

# SCHEDULE D

## TOWNHOME DECLARATION

Prepared by and after recording return to:  
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3737 Glenwood Avenue, Suite 400  
Raleigh, NC 27612

WAKE COUNTY

NORTH CAROLINA

## TOWNHOME DECLARATION

(FOR RAMBLEWOOD TOWNHOMES)

THIS TOWNHOME DECLARATION (“**Declaration**”) made on this \_\_\_\_ day of \_\_\_\_\_, 2006, by Ramblewood 2005, LLC, a North Carolina limited liability company (the “**Declarant**”).

### STATEMENT OF PURPOSE:

Declarant has heretofore caused to be recorded that certain Declaration of Covenants for Ramblewood in Book \_\_\_\_, Page \_\_\_\_, in the Office of the Register of Deeds of Wake County, North Carolina (the “**Master Declaration**”) thereby subjecting all of the property described in the Master Declaration to the covenants, conditions and restrictions described therein.

Declarant is the owner of that certain real property described in Exhibit A attached hereto and incorporated herein by reference (the “**Land**”). The Land is a portion of the Property subject to the Master Declaration.

Declarant desires to create a townhome community on the Land also commonly known as “Ramblewood Townhomes” in accordance with the terms of the North Carolina Planned Community Act codified in Chapter 47F of the North Carolina General Statutes, as amended (the “**Act**”).

In addition, Declarant has deemed it desirable to create a nonprofit incorporated owners association which will be delegated and assigned powers of maintaining and administering the common areas and facilities on the Land, administering and enforcing the covenants and restrictions created in this Declaration, levying, collecting and disbursing the assessments and charges created in this Declaration, and taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the units within the Land and promote the recreation, health, safety and welfare of the unit owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the Land shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Land into condominium units, and shall be deemed to run with the land to both burden and benefit Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and his successors, heirs and assigns.

NOW, THEREFORE, Declarant hereby declares that all of the Land described above shall be held, sold and conveyed, occupied, used or transferred subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Land in accordance with the Act, and which shall run with the real property and be binding on all parties having any right, title or interest in the Land or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I DEFINITIONS

The following words, when used in this Declaration or in any amendment or Supplemental Declaration thereto (unless the context otherwise shall prohibit), shall have the following meanings:

1.1 Act. shall mean the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S.47F, with the particular section number following the G.S.47F reference (for example, G.S.47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

1.2 Additional Property. Additional Property shall have the meaning set out in Section 2.3.

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

1.4 Annexed Property shall mean all real property annexed or subjected (those two terms being used interchangeably herein) to any part or all of the terms of this Declaration following the initial recording of this Declaration in the Wake County registry

1.5 Annual Budget. Annual Budget shall have the meaning set out in Section 5.3.1.

1.6 Architectural Board. Architectural Board shall have the meaning set out in Section 8.2.1.

1.7 Articles of Incorporation. The articles of incorporation of the Association as on file with the North Carolina Secretary of State and all amendments hereinafter filed.

1.8 Association. The Ramblewood Townhome Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns; subject to the Special Declarant Rights, the Association shall have all powers set forth in section 47F-3-102 of the Act.

1.9 Bound Parties. Bound Parties shall have the meaning set out in Section 15.1.

1.10 Bylaws. The bylaws of the Association as they now or hereafter exist

1.11 Builder. A building contractor approved by the Declarant holding title to a Lot for the purpose of constructing a Townhouse Unit thereon for sale to the general public in the ordinary course of business.

1.12 CAS. CAS shall have the meaning set out in Section 15.3.

1.13 City or City of Raleigh is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.

1.14 Claim. Claim shall have the meaning set out in Section 15.1.

1.15 Claimant. Claimant shall have the meaning set out in Section 15.3.

1.16 Code shall mean the Raleigh City Code of Ordinances as it exists from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

1.17 Common Area or Common Elements. Any real property, fixture or improvement within the Community owned or leased by the Association other than a Townhouse Lot

including private streets and open space area as designated on any recorded plat of the Community and any other real property acquired by the Association for the benefit of the Members, together with all improvements and facilities located thereon and dedicated to the common use, benefit and/or enjoyment of the Members; provided that the terms 'Common Area' and 'Common Elements' used herein shall not include Common Area and Common Elements under the Master Instruments (those being owned by the Master Association). The "Common Areas" or "Common Elements" referred to herein are 'Sub-Association Common Areas' as such term is used in Article XV, Part A, Section 1(h) of this Declaration.

1.18 Common Expenses. Expenditures made by or financial liabilities of the Association, together with any allocation to reserves.

1.19 Common Expense Liability. The liability for Common Expenses allocated to each Lot as permitted by the Declaration, the Act or otherwise by law.

1.20 Community. The real property hereby or hereinafter subject to this Declaration and the jurisdiction of the Association, which property will be collectively known and advertised as "The Ramblewood Townhomes."

1.21 Community Property. Collectively, the Common Elements and any personal property, now or hereafter owned by the Association for the common use and enjoyment of the Members.

1.22 County Registry. The records of the Office of the Wake County Register of Deeds.

1.23 Declarant. Ramblewood 2005, LLC, a North Carolina limited liability company and its successors and assigns pursuant to a written assignment duly recorded in the County Registry (collectively the "**Company**"), and any agent or agents appointed by the Company to act on its behalf for the purpose of administering or enforcing, in whole or in part, the rights reserved to the Declarant in this Declaration.

1.24 Declarant Control Period. The period commencing on the date hereof and continuing until the later of (i) two (2) years after the date of the first conveyance of a Unit to an Owner other than a Declarant; (ii) 120 days after conveyance of seventy-five percent (75%) of the Units (including any Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than Declarant; (iii) two years after Declarant has ceased to offer Units for sale in the ordinary course of business; (iv) two years after any development right to add new Units was last exercised, or (v) the date upon which Declarant voluntarily surrenders control of the Properties.

1.25 Eligible Mortgagee. An institutional lender holding a first mortgage or deed of trust encumbering a Townhouse Lot (an "**Eligible Mortgage**"). When any right is to be given to an Eligible Mortgagee, such right shall also be given to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Government National

Mortgage Association and any other public or private secondary mortgage market entity participation in purchasing or guaranteeing such mortgages.

1.26 Executive Board or Board. The body designated herein to act on behalf of the Association in accordance with the terms of the Declaration and the Bylaws and the definition of “Executive Board” set forth in Section 47F-1-103(13) of the Act.

1.27 Exempt Claims. Exempt Claims shall have the meaning set out in Section 15.2.

1.28 Exterior Maintenance. Subject to the terms of Article VII of this Declaration any repair or replacement of any part of the exterior of a Townhouse or Townhouse Unit, driveway, sidewalk, exterior fence or gate, including but not limited to exterior painting, roof shingles, window frames (but not including glass) and exterior landscaping on the front and side of Townhouses and Townhouse Units (but not landscaping or hardscaping in the rear courtyards of any Townhouse Units, if any).

1.29 Fiscal Year. The calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

1.30 Governing Documents is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; Annexation Declarations; and other declarations of restrictive or protective covenants applicable to the Properties; and all Sub-Association documents (with respect to those portions of the Properties subject to such Sub-Association documents), as the same may be amended, restated or supplemented from time to time.

1.31 Governmental Entity. The City, the County of Wake, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Entity or entities is/are applicable.

1.32 Improvements. For the purposes of Article IX Improvements shall mean and refer to all (i) buildings, (ii) Townhouses and Townhouse Units, (iii) outbuildings, (iv) storage sheds or areas, (v) roofed structures, (vi) parking areas, (vii) fences and screens, (viii) walls, (ix) signs, (x) hedges and mass plantings of trees and shrubs, (xi) decks, (xii) driveways, (xiii) changes in grade or slope, (xiv) lot preparation, and (iv) exterior construction or exterior improvements exceeding \$500.00 in cost not included in any of the foregoing, but expressly excluding garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expended in accounting practice and which does not change exterior colors or exterior appearances, but does include both original Improvements and all later changes to such Improvements. When the word “improvement” appears in this document without capitalization it shall have that meaning attributed to such word under state property law.

1.33 Lot. Any separately numbered lot or parcel of Community land (regardless of size) shown on an approved subdivision plat of the Community duly recorded in the County Registry.

1.34 Maintain, Maintenance, Maintaining, or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation

1.35 “Master Association” shall mean and refer to Ramblewood Property Owners Association, Inc., its successors or assigns.

1.36 “Master Declaration” shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Ramblewood recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the Register of Deeds, Wake County, North Carolina, as the same may be from time to time amended or supplemented in accordance with its terms. This Declaration is a “Subdivision Declaration” as that term is used in the Master Declaration. To the extent that there are any conflicts between this Declaration and the Master Declaration, the Master Declaration shall control.

1.37 “Master Instruments” shall mean and refer to the Master Declaration, the Articles of Incorporation and Bylaws of the Master Association, and the Rules and Regulations of the Master Association adopted pursuant to the terms of the Master Declaration, as the same may be from time to time amended or supplemented in accordance with their respective terms.

1.38 Member. All those Owners who are members of the Association as defined in Section 3.1 hereof.

1.39 Mortgage. A mortgage or deed of trust constituting a first lien on a Lot.

1.40 Mortgagee. The holder of a Mortgage that has notified the Association in writing of its name and address and that it holds a Mortgage on a Lot.

1.41 Non-Profit Act. The “North Carolina Nonprofit Corporation Act” currently contained in Chapter 55A of the North Carolina General Statutes, and including all amendments, supplements and replacements as enacted from time to time.

1.42 Notice. Notice shall have the meaning set out in Section 15.3.

1.43 Open Space. The open space areas shown on preliminary subdivision plans filed with the City and delineated on any recorded plat of the Properties or the open space areas required by the Code or by the conditional use zoning of the Properties for the perpetual benefit of the Owners. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code. Under the Code, Open Space may be owned by the Master Association, the Association or by the City. Open Space owned by the Master Association or Association is Master Common Area or Association Common Area, as appropriate.

1.44 Operating Deficit. The difference between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements

1.45 Occupant. Any Person or Persons in possession for any period of time of any portion of a Lot including Owners, and their family members, lessees, guests, invitee and licensees of such person or person, and family members, guests and invitee of such lessees.

1.46 Owner. The record owner, whether one or more Persons of the fee simple title to any Lot including contract sellers, but excluding (i) any Person holding such interest merely as security for the performance or satisfaction of any obligation, and (ii) any Lessee or tenant of an Owner.

1.47 Person. A natural person, a corporation, partnership (general or limited), limited liability company, registered limited liability partnership, association trust, or other legal entity, or any combination thereof.

1.48 Plans. Plans shall have the meaning set out in Section 8.4.1.

1.49 Properties Properties shall refer to the real property that is subject to this Declaration, and which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

1.50 Reasonable Attorney Fees. Attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees pursuant to subsection 47F-1-103(26) of the Act.

1.51 Replacement Reserve Fund. Replacement Reserve Fund shall have the meaning set out in Section 5.12.

1.52 Respondent. Respondent shall have the meaning set out in Section 15.3

1.53 Rules and Regulations. Those written actions of the Board, duly adopted, and any amendments thereto consistent with this Declaration, and any Supplemental Declaration, the purpose of which is to interpret and apply the provisions of the Declaration and the Bylaws and to establish and prescribe the administration and management of the Community and the use, operation, and management of the Common Elements and the improvements and facilities located thereon.

1.54 Settlement Demand. Settlement Demand shall have the meaning set out in Section 15.3.

1.55 Settlement Offer. Settlement Offer shall have the meaning set out in Section 15.3.

1.56 Supplemental Declaration. An amendment or supplement to this Declaration duly recorded in the County Registry, which subjects additional real property to this Declaration or

imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

1.57 Special Declarant Rights. During the Declarant Control Period pursuant to subsection 47F-1-103(28) of the Act, rights reserved for the benefit of the Declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans on file with the Declarant; (ii) to exercise any development rights; (iii) to maintain sales offices and construction models, management offices, and signage advertising the Community; (iv) to use easements through the Common Elements for the purpose of making Improvements within the Community; (v) to make the Community part of a larger planned community or group of planned communities; or (vi) to appoint or remove any officer or Association Board member.

1.58 Stormwater Agreement is defined as any agreement recorded in the Registry among the Declarant, the Association, and the City, or between the Declarant and the City, or between the Association and the City, relating to Stormwater Control Measures, as more particularly described in Article 15, Part B of this Declaration.

1.59 Stormwater Control Measures or Stormwater Control Facilities, such terms being used interchangeably herein and in the Stormwater Agreement, is defined as one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and City drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. Certain Stormwater Control Measures are addressed in the Master Instruments. The Stormwater Control Measures and Stormwater Control Facilities addressed in this Declaration relate to the Townhouse Lots only, and do not include the Stormwater Control Measures and Stormwater Control Facilities addressed in the Master Instruments.

1.60 Termination of Mediation. Termination of Mediation shall have the meaning set out in Section 15.3.

1.61 Termination of Negotiations. Termination of Negotiations shall have the meaning set out in Section 15.3

1.62 Total Association Vote. All of the votes attributable to Members (including votes of Declarant) and the consent of Declarant during the Declarant Control Period.

1.63 Townhouse. A row of individual building connected by common side walls (each individual building unit being hereinafter referred to as a “**Townhouse Unit**”); each Townhouse Unit (albeit connected) shall be constructed on a separate Lot. Each wall which is built as a part of the original construction of a Townhouse Unit and placed on the dividing line between the

Lots (and all reconstruction or extensions of such walls) shall constitute a “party wall” and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls, lateral support, in below-ground construction and liability for property damage due to negligence or willful acts or omission shall apply thereto.

1.64 Townhouse Lot. A Lot intended for or upon which is or will be constructed a Townhouse Unit.

1.65 Townhouse Unit. That portion of a Townhouse constructed on a single Lot albeit connected to another such unit by a party wall.

1.66 Yard Improvements. Yard Improvements shall have the meaning set forth in Section 7.3.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

2.1 Property Hereby Subjected To This Declaration. The real property described in **Exhibit “A”** attached hereto and hereby incorporated by reference shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered, subject to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

2.2 Declarant Conveyance of Community Property. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest. Such conveyances shall be accepted by the Association, and the property shall thereafter be Community Property to be maintained by the Association for the benefit of all or a part of the Members. Declarant shall not be required to make any improvements whatsoever to the property conveyed and accepted pursuant to this section 2.2.

