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GUILFORD COUNTY, NC  
JEFF L. THIGPEN  
REGISTER OF DEEDS

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DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR NORTH VILLAGE TOWNES

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DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS FOR NORTH VILLAGE TOWNES

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR NORTH VILLAGE TOWNES (“Declaration”) is made as of \_\_\_\_\_, 2023, by GHD-REEDY FORK, LLC, a North Carolina limited liability company (“Declarant”).

RECITALS

A. The Declarant is the owner of that certain property located in Guilford County, North Carolina, described in Exhibit A hereto (the “Property”). The Declarant intends that various portions of the Property be set aside for the collective use of the owners and residents of the planned community known as North Village Townes to be created on the Property.

B. In order to preserve and enhance the value of the homes built on the Property and to promote the welfare of their owners and occupants, the Declarant desires to submit the Property to this Declaration.

C. In order to facilitate the objectives described herein, the Declarant has formed, or will form, a North Carolina non-profit corporation called North Village Townes Community Association, Inc. (“Association”), which shall be responsible for the enforcement and performance of certain obligations under this Declaration.

NOW, THEREFORE, Declarant declares that the Property, together with such additions thereto as are hereafter made pursuant to Article 2 of this Declaration, shall be held, transferred, sold, conveyed, leased, mortgaged, used, occupied and improved subject to the easements, covenants, conditions, restrictions, servitudes, charges and liens created or provided for by this Declaration.

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. 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.

1.1. “Act” means 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.

1.2. “Architectural Review Committee” or “ARC” means the “Architectural Review Committee” or “ARC” as defined in the Master Declaration (as defined in Section 1.40).

1.3. “Articles” means the Articles of Incorporation of the Association which have been filed in the office of the Secretary of the State of North Carolina, as amended from time to time.

1.4. “Assessment” means any of the types of assessments defined below in this Section.

1.4.1. “Attached Townhome Assessment” means the amounts charged to each Attached Townhome subject to assessment by the Association representing its proportionate share of the Attached Townhome Expenses as determined in accordance with Sections 11.5 and 11.8.

1.4.2. “Common Assessment” means the amounts charged to each Lot subject to assessment by the Association under Article 11, representing the Lot’s share of the Common Expenses as determined in accordance with Sections 11.5 and 11.6.

1.4.3. “Individual Assessment” means the amounts charged to one or more Lots by the Association in connection with (.1) the enforcement of the Governing Documents as a result of the acts or omissions of the Owner or Permitted Users of a Lot, their respective agents, contractors, subcontractors, employees, licensees or invitees for their failure to duly perform their obligations under the Governing Documents, (.2) reimbursing the Association for expenses incurred by the Association due to that Owner’s failure to Maintain his Lot or Unit pursuant to the standards set forth in this Declaration, (.3) reimbursing the Association for injury, loss or damage to the Association or to any Common Area, Association Property or other Lot caused by the Owner or Permitted Uses, or their respective agents, contractors, subcontractors, employees, licensees or invitees, and not covered by insurance, or (.4) for any other purpose expressly authorized by this Declaration.

1.4.4. “Special Assessment” means and includes the following: the amounts charged to each Lot subject to assessment by the Association for any of the following purposes: (.1) unbudgeted expenses or expenses in excess of the amounts budgeted; (.2) expenses incurred by the Association for repair, replacement or reconstruction of any Improvements on any portion of the Common Areas or Association Property; (.3) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement on any portion of the Common Areas or Association Property; (.4) expenses incurred by the Association for Restoration of portions of the Property in the event the insurance proceeds are insufficient to pay the Restoration Costs or in the event the injury, loss or damage resulted from an uninsured loss; or (.5) expenses incurred by the Association for installation or construction of any Improvements in the nature of a capital improvement to the Attached Townhomes in connection with Attached Townhome Services.

