") signed by an officer of the Association setting forth whether the Assessments on the specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of an Assessment(s) Confirmation. Any third party receiving an Assessment(s) Confirmation may conclusively rely on the information contained in that Assessment(s) Confirmation as to the payment of the Assessments for the Lot identified.

7.7 Initial Assessment In addition to the Annual Assessment otherwise due for the remainder of the then current Assessment Period, on the transfer of fee simple title to a Lot (other than as security for a Mortgage) as described below, the transferee shall pay the following amount (the "Initial Assessment")

(a) On the First Sale Date, an amount equal to 25% of the then current Annual Assessment to be charged for that Lot, and

(b) On the Second Sale Date, an amount equal to three (3) months of the then current Annual Assessment to be charged for that Lot

The Initial Assessment shall not constitute advance payments of Annual Assessments, but shall nevertheless be used by the Association in the manner specified for Annual Assessments. Initial Assessments shall be included in the definition of "Assessments"

7.8 Non-Payment of Assessment Remedies of the Association

7.8.1. Any Assessment which is not paid when due shall be delinquent. The Association shall have the option to declare the entire outstanding balance of any Assessment immediately due and payable if any installment thereof becomes delinquent. If the delinquent Assessment is not paid within thirty (30) days after the due date, a late charge in the maximum amount permitted by law will be applied. The costs, late charges, fines, and, subject to the provisions of **Section 7.8.2** below, reasonable attorney fees incurred in enforcement of the lien, shall be added to the amount of the delinquent Assessment. A delinquent Assessment shall constitute a lien on that Lot when a claim of lien is filed of record as provided under the Act. Each Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner, personally, for the collection of all debts due by it to the Association and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property in accordance with Article 2A of Chapter 45 of the General Statutes and grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Section shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage, and convey the foreclosed Lot. This Section does not prohibit other actions to recover the sums due from an Owner nor prohibit the Association from taking a deed in lieu of foreclosure.

7.8.2. If an Owner fails, within fifteen (15) days after written notice as provided below, to dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the unpaid Assessments and lien, then the Association may collect reasonable attorneys' fees incurred by it up to the then applicable statutory limitation (currently \$1200.00) as a part of its judgment for an unpaid Assessment. The written notice to the Owner must (i) be sent by first-class mail or overnight mail to the address for the Residential Unit and, if different, to the mailing address for the Owner in the Association's records, (ii) set out the outstanding balance due as of the date of the notice, (iii) include notice of the Association's intent to seek attorneys' fees and court costs, (iv) state that the Lot Owner has 15 days from the sending of the notice to pay the outstanding balance without the payment of attorneys' fees and court costs, and (v) give notice of the opportunity, if any, to contact a representative of the Association to discuss a payment schedule for the outstanding balance and shall provide the name and telephone number of the representative.

7.8.3 If a check or other form of payment submitted for the payment of any amounts due the Association is returned due to insufficient funds or is otherwise dishonored, the Association may collect the maximum amount under law from the Owner or other reasonable *administrative charges for that dishonored payment*.

7.8.4 The Association, acting through its Executive Board and in its sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the Association nor the Owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule provided that the Owner has been given notice as required under **Section 7.8.2**.

7 9. Subordination of the Lien The lien of the Assessments shall be subordinated to the lien of the Mortgage on a Lot and the sale or transfer of a Lot pursuant to a Foreclosure shall extinguish the lien of the delinquent Assessments for that Lot, provided that in no event, however, shall any sale or transfer, whether pursuant to a Foreclosure or not, relieve the prior Owner incurring the delinquency from personal liability for the delinquent Assessments or the Lot from liability for any Assessments subsequently becoming due or from the lien therefor

7 10. Surplus Funds Except as determined by the Executive Board from time to time, Surplus Funds shall not be distributed to the Owners or be used as a credit against the Owners' future Assessments

7.11. Fines/Suspensions The Executive Board, after a hearing as required under the Act and/or Bylaws, may impose fines against any Lot and/or suspend a Member's voting privileges for a failure to comply with the Declaration or the Rules & Regulations. These fines shall be collected and enforced as an Individual Assessment otherwise due to the Association from that Owner. Fines shall be paid not later than thirty (30) days after written notice of the fine (the "Fine Notice") is given to the offending Owner. These fines shall not be construed to be exclusive, but shall be in addition to all other rights and remedies to which the Association may be otherwise legally entitled. The amount of any fine imposed shall be determined by the Executive Board, but, shall not, in any event, exceed One Hundred Dollars (\$100.00) per day for each day of continued violation or non-compliance commencing five (5) business days after the Fine Notice has been sent to the offending Owner. Such fines shall be Assessments secured by liens as provided under the Act.

8 MAINTENANCE

8 1. Maintenance Responsibility - Common Areas Except as specifically assigned to an Owner elsewhere in this Declaration, the Association shall be responsible for the repair, replacement, and maintenance of the Common Elements (including the Amenities and any other recreation areas, parking areas, walks, and landscaped areas located within the Common Elements). An Owner shall not do anything that will impair any easement owned by the Association, nor do any act or allow any condition to exist which will adversely affect the other Lots or their Owners. Except as contemplated in **Sections 8.3 & 8.4**, all of costs incurred by the Association in performing its obligations under this Section shall be Common Expenses.

8.2. Maintenance Responsibilities - SF Lots. With respect to the SF Lots, all maintenance, upkeep, and repairs of a SF Lot and the Residential Unit and all landscaping on that SF Lot shall be the sole responsibility of the individual Lot Owner and not in any manner the Association's. Except in connection with the initial construction of the Residential Unit, if, in the opinion of the Association any Owner fails to maintain its Lot or Residential Unit in a neat and orderly manner and in good repair, the Association may perform the required maintenance and assess the applicable Owner for the costs incurred in performing that maintenance, plus an administrative overhead fee of 15% of those costs.

8.3 Maintenance Responsibility - TH Lots

8.3.1. Association Responsibilities With respect to a TH Lot, once the certificate of occupancy has been issued for the Townhome Unit, the Association shall be responsible for the repair, replacement, and maintenance of

(a) all exteriors of each Residential Unit on a TH Lot, including exterior building surfaces, party walls, roofs, gutters and downspouts,

(b) all Party Walls If a Party Wall is destroyed or damaged, the affected Owners shall promptly give the Association notice of that damage, and thereafter, the Association shall restore the damaged Party Wall Upon completion of that restoration, the Association shall also restore, as is reasonably practicable, all affected Lots to as near the same condition which prevailed on or before the commencement of the construction, provided that the Association shall not be responsible for any repairs or replacements that are otherwise the Owner's responsibility under **Section 8.3.2** To the extent not covered by casualty insurance maintained by the Association, the cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in proportion to such use To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls, lateral support, in-below ground construction, and of liability for property damage due to negligence or willful acts or omissions shall apply

(c) except as provided in the next Subsection and/or prior to completion to the completion of the Townhome Unit on the TH Lot, all landscaping located within each TH Lot,

(d) the Private Streets located in the Townhome Neighborhood,

(e) all private utility systems and foundation drainage systems (other than those serving a single Lot) located outside the exterior walls shall be maintained by the Association All public utility systems located outside the exterior walls and/or within the Common Elements shall be maintained by the appropriate utility company or governmental authority

The Association shall establish regulations governing the procedure for exterior maintenance In the event an Owner desires to expend a sum greater than that sum authorized by the Association, prior to the commencement of work, it shall advance to the Association an amount necessary to cover the additional expenses and a lien shall be established against the Owner's Lot for any deficiency Except as contemplated in **Section 8.5**, all of costs incurred by the Association in performing its obligations under this Section shall be TH Expenses

8.3.2. Owner Responsibilities Each Owner shall be responsible for the repair, replacement, and maintenance of

(a) the landscaped areas and improvements within the boundaries of its TH Lot installed by someone other than Declarant or Builder, provided that an Owner shall not place or construct any exterior Improvements, or plant any vegetation within its TH Lot, without the prior approval required by **Section 12**