2.3 Annexation of Additional Property. If Declarant is the Owner from time to time of any property contiguous to the Properties or directly across a street from the Properties (“**Additional Property**”) which it desires to add to the scheme of this Declaration, it may do so by filing of record a “**Supplemental Declaration**” (herein so called) which shall extend the scheme of this Declaration to such Additional Property; provided, however, that:

2.3.1 any development of the Annexed Property must first be approved by the City;

2.3.2 the annexation of such Annexed Property must meet any other applicable requirements of this Declaration; and

2.3.3 contemporaneously with either the development of the Annexed Property or the recording of the plat of the Annexed Property, whichever first occurs, an Annexation/Supplemental Declaration shall be recorded in the Registry.

Such Supplemental Declaration, as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration; and if a person or entity other than Declarant desires to add property to the scheme of this Declaration, such property may only be so added if the Declarant gives written consent thereto and if such consent is given, such property shall be considered Additional Property. No Annexation Declaration shall be valid with respect to those terms and conditions required by the City of Raleigh, as more particularly set forth in Section 15, Part A, Section 13 hereof, without the prior written approval of the Raleigh City Attorney or his/her deputy. Evidence of such approval shall be indicated by the signature of the City Attorney or his/her deputy on the recorded original or copy of the Annexation Declaration.

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

2.5 Conveyance of Common Area Upon Annexation. No later than the time of the conveyance of the first Lot within the Annexed Property, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the Additional Property annexed as such Common Area is developed, as set forth in Section 10.8 of this Declaration; and any Open Space in the Annexed Property shall be conveyed in fee simple without any encumbrances except drainage, greenway, utility and conservation easements and this Declaration. Open Space in the Annexed Property is subject to all Code and Declaration provisions relating to Open Space. Each Annexation Declaration shall state the amount of the Stormwater Assessment for Lots in the annexed Property when required by Article 15, Part A, Section 13 hereof.

2.5.1 Effective Date of Annexation. Annexation of the Annexed Property shall be effective upon the later of the recording of the Annexation Declaration in the Registry or such later date as specified in the Annexation Declaration, and the Annexed Property described therein shall be subject to all of the provisions of this Declaration to the extent made applicable by the Annexation Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration and other Governing Documents of the Association. Each Owner of a Lot in Annexed Property shall be a Member of the Association, and the Annexed Property and each Owner of any portion thereof shall be subject to assessment by the Association in accordance with the terms of this Declaration, the Annexation Declaration, other Governing Documents, the Code, and the Stormwater Agreement, as applicable. The Association shall have the duties,

responsibilities and powers set forth in this Declaration and other Governing Documents with respect to Annexed Property. Except as may otherwise be expressly provided in this Declaration or any Annexation Declaration, the Properties, including the Annexed Property, shall be managed and governed by the Association as an entirety. Assessments for Common Expenses collected from Owners in the Annexed Property may be expended by the Association for Common Expenses anywhere in the Properties without regard to the particular phase, area or subdivision from which such assessments came

ARTICLE III  
ASSOCIATION MEMBERSHIP; VOTING RIGHTS  
ASSOCIATION MANAGEMENT AND DECLARANT CONTROL

3.1 Membership. Every Person who is a record fee simple owner of a Lot subject hereby to assessments of the Association shall be deemed to have a membership in the Association. Ownership of a Lot shall be the sole qualification for membership. Ownership of such Lot shall be the sole qualification for membership. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. Upon termination of ownership, an Owner's membership with respect to the transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot.

3.2 Voting. The Association shall have two (2) classes of voting membership. Members are thus divided into classes for the sole purpose of computing voting rights and, except as otherwise specifically set forth in this Declaration, shall not vote as a class.

3.2.1 Class "A" Membership. Class "A" Membership shall be composed of all Owners, with the exception of the Declarant; each such owner shall be entitled to one (1) vote for each Lot owned.

3.2.2 Class "B" Membership. Class "B" Membership shall be composed solely of the Declarant whose voting rights shall be equal to the total of three (3) votes for each vote held by all Class "A" Owners. The Class "B" Membership shall cease and be converted to Class A Membership upon the happening of either of the following events, whichever occurs first:

(i) When the total votes outstanding in Class A Membership equal the total votes outstanding in Class B Membership, but provided that the Class B Membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, such Additional Property is annexed to the Land or new Lots are created within the Land (for example, the establishment of a new phase of development within the Land or the establishment of a condominium in a new phase) such that the total votes outstanding in Class B Membership again exceeds the total votes outstanding in Class A Membership, or

(ii) On December 31, 2015.

Where not otherwise stated in this Declaration, for the purpose of determining voting quorum and sufficiency requirements, the votes of the Class A Members and the Class B Members shall be aggregated. Thus a 'majority of all votes entitled to be cast' shall mean,

during such time as there remains a Class B membership, a majority of the total number of votes that are entitled to be cast by the Class A members plus the total number of votes that are entitled to be cast by the Class B member.

3.2.3 Voting for Multiple Owners. Pursuant to section 47F-3-110 of the Act, if only one of the multiple Owners of any Lot is present at an Association meeting, the Owner present is entitled to cast all the votes allocated to his Lot. If more than one of the multiple owners is present, the votes allocated to such Lot may be cast only in accordance with the agreement of the majority of such multiple owners; such majority agreement shall be conclusively presumed if any one of the multiple owners casts the allocated votes without protest being made promptly to the person presiding over the meeting by any of the other multiple owners.

3.2.4 Majority Vote. Except as otherwise provided in the Declaration, the Articles of Incorporation, the Bylaws, or the Act and provided all applicable quorum requirements are complied with, any Association action requiring the approval of the Members shall require the vote or written assent of a majority of the Total Association Vote.

3.2.5 Proxies. Votes may be cast in person or by proxy. All proxies must be dated, duly executed by the Owner, and delivered to the Secretary of the Association or to the property management company authorized by the Board to receive proxies prior to the opening of the meeting for which it is first intended to be used. No proxy shall exceed a term of eleven (11) months from its date except as otherwise provided in the Act. Revocation of a proxy shall be made by actual notice to the Person presiding over the Association meeting.

3.2.6 Quorum Reductions. Except as otherwise provided in its Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the governing documents of the Association, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

3.2.7 Suspension of Voting Rights. The right of any Member to vote may be suspended by the Executive Board pursuant to section 4.2.4 hereof.

3.3 Declarant Control. Pursuant to its Special Declarant Rights as defined in the Act, the Declarant hereby retains the right to appoint and remove any member or members of the Executive Board and any officer or officers of the Association until the end of the Declarant Control Period.

3.4 Professional Management of the Association. The management and obligations of the Association may be delegated to a professional management organization in the discretion

of the Declarant during the Declarant Control Period, and thereafter by the Executive Board by majority vote. Any professional management contract shall be reasonable as to term, compensation and termination. During the Declarant Control Period all contracts with any professional management organization shall include a right of termination without cause or penalty upon ninety (90) days advance notice and without penalty at anytime after the end of the Declarant Control Period pursuant to section 47F-3-105 of the Act

#### ARTICLE IV PROPERTY RIGHTS IN THE COMMON PROPERTIES

4.1 Members' Easements of Enjoyment in Common Element. Every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Elements and facilities located thereon which shall be appurtenant to and shall pass with title to the Lot. Subject to the terms of the Bylaws, this Declaration, and the Rules and Regulations, any Member may delegate such right of use and enjoyment (in and to the Common Elements and facilities thereof) to his Occupants or to the members of his family, his tenants, guests and invitees and shall be deemed to have made a delegation of all such rights to all the Occupants of such Owner's Lot if leased.

4.2 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following rights and restrictions.

4.2.1 Security Interest. The right of the Association, in accordance with the Bylaws and section 47F-13-112 of the Act to subject all or any portion of the Common Elements to a security interest, provided, however in the case of any Common Elements no such interest shall be effective unless such encumbrance has been approved by at least eighty percent (80%) the of Total Association Vote. Any security interest given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of (i) Declarant, (ii) any Member, or (iii) any Eligible Mortgagee. Any provision in any Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the Mortgagee thereof shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of (i) Declarant, (ii) any Member, or (iii) any Eligible Mortgagee. Proceeds of the financing secured in accordance with this section 4.2.1 shall be an asset of the Association.

4.2.2 Protection from Foreclosure. The right of the Association to take such steps as are reasonably necessary to protect the properties encumbered pursuant to section 4.2.1 against foreclosure.

4.2.3 Limitations On Use. The right of the Association to limit the number of guests of Owners and Occupants who may use the facilities and improvements located on the Common Elements, and to provide for the exclusive use and enjoyment of specific portions thereof by an Owner, his Occupants, invitees and licensees at certain designated times or to promulgate other Rules and Regulations in connection with Common Element use.

4.2.4 Suspension of Member Rights. The right of the Executive Board (or an adjudicatory panel appointed thereby) pursuant to the mandatory provisions and procedures of

section 47F-3-107.1 of the Act to fine any Member or to suspend any Member's voting rights and/or a Member's right to use Community facilities, if any, (i) for any period during which any assessment levied against such Member's Lot remains unpaid, and (ii) for a reasonable period of time in the case of an infraction of the Declaration, Bylaws, or the Rules and Regulations. Such suspension, however, shall not constitute a waiver or discharge of the Member's continuing obligation to pay any assessments; provided, however, that the Association shall not suspend a Member's right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking, subject to the rules, regulations and fees, if any, established by the Association for such use.

4.2.5 Transfer to Utility. The right of Declarant or the Association to dedicate or transfer to any public or private utility, any drainage or utility, or access easements, on any part of the Common Elements.

4.2.6 Rights of Conveyance and Transfer. The right of the Association, subject to such conditions as may be agreed to by the Members and the provisions of section 47F-3-112 of the Act, to dedicate, give, or sell all or any portion of the Common Elements, including leasehold interests therein; no such dedication or conveyance of any Common Element (and the conditions appurtenant thereto) shall be effective unless in the case of any Common Element unless such conveyance has been approved by at least eighty percent (80%) of the Total Association Vote. The proceeds of sale of a Common Element shall be an asset of the Association. The sale of any personal property owned by the Association shall be determined by the Executive Board in its sole and uncontrolled discretion, provided, however, that the sales proceeds therefrom shall be an asset of the Association.

## ARTICLE V ASSESSMENTS

### 5.1 Creation of the Lien and Personal Obligation for Assessments.

5.1.1 Covenant of Payment. Declarant covenants and each Owner of a Lot subject to this Declaration (whether or not it shall be so expressed in such Owner's deed or other instrument of conveyance), is deemed to covenant and agrees to pay to the Association (i) annual assessments or charges, and (ii) special assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

5.1.2 Creation of Lien. Pursuant and subject to section 47F-3-115 of the Acct, any annual or special assessments levied against a Lot (or undivided interest therein) and remaining unpaid for thirty (30) days or longer from the time such sum is due and payable, shall be a lien on that Lot and shall be deemed a continuing lien thereon when a claim of lien is filed of record in the Office of the Wake County Clerk of Superior Court. Each such assessment, together with interest, late charges, and costs, and Reasonable Attorneys' Fees incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or person who was the Lot Owner at the time such assessments became due; provided,

however, that the personal obligation of an Owner for delinquent assessments shall not pass to his successors in title unless the lien continues to encumber such transferred property interest.

5.2 Purpose of Annual Assessments. The annual assessments levied by the Association in accordance with the terms of this Article shall be used exclusively for (i) the improvement, maintenance, enhancement, enlargement, administration and operation of the Common Elements and Community Property including without limitation private roads, streets and rights of way; (ii) the provision of services which the Association is authorized to provide; (iii) for payment of the permissible or required expenses of the Association, including without limitation, the procurement and maintenance of liability and hazard insurance in accordance with Article VI of this Declaration and section 47F-3-113 of the Act; (iv) expenses to be declared Common expenses by the provision of the Declaration, the Bylaws or the Act; (v) the expense of the Exterior Maintenance of the Townhouses and Townhouse Units as provided in Article VI of this Declaration; and (vi) used to maintain and support the Stormwater Control Measures and the Stormwater Control Facilities.

5.3 Adoption and Ratification of Annual Budget.

5.3.1 The Proposed Budget. By majority vote, the Executive Board shall adopt an annual budget for the subsequent operational year which shall provide for the allocation of expenses and assessment rates in such manner that the obligations imposed by this Declaration and any and all Supplemental Declarations will be met (the “**Annual Budget**”).

5.3.2 Ratification of Proposed Budget. Pursuant to subsection 47-3-103(c) of the Act, the “Maximum Annual Assessment” for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year. The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership (not just a majority of those present at the particular meeting) vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership (not just a majority of those present at the particular meeting) vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

5.4 Special Meeting to Increase Current Annual Assessment. If the Executive Board, by majority vote, determines that the important and essential functions of the Association will

not be properly funded in any year pursuant to the duly ratified current Annual Budget annual, the Board may call a special meeting of the Members in accordance with the Bylaws requesting approval of a specified increase in annual assessments. The proposed increased assessment shall be levied upon the affirmative vote of sixty-seven percent (67%) of the Total Association Vote. An increase in annual assessments in any year pursuant to this section 5.4 shall in no way affect annual assessments for subsequent years. There shall be no requirement that a quorum be present to vote on the increase of the Assessment (although a quorum must be present to vote on other matters).

5.5 Initial Annual Assessments. The initial assessments for the calendar year in which this Declaration is filed in the County Registry, if any, represent that sum covering the projected cost to the Association of Common Expenses as set forth in the initial budget prepared by the Declarant (“**Initial Assessments**”); provided, however, that the Executive Board in its discretion may charge a lesser amount until such time as the Common Elements have been substantially completed.

5.6 Billing of Annual Assessments. The annual assessments may, in the sole discretion of the Executive Board, be billed monthly, quarterly, semiannually or annually, and each such installment billed shall be due and payable thirty (30) days from the date bills are mailed.

5.7 Date of Commencement of Annual Assessments; Assessment Obligation of Declarant. Annual assessments shall commence as to any Lot on the first day of the month following the issuance by the governmental authority having jurisdiction thereof of a Certificate of Occupancy for a Lot with a Townhouse Unit situated thereon.

Notwithstanding any provision herein to the contrary the assessment for each Townhouse Unit owned by Declarant shall be twenty-five percent (25%) of the assessment which is applicable for a Townhouse Unit titled in a name other than the Declarant; provided, however, that Declarant shall pay the full assessment on any Townhouse Unit which has been (i) leased by Declarant and (ii) on which an occupiable Building is located. Furthermore, any provision of this Declaration to the contrary notwithstanding, the Declarant may, at its sole election and discretion, postpone, in whole or in part, the date on which the assessment shall commence as to a Townhouse Unit provided the Declarant maintains the Common Elements for which no assessment is being collected during the period of such postponement.