If Special Assessments are assessed for Common Expenses or for any purpose identified in clause (.2) or (.3) above, they shall be assessed against all Lots subject to assessment under Article 11. If Special Assessments are assessed for Attached Townhome Expenses, they shall be assessed against all Attached Townhomes subject to assessment within the particular Collection under Article 11. If Special Assessments are assessed for any purpose identified in clause (.4) above, they shall be assessed against the Owners of the damaged Attached Townhomes in the same proportion which the Restoration Costs attributable to their Attached Townhomes bears to all Restoration Costs of the damaged Attached Townhomes as provided in Article 9. If Special Assessments are assessed for any purpose identified in clause (.5) above, they shall be assessed against all Attached Townhomes benefited by the installation or construction of capital

improvements as provided under Article 11.

1.5. “Association Property” means all personal property owned by the Association. Association Property shall also include all personal property in which the Association holds possessory or use rights.

1.6. “Attached Townhome” means a two (2) or three (3) story Unit which has no Units located above or below it and which shares one or more Party Walls with adjacent Unit(s).

1.7. “Attached Townhome Building” means an Improvement consisting of two or more Attached Townhomes notwithstanding that each Attached Townhome therein is located on a separate Lot.

1.8. “Attached Townhome Expenses” means all actual and estimated expenses which the Association incurs or expects to incur to provide Attached Townhome Services for the benefit of Owners of Attached Townhomes, including any of the following in connection therewith: Maintaining (including reasonable reserves for capital improvements, repairs and replacements) and providing labor, materials, goods, services, or benefits in connection with Attached Townhome Services, all as may be determined from time to time by the Board of Directors of the Association in accordance with this Declaration.

1.9. “Attached Townhome Owner” means the Owner of an Attached Townhome.

1.10. “Attached Townhome Services” means those goods, services, items or benefits provided by the Association for the benefit of the Attached Townhomes pursuant to this Declaration, any Supplemental Declaration or agreement approved by a majority of the voting interests of the Attached Townhome Owners present in person or by proxy at a meeting of the Attached Townhome Owners. Attached Townhome Services include the following:

1.10.1. Exterior Maintenance for Attached Townhomes;

1.10.2. Procurement and Maintenance of the insurance coverage described in Section 8.2 and Section 8.3 of this Declaration; and

1.10.3. Restoration of those portions of the Attached Townhomes when damaged by casualty or loss as provided in Article 9 of this Declaration;

The Association has the right in its sole and absolute discretion to change, add, modify, expand, reduce or eliminate Attached Townhome Services upon not less than ninety (90) days prior written notice to the Attached Townhome Owners.

1.11. “Board” or “Board of Directors” means 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.

1.12. “Builder” means (i) Pulte Home Company, LLC, a Michigan limited liability company (“Pulte”), and (ii) any other person or entity expressly designated as a “Builder” by Declarant in a recorded amendment to this Declaration or in any Supplemental Declaration.

1.13. “Bylaws” means the Bylaws of the Association adopted by the Board, as amended from time to time.

1.14. “City” or “City of Greensboro” means the City of Greensboro, North Carolina, a North Carolina municipal corporation.

1.15. “Class A Member” shall have the meaning set forth in Section 4.2.1.

1.16. “Class B Member” shall have the meaning set forth in Section 4.2.2.

1.17. “Code” means the Code of Ordinances for the City, as amended and supplemented from time to time.

1.18. “Collection” means a group of Units having similar features or characteristics which are designated as such by an amendment hereto or in a Supplemental Declaration. A group of Units may be designated as a separate Collection for purposes of receiving goods, services or benefits that are not provided to all of the Units, or are provided at a different level or frequency. A Collection may be comprised of more than one group of Units or type of Improvement within the Property and the Lots within the Collection need not be contiguous or adjacent. For so long as the Declarant or its affiliates own any portion of the Community, the Lots within any Collection shall be determined by the Declarant in its reasonable discretion and thereafter by the Association.

1.19. “Common Areas” means all real property and interests in real property, together with any Improvements situated thereon, intended for the common use and benefit of the Association, the Owners, and/or the Permitted Users of the Property, and designated as a Common Area in this Declaration, on a Subdivision Plat or other document recorded in the Registry. For avoidance of any doubt, the Common Areas shall include any private streets or alleys within the Community. Common Areas may be owned or leased by the Association or dedicated to the Association on a Subdivision Plat or 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 Property and that serves more than one (1) Lot 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 Town).