(b) any Limited Common Elements (including patios, decks, fences, and porches) serving its Lot or Residential Unit,

(c) screens and screen doors, exterior doors, garage doors, windows, window fixtures and other related hardware,

(d) all fixtures and equipment installed within a Residential Unit commencing at a point where the utility lines, pipes, wires, conduits, or systems are within the Residential Unit's exterior walls, and

(e) all interior Improvements, regardless of who constructed or installed those Improvements

None of the above maintenance, repairs, etc shall be the Association's responsibility, nor, when performed by the Owner, in any way reduce the Assessments otherwise payable by that Owner to the Association

8.4. Structural Integrity No Owner shall do anything that will impair the structural soundness or integrity of another Lot or Residential Unit, nor impair any easement or hereditament, nor do any act or allow any condition to exist which will adversely affect the other Lots or their Owners. Nothing shall be done in any Lot or in, on, or to the Common Elements that will impair the structural integrity of the Property or, with respect to the TH Lots, will structurally change the building of which the Townhome Unit is a part, except as is otherwise provided in this Declaration. In no event shall interior partitions contributing to the support of any Residential Unit or the Common Elements be altered or removed.

8.5. Willful or Negligent Acts Notwithstanding any provision in this Declaration to the contrary, if the need for maintenance or repair to any of the items to otherwise be maintained by the Association is caused by the willful or negligent act of an Owner or its Family Members, guests, tenants, contractors, agents, or invitees, the Owner shall be responsible for the costs of that maintenance or repair to the extent such is not covered by insurance maintained by the Association (the "Uninsured Costs"). If the need for maintenance or repair to any of the items to otherwise be maintained by an Owner is caused by the willful or negligent act of an the Association or its employees, agents, or contractors, the Association shall be responsible for the costs of that maintenance or repair to the extent such is not covered by insurance maintained by that Owner. Notwithstanding the preceding to the contrary (a) if the claim for reimbursement of damages is within the jurisdictional amount established for small claims by G S 7A- 210, a hearing as required under the Act and/or Bylaws shall be held prior to assessing any liability under this Section, or (b) if such claim exceeds that jurisdictional amount, the liability of any Owner or the Association shall be determined as otherwise provided by law. Any liabilities of an Owner shall be added to and become a part of the Assessment to which the Residential Unit is subject and any liabilities of the Association may be offset by the Owner against sums owing to the Association.

9. INSURANCE/CONDEMNATION.

9.1. Association Coverage The Association shall obtain and maintain, to the extent available, covering the interest of the Association, the Executive Board, and all Owners and their Mortgagees, as their interests may appear, the following insurance:

9.1.1. General Liability Insurance Commencing no later than the date title to any of the Common Elements are deeded to the Association, liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements. The general liability insurance shall not, however, cover the liability of an Owner arising from an occurrence within its own Lot.

9.1.2. Property/Casualty Insurance - Common Elements Commencing no later than the date construction of any vertical improvements on any of the Common Elements owned by the Association is completed, full replacement cost, all-risk property damage and hazard/casualty insurance with extended coverage insuring against loss or damage to all improvements located within those Common Elements owned by the Association.

9.1.3. Property/Casualty Insurance - Townhome Units Commencing no later than the date the construction of all of the Townhome Units within a particular building is completed, full replacement cost, all-risk property damage and hazard/casualty insurance with extended

coverage insuring against loss or damage to those Townhome Units. This coverage shall not, however, include any improvements or betterments installed by an Owner or any of the personal property belonging to an Owner, whether located inside or outside of a Residential Unit.

9.1.4. Other Insurance To the extent obtainable, the Association shall also maintain (in amounts to be determined by it) (1) fidelity insurance covering all members of the Executive Board, officers, or employees of the Association who handle funds of the Association, (2) workmen's compensation insurance, and (3) such other insurance coverages as it deems desirable and necessary.

Insurance policies carried pursuant to this **Section 9.1** shall provide that (i) Each Owner is an insured person under the policy to the extent of the Owner's insurable interest, (ii) The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household, (iii) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy, and (iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. If any of the insurance described above is not reasonably available, the Association shall promptly send notice of that fact to all Owners.

9.2. Owner's Coverage

9.2.1. SF Lots Each Owner of a SF Lot, at its own expense, shall obtain and continuously maintain (a) full replacement cost all-risk property damage and hazard/casualty insurance with extended coverage insuring against loss or damage to its Residential Unit and other Improvements on its Lot (whether exterior or interior), and (b) general liability insurance in reasonable amounts or as otherwise expressly required by the Executive Board. This general liability insurance shall (i) be primary and non-contributing, (ii) contain cross-liability endorsements, and (iii) show the the Association as an additional insured.

9.2.2. TH Lots Each Owner of a TH Lot, at its own expense, shall obtain and continuously maintain (a) full replacement cost, all-risk property damage and hazard/casualty insurance with extended coverage insuring against loss or damage to all property and improvements making up, or located within, its Townhome Unit (including all improvements or betterments installed by the Owner and any of the personal property belonging to the Owner whether or not located inside its Townhome Unit) not covered by the insurance referenced in **Section 9.1.1** (b) general liability insurance in reasonable amounts or as otherwise expressly required by the Executive Board. This general liability insurance shall (i) be primary and non-contributing, (ii) contain cross-liability endorsements, and (iii) show the Association as an additional insured.

9.3. Insurance Policies All required policies of insurance shall (i) to the extent available, provide that they may not be changed or cancelled without thirty (30) days' prior written notice to the named insured, (ii) shall be underwritten by insurers who are licensed to do business in North Carolina, and who are authorized to issue the policies, and (iii) have a reasonable deductible as determined from time to time by the Executive Board. The general liability policies shall be on ISO Form CG 0001 0196 or equivalent "occurrence basis" insurance policy form. The amount and coverage of any insurance shall not limit that party's liability nor relieve it of any other obligation under this Declaration. With respect to the insurance policies maintained by the Association, such shall include a waiver of any reduction of pro rata liability of the insurer as a result of any insurance carried by Owners or of any invalidity arising from any acts of the insured or any Owners. Promptly after obtaining or renewing its required insurance

or otherwise upon the Executive Board's request, each Owner shall provide the Executive Board with a certificate evidencing the insurance required of it under this Declaration

9.4. Waiver of Subrogation Notwithstanding that the loss or damage may be due to or result from the negligent or willful act of a party or its employees or agents, each Owner and the Association, for themselves and their respective insurers, release each other from any and all claims, demands, actions and causes of action that each may have or claim to have against the other for loss or damage to persons or property, both real and personal, caused by or resulting from casualties required to be insured against by the terms of this Declaration or otherwise insured against by the party suffering the loss or damage. All policies of insurance required by this Declaration shall contain a provision whereby the insurer waives all rights of subrogation against either the Association or the Owners, as appropriate. If insurance policies with waiver of subrogation provisions shall be obtainable only at a premium, the party seeking the policy shall pay that additional premium. Except to the extent insurance pays (or would have paid if the insurance coverage required by this Declaration were in effect) a claim subject to indemnification, this release is not intended to nor shall it release a party from its indemnification obligations as set out in this Declaration. These obligations shall survive a termination of an Owner's ownership of a Lot.

9.5. Ownership/Proceeds All contracts of insurance purchased by the Association shall be for the benefit of the Association, the Owners, and their respective Mortgagees, if any, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive any proceeds paid and to hold them in trust for the purposes stated in this Declaration. The proceeds received by the insurance trustee shall be distributed to or for the benefit of the appropriate beneficiary(ies) as required by the Planned Community Documents.

9.6. Premiums Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be included in Common Expenses, provided that the premiums for the property/casualty insurance insuring the Townhome Units shall be a TH Expense, only.