5.8 Common Elements. All Common Elements shall be exempt from all assessments created pursuant to this Article.

5.9 Special Assessments.

5.9.1 Purpose and Payment of Special Assessments. In addition to the annual assessments authorized hereby, the Association may levy special assessment for such purposes as the Association deems necessary and proper pursuant to the approval process of Section 5.9.2 including without limitation (i) construction or reconstruction, repair or replacement of capital improvements upon the Common Elements including the necessary fixtures and personal property related thereto and sanitary sewer and water lines; (ii) repayment of any loan made to

the Association to enable it to perform the duties and functions authorized herein; (iii) defense of any and all legal claims brought against the Association; and (iv) to provide adequate insurance coverage for the Association.

5.9.2 Approval of and Payment of Special Assessments. A special assessment shall be approved by sixty-seven percent (67%) of the Total Association Vote. The notice of the meeting to consider such assessment shall include one statement (not to exceed five (5) pages in length) from the members of the Board favoring the special assessment, and one statement from those members of the Board opposing the special assessment, if any. Approved special assessments shall be paid in installments as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

5.10 Subordination of the Lien to Eligible Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any Eligible Mortgage and the lien of ad valorem taxes assessed by any governmental authority having jurisdiction thereof. Sale or transfer of any Lot shall not affect the assessment lien; provided, however, that the sale or transfer of any Lot pursuant to a decree of foreclosure of an Eligible Mortgage (or any proceeding in lieu of foreclosure thereof), shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Pursuant to section 47F-3-116 of the Act, such unpaid assessment, however, shall be deemed Common Expenses collectible pro rata from all the Owners including such purchaser, his heirs, successors and assigns. No sale or transfer pursuant to this section 5.10 shall relieve such Lot from liability or liens arising from assessments thereafter becoming due.

5.11 Remedies for Non-Payment of Assessments. Any assessments (as billed on a per installment basis or otherwise) not paid when due shall be delinquent. Such delinquent assessment not paid within thirty (30) days after the date due shall bear interest from the date of delinquency at a rate equal to eighteen percent (18%) per annum, and the Association may levy a late charge not to exceed five percent (5%) of the delinquent assessment. The Association may bring an action at law against the delinquent Owner or proceed to foreclose the lien created herein pursuant to provisions and procedures set forth in section 47F-3-116 of the Act; provided, however, that this section does not prohibit other actions to recover the sums created by such lien or to prevent the Association from taking a deed in lieu of foreclosure pursuant to section 47F-3-116(d) of the Act. Costs, late charges, fines, interest and fees (including Reasonable Attorney's Fees) of any such action shall be added to the amount of the delinquent assessment and shall be part of the lien assessed against such Lot.

5.12 Replacement Reserve Account. Declarant, on behalf of the Association, shall establish a replacement reserve fund (the "**Replacement Reserve Fund**") to meet the needs for regular replacement and repair of portions of the Condominium as such replacement and repair is necessary. The initial amount of the Replacement Reserve Fund shall be set by Declarant not later than the end of the second year following the date of this Declaration. The amount of the Replacement Reserve Fund shall thereafter be reestablished every two (2) years. The amount of the Replacement Reserve Fund shall be based upon a quantified amortization schedule relating to those items and systems within the Community that will require replacement.

5.13 Working Capital Fund. At the time of closing of the initial sale of each Townhouse Lot and the Townhouse Unit located thereon by the Declarant or Builder to a consumer-Occupant Lot Owner, a sum equal to one-sixth of the annual assessment in effect at the time of such sale shall be collected from the purchaser of such lot and transferred to the Association to be deposited in the Replacement Reserve Account. Payments of such working capital shall not be considered as an advance payment of any regular or special assessment

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

5.15 Abandonment and Non-Use. No Owner may waive or otherwise escape liability for any assessments created by this Article V by the non-use of the Common Elements or abandonment of his Lot.

5.16 Request for Statement. Pursuant to section 47F-3-118 of the Act, upon written request, the Association shall furnish any Owner or any Owner's authorized agents a statement setting forth the amount of any unpaid assessment and other charges against such Owner's Lot. The statement shall be furnished within ten (10) business days after receipt of such request and shall be binding on the Association, the Executive Board, and any other Owner. In connection therewith the Association shall charge the requesting party a reasonable fee of not less than \$75.00 per statement issued.

5.17 Auto Withdraw for Assessment. Declarant or the Association may establish a system in which assessments shall be automatically withdrawn from the applicable bank account of the Owner and, to the extent permitted under applicable law, may require the use of such automatic withdrawal system.

5.18 Declarant's Obligation to Fund Deficits; Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by

Declarant thereafter for Lots owned by Declarant, in an amount equal to aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full

ARTICLE VI  
INSURANCE AND PROPERTY CASUALTY  
LOSSES AND DAMAGES

6.1 By Association. The Association shall procure and maintain the following fire and extended coverage insurance, and shall collect the amounts set forth in 6.1.1 and 6.1.2 of this Section 6.1 from the Owners in the Annual Assessment:

6.1.1 Coverage. Each Townhouse Unit and Improvements upon a Lot shall be insured in an amount equal to at least eighty percent (80%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing form waiver of subrogation.

6.1.2 Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence.

All such policies shall name the Owner as one of the named insureds as its interest appears and, upon written request, copies of said policies and renewals thereof shall be furnished to each applicable Owner. Upon failure by the Association to promptly pay the premiums due on the policy insuring the Owner's Townhouse unit and Improvements, such Owner may, but it is not required to, pay the delinquent premium(s), and shall bill the Association for such premium amount but any such Owner shall not be entitled to offset any such bill against his future assessments without express written authorization from the Association for any such offset.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

6.1.3 Community Property. All insurance policies upon the Community Property shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of Owners.

6.1.4 Coverage. All buildings and Improvements upon the Association Property and all the personal property of the Association included in the Association Property or otherwise owned by the Association shall be insured in an amount equal to at least eighty percent (80%) insurable replacement value as determined annually by the Association with the assistance of the insurance company and shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing form waiver of subrogation.

6.1.5 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the Annual Assessment.

6.1.6 Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Community Property and facilities are to be held for the Association.

(ii) Proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

(iii) In the event a mortgage endorsement has been issued for any Lot, the share of the proceeds of the Owners shall be held in trust for the mortgagee and the Owners as their interests may appear.

6.1.7 Subrogation. Each insurer shall waive its right to subrogation under any policy maintained pursuant to this Section against any Owner or member of Owner's household.

6.1.8 Act or Omission of Owner. No act, error omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under any of the policies maintained pursuant to this Section.

6.1.9 Other Insurance. If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary insurance.

6.1.10 Issuance of Certificates; Cancellation. Any insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurer issuing an insurance policy under this Section may not cancel or refuse to review the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

6.2 Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner:

6.2.1 Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

6.2.2 Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Community Property and, if applicable due to insured casualty occurring on the Community Property, proceeds on account of damage to Lots shall be paid to defray the cost of repair to the Lots. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners as provided in Section 2(g)(ii).

6.2.3 Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, may, as determined by the business judgment of the Board from year to year, first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least six (6) months' assessments, plus reserves accumulated. Premiums for such insurance shall be included as part of the annual assessment described herein.

## ARTICLE VII

### MAINTENANCE BY ASSOCIATION

7.1 Common Elements and Private Streets. The Association shall maintain and keep in good repair all plant material, site furnishings, private roads and rights of ways, Stormwater Control Facilities (Stormwater Control Facilities are addressed more particularly in Article 15, Part B of this Declaration), and any other improvements and facilities located on the Common Elements. Maintenance of private streets as shown on any recorded plat of the Community shall rest with the Association pursuant to the provisions of the Raleigh City Code.

7.2 Exterior Maintenance. In addition to the maintenance of the Common Elements, the Association shall provide Exterior Maintenance of the Townhomes and each Townhouse Unit

7.3 Yard Improvements. In addition to maintenance of the Common Area and the improvement and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the “**Yard Improvements**”) installed by the Declarant, Association or any Builder who constructed the initial improvements on the Townhouse Lot(s), and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping); provided, however, that (i) the Association shall not be responsible for maintaining any fence installed on any Townhouse Lot or any Yard Improvements inside of such fence installed; (ii) the Association’s obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; however, the Association reserves the right to do so and charge back the applicable Owner; and (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitate by work done by or at the request of any Owner or any utility company or governmental entity; however, the Association reserves the right to do so and charge back the applicable Owner. No Owner or Occupant shall plant any vegetation in the front yard or along the front facade of the Townhouse or install any hardscapes except with the prior written approval of the Association.

## ARTICLE VIII ARCHITECTURAL CONTROL AND STANDARDS

8.1 Purpose. Of paramount important in the promulgation of this Declaration is the creation of a community which is aesthetically pleasing and functionally convenient.

8.2 Architectural Review Board.

8.2.1 Composition. During the Declarant Control Period, the Declarant shall establish an Architectural Review Board (the “**Architectural Board**”) which shall consist of not more than five (5) nor less than three (3) members. The regular term of office for each Architectural Board member shall be one (1) year. During the Declarant Control Period, the Declarant may remove, with or without cause, any Architectural Board member, at any time by written notice to such appointee, and the successor appointed to fill such vacancy shall serve the remaining term of such former member. The Architectural Board shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Board is authorized to retain the services of additional consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Board in performing its functions set forth herein with reasonable compensation paid thereto.

8.2.2 Meetings and Action. The Architectural Board shall meet at least quarterly in any calendar year, as well as upon call of the chairman at such places as may be designated by the chairman. A majority of the members shall constitute a quorum for the transaction of

business, and an affirmative majority vote of those present in person or by proxy at such meeting shall constitute the action of the Architectural Board on any matter before it.

8.3 Declarant's Right to Assign Architectural Board Functions to the Association. During the Declarant Control Period, the Declarant, at its sole discretion, reserves the right to assign to the Association all or any portion of its rights reserved herein which are exercisable by the Architectural Board. The Association hereby agrees to accept the assignment of such rights, together with any outlined guidelines and restrictions, without the necessity of any further Board action.

8.4 Review of Proposed Improvements.

8.4.1 Review Requirement. No Improvement (as defined in section 1.25) shall be erected, placed, changed, modified or altered, nor shall any building permit be applied for, until the proposed plans and specifications showing the nature, kind, shape, height, materials, exterior color, location and siting of such improvements have been submitted to the Architectural Board (the "**Plans**") and expressly approved in writing. In addition, no subsequent alteration or modification of any Improvements or the construction, erection or installation of additional Improvements may be undertaken or allowed to remain on any Lot without the review and express written approval of the Architectural Board. The Architectural Board shall establish minimum requirements for Plans submitted for approval, but shall have the authority to request such additional information as it may determine is necessary to render its decision; provided, however, during the Declarant Control Period, any Builder with whom Declarant has contracted to sell a Lot and who has received Declarant approval of such builder's Plans (pursuant to such contract), shall be deemed to have complied with the terms and conditions of this section 8.4. Any Improvement or alterations executed without Board approval shall be subject to immediate removal at the expense of the Owner of the subject Improvement or alteration.

8.4.2 Discretion of the Architectural Board. The Architectural Board or the Declarant acting pursuant to section 8.4.1 above shall be the sole arbiter of submitted Plans and may withhold approval based upon any reasonable grounds, including purely aesthetic consideration; provided, however, the Architectural Board shall at all times endeavor to be fair, reasonable, and uniform in its application of the Design Code and the Board's procedures and shall use its best efforts to balance the equities between matters of taste, Community design standards and the use of private property.

8.4.3 Effect of Failure to Approve or Disapprove. In the event that the Architectural Board fails to approve or disapprove the design of any proposed Improvements within forty-five (45) days after the Owner has submitted Plans, approval will not be required and the Owner shall be deemed to have fully complied with the provisions of this section 8.4; provided, however, that such submission shall not be deemed to have been received by the Architectural Board if submitted Plans are incomplete, fail to meet the minimum requirements established by the Architectural Board, contain erroneous data or fail to present adequate information upon which the Architectural Board can base its decision. In connection therewith the Association shall promulgate a schedule of reasonable review fees consistent with the complexity of the type of plans reviewed.

8.5 Right to Inspect. Any Architectural Board member (or the authorized representatives thereof) shall have the right, during reasonable hours, to enter upon any Lot or Lot Unit to inspect such property and any Improvements thereon for the purpose of ascertaining whether or not such property and improvements complies with the terms of this Declaration and the Design Code; such inspector shall not be deemed guilty: of trespass by reason of such entry.

8.6 Enforcement.

8.6.1 All construction commenced and completed pursuant to Board approved Plans shall be constructed substantially and materially in accordance with such approved Plans. In the discretion of the Architectural Board, an Owner may be required to verify any conditions of Plan approval by a written instrument acknowledged by such Owner on his and his successors-in-interest's behalf and recorded in the County Records.

8.6.2 The Board of Directors and the Declarant during the Declarant Control Period shall have the specific right (but not obligation) acting through and directing the Architectural Board to enforce the provisions of this Article and/or prevent any violation thereof by a proceeding at law or equity.

8.7 Liability. NO PERSON SHALL RELY ON PLAN APPROVAL PURSUANT TO THIS ARTICLE VIII AS EVIDENCE THAT SUCH PLANS AND THE IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH (I) ARE OR WILL BE IN COMPLIANCE WITH ANY BUILDING CODES, ZONING ORDINANCES OR ANY OTHER STATUTE, LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL UNIT OR AUTHORITY HAVING JURISDICTION THEREOF; OR. (II) ARE CONSISTENT WITH GOOD ENGINEERING ARCHITECTURAL OR CONSTRUCTION STANDARDS, PRACTICE, AND PROCEDURES. NEITHER DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM ASSUMES LIABILITY OR RESPONSIBILITY FOR ANY DEFECT IN ANY IMPROVEMENTS CONSTRUCTED FROM THE APPROVED PLANS AND SHALL NOT BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS, OR TO ANY OWNER OP PROPERTY AFFECTED BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS. EVERY PERSON AND EVERY OWNER SUBMITTING PLANS FOR REVIEW AGREES NOT TO BRING ANY ACTION OR SUIT AGAINST THE DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES; REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ANY CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

ARTICLE IX  
COVENANTS RESTRICTIONS AND AFFIRMATIVE OBLIGATIONS

9.1 Residential Use. All Lots shall be used for residential purposes only. Notwithstanding the foregoing, Declarant may maintain any Lot owned by Declarant as a sales office or model unit. An Owner may conduct ancillary business activities within the Units so long as (i) the existence or operation of the business activity is not apparent nor detectible by sight, sound, or smell from outside of the Lot; (ii) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to Lot without business activity; (iii) the business activity is legal and conforms to all zoning requirements; (iv) the business activity does not unreasonably increase traffic in the Community in excess of what would normally be expected for Lots in the Community without business activity; (v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; (vi) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Communities, as determined in the Board's discretion; and (vii) the business activity does not result in a materially greater use of Common Elements facilities.