1.20. “Common Expenses” means all of the actual and estimated expenses of the Association for owning, leasing, administering, Maintaining, managing, operating, insuring, repairing, and replacing the Common Areas and Association Property (including unpaid Common Assessments and Special Assessments not paid by the Owner responsible for payment), and performing its rights and responsibilities under the Act and the Governing Documents, together with any other expenses incurred by the Association as are specifically provided for elsewhere in this Declaration or are otherwise reasonably incurred by the Association in connection with the Association, Common

Areas or Association Property or for the benefit of the Owners and their Permitted Users.

1.21. “Community” means that planned community known as North Village Townes and depicted on the Site Plan.

1.22. “County” means Guilford County, North Carolina.

1.23. “Declarant” means GHD-Reedy Fork, LLC, a North Carolina limited liability company, its successors and those assigns to which the Declarant may assign all or a portion of its rights hereunder in a written assignment recorded in the Registry. In the event of a partial assignment, the assignee shall not be deemed the Declarant, but may exercise such rights of Declarant specifically assigned to it. Any such assignment may be made on a nonexclusive basis.

1.24. “Declarant Control Period” means as any period of Declarant control of the Association, as provided in 3-103(d) of the Act and established in this Declaration. For purposes of this Declaration and other Governing Documents, “Declarant Control Period” refers to the period during which the Declarant shall have the right to control the Association and appoint all of the Board of Directors. The Declarant Control Period shall expire on first to occur of the following events:

1.24.1. December 31, 2053;

1.24.2. The later of 365 days or the annual meeting following the date on which one hundred (100%) percent of the Units in all phases of the Community that may ultimately be subject to this Declaration have been conveyed to Class A Members; or

1.24.3. When the Declarant records a notice in the Registry expressly terminating its Class B membership.

1.25. “Declarant’s Permittees” means the Declarant’s officers, directors, partners, joint venturers, managing members (and the officers, directors and employees of any such corporation, partnership, joint venture or limited liability company), employees, beneficiaries, agents, independent contractors (including both general contractors and subcontractors), suppliers, visitors, licensees and invitees and those of any affiliate of the Declarant.

1.26. “Declaration” and “this Declaration” mean (and, except as otherwise provided in Section 1.63, “herein”, “hereto”, “hereof”, “hereunder” and words of similar import shall refer to) this document together with all exhibits and amendments to the document and Supplemental Declarations thereto.

1.27. “Eligible Mortgagee” means a First Mortgagee which owns, services, insures or guarantees a First Mortgage encumbering a Unit which has notified the Association in writing of its name and address and status as a holder, insurer or guarantor of a First Mortgage. Such notice will be deemed to include a request that the Eligible Mortgage Holder be given the notices and other rights described in Article 17.

1.28. “Exterior Maintenance” means all labor, materials, goods and services necessary or desirable to Maintain in good repair and condition, operate, inspect, test, repair, preserve, perform minor alterations, clean, and/or any other action or activity commonly or customarily regarded as Maintenance of the following the standard original exterior portions of an Attached Townhome:

1.28.1. repair and replacement of the roof of each Attached Townhome, including roof shingles, flashing, fascia, soffit, decking, gutters and downspouts, and boots around vents and fresh air returns, but excluding roof trusses, joists, or any other structural element of the roof; and

1.28.2. all other exterior portions of an Attached Townhome, which is subject to assessment hereunder, including, but not limited to, exterior building surfaces, roofs (limited to shingles, underlayment, and plywood, not to include sheathing and roof structure), gutters, downspouts, trees, shrubs, grass, walks and other exterior improvements and betterments, however, notwithstanding the foregoing, the Association shall not be responsible for any maintenance that is covered by an Owner’s insurance policy. Such exterior maintenance shall not, however, include screens and screen doors, exterior doors, garage doors, exterior glass surfaces, windows, window frames, window, door, and light fixtures and other related hardware, and any patios, decks and porches serving a single Attached Townhome; however, notwithstanding the foregoing, the Association shall be responsible for the painting of exterior doors and windows.