9.7. Repair/Reconstruction

9.7.1. SF Houses Except as expressly provided below, in the event of damage to an Owner's Residential Unit or other Improvements on its Lot, the Owner shall contract to repair such damaged portions of the property in as good condition as formerly. If the Owner fails to promptly commence and thereafter diligently pursue the required repair, the Association shall have the power to make/complete the repair and to charge the applicable Owner for all reasonable and necessary costs incurred in doing such, plus an administrative overhead fee of 15% of those costs, as an Individual Assessment. Notwithstanding the preceding to the contrary, if more than fifty percent (50%) of the SF House is destroyed or damaged (as determined on a relative value basis, i.e., the costs of repairs versus the then current tax value), that Owner, in its discretion, may elect to demolish the SF House and restore the Lot, provided that that demolition/restoration is completed within ninety (90) days of the date of the casualty. If the Owner fails to promptly commence and thereafter diligently pursue the required demolition/restoration, the the Association shall, upon obtaining any required Member approval, have the power to demolish the Residential Unit and restore the Lot and charge the applicable Owner for all reasonable and necessary costs incurred in completing that demolition/restoration, plus an administrative overhead fee of 15% of those costs, as an Individual Assessment.

9.7.2. Common Elements In the event of damage to any of the Common Elements covered by insurance written in the name of the Association, the proceeds from this policy shall be payable to the Association. The Executive Board, with concurrence of the Mortgagee, if any, shall, upon receipt of the insurance proceeds, contract to rebuild or repair the damage to the Common Elements to as good condition as formerly existed. If the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding to the same condition as existed immediately prior to the damage, the Executive Board shall, upon obtaining the required Member approval, levy a Special Assessment against all Lot Owners to make up any deficiency, provided that any deficiency relating to those costs of repairing, restoring, or rebuilding the improvements described in **Section 8.3.1** shall only be assessed against the Owners of the TH Lots in proportion to their respective interests in the Common Elements. Notwithstanding the preceding to the contrary, such repair or replacement shall not be undertaken if (i) the Planned Community is terminated as provided under the Planned Community Documents, (ii) repair/replacement would be prohibited by any Law, or (iii) except as otherwise required by Law, if eighty percent (80%) or more of the Owners vote not to repair/replace the damage. In that event, the insurance proceeds shall be used/distributed in accordance with the requirements of the Act.

9.7.3. Townhome Units In the event of damage to any of the Townhome Units covered by insurance written in the name of the Association, the proceeds from this policy shall be payable to the Association. The Executive Board, with concurrence of the Mortgagee(s), if any, shall, upon receipt of the insurance proceeds, contract to rebuild or repair the damage to the Townhome Units to as good condition as formerly existed. If the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding the damaged Townhome Units to the same condition as existed immediately prior to the damage, the Executive Board shall, levy an Individual Assessment against each Owner of the damaged Townhome Units to make up any deficiency in proportion to the relative damage to each Townhome Unit as reasonably determined by the insurance company or otherwise by the Executive Board. Notwithstanding the preceding to the contrary, such repair or replacement shall not be undertaken if (i) the Planned Community is terminated as provided under the Planned Community Documents, (ii) repair/replacement would be prohibited by any Law, or (iii) except as otherwise required by Law, if eighty percent (80%) or more of the Owners of the damaged Townhome Units vote not to repair/replace the damage. If the damaged Townhome Units are not repaired/replaced, the insurance proceeds shall be distributed as follows: (i) first, as applicable, to the Mortgagees of those Townhome Units, (ii) second, to the Association to cover the costs of demolishing the damaged Townhome Units and restoring those Townhome Lots, and (iii) lastly, the balance, if any, shall be distributed to the Owners of the damaged Townhome Units in proportion to the relative damage to each Townhome Unit as reasonably determined by the insurance company. If the insurance proceeds are not sufficient to make all of the first and second distributions described above, the Executive Board may assess, by way of an Individual Assessment, each of the Owners of the damaged Townhomes for such shortfall in proportion to the relative damage to each Townhome Unit as reasonably determined by the insurance company or otherwise by the Executive Board.

9.7.4. Owner Liability Each Owner shall nevertheless be liable for the expense of any maintenance, repair, or replacement rendered necessary by its act, neglect, or carelessness, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy, or abandonment of a Lot or its appurtenances. This subsection shall not, however, be construed so as to modify any waiver of subrogation rights by insurance companies.

9.8. Condemnation

9.8.1 In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements, the condemnation award made for such taking shall be payable to the Association. If eighty percent (80%) or more of the Owners (with the written approval of the applicable Mortgagees) duly and promptly approve the repair and restoration of such Common Elements, the Executive Board shall arrange for the repair and restoration of such Common Elements and shall disburse the proceeds of such condemnation award to the contractors engaged in such repair and restoration in appropriate progress payments. If eighty percent (80%) or more of Lot Owners do not duly and promptly approve the repair and restoration of such Common Elements, or if the condemnation award exceeds the cost of such repair or restoration, the Executive Board shall disburse the net proceeds not used in the repair/restoration among all Owners in proportion to their respective Allocated Interest. As used in this Section, the words "promptly approve" shall mean not more than sixty (60) days from the date of such taking.

9.8.2. If a Lot is acquired by eminent domain or if part of a Lot is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the condemnation award shall compensate the Owner for its Lot, Residential Unit, and its interest in the Common Elements. Upon acquisition, unless the decree otherwise provides, the Allocated Interests shall be automatically reallocated to the remaining Lots, exclusive of the Lot taken. Any remnant of a Lot remaining after part of a Lot is taken under this subsection shall thereafter be part of the Common Elements.

9.8.3. Any portion of a condemnation award attributable to the acquisition of a Limited Common Element shall be apportioned among those Lot Owners to which that Limited Common Element was allocated at the time of the taking based on their relative Allocated Interests before the taking.

10. EASEMENTS

10.1 Association Easements An easement is granted to the Association and its designees to enter in or to cross over the Common Areas and Lots to the extent reasonably necessary to perform its obligations under this Declaration or the Act. Every Lot shall be subject to an easement for entry by the Association and its designees for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Elements. In addition to those easements described in the following subsections, Declarant (during the Declarant Control Period) and the Association shall have the right to subject the Property to easements which it reasonably deems beneficial to the development and/or operation of the Planned Community. The cost of maintaining these easements shall be a Common Expense.

10.2. Utility Easements

10.2.1 Declarant reserves unto itself and the Association a perpetual, nonexclusive alienable, and releasable easement and right, on, over and under the Property to erect, maintain, and use poles, wires, cables, conduits, lines, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water drainage, cablevision, or other public conveniences or utilities on, in or over those portions of the Property as may be reasonably required to serve the Lots. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Elements except as approved by Declarant or, after the end of the Declarant Control Period, the Association. Should any utility furnishing a service

covered by this general easement request a specific easement by separate recordable documents, Declarant or, after the end of the Declarant Control Period, the Association will have the right and authority to grant such easement. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation to maintain reasonable standards of health, safety, and appearance. Such rights may be exercised by any licensee of Declarant. This reservation shall not create any obligation on the part of Declarant to provide or maintain any such utility or service. Whenever possible, utilities within the Property, whether located within the Common Elements or not, shall be installed and maintained underground. The easement provided for in this Section shall not, in any way, affect other recorded easements on the Property.