9.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Lot or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners or endanger the health and safety of any Owner. In addition, no Owner may use or allow the use of a Lot or the Common Elements in any manner which creates disturbing noises, including, without limitation, use of stereo speakers or equipment that will in the sole discretion of the Board interfere with the rights, comfort or convenience of the other Owners. Nothing shall be done or kept in any Lot or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Community.

9.3 Prohibitions on Use of Common Areas; Abandoned Personal Property. The Common Elements (other than storage areas, if any, designated by the Association) shall not be used for the storage of personal property of any kind. Stairs, entrances, lobbies, hallways, sidewalks, yards, driveways and parking areas shall not be obstructed in any way or used for other than their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either on his Lot or upon the Common Elements which detracts from the appearance of the Community. If the Board determines that personal property impermissibly remains upon any portion of the Common Elements without prior written permission of the Board, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property Owner's Townhome Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the Owner of the property. The Board, in its discretion, may further determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property Owner. Neither the Association or any officer or agent thereof shall be liable to any Person for any claim of damage

resulting from the removal activities described above. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

9.4 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Lot, and deposited only in the common trash receptacles, if any, or as otherwise directed by the Association.

9.5 Parking. No Owner or any employee, agent or invitee of any Owner shall park, store or keep any vehicle on the Properties except wholly within the designated parking areas, and in particular shall not block any entrances, drive aisles or fire lanes. Street parking shall be limited to guests. Declarant may designate certain parking areas as being for the sole benefit of certain portions of the Community. No boat, boat trailer, motor home, travel trailer, camper, or recreational vehicle may be stored at the Community at any time. No significant automobile repair shall be allowed in the parking areas on the Land. Further, no Owner may store an unused vehicle for more than one (1) month at the Properties. Trucks, vans, commercial vehicles and vehicles with commercial writing on their exteriors shall be allowed temporarily in the parking areas during normal business hours for the purpose of making deliveries or serving any Lot; provided no such vehicle shall remain overnight or for any purpose unless consent of the Board is first obtained. The Association shall have the right to tow any vehicle in violation of this Section 9.5 at its owner's expense.

Specifically, but not by way of limitation, the Association shall have the right, and so intends, to enforce the parking restrictions in this Section 9.5. In addition to having the right to tow any vehicle in violation of this Section, the Association shall have the right to levy fines as follows: (i) Fifty and No/100 Dollars (\$50.00) for the first offense during any twelve (12) month period; (ii) Seventy Five and No/100 Dollars (\$75.00) for the second offense during any twelve (12) month period; and (iii) One Hundred and No/100 Dollars (\$100.00) for more than two (2) violations in any twelve (12) month period. Fines imposed for violation of the parking restrictions shall be considered special assessments and shall be due and payable upon receipt of the parking violation. The Association shall have the right to enforce payment of such special assessment in the same manner as it may enforce the collection of any assessments under this Declaration and the Bylaws including charging of interest, payment of late fees and imposing of a lien against the Unit. Each Owner shall be responsible for any parking violation by Owner or anyone in Owner's family, or by any guests or invitees of the Owner.

Notwithstanding anything to the contrary set forth herein, any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

9.6 No Timeshares. No interest in any Unit may be subjected to a time share program as that term is defined in N.C. Gen. Stat. §93A-41(10).

9.7 Animals. No animals, livestock or poultry of any kind shall be kept or maintained in the Community or in any dwelling located thereon except that small, common, domestic household pets (less than fifty (50) pounds each, except as may be reasonable and customary for certain large breeds of domesticated dogs) may be kept or maintained in each Townhome Unit,

provided they are not kept or maintained for commercial purposes and provided that no Owner may have more than three (3) such pets at any one time (excluding fish). Fish tanks shall be limited to the lesser of fifty-five (55) gallon tanks or five hundred fifty (550) pounds (when full). No potbellied pigs, snakes, pit bulls, rottweilers, or Doberman pinchers may be brought onto or kept in the Community at any time. In addition, other animals determined in the Board's sole discretion to be dangerous shall not be brought onto or kept in the Community at any time. No pet shall be permitted upon the Common Elements unless carried or leashed by a person that can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) in the Community. Each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered, licensed and inoculated as required by law. Each Owner shall hold the Association harmless from any claim resulting from any action of his pet and shall repair at his expense any damage caused by his pet. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the Owner to remove the pet permanently from the Community upon not less than ten (10) days written notice. The Board may, in its discretion, make exceptions to the above rules on a case by case basis.

9.8 Utilities. Total electrical usage in any Townhome Unit shall not exceed the capacity of the circuits for that Townhome Unit as labeled on the circuit breaker boxes and no electrical device causing overloading of the standard circuits may be used in any Townhome Unit without permission of the Association. All clothes dryers will have lint filters and all stove hoods will have grease screens. Such screens and filters shall be used at all times and kept clean and in good order and repair by the Owner of the Townhome Unit in which they are located.

9.9 Windows. No curtains or draperies shall be installed or hung in any window of any Townhome Unit unless they have a white lining or backing on the side exposed to the window. No storm windows shall be installed in any Townhome Unit. The Owner may install white mini-blinds or plantation shutters.

9.10 Yard Art, Signs and Flags. No signs (excluding political signs) or other advertising devices shall be displayed on or about the exterior of any Townhome Unit or on a Lot. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs independent of this standard, provided those signs comply with applicable government regulations. Further, each Owner shall have the right to place a standard-size "for sale" sign in the front yard area of any Lot; provided, however, that the Association has the right to require that all "for sale" signs are of a uniform color, size and style. No yard art (garden gnomes, lawn jockeys, etc.) or birdhouses or bird feeders shall be permitted unless approved by the Board. The display of political signs is permitted. Notwithstanding the foregoing, the Association may prohibit the display of political signs earlier than forty-five (45) days before an election and later than seven (7) days after an election and may regulate the size and number of political signs that may be placed on an Owner's property as long as the regulation does not prohibit the number of signs allowed to be less than one (1) or smaller than twenty-four inches by twenty-four inches (24" x 24"). For purposes of this section, a political sign means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on a election ballot. Further, no pole or other device for the display of decorative flags shall be

erected or displayed on or about the exterior of any Townhome Unit or in the Common Elements unless approved in advance by the Association, excluding the display of one (1) standard sized (not to exceed four feet by six feet) flag of the United States of America or State of North Carolina, not to hang or extend over any perimeter vertical plane of any balcony railing, if applicable, which form of attachment shall be approved or disapproved by the Association. In the event that the Association approves installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner shall be in good taste and shall not contain lewd or offensive displays or material.

9.11 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Community may be made and amended from time to time by the Association. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date and shall be furnished by the Association to all Owners upon request.

9.12 Satellite Dishes and Antennas. In no event shall any exterior television antenna or satellite dish be mounted or placed on the exterior surface or patio balcony of any Unit without the Association's prior written approval, to be granted in the Association's sole discretion. In addition, the Board may require that in the event the Association contracts with one (1) satellite service vendor to provide building-wide subscription services for the Lot owners, then all Owners shall obtain satellite service solely from this vendor. In all instances, any antenna or satellite dish located on this rooftop area must be screened from public view. Only in the event there is no Association authorized service vendor available to provide service as described above, then prior to installing the antenna or satellite dish, the Owner shall furnish to the Board a copy of the Owner's installation plans. The Association shall have the right to perform any portion of the installation work at the expense of the Owner, or to require that any portion of the work be performed by contractors designated by the Board and in ways consistent with the existing infrastructure, shafts, and penetrations in the building. The Owner shall also be responsible for removal of any antenna or satellite dish and associated mounting and wiring if and when services for the device are cancelled. In addition, the Owner shall be responsible for any damage caused by the removal of the antenna or satellite dish and associated mounting and wiring, including the sealing of conduits or other roof penetrations. Any Owner installing an antenna or satellite dish under this Section 9.12 shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use and/or removal of the antenna or satellite dish, including but not limited to any damage to the corridor walls and ceilings as well as the roof of the building or other property damage caused by installation or use or roof leaks.

9.13 Firearms and Fireworks. The display or discharge of firearms or fireworks in the Community outside the interior of any Townhome Unit, is prohibited; provided, however, the display of firearms is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements to or from the Owner's Townhome Unit. The term "firearm" includes BB guns, pellet guns, and other firearms of all types, regardless of size.

9.14 Garage Sales. Garage sales, yard sales, flea markets or similar activities are prohibited unless approved in writing by the Board.

9.15 Leasing. In order to preserve the character of the Community as predominantly owner-occupied and to comply with the eligibility requirements for financing in the secondary mortgage market, the leasing of Townhome Units shall be governed by the restrictions imposed by this Section 9.15. This Section 9.15 may not be amended except with the consent of the Master Association. Except as provided herein, the leasing of Units shall be prohibited. "Leasing," for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any Person other than the Owner. For purposes hereof, occupancy by a roommate of an Owner who occupies the Unit as such Owner's primary residence shall not constitute Leasing hereunder.

9.15.1 General. Owners desiring to lease their Townhome Units may do so only if they have applied for and received from the Board either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Townhome Unit provided that such leasing is in strict accordance with the terms of the permit and this Section. The Board shall have the authority to establish conditions as to the duration and use of such permits consistent with this paragraph. All Leasing Permits and Hardship Leasing Permits shall be valid only as to a specific Owner of a Townhome Unit and shall not be transferable between either Townhome Units or Owners of Townhome Units, but shall be transferable to successors in title to the same Unit.

9.15.2 Leasing Permits. An Owner's request for a Leasing Permit for a Townhome Unit shall be approved if current, outstanding Leasing Permits have not been issued for more than twenty-five percent (25%) of the total number of Townhome Units in the Community. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (A) the sale or transfer of the Townhome Unit to a third party (excluding sales or transfers to (1) an Owner's spouse; (2) a Person cohabitating with the Owners, and (3) a corporation, partnership, company, or legal entity in which the Owner is a principal); (B) the failure of an Owner of a Townhome Unit to lease his or her Townhome Unit within ninety (90) days of the Leasing Permit having been issued; or (C) the failure of an Owner of a Townhome Unit to have his or her Townhome Unit leased for any consecutive one hundred eighty (180) day period thereafter. If current Leasing Permits have been issued for more than twenty-five percent (25%) of the total number of Townhome Units (excluding Townhome Units owned by Declarant), no additional Leasing Permits shall be issued (except for Hardship Leasing Permits) until the number of outstanding current Leasing Permits falls below twenty-five percent (25%) of the total number of Townhome Units (excluding Townhome Units owned by Declarant) in the Community. An Owner of a Townhome Unit who has been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued the same if they so desire when the number of current outstanding Leasing Permits issued falls to twenty-five percent (25%) or less of the total number of Townhome Units (excluding Townhome Units owned by Declarant) in the Properties. The issuance of a Hardship Leasing Permit to an Owner of a Townhome Unit shall not cause the Owner of a Townhome Unit to be removed from the waiting list for a Leasing Permit.

9.15.3 Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner of a Townhome Unit may seek to lease his or her Townhome Unit on a hardship basis by applying to the Board for a Hardship Leasing Permit. The Board shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (A) the nature, degree, and likely duration of the hardship, (B) the harm, if any, which will result to the Properties if the permit is approved, (C) the number of Hardship Leasing Permits which have been issued to other Owners of Units, (D) the ability of the Owner of a Townhome Unit to cure the hardship, and (E) whether previous Hardship Leasing Permits have been issued to the Owner of a Townhome Unit. A “hardship” as described herein shall include, but not be limited to the following situations: (1) an Owner of a Townhome Unit must relocate his or her residence outside the Raleigh metropolitan area and cannot within four (4) months from the date that the Unit was placed on the market, sell the Townhome Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner of a Townhome Unit dies and the Unit is being administered by his or her estate; and (3) the Owner of a Townhome Unit takes a leave of absence or temporarily relocates and intends to return to reside in the Unit. Hardship Leasing Permits shall be valid for a term not to exceed one (1) year. Owners of Townhome Units may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner of a Townhome Unit is approved for and receives a Leasing Permit.

9.15.4 Leasing Provisions. Leasing of a Townhome Unit that is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

(i) Notice. At least fourteen (14) days prior to entering into the lease of a Townhome Unit, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) General. Townhome Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable. There shall be no subleasing of Townhome Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Townhome Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Townhome Unit. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board’s approval or disapproval shall be limited to the form of the proposed lease.

(iii) Liability for Assessments, Use of Common Elements, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and

agrees that any lease of a Townhome Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Compliance with Declaration, Bylaws and Rules and Regulations:

The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other occupants and guests of the leased Townhome Unit in order to ensure such compliance. The Owner shall cause all occupants of his or her Townhome Unit to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such occupants, notwithstanding the fact that such occupants of the Townhome Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a Person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Bylaws. If the fine is not paid by the lessee within the time period set by the Executive Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit. Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law. The Owner hereby delegates and assigns to the Association, acting through the Executive Board, the power and authority to enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms thereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorneys' fees actually incurred and court costs, associated with the eviction shall be an assessment and lien against the Unit.

Use of Common Elements. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including but not limited to, the use of any and all recreational facilities and other amenities.

Liability for Assessments. When an Owner who is leasing his or her Townhome Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provisions shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

9.16 Colors. No exterior colors on any Structure shall be permitted that, in the sole judgment of Declarant or the Architectural Committee, would be inharmonious or discordant or incongruous. Any future exterior color changes desired by an Owner must be first approved by the Architectural Committee. Exterior painting shall be done by the Association.

9.17 Factory Built Structures. No structure of any kind of what is commonly known as "factory built", "panelized", or "mobile home" type construction shall be erected on any Lot. Only on-site stick built homes are allowed.