10.2.2 As part of the development of the Planned Community, Declarant shall construct an integrated sewer collection, water distribution, and storm drainage system (collectively the "Drainage Facilities") to serve one or more of the Lots in the Planned Community. Declarant establishes and/or reserves in the name of the Association and for the benefit of each Owner (a) a perpetual, non-exclusive license to use, in common with the Owners, the Drainage Facilities, and (b) a perpetual, non-exclusive, appurtenant easement over the Drainage Facilities Easement Areas (defined below) for the purposes of maintaining the Drainage Facilities. It is Declarant's intent that the easement/license shall be located on the Property where the Drainage Facilities are actually constructed (the "Drainage Facilities Easement Areas") and this easement/license shall be deemed automatically amended to conform with those constructed locations. The as-built surveys showing the location of the Drainage Facilities, as constructed, are incorporated into this document by this reference. This reservation is in the nature of a "blanket" easement/license and shall cover all Drainage Facilities, existing now or in the future, which are intended to be used in common by the Planned Community and which are not otherwise dedicated to a governmental entity or conveyed to, or owned by, a private utility. The easement/license shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns, shall inure to the benefit of Declarant and each Owner, and shall be deemed a part of the Common Elements and shall be maintained by the Association. This reservation shall not create any obligation on the part of Declarant to provide or maintain any such utility or service.

10.3. Temporary Construction Access and Disturbance Easement A temporary construction easement over, through, and to the Property is reserved and established in favor of Declarant and each Builder for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials, and the necessary disturbance of land for the initial construction contemplated for the Planned Community. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot or the Common Elements by Declarant or a Builder, as well as the extension of driveways, sidewalks, underground drainage and utility conduit, and hookups to any dwelling structure in the Planned Community. Following construction, disturbed areas will be stabilized and restored to the extent reasonably practical.

10.4. Repair, Maintenance, and Reconstruction Easement

10.4.1. The Association shall have a perpetual access easement over the Common Elements and Lots to the extent reasonably necessary to perform repair, maintenance, replacement, or reconstruction obligations under this Declaration or the Act. The repair, maintenance, and/or reconstruction shall be done expeditiously and, upon completion of the work, the Association shall, at its expense, restore, to the extent reasonably practical, the Lot and adjoining Lots to as near the same condition as that which existed prior to the commencement of the work. Should the Association fail to restore the Lots as required, the

affected Owner(s) may, at the Association's expense, complete the required restoration, plus an administrative overhead fee of 15% of those costs

10.4.2. Each Owner shall have a perpetual access easement over the adjoining Common Elements and Lots to the extent reasonably necessary to perform repair, maintenance, or reconstruction of its Residential Unit Lot. The repair, maintenance, or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall, at its expense, restore, to the extent reasonably practical, the adjoining Common Elements and Lots to as near the same condition as that which existed prior to the commencement of the work. Should the Owner fail to restore the Common Elements and Lots as required, the adjoining Lot Owner and/or the Association may, at the other Lot Owner's expense, complete the required restoration, plus an administrative overhead fee of 15% of those costs

10.4.3. The easements granted under this **Section 10.4** shall be restricted to that Common Elements and/or adjoining Lots which shall be reasonably servient and proximate to the Lot(s) upon which the construction is taking place

10.5. Easement for Minor Encroachments All Lots and the Common Elements shall be subject to a perpetual easement for the encroachment of the initial Improvements constructed to the extent that such initial Improvements actually encroach. These authorized encroachments shall be limited to such items as overhanging eaves, roofs, gutters, downspouts, exterior storage rooms, bay windows, stoops, decks, patios, porches, steps and walls

10.6. Drainage Easement During the Declarant Control Period, Declarant reserves an easement over and under the Property to maintain and to 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, grade the soil, or take any other similar action reasonably necessary. After such action has been completed, Declarant shall restore the affected property to its previous condition to the extent practicable. Declarant shall give the Association thirty (30) days' advance written notice of Declarant's intent each time it plans to exercise its rights pursuant to this Section. In addition, Declarant establishes and/or reserves in the name of the Association and for the benefit of each Owner, a perpetual, non-exclusive easement over any various "Private Drainage Easement" areas described on the Plat

10.7 Governmental Easements Declarant reserves an easement for the benefit of the appropriate governmental entity over the Common Elements, existing now or in the future, for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and similar services to enter upon the Property in the performance of their duties

10.8. Landscape/Sign Easement Declarant establishes and/or reserves in the name of the Association and for the benefit of each Owner, a perpetual, non-exclusive easement over the "Landscape & Sign Easement" areas and the like areas described on the Plat (collectively, the "Landscape/Sign Easement Areas"). This easement over the Landscape/Sign Easement Areas shall be for the purposes of installing, replacing, repairing and/or maintaining plants, shrubs, trees, grass, signs and monuments identifying the Planned Community, sprinkler systems, lighting, and other landscape architectural materials (the "Landscaping/Signs"). Except as may be constructed by Declarant prior to conveyance of a Lot to an Owner, the initial installation of the Landscaping/Signs and the related facilities and the repair, replacement and maintenance obligations for the Landscape/Signs and the Landscape/Sign Easement Areas shall be the Association's sole responsibility and expense. Only those Improvements installed

by Declarant and/or the Association or otherwise approved by the Association, in writing, shall be located within any of the Landscape/Sign Easement Areas

10 9. Zero Lot Line Lot Easements The TH Lots will have at least one boundary line from which no building setback is required (a "Zero Lot Line") To facilitate the construction of dwelling houses on or near a Zero Lot Line, all of the Common Area and each TH Lot (each a "ZLL Servient Tract") shall be subjected to a perpetual, non-exclusive easement in favor of and appurtenant to each adjoining TH Lot having the same common Zero Lot Line (each a "ZLL Dominant Tract"), as follows A temporary construction easement from time to time as reasonably necessary in connection with any one or more of the following (a) initial construction of a Residential Unit, utilities (including storm water drainage, water lines, sewer lines, electric lines, telephone lines and cable television lines), and other Improvements on the ZLL Dominant Tract, (b) additions to the Residential Unit, utilities, and other Improvements on the ZLL Dominant Tract, and (c) repair, maintenance, alteration, replacement, or removal of the Residential Unit, utilities, and other Improvements on the ZLL Dominant Tract This easement shall exist over and upon the following portion of each ZLL Servient Tract that adjoins a ZLL Dominant Tract the lesser of (i) a fifteen (15) feet wide strip parallel and adjacent to the Zero Lot Line, or (ii) if a dwelling house is being constructed or exists on the ZLL Servient Tract, the distance from the Zero Lot Line to the nearest wall of the Residential Unit located on the ZLL Servient Tract This easement right shall be subject to the following restrictions (a) it shall be exercised only upon reasonable prior notice to the Owner of the ZLL Servient Tract, (b) it shall be exercised at such times and in such manner as will result in the least amount of interference and damage to the ZLL Servient Tract, (c) as soon as reasonably practicable following each exercise, the Owner of the ZLL Dominant Tract shall restore the ZLL Servient Tract and all Improvements thereon to substantially the same condition existing immediately preceding the exercise of the easement, and (d) the Owner of the ZLL Dominant Tract shall indemnify and hold harmless the Owner of the ZLL Servient Tract from and against any and all claims and causes of action for damages to person or property and all costs (including reasonable attorney fees) of defending against such claims and causes of action arising out of or resulting from each exercise of the easement

11. LAND USE REGULATIONS.

11.1. Uses. Notwithstanding the uses otherwise permitted by the Zoning Entity's applicable zoning code and unless otherwise permitted by this Declaration, use of each Lot shall be strictly limited to single family residential purposes and those other purposes expressly permitted by this Declaration Upon the prior written consent of Declarant (during the Declarant Control Period) or, thereafter, the Executive Board, which consent may be arbitrarily withheld, a reasonable portion on any Residential Unit may be used as a professional office or for any other purpose, provided such use complies with all applicable zoning codes Even if such other use is permitted, each Owner is nevertheless required to comply with all other restrictions of this Declaration and the Law Notwithstanding anything in this Section or the Planned Community Documents to the contrary, Declarant may, without the consent of the Executive Board or other Owners, use any Unsold Lots as model Lots and offices for the selling, renting, management, operation, and promotion of the Unsold Lots or for any other purpose, subject only to compliance with the Law

11 2. Occupancy. The number of Occupants in each Residential Unit shall not exceed (i) the Family Members of one family only, or (ii) two (2) individuals unrelated by blood or marriage per bedroom designated for that Residential Unit No transient tenants may be accommodated, provided, however, that the guests and invitees of Occupants and their lessees may reside in any one Residential Unit for a maximum period of thirty (30) days per calendar year A Residential Unit owned or leased by a Person other than an individual(s) may be

occupied by an officer, director, partner, owner, beneficiaries, or employees of such entity, or by Family Members or guests of any of the foregoing

11.3. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in the Lots, except that domesticated, household pets may be kept in any one Lot Notwithstanding the preceding to the contrary (i) in no event shall any pet be maintained for commercial purposes, (ii) no pet weighing more than one-hundred fifty (150) lbs shall be permitted, and (iii) not more than two (2) domesticated, household pets, in the aggregate, shall be permitted on a TH Lot or in a Townhome Unit

11.4. Garbage. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate, but shall only be put at curbside for pickup on the regularly scheduled dates Residents of the Townhome Neighborhood must use the trash dumpster located in the Townhome Neighborhood

11.5. Leasing No Lot or portion thereof shall be leased for transient or hotel purposes An Owner may nevertheless lease the entire Lot, provided that (i) each lease must be in writing, must be for a period of not less than one (1) year, and must provide that it is subject to this Declaration and the Bylaws and that any failure by a tenant to comply with such shall be a default under the lease, and (ii) all leasing/management activities for the Lot to be leased must be conducted through the management company designated for that purpose by the Association The Owner shall promptly provide the Association with copies of any and all leases entered into by the Owner In no event, however, shall a portion of a Lot (as opposed to the entire Lot) be sold, conveyed, leased, or subleased

11.6. Drapes, Blinds, Etc. The side of all, drapes, blinds, and/or other window treatments which is visible from the exterior of a Residential Unit shall be white or neutral in color

11.7. Utility Devices Except as required by Law, no exterior television or radio antennas, satellite dishes, or solar panels or other utility devices, of any sort, shall be placed, allowed, or permitted upon any portion of the exterior of a Residential Unit without the prior written approval and the authorization of Declarant, during the Declarant Control Period, or thereafter the Executive Board Declarant and the Association, for the common benefit of the Owners, reserves the right to install within the Property such utility devices necessary to provide cable TV or similar services

11.8. Business/Obnoxious Activity Except as contemplated by **Section 11.1**, no business activity of any kind or any obnoxious or offensive activity shall be carried on the Property, nor shall anything be done which may be or may become a nuisance or annoyance to the Planned Community Nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb an Owner or its tenants or invitees Notwithstanding any provision in this Section to the contrary, during the period of development and sale of the Lots, Declarant is permitted, subject to applicable Laws, to maintain such facilities and conduct such sales activities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots These facilities/activities shall include sales tours, sales parties and promotions at the Amenities, a business/sales office, storage area, construction yards, model units, and signs During the Declarant Control Period, this provision shall not be amended or revoked without Declarant's written consent

11.9. Signs Except as may otherwise specifically authorized by the Association, no "for sale" or "for rent" signs exceeding four (4) square feet in area, advertising signs, billboards, political signs, unsightly objects, or nuisances shall be erected, placed or permitted to remain on

a Lot, and in no event in the Common Elements Notwithstanding any provision in this Section to the contrary, political signs meeting the following criteria will be permitted (a) signs cannot exceed four (4) square feet in area, (b) signs cannot be displayed more than forty-five (45) days before or seven (7) days after the applicable election, and (c) no more than one (1) political sign per candidate, political party, or referendum or more than two (2) political signs, in the aggregate, will be permitted to be displayed at any one time

11.10. Flags Except as permitted below, no flags may be displayed or permitted to remain on a Lot, and in no event in the Common Elements Notwithstanding the preceding or anything else in this Declaration to the contrary, flags meeting the following criteria will be permitted (a) flags cannot be greater than 4' x 6' in size, (b) any display of United States and North Carolina flags shall be accordance with or in a manner consistent with the patriotic customs governing the display and use of those flags, (c) all flags shall be on a pole or similar device which is attached to the Residential Unit and no "free standing" flags will be permitted, and (d) no more than one (1) flag will be permitted to be displayed at any one time

11.11 Vehicles No boats, recreation vehicles, campers, motorcycles, tractors, trucks (other than one pick-up truck rated one-half ton or less), or trailers (the "Vehicles") of any Occupant shall be parked within the Common Elements, or, except as permitted by Law, within the right-of-way of any street in or adjacent to the Planned Community All Vehicles shall be stored either within the Owner's garage or other facilities not located on the streets in the Planned Community

11 12. Tanks Other than hot tubs or similar devices approved by the Architectural Review Board, no above or below-ground tanks or pools will be permitted for the storage of fuel or water or any other substance The installation of such tanks shall be subject to reasonable screening requirements established by the Architectural Review Board

11 13 Lawn Ornaments No decorative lawn ornaments shall be placed on any Lot without the prior written approval of the Architectural Review Board

11.14. Parking Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles and Vehicles owned by its Occupants Occupants shall not be permitted to park their automobiles and Vehicles on the streets or Common Elements in the Planned Community

11.15 Subdivision/Recombination Lots may not be subdivided or recombined without the Executive Board's prior written approval, which may be arbitrarily withheld, or, in any event, where otherwise prohibited by Law

11 16 Governmental Regulations Each Owner shall comply with all Laws applicable to its Lot and/or Common Elements In the event of any conflict between any provision of such Laws and any provision of this Declaration, the more restrictive provision shall apply

11.17. Additional Restrictions Declarant, during the Declarant Control Period, and thereafter the Association or the Executive Board shall have the power to formulate, amend, publish, and enforce other reasonable rules and regulations concerning the architectural control and use of the Property

11.18. Use of Common Elements The Common Elements shall be used only for the furnishing of the services and facilities and for the other uses for which they are reasonably intended and which are incident to the use and occupancy of the Lots No Owner may construct, install, place, store, or otherwise maintain any improvements or personal property on or within

the Common Elements Notwithstanding the preceding or anything in this Declaration to the contrary, Declarant shall have the right, without charge or limitation and so long as there are any Unsold Lots, to (i) erect and maintain signs of any size or content determined by Declarant on or about any portion of the Common Elements, (ii) have its employees, contractors, subcontractors, and sales agents present on the Property, and (iii) do all things necessary or appropriate, including the use of the Common Elements, to sell, lease, manage, or operate Unsold Lots and to comply with Declarant's obligations under the Planned Community Documents In no event, however, shall Declarant be entitled to use any Common Elements in such a manner as will unreasonably interfere with the use of any Lot for its permitted purposes or violate any Law

11.19. Waiver Notwithstanding anything above to the contrary, Declarant, during the Declarant Control Period, and, thereafter the Executive Board shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this **Section 11** No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration No waiver shall be effective if it shall cause the Lot or structures thereon to be in non-conformance with any Law

12. ARCHITECTURAL REVIEW BOARD/ARCHITECTURAL CONTROL

12.1 Members The Architectural Review Board shall initially consist of one (1) or more individuals designated by Declarant As of the end of the Declarant Control Period (or earlier if Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), Declarant shall be deemed to have assigned to the Association the rights, powers, duties and obligations of the Architectural Review Board Upon this assignment, the Executive Board shall appoint three (3) or more individuals as the members of the Architectural Review Board If no such individuals are appointed, the members of the Executive Board shall make up the Architectural Committee Before the end of the Declarant Control Period, this provision shall not be amended or revoked without Declarant's prior written consent