9.18 Porches, Stoops, Decks and Front Yards. Porches, stoops, decks and yards shall be maintained in a neat and orderly fashion. Outdoor furnishings shall be limited to traditional porch furnishings. No appliances, interior furniture or unusual items may be placed in the yard, on the porch, patio or deck. Toys, bicycles, carriages, strollers and similar items exposed to the street shall not be stored on porches, decks or in locations visible from the street.

9.19 Entry Features. Occupants shall not alter, remove or add improvements to any site features (including, but not limited to walls, piers, fences, monuments, light fixtures, signage and planting) constructed by the Declarant on any Community property, or any part of any easement area associated therewith without the prior written consent of the Association.

9.20 Garages. Garages, if any, must be maintained in their original intended use and shall not be converted to habitable living space. If a garage is included on any Townhouse Lot, garage parking for at least one vehicle must be maintained within the garage at all times. Garage doors facing either the Lot frontage or side streets must remain closed when not in use, and under no circumstances shall garage doors remain open overnight.

9.21 Subdivision and Recombination of Lots. No Lot shall be subdivided without the written consent of Declarant. One or more Lots may be combined into a single Lot with the written consent of Declarant and, upon such combination and consent of Declarant, the resulting Lot shall be considered as one Lot for the purposes of this Declaration. Provided, the foregoing shall not prohibit or restrict the right (which is hereby reserved) of Declarant to subdivide, combine, resubdivide, recombine, or re-record maps relating to, any Lots subject to this Declaration.

9.22 No Implied Waiver. The above restrictions on the use and development of Lots by Owners shall not be construed as limiting the right of review and analysis afforded Declarant and the Architectural Committee. The failure of Declarant to object to an Owner or another person's failure to comply with the covenants and restrictions contained herein shall in no event be deemed a waiver by Declarant, or any other Person having an interest herein, of its rights to object to the same and to seek compliance therewith in accordance with the provisions of this Declaration.

## ARTICLE X ADDITIONAL EASEMENTS

10.1 Easements for Utilities. There is hereby reserved to the Declarant and the Association easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining telecommunications, electrical, sanitary sewer, water, gas, storm drainage systems, including but not limited to, a master television antenna system, cable television system, fiber optic telecommunications system or security system which the Declarant or Association may install (but is not required to install) to serve the Community. It shall be expressly permissible for the Declarant, the Association (or the designee of either including any private or public utility or governmental authority, as appropriate) to install, repair, replace, and maintain or to authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the provision of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement or license. It is further provided, however, that any Person exercising rights pursuant to such easement shall be liable for any damage to the property so entered and be responsible for reasonably restoring such damaged property to substantially the same condition as existed prior to such damage.

10.2 Association's Easement and Right of Entry. The Association, for itself and its employees, agents, contractors, and subcontractors and invitee's, shall have a perpetual easement over each Lot to the extent reasonably necessary to perform maintenance pursuant to Article VII.

10.3 Easement for Entry. The Executive Board shall have the right (but not the obligation) to enter upon any property within the Community for emergency, security, and safety reasons. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure such condition after written notice of the Board.

10.4 Easement to Governmental and Public Authorities. An easement is hereby established for municipal, state or other public utilities serving the community, and for their agents and employees over all portions of the Community for setting, removing and reading utility meters, maintaining or replacing utility or drainage connections, and acting with other purposes consistent with public safety and welfare, including without limitation, police and fire protection.

10.5 Easements for Encroachments. If, by reason of the initial construction of the Townhome Units or improvements comprising a part of the Property, any part of such improvement encroaches upon any part of the Common Elements, or upon any part of another Lot, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if the encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lots so encroached upon.

10.6 Access Easement for Repair of Structures. A perpetual access easement over an adjoining Lot hereby is established in favor of each Owner or tenant of a residence, and the contractors of such Owner or tenant, whose residence is located closer than five (5) feet from an adjoining Lot line, for the purpose of allowing the residence to be Maintained. No fence, wall, storage shed, or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the residence.

10.7 Access for Governmental Agencies. A non-exclusive, perpetual right of access over all Lots and Common Areas (including private streets, if any) in the Properties is hereby established for the benefit of Governmental Entities for installing, removing and reading water meters, Maintaining and replacing water and sewer facilities, fire lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and the delivery of mail.

10.8 Conveyance or Dedication of Common Areas. Common Areas, including Open Space, shall either be conveyed to the Association in fee simple without any encumbrances except this Declaration, drainage, greenway, utility and conservation easements of record at the time of conveyance, and the lien of real property taxes not yet due and payable, or conveyed to the City as allowed or required under the Code. Common Areas may be conveyed to the City free of part or all of the provisions of this Declaration, as determined by the Declarant and the City. Title to Common Areas shall be conveyed to the Association or to the City no later than the time of the conveyance of the first Lot within the applicable phase of the Properties. The Association shall accept all Common Areas, including the improvements installed thereon by the Declarant, deeded to it and/or dedicated to it on any recorded plat of the Properties, whether or not the conveyance or dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Properties. Common Areas under the Master Instruments shall be conveyed to the Master Association in accordance with the terms of the Master Instruments.

10.9 Private Utility Lines. Any water or sewer line that serves more than one Lot and which is either located outside of any public street right-of-way or outside of any City utility easement shall be owned and Maintained by the Master Association, or by the Association as Common Area. In no case shall the City or the State of North Carolina be responsible for Maintaining any such private utility line or be responsible for the consequences for any blockage, backflow, break or leak in said utility line. Such responsibility shall rest with the Association (or the Master Association) and Owners of Lots within the Properties. Accordingly, the City shall not be responsible for failing to provide regular or emergency utility services to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or their occupants when such failure is due to inadequate design or construction, blockage, backflow, leakage, inadequate maintenance, or any other factor within the control of the Declarant, the Master Association, the Association, or the Owners or occupants of the Properties. The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration. Provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

10.10 Landscape Easements. The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation, except when the same are allocated to the Master Association under the Master Instruments. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement removes or causes any of the shrubs or trees within the slope easement to die or become unhealthy (as defined in Part 10 Chapter 2 of the Code), it shall be the responsibility of the Association to replace the shrubs and trees in accordance with the minimum applicable quantity, size and spacing requirements of the Code within one-hundred and eighty days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association. Notwithstanding the foregoing, no Governmental Entity shall be required to obtain the consent of the Association when working within slope easements, greenway easements or construction easements.

10.11 Sight Triangles. No sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two feet and eight feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists, shall be placed within any area designated on a recorded map of the Properties as a sight triangle or other similar designation. An easement over sight triangles is reserved for the benefit of the Declarant, the Association, and the City, and their respective agents and contractors for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or the Owner of the Lot with respect to the obstruction removed from the site triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the

Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Properties previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

10.12 Drainage Easements. The Declarant dedicates, establishes and declares to and for the benefit of each Lot, the Common Area and each Owner hereof:

10.12.1 a perpetual, irrevocable and nonexclusive easement, right and privilege to discharge and store surface water drainage from such Lot or Common Area into the Stormwater Control Measures situated in private drainage easements that serve the Properties, whether located on or off or the Properties, and

10.12.2 a perpetual, irrevocable and non-exclusive easement, right and privilege to use and Maintain Stormwater Control Measures, including the right of access to and from the private drainage easements and other portions of the Properties as reasonably necessary to Maintain the Stormwater Control Measures.

10.13 Relocation of Drainage Easements. Drainage easements situated on the Properties may be relocated only by a written agreement signed by the Association - upon approval of the Board of Directors without vote of the Members - and by the Owners of all portions of the Properties on which the drainage easement then is located, and by the Owners of all portions of the Properties on which the drainage easement is to be relocated. The consent of tenants and Mortgagees of the affected Lots shall not be required for the relocation to be effective. All relocations of a drainage easement shall be accompanied with a letter sealed by a professional engineer licensed in the State of North Carolina stating that the relocated drainage easement will not cause any adverse stormwater runoff unto adjoining properties.

Notwithstanding anything herein to the contrary, no relocation of any drainage easement shall be valid without the without the prior approval of the Raleigh Chief Engineer or his/her Deputy. City approval shall be evidenced by the signature of the Raleigh Chief Engineer or his/her Deputy on the recorded plat or other instrument of the relocation. Any relocation, without the required City signature is void *ab initio*. Relocation of a drainage easement is valid from the later of the time of either recording of the plat or other instrument of relocation in the Registry or such later date specified therein.

## ARTICLE XI CONDEMNATION

11.1 Common Elements. If a portion of the Common Elements shall be acquired by any authority having the power of eminent domain (collectively or individually the “**Condemnation Authority**”) or conveyed by the Board in lieu of and under threat of

condemnation pursuant to the written direction of eighty percent (80%) of the Total Association Vote, the provisions of section 6.7 (applicable to damage or destruction to Common Element Improvements), shall govern the replacement or restoration of the affected improvements and the actions to be taken in the event that such improvements are not restored or replaced. Pursuant to section 47F-1-107 of the Act the condemnation award attributable to such elements shall be paid to and be an asset of the Association.

## 11.2 Lots.

11.2.1 Entire Lot. In the event any Condemnation Authority shall acquire an entire Lot leaving the owner of such Lot with a remnant which is not practically or lawfully useable for any purpose permitted by this Declaration, such award shall be payable to such owner for his interest in the Lot together with the value of the property rights and benefits granted to the Owner hereunder. Upon such acquisition, unless the court decree otherwise provides, such Lot's allocated interests hereunder are automatically reallocated to the remaining Lots in proportion to the respective allocated interests-of those Lots before the taking, exclusive of the Lot taken.

11.2.2 Partial Lot. Except as provided in section 11.2.1 above, in the event a portion of a Lot shall be acquired by any Condemnation Authority, such award shall compensate the affected Owner for the reduction in value of the Lot. Upon such acquisition, unless the court decree otherwise provides, (i) such Lot's allocated interests are reduced in proportion to the reduction in the size of the Lot and (ii) the portion of the allocated interests divested from the partially acquired Lot are automatically reallocated to such Lot and the remaining Lots in proportion to the respective allocated interests of those Lots before the taking.

## ARTICLE XII SALES AND CONSTRUCTION ACTIVITIES OF DECLARANT AND BUILDERS

12.1 Rights Reserved. Notwithstanding any provisions or restrictions contained in the Rules and Regulations, this Declaration, Supplemental Declaration, use restrictions or any amendments to the foregoing it shall be expressly permissible for Declarant, and its respective agents, employees, and approved Builders during the Development Period to maintain such facilities and carry out such activities as may be reasonably required, convenient, or incidental to the development, improvement, completion and sale of the any portion of the Community, including, without limitation, the installation and operation of sales and construction trailers and offices, sales models and appropriate signs; provided, however, that in the event a sales office has been maintained in any portion of a Townhouse such sales office must be removed and the original intended and approved use of such structure must be restored prior to conveyance from the Declarant or Builders to any consumer-occupant Lot Owner.

12.2 Easement to Perform Reserved Rights. During the Declarant Control Period, the Declarant hereby expressly reserves unto itself and approved Builders, a non-revocable (during such defined period) right, privilege, and easement with respect to all property within the Community for the benefit of the Declarant and such Builders over, under, in, and/or on such property, without obligation and without charge for the purposes of taking all actions related to or connected with the activities specified in section 12.1 above, including the right to reserve up to five (5) parking spaces for use on Saturdays and Sundays between the hours of 9 a.m. and 6 p.m.

ARTICLE XIII  
AMENDMENT OF DECLARATION

13.1 Amendment by Owners. The covenants, conditions and restrictions of the Declaration may be amended during the first thirty (30) year period or thereafter by an instrument signed by the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, that the Executive Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction or to make an amendment requested by the Federal National Mortgage Association, without action or consent of the Owners, and such amendment shall be certified as an official act of the Executive Board and recorded in the County Registry.

13.2 Certification and Recordation of Amendment. Any instrument amending this Declaration (other than an amendment by the Executive Board to correct an error or inconsistency in drafting, typing, or reproduction or an amendment by Declarant or the Executive Board pursuant to section 13.4 hereof) shall be delivered, following approval by the Owners, to the Executive Board. Thereupon, the Executive Board shall, within thirty (30) days after delivery:

13.2.1 Approval. Reasonably assure itself that the amendment has been duly approved by the Owners as provided in section 13.1, and for this purpose, the Executive Board may rely on its roster of Members and shall not be required to cause any title to be examined;

13.2.2 Certificate of Validity. Attach to the amendment a certification as to its validity, which certification shall be executed by the Association, and shall be in the following form:

CERTIFICATE OF VALIDITY

By authority of its Executive Board The Ramblewood Townhome Owners Association, Inc. hereby certifies that the foregoing instrument has been approved by affirmative vote or by written statement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association have been

allocated and is therefore, a valid amendment to the existing Declaration of Ramblewood Townhomes.

IN WITNESS WHEREOF, the The Ramblewood Townhome Owners Association, Inc. has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed, the day and year first above written.

THE RAMBLEWOOD TOWNHOME OWNERS  
ASSOCIATION, INC.

By: \_\_\_\_\_  
\_\_\_\_\_ President

ATTEST

\_\_\_\_\_  
Secretary

13.2.3 Recordation. Within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry; provided that any delay in recording such amendment within the aforesaid thirty (30) day period shall net invalidate the amendment.

13.3 Effect and Validity of Amendment. All amendments shall be effective from the data of proper recordation in the Wake County Registry. When any instrument purporting to amend this Declination has been certified by the Executive Board and recorded as provided in this section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners.

13.4 Amendment by Declarant. Notwithstanding anything to the contrary set forth in this Article and in accordance with its rights as Declarant pursuant to section 47F-2-117 of the Act, the Declarant may unilaterally amend the Declaration at any time and from time to time (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to qualify the Association for tax-exempt status; (iii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Property subject to this Declaration; or (iv) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration, or (v) if such amendment is necessary to enable any

governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lot or subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any unless any of the affected Owner shall consent thereto in writing.

ARTICLE XIV  
DISSOLUTION OR INSOLVENCY OF THE ASSOCIATION

14.1 The Association may be dissolved and the Community terminated pursuant to the provisions and procedures of section 47F-2-118 of the Act.

## ARTICLE XV

### RALEIGH CITY CODE REQUIREMENTS

#### **PART A DEFINITIONS AND GENERAL REQUIREMENTS**

15.1 **Definitions.** As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise (when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital letters in order to have the defined meaning). Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in Section 3 of this Part A (for example, words and terms defined by the Code and used in this Declaration have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

(a) “Act” is defined as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S.47F, with the particular section number following the G.S.47F reference (for example, G.S.47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

(b) “Annexation Declaration” is defined as a document, by whatever name denominated, that is recorded for the purposes of annexing Annexed Property to this Declaration and causing such Annexed Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and including any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

(c) “Annexed Property” is defined as all real property annexed or subjected (those two terms being used interchangeably herein) to any part or all of the terms of this Declaration following the initial recording of this Declaration in the Registry.