12.2. Powers

12.2.1. The Architectural Review Board shall review, study, and either approve or reject proposed Improvements on a Lot/or the exterior of a Residential Unit, all in compliance with this Declaration and as further set forth in the rules and regulations the Executive Board may establish from time to time to govern its proceedings The Architectural Review Board shall have the right to refuse to approve any plans and specifications for Improvements proposed to be constructed on a Lot/ or the exterior of a Residential Unit (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld The actions of the Architectural Review Board in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested Parties In approving or disapproving Plans & Specifications, the Architectural Review Board shall consider the purposes of the Declaration as discussed in the Recitals, including the suitability of the proposed Improvements and materials to be used in those Improvements, the Lot/Residential Unit on which it is proposed to be erected, and the effect of the Improvements on adjacent or neighboring Lots/ Residential Units

12.2.2. The Architectural Review Board and the Executive Board is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy In the event it becomes necessary to resort to litigation to determine the propriety of any constructed

Improvement, or to remove any unapproved Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorney's fees)

12.2.3. The Association and its agents shall have the right, but not the obligation, to enter and inspect, without being deemed guilty of trespass, any Lot for the purpose of determining whether the Improvements have been or are being built in compliance with the Plans & Specifications approved by the Architectural Review Board or whether there exists any construction of any Improvements which violates the terms of any approval by the Architectural Review Board, or the terms of this Declaration or of any other applicable regulations or ordinances

12.2.4. The Association, upon request of the Architectural Review Board and after reasonable notice to the offending Owner, may enter upon any Lot at any reasonable time, without being deemed guilty of trespass, and remove any Improvement constructed, reconstructed, refinished, altered, or maintained in violation of this Declaration and, as necessary, repair the Residential Unit. The Owner of the Improvement shall immediately reimburse the Association for all expenses incurred in connection with such removal/repair (the "Removal/Repair Costs"), plus administrative overhead fee of 15% of those costs. If the Owner fails to reimburse the Association within thirty (30) days after the due date, the Removal/Repair Costs shall incur a late charge in the then applicable amount fixed by the Executive Board, shall bear interest from the date of delinquency at the Interest Rate, and shall constitute a lien on that Residential Unit when a claim of lien is filed of record as provided under the Act. This lien shall be enforceable by the Association as provided in this Declaration.

12.3 Approval of Plans & Specs No Improvement shall be commenced, erected, or maintained upon the Property, nor shall an Improvement be repaired or rebuilt after destruction by any hazard until completed Plans & Specifications, showing the nature, kind, space, height, materials, and location of the Improvement shall have been submitted to and approved in writing by the Architectural Review Board (the "Approved Improvements"). A failure to approve or disapprove completed Plans & Specifications within forty-five (45) days after they have been submitted shall be deemed to be an approval of those Plans & Specifications. The actions of the Board in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

12.4. Building Sites Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for residential purposes only. The lay of the Lots as shown on the recorded Plat shall be substantially adhered to, provided, however, that with the prior written approval of Declarant, during the Declarant Control Period, or, thereafter the Executive Board or the Architectural Review Board, and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one SF Lot may be used as one Building Site provided the location of any structure permitted thereon is approved in writing by the Architectural Review Board or Declarant and those SF Lots are recombined as provided in N.C. General Statute 160A-376(1). In no event, however, shall a Lot or group of Lots be resubdivided or recombined in violation of any applicable zoning or other Law in force at the time of the change.

12.5. Setbacks No structure shall be located on any Building Site in relationship to its boundary lines any nearer than the distances permitted by the applicable zoning ordinances. For the purposes of this covenant, eaves, steps, carports and open porches shall not be considered as a part of a Residential Unit, provided, however, that this shall not be construed to permit any portion of a Residential Unit on a Building Site to encroach upon another Lot. Provided it otherwise complies with the applicable zoning ordinances and the setbacks, if any,

shown on the applicable recorded Plat, Declarant and/or the Architectural Review Board may approve by written waiver a violation of these requirements

12.6. Structures Improvements on any Building Site shall be restricted solely to Residential Units and related Improvements All Improvements erected upon a Lot shall be of new construction Only a SF House may be constructed on a SF Lot and only a Townhome Unit may be constructed on a TH Lot Each Residential Unit constructed on a Building Site shall have the following minimum (or maximum, as applicable) heated area (exclusive of porches, basements, walk-up attics, and garages)

(a) SF Lots 33' building envelope in width or larger

- 1 Story 1,600 sq ft Minimum
- 1½ Story 1,700 sq ft Minimum
- 2 Story 2,000 sq ft Minimum

(b) SF Lots Less than 33' building envelope in width

- 1 Story 1,600 sq ft Minimum
- 1½ Story 1,700 sq ft Minimum
- 2 Story 1,700 sq ft Minimum to 2,300 sq ft Maximum

(c) TH Lots

- 1 Story 1,000 sq ft Minimum
- 1½ to 2 Story 1,300 sq ft Minimum

No building or structures shall exceed two (2) stories in height Nowhere on the Property shall a temporary structure, manufactured home, mobile home, trailer, tent, shack, garage, barn, or other out-building be used, either temporarily or permanently, as a residence at any time Each Residential Unit must meet these square footage requirements and no non-conforming Residential Unit shall be erected or placed on any Building Site During the Declarant Control Period, Declarant reserves the right, without the Association's or any Owner's prior consent, to revise or supplement the size criteria set out in this Section with respect to each Lot that is an Unsold Lot as of that date

12.7. Expenses Except as provided below, all expenses of the Architectural Review Board shall be paid by the Association and shall constitute a Common Expense The Architectural Review Board shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Executive Board from time to time, and such fees shall be collected by the Architectural Review Board and remitted to the Association to help defray the expenses of the Architectural Review Board's operation

12.8 Other Requirements

12.8.1 Compliance with the Architectural Review Board's process is not a substitute for compliance with the Zoning Entity's building, zoning, and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction of any Improvements Approval by the Architectural Review Board does not necessarily assure approval by the Zoning Entity

12.8.2. All Approved Improvements commenced on a Lot shall be prosecuted diligently to completion and shall be completed within the time period specified in the Architectural Review Board's approval or, if no time period is specified, a reasonable time. If an Improvement is commenced and construction is then abandoned for more than ten (10) consecutive days, or if construction is not completed within the required time period, then after notice and opportunity for hearing, the Association may impose a fine in an amount established from time to time by the Architectural Review Board to be charged against the Owner of the Lot until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Architectural Review Board that such abandonment is for circumstances beyond the Owner's control, other than the Owner's failure or refusal to pay money. Such charges shall be a fine as contemplated under **Section 7.7**.

12.9. Limitation of Liability Neither the Association, the Executive Board, Declarant, the Architectural Review Board or any officer, employee, director or members thereof (the "Indemnified Parties") shall be liable for damages (collectively, the "Damages") to any Persons by reason of (i) mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications, (ii) any defects in any Plans & Specifications submitted, revised, or approved by the Architectural Review Board, or (iii) any structural or other defects in any work done according to such Plans and Specifications. By submitting Plans & Specifications for approval, such Person unconditionally waives (for itself, all Owners of the subject Lot, and their respective successors), any and all claims and causes of action to recover any such Damages. In all events the Indemnified Parties shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Architectural Review Board's decision, provided that the Association shall not be obligated to indemnify any Person to the extent any such Person is adjudged to be liable for gross negligence or misconduct in the performance of its duties.

13. MORTGAGES/MORTGAGEES.

13.1. Notice An Owner shall notify the Executive Board of the name and address of the Mortgagee for each Mortgage on its Lot and shall file a conformed copy of the Mortgage(s) with the Executive Board. Upon a Mortgagee's written request (an "Eligible Mortgagee"), the Executive Board shall promptly provide written notice to the Eligible Mortgagee of (a) prior to enforcing its lien, any enforcement action the Association files with respect to the mortgaged Lot, (b) a lapse, cancellation, or material modification of any insurance policy maintained by the Association, and (c) any proposed action that requires the consent of the holders of mortgages constituting first liens on Lots. Upon the happening of a default under the terms of the mortgage or other liens which would permit the holder to declare the entire principal sum due, notice of the intention of the holder to do so shall be given to the Executive Board, but the failure to give such notice shall not prevent the holder from instituting a Foreclosure action. The Foreclosure of a Mortgage will extinguish the lien for any unpaid Assessments that were payable before the foreclosure sale.

13.2. Mortgagee Approval Notwithstanding anything in **Section 15.5** to the contrary, any amendments to the Declaration which materially amend or add to the provisions of this Declaration relating to (i) voting rights, (ii) Assessments, Assessment liens, or the subordination of such liens, (iii) insurance or fidelity bonds, (iv) rights to use the Common Elements, or (v) responsibility for repair and maintenance of the Planned Community, shall require the written approval of not less than a Majority in Interest of the affected Eligible Mortgagees.

14. DEFAULTS/REMEDIES

14.1. Default Failure of the Executive Board, or Owner, or Occupant to comply with the terms of the Planned Community Documents or any Rules & Regulations, as they may be amended from time to time, shall be a default and grounds for an action to recover sums due, damages, and/or injunctive relief by the Executive Board (on behalf of the Association or one or more of the Owners) or by an Owner in its own behalf. In the case of flagrant or repeated violations by an Owner, that Owner may be required by the Executive Board to give sufficient surety or sureties for its future compliance.

14.2 Remedies In the event of any default in and/or breach of any of the terms, conditions, and provisions of the Planned Community Documents or the Rules & Regulations (either actual or threatened) the aggrieved party shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. In any proceeding arising because of an alleged default by an Owner or by the Executive Board, the prevailing party shall be entitled to recover the costs of the proceedings, including reasonable attorneys' fees. The right and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from another's default shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. The rights and remedies provided in this Declaration are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

15. MISCELLANEOUS.

15.1. Anti-Discrimination No action in the enforcement or interpretation of this Declaration shall be taken at any time by Declarant, the Association or the Executive Board which in any manner would unfairly discriminate against any Owner in favor of any of the other Owners.

15.2 Waiver Declarant (during the Declarant Control Period) and thereafter the Association or the Executive Board shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Declaration. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or its Improvements to be in non-conformance with any applicable Law.

15.3. Enforcement Declarant (during the Declarant Control Period), the Association, or any Owner shall have the right to enforce, by a proceeding at law or in equity, the terms of this Declaration. Failure by Declarant, the Association, or by any Owner to enforce any covenant or restriction of this Declaration shall in no event be deemed a waiver of the right to do so thereafter. The court may award the prevailing party its reasonable attorneys fees incurred in any such enforcement action.

15.4. Amendment. Except as specifically otherwise provided in the Planned Community Documents, the Declaration may be amended by a vote of not less than sixty-seven percent (67%) of the Allocated Interests of all of the Lots. If an amendment is properly adopted, the Board shall, within thirty (30) days cause the amendment to be recorded with the County Registry. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds. Notwithstanding the above provisions to the contrary, during the Declarant Control Period, an amendment, to be effective, must also obtain Declarant's written approval.

No amendment shall affect the use of a Lot which was approved pursuant to the terms of this Declaration prior to the effective date of the Amendment

15.5 Disputes. In the event of any dispute concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee

15.6. Owner Addresses Each Owner agrees to keep the Association informed of its then current address and any notice sent or delivered to that address shall be sufficient Each new Owner agrees to provide the Association with evidence of its ownership for preparation of an Owner roster and the roster as so completed shall be sufficient evidence as to the ownership of each Lot

15.7. Notice All notices under this Declaration shall be in writing Unless delivered personally, all notices shall either be delivered by a nationally recognized overnight express delivery service or be given by first class mail, postage prepaid, addressed to the addresses maintained pursuant to **Section 15.6** or, if none, to the address noted on the most recent Durham County tax records for the Owner of the Lot

15.8. Owner Responsibility Notwithstanding anything in this Declaration to the contrary, an Owner shall be responsible for any and all violations of this Declaration by its Family Members, employees, agents, tenants, guests, and invitees When a party to this Declaration consists of more than one individual or entity, such party's liability shall be joint and several

15.9. Rules of Construction The following rules shall be followed in interpreting the provisions of this Declaration (a) all attached schedules and exhibits, if any, are incorporated into this document by reference and are made a part of this document The term "Declaration" shall be deemed to include all such exhibits and schedules and any other documents expressly incorporated, by reference, into this Declaration, (b) all words and phrases shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, both as the context requires, (c) the captions and headings are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Declaration, (d) all references to "Sections" are references to sections and articles of this Declaration unless some other reference is established, (e) the term "include" or "including" shall be deemed to mean "without limitation", (f) this Declaration may be executed in any number of counterparts with the same effect as if all parties had signed the same document All counterparts shall be construed together and shall constitute one Declaration, (g) any statutory reference in this Declaration shall include a reference to any successor to such statute and/or revision thereof, (h) this Declaration shall be deemed executed and completed in North Carolina and construed in accordance with the laws of North Carolina, without giving effect to its conflict of laws principles, and (i) whenever possible, each provision of this Declaration and every related document shall be interpreted in such manner as to be valid under applicable law If, for any reason, a provision is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, such shall not affect the validity of the remaining provisions provided that doing so does not adversely affect, in any material respect, the economic or legal substance of the transactions contemplated by this Declaration as to any party In that case, in lieu of the illegal, invalid, or unenforceable provision, there shall be automatically added, as a part of this Declaration, a provision as similar in terms as necessary to render the provision legal, valid, and enforceable

15 10. Jurisdiction This Declaration shall be deemed executed and completed in North Carolina, the courts of North Carolina shall have exclusive jurisdiction over any matters

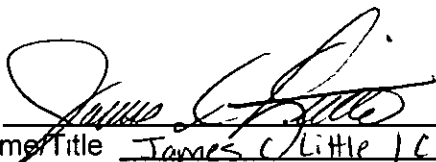
(including torts) relating to or arising out of this Declaration or the relationship of the parties under this Declaration, and by their signatures below, the parties consent to the exclusive, personal jurisdiction by the courts of North Carolina and to venue in Durham County, North Carolina and waive any objection thereto

15.11. Time Time is of the essence in connection with each and every provision of this Declaration. If any time period under this Declaration ends on a Saturday, Sunday, or any day on which the state courts of Durham County, North Carolina are closed, that time period shall be extended until the next business day

IN WITNESS WHEREOF, the undersigned have executed, sealed and delivered this Declaration in the Company name on the date first above written

RUSTICA OAKS DEVELOPMENT, LLC,
a North Carolina limited liability company,

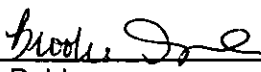
By Its Manager Keystone Corporation,
a North Carolina corporation

By 
Name/Title James C Little / CFO

WAKE COUNTY, NORTH CAROLINA

The undersigned Notary Public certifies that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated James C Little

Date December 31, 2012


Notary Public
Printed Name Brooke Davenport
My commission expires February 10, 2016

(Official Seal)

BROOKE DAVENPORT
NOTARY PUBLIC
WAKE COUNTY, N C
My Commission Expires February 10, 2016