(d) “Association” is defined as the nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for the Properties. Sub-Association (if applicable) is defined as a nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for a portion of, but not all of, the Properties. There may be one or more Sub-Associations (if applicable) with respect to the Properties. An example of a Sub-Association is a property Owners association for a townhouse development that is part of a cluster unit development which has an Association for the cluster unit development. All references herein to an Association that is, in fact, a Sub-Association, are deemed corrected accordingly.

(e) “Board” is defined as the board of directors of the Association, and is the Executive Board as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

(f) “City” or “City of Raleigh” is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.

(g) “Code” is defined as the Raleigh City Code of Ordinances as it exists from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

(h) “Common Area” is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Properties, however such real property is described on a plat or document recorded in the Registry. Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one (1) Lot in the Properties or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the City). Common Areas include all of the following:

- (1) any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);
- (2) Stormwater Control Measures;
- (3) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any City utility easement;
- (4) any site or facility designated a common area, common property open space, open space common area, amenity area, or other similar designation on any recorded plat or map of the Properties, or in this Declaration;
- (5) any Code-required shared facility or Open Space for the Properties, except for Open Space owned by the City;

- (6) any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public Maintenance by the appropriate Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorney's fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and
- (7) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers.

Common Area that is owned by or subject to being Maintained by a Sub-Association is Sub-Association Common Area, even if it is referred to in this Declaration or in any recorded plat of the Properties as Common Area instead of Sub-Association Common Area. Common Area, if any, established by the Declarant or the Association for the benefit of fewer than all of the Owners and occupants of the Properties is Limited Common Area, and such Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Limited Common Area exists are subject to the same Code provisions as those applicable to Common Area. All references herein or in any recorded plat of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly. Sub-association Common Area, if any, owned by or subject to being Maintained by a Sub-Association for the benefit of fewer than all of the Owners and occupants of the applicable portion of the Properties is Sub-Association Limited Common Area, and such Sub-Association Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Sub-Association Limited Common Area exists are subject to the same Code provisions as those applicable to Sub-Association Common Area. All references herein or in any recorded plat of the Properties to Limited Common Area or Sub-Association Limited Common Area that is, in fact, Common Area or Sub-Association Common Area, are deemed corrected accordingly.

(i) "Common Expense" is defined as all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, and the Governing Documents and including specifically, but without limitation, all of the following: (Expenses for the Maintenance of Limited Common Area are Limited Common Expenses, which is a subcategory of Common Expense.)

- (1) All sums lawfully assessed by the Association against its Members;
- (2) Expenses of the Common Area and administration, inspection and Maintenance of the Common Area;

- (3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;
- (4) Expenses for acquisition, Maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;
- (5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;
- (6) Ad valorem taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;
- (7) Fees or charges for utilities used in connection with the Common Area;
- (8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (9) Allocations to reserve funds;
- (10) Payments owed to the City pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the City by the Declarant;
- (11) Fees for services engaged by the Association;
- (12) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other Governmental Entity;
- (13) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (14) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and
- (15) Expenses agreed by the Members to be Common Expenses of the Association.

(j) “Declarant” is defined as Ramblewood 2005, LLC, a North Carolina limited liability company, its successors and assigns.

(k) “Declarant Annexation Date” is defined as the last date and time on which the Declarant has the right to annex real property to this Declaration without the consent or joinder of any Person other than the City, which date is 5:00 p.m. on \_\_\_\_\_ (or, if no date is entered in the blank space, is 5:00 p.m. on the date that is seven (7) years following the date of the recording of this Declaration). The timeliness of an Annexation Declaration is determined by the date of its recordation as stamped by the Registry notwithstanding its date of execution.

(l) “Declarant Control Period” is defined as any period of Declarant control of the Association, as provided in 47F-3-103(d) of the Act and established in this Declaration (which may include a vote allocation that gives Declarant, by itself, sufficient voting power to elect members of the Board).

(m) "Declaration" is defined as the document, however denominated, which contains this Article, together with all exhibits and amendments to the document.

(n) "Fiscal Year" is defined as the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

(o) "Governing Documents" is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; Annexation Declarations; and other declarations of restrictive or protective covenants applicable to the Properties; and all Sub-Association documents (with respect to those portions of the Properties subject to such Sub-Association documents), as the same may be amended, restated or supplemented from time to time.

(p) "Governmental Entity" is defined as the City, the Counties of Wake and Durham, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Entity or entities is/are applicable.

(q) "Include" or "Including" is defined as being inclusive of, but not limited to, the particular matter described, unless otherwise clearly obvious from the context.

(r) "Lot" is defined as any numbered or lettered portion of the Properties, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is not any of the following: dedicated street rights-of-way; Common Area; Open Space owned in fee simple by the Association; greenway or park lands owned in fee simple by the City.

(s) "Maintain", "Maintenance", "Maintaining", or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation. Provided, however, this definition is not applicable to Section 8 of Part A of this Article.

(t) "Member" is defined as each Person who or which holds membership in the Association.

(u) "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust, and the terms mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

(v) "Open Space" is defined as open space areas shown on preliminary subdivision plans filed with the City and delineated on any recorded plat of the Properties or the open space areas required by the Code or by the conditional use zoning of the Properties for the perpetual benefit of the Owners. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code. Under the Code, Open Space may be owned by the Association, a Sub-Association, or by the City. Open Space owned by the Association or a Sub-Association is Common Area or Sub-Association Common Area, as appropriate.

(w) "Operating Deficit" is defined as the difference between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements.

(x) "Owner" is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any Person who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

(y) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the City), or other entity.

(z) "Properties" is defined as all of the real property subject to any part or all of the terms of this Declaration. The amount of acreage of the Properties at the time of the recording of this Declaration is \_\_\_\_ acres.

(aa) "Registry" is defined as the office of the Register of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Properties are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Properties is situated.

(ab) "Stormwater Agreement" is defined as any agreement recorded in the Registry among the Declarant, the Association, and the City, or between the Declarant and the City, or between the Association and the City, relating to Stormwater Control Measures for the Properties or any part thereof, and includes all amendments and supplements to such agreements. A Stormwater Agreement with the City includes the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution Contract and the Stormwater

Replacement Protection Easement and Access Maintenance Agreement and Lump Sum Replacement Contribution Contract (those names being subject to change from time to time under the Code).

(ac) “Stormwater Control Measures” or “Stormwater Control Facilities”, such terms being used interchangeably herein and in the Stormwater Agreement, is defined as one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and City drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures are Common Area or Limited Common Area, or Sub-Association Common Area or Sub-Association Limited Common Area, as applicable.

(ad) “Stormwater Operations Maintenance Manual and Budget” is defined as that manual; however named, attached to and incorporated into the Stormwater Agreement as an exhibit for the Maintenance of Stormwater Control Measures and the payment of the costs thereof.

15.2 Applicability. The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the City, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

### 15.3 Conflicts.

(a) Some or all of the Properties may be subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents.

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all Annexation Declarations are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Provided, however, any provision of this Declaration or any Annexation Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration or an Annexation Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(c) The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, any Annexation Declaration or any other Governing Documents.

(d) The provisions of this Declaration control over any inconsistent provisions of any other Governing Documents, except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the Articles shall control.

15.4 Amendment of Declaration. Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment. When City approval of an amendment is required by the Code or by a provision of this Declaration (including this Article), City approval shall be evidenced by the signature of the Raleigh City Attorney or his/her Deputy on the recorded original or copy of the amendment. Any amendment of this Article of this Declaration must have prior City approval. Any amendment of this Article or any other provision of this Declaration that requires City approval is void *ab initio* if recorded without the required City signature.

#### 15.5 Assessments.

(a) Obligation for Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) stormwater assessments created and established pursuant to Part B of this Article; (4) special assessments; (5) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (6) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (7) late payment charges, interest on unpaid assessments, costs of collection, including without

limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (8) all other assessments and charges imposed or allowed to be imposed by this Declaration.

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

(b) Purpose of Assessments. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which it applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board. All budgets of the Association shall be proposed in good faith and with the intent to cover all reasonably necessary Common Expenses for the applicable Fiscal Year of the Association, including monies allocated for reserve funds.

(c) Budgets; Amount of Assessments. The Association is at all times empowered to levy assessments against the Lots and the Owners of Lots within the Properties for the payment of Common Expenses.

Notwithstanding the foregoing, for calendar year 2006, the annual assessment per Lot is \_\_\_\_\_. The "Maximum Annual Assessment" for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the

Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

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

(d) Effect of Non-Payment; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

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

(e) Classes of Membership. This Declaration may allow different classes of membership in the Association and may allow different levels of annual assessments and other assessments to be imposed for different classes of membership.

(f) Declarant's Obligation to Fund Deficits; Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the

Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots owned by Declarant, in an amount equal to aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

(g) Certificate of Payment. The Association shall, within ten (10) business days after receipt of a written request from an Owner or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the assessments and other charges against a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

#### 15.6 Membership and Governance.

(a) Membership. The Declarant and every Owner within the Properties shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. The foregoing is not intended to include any Person that holds an interest merely as security for the performance of an obligation. Upon termination of ownership, an Owner's membership with respect to the transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot.

(b) Members' Rights of Use. Each Member and lawful occupant in the Properties shall have a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right rights of ingress and egress to and from all Common Areas throughout the Properties, subject to such rules and regulations as are allowed under the Governing Documents to be

imposed by the Association and subject to suspension of use rights allowed in the Governing Documents; provided that no suspension of rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by G.S. 47F-3-107.1 of the Act. But, the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

(c) Voting Rights. Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. If a Lot is owned by multiple Owners, the votes allocated to that Lot shall be cast only in accordance the agreement of a majority in interest of the multiple Owners unless otherwise provided in the Governing Documents. A majority agreement is conclusively presumed if only one of the multiple Owners casts the votes allocated to that Lot, unless any of the other Owners of the Lot protest such co-Owner's vote promptly to the Person presiding at the meeting.

(d) Proxies. Votes may be cast in person or by proxy. All proxies must be dated, duly executed by the Owner, and delivered to the Secretary of the Association or to the property management company authorized by the Board to receive proxies prior to the opening of the meeting for which it is first intended to be used. No proxy shall exceed a term of eleven (11) months from its date except as otherwise provided in the Act. Revocation of a proxy shall be made by actual notice to the Person presiding over the Association meeting.

(e) Quorum. Except as otherwise provided in the Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Governing Documents, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

15.7 Permanently Protected Undisturbed Open Space Areas. Within any permanently protected undisturbed open space areas shown on any recorded plat of the Properties, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code), any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse permit from the City. Permanently Protected Undisturbed open space may or may not be Open Space as defined in this Declaration.

15.8 Tree Conservation. The Association shall have a conservation easement for the planting of trees and for the protection and Maintenance of the trees situated within any tree conservation areas shown on any recorded plat of the Properties. No tree disturbing activity, as defined in Part 10, Chapter 2 of the Code, shall be permitted in tree conservation areas in violation of the Code. Any tree disturbing activity undertaken in tree conservation areas or in permanently protected undisturbed open space areas shown on recorded plats of the Properties without a permit from the City or otherwise in violation of the Code is a violation of the Code and may result in significant financial consequences to the Owner and to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of both the City and of the Association, enter tree conservation areas to perform active tree protection measures (as defined in the Code), to plant trees, to remove dead or diseased trees, or to plant replacement trees, provided, however, that Association consent shall not be required, unless otherwise required by other provisions of this Declaration or Governing Documents, if the tree conservation area in which the Owner desires to perform active tree protection measures or plant trees, remove dead or diseased trees and to plant replacement trees is located on that Owner's Lot.

15.9 Insurance. Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall procure and Maintain (i) hazard insurance on the Common Area, insuring against all risk of loss commonly insured against, including fire and extended coverage of peril, and (ii) liability insurance, in an amount of not less than one million dollars (\$1,000,000.00), 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 Common Area. The Association shall obtain and Maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial for the protection or preservation of the Common Area and other property of the Association or otherwise is in the best interests of the Association. The premiums for such insurance shall be a Common Expense paid from the annual assessments as established pursuant to this Declaration.

15.10 Indemnification. No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from its liabilities as an Owner under this Declaration and other Governing Documents.

15.11 On-Street Parking. Any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

15.12 Sight Triangles. No sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two feet and eight feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists, shall be placed within any area

designated on a recorded map of the Properties as a sight triangle or other similar designation. An easement over sight triangles is reserved for the benefit of the Declarant, the Association, and the City, and their respective agents and contractors for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or the Owner of the Lot with respect to the obstruction removed from the site triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Properties previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

15.13 Annexed Property. Real property which was not part of the City-approved development, or real property that was part of the City-approved development but which was not subjected to this Declaration at the time of its initial recording, may be annexed to this Declaration and made part of the Properties as Annexed Property, provided that all of the following conditions are met with respect to the real property to be annexed:

- (a) the Annexed Property is contiguous to the Properties or directly across a street from the Properties;
- (b) any development of the Annexed Property is first approved by the City;
- (c) annexation of such Annexed Property meets any other applicable requirements of this Declaration; and
- (d) contemporaneously with either the development of the Annexed Property or the recording of the plat of the Annexed Property, whichever first occurs, an Annexation Declaration shall be recorded in the Registry.

No Annexation Declaration shall be valid without the prior written approval of the Raleigh City Attorney or his/her deputy. Evidence of such approval shall be indicated by the signature of the City Attorney or his/her deputy on the recorded original or copy of the Annexation Declaration. Any Annexation Declaration recorded without the required City approval is void *ab initio*. An Annexation Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Annexed Property and as are not inconsistent with the general scheme of this Declaration. Each Annexation Declaration shall state that title to the Common Area that is included within the Annexed Property shall be conveyed to the Association no later than the time of the conveyance of the first Lot within the Annexed Property, and any Open Space in the Annexed Property shall be conveyed in fee simple without any encumbrances except drainage, greenway, utility and conservation easements and this Declaration. Open Space in the Annexed Property is subject to all Code and Declaration provisions relating to Open Space. Each Annexation Declaration shall state the amount of the Stormwater Assessment for Lots in the annexed Property when required by Part B, Section 6 of this Article.