EXHIBIT A
LEGAL DESCRIPTION

BEGINNING at a point where the eastern right-of-way of Alston Avenue (60' ROW) intersects with the southern right-of-way of Rustica Drive (60' ROW) as shown in that plat recorded at Plat Book 182, Page 23, Durham County Registry, the **Point of Beginning**, thence with that Alston Avenue right-of-way (i) N 02°53'44"W 65 69' to a point being in the northern right-of-way of Rustica Drive, and (ii) thence along a curve to the left having a radius of 791 14', in a northerly direction an arc distance of 102 88' (Chord N 08°06'41"W 102 81') to a point in the eastern line of the 100' Durham Southern Railway right-of-way, thence continuing that right-of-way (i) N 14°07'24"E 270 62' to a point, (ii) N 14° 02'48"E 809 62' to a point, and (iii) N 14°04'17"E 450 62' to an existing iron pipe being in the common property line with lands now or formerly owned by A Marshall Goad *et al* (DB1810/169), thence with that common line S 89°13'35"E 743 30' to a point, thence leaving that common line S 01°43'43"W 44 40' to a point, thence along a curve to the left having a radius of 532 50', in a southerly direction an arc distance of 86 02' (Chord S 02°53'58"E 85 93') to a point, thence N 89°14'33"W 97 33' to a point, thence along a curve to the left having a radius of 275 00', in an easterly direction an arc distance of 39 99' (Chord N 86°35'31"E 39 95') to a point, thence N 82°25'34"E, 32 73' to a point, thence along a curve to the right having a radius of 325 00', in an easterly direction an arc distance of 47 26' (Chord N 86°35'31"E 47 22') to a point, thence S 89°14'33"E 47 55', thence along a curve to the left having a radius of 10 00', in a northeasterly direction an arc distance of 15 70' (Chord N 45°47'34"E 14 13') to a point, thence N 00°49'40"E 109 01' to an existing iron pipe in the western right-of-way of Turner Street (60' ROW), thence S 89°13'35"E 60 00' to an existing iron pipe in the eastern right-of-way of Turner Street, thence leaving that right-of-way, S 00°49'40"W 108 97' to a point, thence along a curve to the left having a radius of 10 00', in a southeasterly direction an arc distance of 15 72' (Chord S 44°12'26"E 14 15') to a point, thence S 00°45'27" W 50 00' to a point, thence N 89°14'33"W 127 55' to a point, thence along a curve to the left having a radius of 275 00', in a westerly direction an arc distance of 39 99' (Chord S 86°35'31"W 39 95') to a point, thence S 82°25'34"W 32 73' to a point, thence along a curve to the right having a radius of 325 00', in a westerly direction an arc distance of 41 82' (Chord S 86°06'44"W 41 79') to a point, thence N 89°14'33"W, 93 04' to a point, thence along a curve to the left having a radius of 532 50', in a southeasterly direction an arc distance of 108 51' (Chord S 18°50'36"E 108 33') to a point, thence N 89°12'58"W 248 16' to a point, thence N 00°47'02"E 102 00' to a point, thence N 89°12'58"W 88 16' to a point, thence along a curve to the left having a radius of 295 00', in a westerly direction an arc distance of 93 59' (Chord S 81°41'44"W 93 19') to a point, thence S 09°58'07"E 89 14' to a point, thence S 07°35'30"W 6 59' to a point, thence S 45°21'47"W 84 33' to a point, thence S 37°14'43"W 41 93' to a point, thence S 24°13'49"W 41 93' to a point, thence S 11°12'55"W 41 93' to a point, thence S 02°39'12"E 89 59' to a point, thence S 14°18'05"E 48 07' to a point, thence S 14°18'05"E 456 88' to a point, thence S 30°41'55"W 16 49' to a point, thence S 59°18'05"E 16 49' to a point, thence S 14°18'05"E 46 46' to a point, thence S 01°34'50"E 50 58' to a point, thence N 88°25'10"E 51 00' to a point, thence S 01°34'50"E 7 33' to a point, thence S 60°16'40"E 78 99' to a point, thence S 37°07'44"E 30 19' to a point, thence S 33°40'58"E 18 60' to a point, thence S 27°28'13"E 24 67' to a point, thence S 24°49'09"E 24 33' to a point, thence S 10°34'55"E 11 58' to a point, thence S 16°01'34"E 6 86' to a point, thence S 23°43'56"E 11 05' to a point, thence S 38°59'29"E 1 05' to a point, thence S 06°55'54"E 51 71' to a point, thence N 89°11'40"E 17 28' to a point, thence S 00°48'20"E 48 00' to a point, thence S 89°11'40"W 53 38' to a point, thence along a curve to the right having a radius of 46 50', in a southeasterly direction an arc distance of 48 32' (Chord S 50°17'20"E 46 18') to a point, thence N 89°11'40"E 75 42' to a point, thence S 00°58'44"E 21 81' to a point, thence S 45°58'44"E 10 38' to a point, thence S 00°58'44"E 82 85' to a point, thence S 43°10'22"W 63 32' to a point, thence S 88°54'08"W 71 44' to a point, thence N 85°51'12"W 138 66' to a point, thence S 01° 34'50"E 39 53' to a point, thence S 88°56'01"W 190 61' to a point being in the common property line of lands now or formerly owned by

Katahdin Donald Barefoot (DB 1945/338), thence along that common property line (i) N 00°58'56"W 189 83' to an existing iron pipe also being in the southern right-of-way of Rustica Drive, (ii) continuing along that right-of-way along a curve to the left having a radius of 529 81', in a southwesterly direction an arc distance of 120 10' (Chord S 70°28'49"W 119 84') to an existing iron pipe, and (iii) S 00°24' 19"E 151 90' to an existing iron pipe, thence leaving that common property line S 88°56'01"W, 254 32' to an existing iron pipe being in the common property line of lands now or formerly owned by Harry J Hill and Sarah B Hill (DB 2267/27), thence with that common property line (i) S 88°56'01"W 167 54' to a point also being in the southern right-of-way of Rustica Drive, and (ii) continuing along that right-of-way S 88°56'01"W 59 37' to the **Point of Beginning**, being 25 5314 acres more or less according to that survey entitled "Property of Rustica Oaks Development, LLC", prepared by Bass, Nixon & Kennedy, Inc and dated October 26, 2012

SAVE AND EXCEPTING

- All of that tract now or formerly owned by William P Barrett as more particularly described in Deed Book 3773, Page 295 and Plat Book 39, Page 148, Durham County Registry
- All of that public right-of-way area for Rustica Drive shown on that plat recorded in Plat Book 182, Page 23, Durham County Registry

SUBORDINATION

Capital Bank ("Lender"), the holder of that Deed of Trust, Security Agreement and Assignment of Leases, recorded in Book 7115, Page 530, Durham County Registry (as may be subsequently amended or restated, the "Deed of Trust"), joins in this Declaration of Covenants, Conditions and Restrictions, (the "Declaration"), for the sole purpose of subordinating the Deed of Trust to the provisions of the Declaration (including, without limitation, any easements reserved therein) Notwithstanding the preceding to the contrary (i) the lien of the Deed of Trust shall nevertheless remain superior to any and all liens for Assessments now or subsequently created under the Declaration, (ii) Lender shall, without further notice, be deemed to be a "Mortgagee" as described in the Declaration, and (iii) Lender shall, without further notice, be entitled to all "notification rights" (as described in the Declaration) which shall be sent to Lender at the address noted in the Deed of Trust, and (iii) the trustee's deed given in connection with the foreclosure of the Deed of Trust or a deed in lieu of foreclosure from the mortgagor under the Deed of Trust accepted by Lender shall extinguish all liens for those Assessments accruing prior to the date of the deed

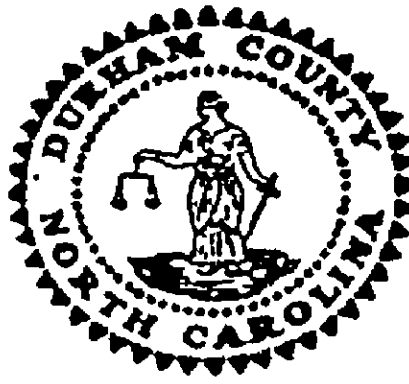
IN WITNESS WHEREOF, the Bank, by its authorized officer, has caused this Subordination to be executed this December 31, 2012

BANK:

Capital Bank, N A,
a national banking association

By _____

Name/Title Anthony R. Cobb Jr, Vice President



WILLIE L COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E MAIN STREET
DURHAM, NC 27701

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording
and/or cancellation

Filed For Registration: 01/15/2013 10.26 13 AM
Book: RE 7166 Page. 449-484
Document No 2013001698
DECL 36 PGS \$106.00
Recorder: SHARON M CEARNEL



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