Annexation of the Annexed Property shall be effective upon the later of the recording of the Annexation Declaration in the Registry or such later date as specified in the Annexation Declaration, and the Annexed Property described therein shall be subject to all of the provisions of this Declaration to the extent made applicable by the Annexation Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration and other Governing Documents of the Association. Each Owner of a Lot in Annexed Property shall be a Member of the Association, and the Annexed Property and each Owner of any portion thereof shall be subject to assessment by the Association in accordance with the terms of this Declaration, the Annexation Declaration, other Governing Documents, the Code, and the Stormwater Agreement, as applicable. The Association shall have the duties, responsibilities and powers set forth in this Declaration and other Governing Documents with respect to Annexed Property. Except as may otherwise be expressly provided in this Declaration or any Annexation Declaration, the Properties, including the Annexed Property, shall be managed and governed by the Association as an entirety. Assessments for Common Expenses collected from Owners in the Annexed Property may be expended by the Association for Common Expenses anywhere in the Properties without regard to the particular phase, area or subdivision from which such assessments came.

15.14 Access Easement for Repair of Structures. A perpetual access easement over an adjoining Lot hereby is established in favor of each Owner or tenant of a residence or business, and the contractors of such Owner or tenant, whose residence or business is located closer than five (5) feet from an adjoining Lot line, for the purpose of allowing the residence or business to be Maintained. No fence, wall, storage shed, or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the residence or business.

15.15 Access for Governmental Agencies. A non-exclusive, perpetual right of access over all Lots and Common Areas (including private streets, if any) in the Properties is hereby established for the benefit of Governmental Entities for installing, removing and reading water meters, Maintaining and replacing water and sewer facilities, fire lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and the delivery of mail.

15.16 Conveyance or Dedication of Common Areas. Common Areas, including Open Space, shall either be conveyed to the Association in fee simple without any encumbrances except this Declaration, drainage, greenway, utility and conservation easements of record at the time of conveyance, and the lien of real property taxes not yet due and payable, or conveyed to the City as allowed or required under the Code. Common Areas may be conveyed to the City free of part or all of the provisions of this Declaration, as determined by the Declarant and the City. Title to Common Areas shall be conveyed to the Association or to the City no later than the time of the conveyance of the first Lot within the applicable phase of the Properties. The Association shall accept all Common Areas, including the improvements installed thereon by the Declarant, deeded to it and/or dedicated to it on any recorded plat of the Properties, whether or

not the conveyance or dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Properties.

15.17 Private Utility Lines. Any water or sewer line that serves more than one Lot and which is either located outside of any public street right-of-way or outside of any City utility easement shall be owned and Maintained by the Association as Common Area. In no case shall the City or the State of North Carolina be responsible for Maintaining any such private utility line or be responsible for the consequences for any blockage, backflow, break or leak in said utility line. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lots within the Properties. Accordingly, the City shall not be responsible for failing to provide regular or emergency utility services to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or their occupants when such failure is due to inadequate design or construction, blockage, backflow, leakage, inadequate maintenance, or any other factor within the control of the Declarant, the Association, or the Owners or occupants of the Properties.

The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration. Provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

15.18 Landscape Easements. The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement removes or causes any of the shrubs or trees within the slope easement to die or become unhealthy (as defined in Part 10 Chapter 2 of the Code), it shall be the responsibility of the Association to replace the shrubs and trees in accordance with the minimum applicable quantity, size and spacing requirements of the Code within one-hundred and eighty days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association. Notwithstanding the foregoing, no Governmental Entity shall be required to obtain the consent of the Association when working within slope easements, greenway easements or construction easements.

**PART B**  
**STORMWATER**  
**(CODE SECTIONS 10-5007 and 10-9027)**

**Section 1. Stormwater Control Measures.** The Code requires that stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the Properties be reduced. To comply with the Code, Stormwater Control Measures will be installed by the Declarant and Maintained by the Association as Common Area or Limited Common Area (or by a Sub-Association as Sub-Association Common Area or Sub-Association Limited Common Area) in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement for the Properties so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code and applicable regulations, rules and directives of the City. The expenses for Maintenance of Stormwater Control Measures by the Association shall be Common Expenses (or, if applicable, Limited Common Expenses). Failure to Maintain the Stormwater Control Measures is a violation of the Code potentially subjecting each Owner of a Lot to significant daily civil penalties and other enforcement actions.

**Section 2. Creation of Stormwater Assessments.** Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a Stormwater Assessment, as hereinafter defined, established and collected as hereinafter provided, and each Owner of a Lot, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any person who may be designated by the Association to collect such monies) such Stormwater Assessment. For calendar year 2006, the Stormwater Assessment is \_\_\_\_\_ . Stormwater Assessments shall commence with respect to each Lot on the later of the date on which this Declaration or applicable Annexation Declaration is recorded or the date on which a plat is recorded establishing the Lot. The annual budget for the Association shall include a line item evidencing the Stormwater Assessments, and the amount budgeted shall be sufficient to satisfy the total annual inspection, management and Maintenance budget for the Stormwater Control Measures as set forth in the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, and any replacement contribution payment owed to the City pursuant to the Stormwater Agreement. The Association shall honor its obligations under the Stormwater Agreement, and the Association shall assess the Stormwater Assessment. The Declarant and each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the Members of the Association. No vote of the Owners is required to levy, collect, or foreclose a Stormwater Assessment. Stormwater Assessments shall be paid to the Association at the same time annual assessments are due.

In the event of nonpayment of any Stormwater Assessment for a period of thirty (30) days or longer after the payment due date, such Stormwater Assessment, together with interest at a rate not to exceed the highest rate allowed by North Carolina law, as computed from the date the

delinquency first occurs, late charges, and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land upon the filing of a claim of lien, in the manner provided in G.S.47F-3-116(g), in the office of Clerk of Superior Court in the County in which the Lot is located and shall be a continuing lien upon each Lot against which the assessment is made until paid in full. The lien may be foreclosed in accordance with North Carolina law, or in any other manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the Stormwater Assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. In such instances, such unpaid assessments shall be deemed Common Expenses collectible from all Owners, including the new Owner.

Each Stormwater Assessment, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was the Owner of the Lot at the time when the Stormwater Assessment first became due and payable. If more than one Person held an ownership interest in the Lot at the time the Stormwater Assessment first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of Stormwater Assessments shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amount due is paid.

The creation of the Stormwater Assessments is for the benefit of the City, and the Stormwater Assessments may be collected and enforced by the City as provided herein and in the Code.

**Section 3. Purpose of Stormwater Assessments.** The Stormwater Assessments to be levied by the Association against each Lot shall be used as follows:

(a) to pay the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve funds, under any Stormwater Agreement, including Maintenance of the Stormwater Control Measures in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code, applicable regulations and rules and directives of the City;

(b) to pay all legal, engineering and other professional fees incurred by the Association in carrying out its duties as set forth herein, or in the Governing Documents, or in the Stormwater Agreement in connection with the Stormwater Control Measures; and

(c) payments to the City pursuant to the Stormwater Agreement.

**Section 4. Assignment of Collection Rights and Lien Rights to the City.** Pursuant to the Stormwater Agreement and G.S.47F-3-102(15) of the Act, the Association has assigned to the City its rights to collect Stormwater Assessments, its rights to file liens against the Lots, and the right to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement. The Association shall have a license to collect Stormwater Assessments, to file liens against the Lots, and to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement until such time as the City notifies the Association in writing that it has elected to exercise its right to collect Stormwater Assessments, to file liens against the Lots, and/or to foreclose on those liens for monies owned by the Association to the City pursuant to the Stormwater Agreement. Declarant hereby irrevocably authorizes and directs each Owner to rely upon any written notice sent to such Owner by the Association that the City has elected to exercise its rights hereunder and thereafter to pay Stormwater Assessments directly to the City without any obligation or right to inquire otherwise until such time such Owner receives written notice from the City to pay the Stormwater Assessments directly to the Association. As the assignee of the Association's collection and lien rights, upon the filing of a claim of lien by the City, any such lien may be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Articles 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the office of the clerk of superior court of the county in which the Lot is located; which claim of lien shall state the description of the Lot(s) encumbered by the claim of lien, the name and address of the Association and of the City, the record Owner(s) of the encumbered Lot(s) at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be filed any time after a period of thirty (30) days or longer of default and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is filed, plus late charges, interest at the rate set forth in the Stormwater Agreement, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorney's fees. Any lien claim filed by the City shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

**Section 5. Effect of Assignment.** Each Owner of a Lot, by acceptance of a deed or otherwise, vests in the City, as the assignee of the Association's collection and lien rights for the Stormwater Assessments, the right and power, upon nonpayment of the Stormwater Assessments by the Association, to bring all actions against each Owner, personally, for the collection of such charges as a debt or to foreclose the lien, which charges and lien amounts shall equal a pro-rata share of the Stormwater Assessments for each Owner. The lien provided for in this Article shall be in favor of the City and shall be for the benefit of all Owners.

**Section 6. Annexation of Additional Property.** As set forth in this Declaration, additional real property from time to time may be annexed to the Properties and subjected to this Declaration.

Such Annexed Property shall also be subjected to existing Stormwater Agreements and/or new Stormwater Agreements, in accordance with the following:

In connection with the recording of an Annexation Declaration, either a new Stormwater Agreement and/or an amendment to an existing Stormwater Agreement (as determined by the City) shall be entered into among the City, Declarant, and Association to address the Stormwater Control Measures of the Annexed Property. Except in those instances where the Stormwater Agreement already contains contribution payments for the Annexed Property, the Annexation Declaration shall establish a new Stormwater Assessment for the Lots in the Annexed Property with respect to all new Stormwater Control Measures located in or serving such Annexed Property, and such new Stormwater Control Measures shall be designated as Common Area or Limited Common Area, as appropriate, on the recorded plat(s) of the Annexed Property. The new Stormwater Assessment shall be sufficient to Maintain the new or additional Stormwater Control Measures in or serving the Annexed Property and to pay the applicable replacement contribution payments to the City under the new or amended Stormwater Agreement, and such Stormwater Assessment shall be assessed against the Owners of the Lots of the Annexed Property and Owners of the existing or future Lots served by the same Stormwater Control Measures.

**Section 7. Drainage Easement.** The Declarant dedicates, establishes and declares to and for the benefit of each Lot, the Common Area and each Owner hereof:

(a) a perpetual, irrevocable and nonexclusive easement, right and privilege to discharge and store surface water drainage from such Lot or Common Area into the Stormwater Control Measures situated in private drainage easements that serve the Properties, whether located on or off or the Properties, and

(b) a perpetual, irrevocable and non-exclusive easement, right and privilege to use and Maintain Stormwater Control Measures, including the right of access to and from the private drainage easements and other portions of the Properties as reasonably necessary to Maintain the Stormwater Control Measures.

**Section 8. Joint and Several Liability.** Each Owner of any portion of the Properties served by Stormwater Control Measures is jointly and severally responsible for Maintenance of such Stormwater Control Measures, including payment of any unpaid *ad valorem* taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the Stormwater Control Measures, and including all interest charges thereon, together with the costs and expenses of collection incurred by the City or other collecting Person, including court costs and reasonable attorney's fees actually incurred. Each Owner of any portion of the Properties served by the Stormwater Control Measures has a right of contribution against all other Owners of other portions of the Properties served by the same Stormwater Control Measures for payment of such costs and expenses to the extent that the Owner having such right of contribution pays more than such Owner's prorata share thereof, such prorata share

being determined either by other assessment provisions of this Declaration or by dividing the acreage of such Owner's portion of the Properties served by the Stormwater Control Measures by the total acreage of the Properties served by the same Stormwater Control Measures.

**Section 9. Relocation of Drainage Easements.** Drainage easements situated on the Properties may be relocated only by a written agreement signed by the Association - upon approval of the Board of Directors without vote of the Members - and by the Owners of all portions of the Properties on which the drainage easement then is located, and by the Owners of all portions of the Properties on which the drainage easement is to be relocated. The consent of tenants and Mortgagees of the affected Lots shall not be required for the relocation to be effective. All relocations of a drainage easement shall be accompanied with a letter sealed by a professional engineer licensed in the State of North Carolina stating that the relocated drainage easement will not cause any adverse stormwater runoff unto adjoining properties.

Notwithstanding anything herein to the contrary, no relocation of any drainage easement shall be valid without the without the prior approval of the Raleigh Chief Engineer or his/her Deputy. City approval shall be evidenced by the signature of the Raleigh Chief Engineer or his/her Deputy on the recorded plat or other instrument of the relocation. Any relocation, without the required City signature is void *ab initio*.

Relocation of a drainage easement is valid from the later of the time of either recording of the plat or other instrument of relocation in the Registry or such later date specified therein.

**PART C**  
**CLUSTER UNIT DEVELOPMENT**  
**(CODE SECTIONS 10-2101, 10-3071 and 10-3073)**

Any portion of the Properties that is part of a "cluster unit development", as that term is defined in the Code, is subject to all of the following:

**Section 1. Open Space.** In addition to other provisions of this Article (*see e.g.*, Part A, Sections 6, 16 and 17), all Open Space is subject to the following:

(a) Preservation. Open Space and private streets shall be preserved for the perpetual benefit of the Owners of the Lots within the Properties, and shall be restricted against private or public ownership for any other purpose except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage, conservation and greenway easements.

(b) Exchange. Open Space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of Open Space for other properties when all of the following are met:

- (1) written notice of the exchange is given to each Member of the Association;
- (2) after the notice is given, those Members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;
- (3) the exchanged properties and other considerations are of like value and utility;
- (4) the acreage and configuration of the remaining Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and
- (5) the exchange is approved by the Planning Director of the City.

(c) Dissolution. If the Association is dissolved, the Open Space shall first be offered to the City, and, if accepted, deeded to the City.

(d) Recreation. Recreational uses located in Open Space and other Common Areas shall comply with the provisions of Code Section 10-2072 related to recreational use related to a residential development, other than a single-family dwelling unit. Membership fees shall not be charged to non-members of the Association for any recreation facility located in a residential zoning district unless the facility is owned by a non-profit entity and a special use permit is first obtained from the Raleigh Board of Adjustment in accordance with Code Section 10-2144(b), "Recreational Use Restricted to Membership - Not for Profit".

(e) Mortgaging of Open Space. Open Space may be subjected to a security interest with the written approval by those Members who have the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration, and provided that the rights of the mortgagee are subordinate to the rights of the Owners and the Association.

**Section 2. Residential Density Transfers.** The Properties are developed as a cluster unit development approved by the City. Residential density transfers are permitted in a cluster unit development as allowed in the Code. Accordingly, even though some Lots may appear to contain enough land area to construct additional dwelling units or create additional Lots, prior density transfers approved within the cluster unit development may, in fact, preclude City approval of additional dwellings or further subdividing of Lots.

**Section 3. Development Rights.** Development rights retained by the Declarant as special Declarant rights, including the right to add real estate to the cluster unit development, to add dwelling units, to add Common Areas, to change dwelling unit types within the cluster, or to reallocate units within the cluster, as well as all conditions and limitations applied to the exercise of any such development rights, are described in other Articles and Sections of this Declaration.

Exercise of any of the development rights described in this Section is subject to the prior approval of the City.

**Section 4. Addition of Land.** The maximum amount of land that can be added to the cluster unit development is as follows: \_\_\_\_\_ acres.

**Section 5. Number of Dwelling Units.** The maximum number of dwelling units and the maximum number of dwelling units per acre that can be contained in the cluster unit development, or transferred to portions of the cluster unit development without rezoning the real property to another zoning classification for additional dwelling units, are as follows (for purposes of this Section, the cluster unit development includes all portions of the Properties initially subjected to this Declaration that are part of the cluster unit development, together with all Annexed Property that becomes subject to this Declaration and is part of the cluster unit development):

(a) maximum number of dwelling units allowed in the cluster unit development is \_\_\_\_\_;

(b) maximum number of dwelling units per acre allowed in the cluster unit development is \_\_\_\_\_;

**Section 6. Common Party Walls.** All common party walls between individual residences shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

(a) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable Maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall, without

prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(e) The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

(f) An Owner who desires to sell a residence, or the prospective purchaser of such residence, may request the Owners of each other residence which shares that common party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such common party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a residence which shares a common party wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that residence and with respect to third parties.

(g) Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences or businesses to the extent reasonably necessary to repair, restore, Maintain or reconstruct the common party wall. Such repair, restoration, Maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences or businesses damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

**PART D**  
**TOWNHOUSE DEVELOPMENT**  
**(CODE SECTIONS 10-2109, 10-3072 AND 10-3073)**

Any portion of the Properties that is part of a “townhouse development”, as that term is defined in the Code, is subject to all of the following. A townhouse development may be, but is not required to be, part of a cluster unit development. Any townhouse development that is part of a cluster unit development is also subject to the provisions of the Code applicable to cluster unit developments (some of which may be identical to the following provisions), except as otherwise provided in the Code:

**Section 1. Open Space.** In addition to other provisions of this Article (*see e.g.*, Part A, Sections 6, 16 and 17), all Open Space is subject to the following:

(a) **Townhouse Open Space.** Townhouse Open Space and private streets used for the exclusive benefit of townhouse residents are Limited Common Area or Sub-Association Common Area when the townhouse development is part of a cluster unit development containing other housing types.

(b) **Preservation.** Open Space and private streets shall be preserved for the perpetual benefit of the Owners of the Lots within the Properties, and shall be restricted against private or public Ownership for any other purpose, except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage, conservation and greenway easements.

(c) **Exchange.** Open Space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of Open Space for other properties when all of the following are met:

- (1) written notice of the exchange is given to each Member of the Association;
- (2) after the notice is given, those members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;
- (3) the exchanged properties and other considerations are of like value and utility;
- (4) the acreage and configuration of the remaining Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and
- (5) the exchange is approved by the Planning Director of the City.

(d) **Dissolution.** If the Association is dissolved, the Open Space shall first be offered to the City, and if accepted, deeded to the City.

(e) **Recreation.** Recreational uses located in Open Space and other Common Areas shall comply with the provisions of Code Section 10-2072 related to recreational use related to a

residential development, other than a single-family dwelling unit. Membership fees shall not be charged to non-members of the Association for any recreation facility located in a residential zoning district unless the facility is owned by a non-profit entity and a special use permit is first obtained from the Raleigh Board of Adjustment in accordance with Code Section 10-2144(b), "Recreational Use Restricted to Membership - Not for Profit".

(f) **Mortgaging of Open Space.** Open Space may be subjected to a security interest with the written approval by those Members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration, and provided that the rights of the mortgagee are subordinate to the rights of the Owners and the Association.

**Section 2. Common Party Walls.** All common party walls between individual residences shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

(a) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable Maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(e) The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may

be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

(f) An Owner who desires to sell a residence, or the prospective purchaser of such residence, may request the Owners of each other residence which shares that common party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such common party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a residence which shares a common party wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that residence and with respect to third parties.

(g) Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences or businesses to the extent reasonably necessary to repair, restore, Maintain or reconstruct the common party wall. Such repair, restoration, Maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences or businesses damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

**PART F**  
**CITY GREENWAYS**  
**(CODE SECTIONS 10-3003 AND 10-3022)**

Notwithstanding any other provision of this Declaration, without the prior written consent of the City, none of the following is allowed in any City-owned greenway or greenway easement: grading; excavation; dredging; the addition or removal of soil or other materials; the erection of buildings, signs, fences, drainage devices or structures; or any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code). The City, in its sole discretion, at any time and from time to time, may erect paved or unpaved trails, trail markers, and place litter receptacles and other convenience facilities, within the greenway boundaries. The City, in its sole discretion, may adopt and amend regulations concerning the use of greenway (including, by way of example, limiting hours of operation), which shall be equally applicable to the general public and to the Owners and their occupants and guests.

**PART G**  
**PRIVATE STREETS**  
**(CODE SECTION 10-3074)**

**Section 1. Private Streets.** Pursuant to Code Section 10-3074 (b) and (c), all of the following are applicable to private streets in the Properties:

(a) In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or to the occupants of same when such failure is due to lack of access to such areas due to inadequate design, construction or blocking of access routes, inadequate Maintenance, or any other factor within the control of the Declarant, the Association, the Owners or the occupants of the Properties.

(b) In no case shall the City or the State of North Carolina be responsible for Maintaining any private street. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lot within the Properties, in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

(c) The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration; provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

ARTICLE XVI

DISPUTE RESOLUTIONS AND LIMITATIONS ON LITIGATION

16.1 Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Declarant, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “**Bound Parties**”) agree to encourage the amicable resolution of disputes involving the Community in order to avoid the emotional and financial costs of litigation. Accordingly, to the extent permitted under applicable law, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Property including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles (collectively “**Claim**”), except for those Claims authorized in Section 15.2, shall be resolved using the procedures set forth in Section 15.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

16.2 Exempt Claims. The following Claims (“**Exempt Claims**”) shall be exempt from the provisions of Section 15.1:

16.2.1 Any suit by the Association against any Bound Party to enforce the provisions relating to Assessments;

16.2.2 Any suit by the Association to obtain a temporary restraining order or equivalent emergency equitable relief and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions relating to architectural control or use restrictions;

16.2.3 Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, Bylaws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00;

16.2.4 Any suit arising out of any written contract between Owners and which would constitute a cause of action under the laws of the State of North Carolina in the absence of the Declaration, Bylaws, and Articles of the Association; and

16.2.5 Any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 15.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 15.3 shall require the approval of the Association.

16.3 Mandatory Procedures for All Other Claims. All claims other than Exempt Claims shall be resolved using the following procedures:

16.3.1 Notice. Any Bound Party having a claim ("**Claimant**") against any other Bound Party ("**Respondent**"), other than an Exempt Claim, shall notify each respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely:

(i) The nature of the Claim, including date, time, location, persons involved and respondent's role in Claim;

(ii) The basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the claim arises);

(iii) What Claimant wants Respondent to do or not to do to resolve the Claim;

(iv) That the Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

16.3.2 Negotiation.

(i) Each Claimant and Respondent (the “**Parties**”) shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good negotiation.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if it believes its efforts will be beneficial to the Parties and to the welfare of the community.

### 16.3.3 Mediation.

(i) If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“**Termination of Negotiations**”), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the same geographical area upon which the Parties may mutually agree.

(ii) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(iii) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings (“**Termination of Mediation**”). The Termination of Mediation notice shall set forth when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.

(iv) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand (“**Settlement Demand**”) to the Respondent. The Respondent shall make a formal written settlement offer (“**Settlement Offer**”) to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant’s original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a “zero” or “take nothing” Settlement Offer.

16.3.4 Final and Binding Arbitration. Any and all claims, disputes and controversies by and between the Declarant, Association and/or Owners or any combination thereof arising from or related to the Community (including Townhouse Units and Common Elements), any improvements to the Land, the sale of the Land, including, without limitation, any claim of breach of contract or warranty, negligence, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any

alleged duty of good faith and fair dealings, shall be submitted to arbitration by and pursuant to the rules of Construction Arbitration Services, Inc. (hereinafter “CAS”) in effect at the time of the request for arbitration or by such other arbitration service as Declarant shall, in its sole discretion select, and pursuant to the rules of that arbitration service in effect at the time of the request for arbitration. This arbitration agreement shall inure to the benefit of, and be enforceable by, all successors and assigns of the parties. Any party shall be entitled to recover reasonable attorneys’ fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues, and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement and, notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The arbitrator’s compensation shall be borne equally by the arbitrating parties. Any additional fees may be assessed in accordance with the arbitration rules and fees. Parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC §1 *et seq.*) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or (ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms.

16.3.5 Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with the above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth above and, in such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

16.4 Litigation. (a) any litigation by the Association other than the Exempt Claims set out above, or (b) any arbitration against the Declarant shall both require an affirmative vote of seventy-five percent (75%) of the Members of the Association prior to the institution of such litigation. If and to the extent allowed by applicable law, no lawsuit shall be permitted against the Declarant.

## ARTICLE XVII GENERAL PROVISIONS

17.1 Duration. The covenants, restrictions and conditions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of twenty (20) years from the filing thereof, after which time, any such provision shall be (i) automatically extended for successive periods of twenty (20) years from the date hereof; unless such extension is disapproved by at least sixty-seven percent (67%) of the Total Association Vote as evidenced by instrument reflecting such disapproval recorded in the County Records within the year immediately preceding the beginning of any twenty (20) year renewal period; (ii) or the Association is dissolved or otherwise terminated pursuant Article XV or (ii) as otherwise provided by law.

17.2 Enforcement. The Declarant (during the Declarant Control Period), the Association, any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by such parties to enforce any such provision herein shall in no event be deemed a waiver of the right to do so thereafter. Pursuant to the provisions and procedures of section 47F-3-107.1 of the Act the Association may also levy reasonable fines not to exceed \$150.00 per violation any violations for any infraction of this Declaration of any Supplemental Declaration or amendment thereto, the Bylaws and/or the Rules and Regulations; any fines so paid and collected by the Association shall be deposited in the Association's general fund or Reserve Account in the Board's discretion.

17.3 Notices. Any notice required to be sent to any Member pursuant hereto shall be deemed to have been properly sent and notice thereby given when delivered personally or sent by mail with the proper postage affixed to the address appearing on the Association membership list. It shall be the obligation of every Member to immediately notify the Association Secretary in writing of any change of address. Association notice to one or more co-Owners shall constitute notice to all co-Owners. Any Person who becomes a Member following the first day in the calendar month in which said notice is delivered or mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

17.4 Books and Records.

17.4.1 Inspection by Members and Mortgagees. This Declaration (and any amendments of supplementary declarations thereto), copies of the Rules and

Regulations, membership register, books of account, and minutes of Member meetings of the Association, the Executive Board, Architectural Board and any Association committee shall be made available for inspection and copying by any Member of the Association or Eligible Mortgagee (or their respective duly appointed representatives) for any lawful and reasonable purpose at the office of the Association or at such other reasonable place as the Board shall prescribe; provided, however, the Executive Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records; (ii) hours and days of the week such inspection may be made, and (iii) payment of the cost of document reproduction.

17.4.2 Inspection by Executive Board Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association. Such right of inspection by a director includes the right to make extra copies of documents at reasonable expense to the Association.

17.5 Financial Statements. Financial statements for the Association shall be compiled annually for distribution to the Members in the manner as the Executive Board may decide or is otherwise provided by law; provided, however, after having received the Board's financial statements at the Association annual meeting, the Members, by an affirmative majority vote, may require that the financial statements of the Association be audited as a Common Expense by a certified public accountant. Upon written request of any Eligible Mortgagee and upon payment of all costs associated therewith, such Mortgagee shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request.

17.6 Agreements. Subject to the prior approval of Declarant during the Declarant Control Period, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Executive Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

17.7 Indemnification. In accordance with the North Carolina Nonprofit Corporation Act and to the full extent allowed, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any such action, suit, or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interest of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon determination that indemnification of the Person is proper under the circumstances.

17.8 Other Governing Instruments. Notwithstanding anything contained herein to the contrary, all the provisions of these covenants shall be subject to, interpreted and applied in accordance with the laws of the State of North Carolina and the Code of the City of Raleigh, North Carolina, and the regulations promulgated thereunder and (ii) the Act.

17.9 Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot or Lot Unit, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

17.10 Gender and Grammar. The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

17.11 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

17.12 Captions. The Captions of each Article and section hereof, as to the contents of each article and section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular article or section to which they refer.

17.13 Conflicts. In the event of any irreconcilable conflict between the Declaration and the Bylaws, the provisions of this Declaration shall control. In the event of an irreconcilable conflict between this Declaration and the Articles of Incorporation, the provision of the Declaration shall control. Unless otherwise allowable under the Act as being discretionary, in the event of a conflict between or among any provision in this Declaration, the Articles of Incorporation or the Bylaws and the Act, the Act shall control.

IN WITNESS WHEREOF, the undersigned Declarant has executed this instrument under seal by authority duly given all as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

[SIGNATURE PAGE AND ACKNOWLEDGMENT ATTACHED]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be duly executed the day and year first above written.

DECLARANT:

RAMBLEWOOD 2005 LLC,  
a North Carolina limited liability company

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_ County, State of North Carolina, certify that \_\_\_\_\_. (the "Signatory"), personally came before me this day and acknowledged that he is the \_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_, and that he, in such capacity and being authorized to do so, executed the foregoing on behalf of the limited liability company.

I certify that the Signatory personally appeared before me this day, and  
(check one of the following)

- \_\_\_\_\_ (I have personal knowledge of the identity of the Signatory); **or**
- \_\_\_\_\_ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

- \_\_\_ a driver's license *or*
- \_\_\_ in the form of \_\_\_\_\_); **or**
- \_\_\_\_\_ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]

EXHIBIT A

The Properties