The cost of Exterior Maintenance for Attached Townhomes shall be an Attached Townhome Expense. Exterior Maintenance shall not include (.1) any maintenance or repairs caused by the negligence or intentional misconduct of any Attached Townhome Owner, and/or any Permitted Users, or (.2) repair, replacement or reconstruction of any of the following parts or components of an Attached Townhome: windows or interior doors; fiber-cement siding and trim material, rebar, mortar, tie beams, roof trusses or joists, or any structural element of the exterior walls or roof; all or any portion of the plumbing, electrical or mechanical systems whether located inside or outside of the Attached Townhome; all patios, terraces, decks and stairs; all exterior lighting fixtures and bulbs; and all sidewalks, driveways and front porches (except for the roof and decorative columns of a porch which are the Maintenance responsibility of the Association to the extent described in this Section). All portions of an Attached Townhome other than those which are Maintained by the Association as part of Exterior Maintenance shall be the Owner’s responsibility.

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

1.30. “Future Development Property” means the real property more particularly described in Exhibit B attached hereto, as amended from time to time, which may be developed as Lots, Units or Common Areas; however, the boundaries, location, size, configuration, and uses of any such Lots, Units, and Common Areas have not been determined as of this Declaration. The Declarant has no obligation to declare all or any portion of the Future Development Property to be Lots, Units or Common Areas.

1.31. “Governing Documents” means collectively this Declaration (including any Supplemental Declaration), Articles, Bylaws, architectural guidelines and the rules and regulations of the Association and all exhibits to any of the foregoing, all as they may be amended, restated or supplemented from time to time.

1.32. “Guest” means any Person who is physically present in or occupies a Unit on a permanent or temporary basis at the invitation of the Owner or Tenant without the payment of consideration. Any Person who is physically present in or occupies a Unit at the invitation of the Owner or Tenant for consideration shall be deemed a “Tenant.”

1.33. “Improvement” means any structure or artificially created condition or appurtenance located on the Property, including any building constructed on any Lot, any additions and structural alterations to any Unit or Lot, any walkway, sprinkler pipe, road, driveway, parking area, fence, screening wall, retaining wall, stairway, deck, landscaping, hedge, fountain, tree, planting, shrub, windbreak, pole, swimming pool, pool deck, sign, screen enclosure, sewer, drain, disposal system, grading, paving, or exterior heating, ventilating or air-conditioning equipment or water softener fixture or equipment.

1.34. “Include,” “includes,” or “including” is intended to include of the particular matter described and to be interpreted as if it were followed by either the phrase “without limitation” or “but not limited to,” unless otherwise clearly obvious from the context.

1.35. “Lot” means that portion of the Property (.1) which is developed or intended for development, use and occupancy as a Unit and is shown as a numbered or letter parcel on any Subdivision Plat of any part or all of the Property and is declared to be a Lot in this Declaration or a Supplemental Declaration and (.2) which is not a Common Area, dedicated street or transit right of way, Master Association Common Area or greenway or park lands owned in fee simple by the City. The Declarant may declare a portion of the Property to be a “Lot” subject to the Governing Documents on a Subdivision Plat, replat, or by this Declaration, any Supplemental Declaration or any other recorded instrument. The term “Lot” shall include any Unit constructed thereon. No portion of the Future Development Property shall be deemed to be a Lot unless and until it is expressly declared to be a Lot in a Supplemental Declaration.

1.36. “Lot Landscaping” means the following portions of a Lot which are Maintained by the Association, if any, but only to the extent as determined from time to time by the Board: (.1) the grass, shrubs, trees and other landscaping materials located in the front, side or back yards, and (.2) those irrigation lines and facilities, if any, installed on a Lot by the Declarant, Builder, or Association. Neither the Declarant, Builder, nor the Association shall have any obligation to install any irrigation lines or facilities serving the Lots. Lot Landscaping does not include any spa, pool, fountain, patio, courtyard paving, screening, or any landscaping within an enclosed or gated area (except as otherwise set forth in Section 7.2 below) or similar Improvement located on a Lot. For purposes of this Declaration, the term “Builder” shall mean any Person who is designated as such by the Declarant and who purchases one (1) or more Lots for the purpose of constructing Units thereon for later sale to consumers in said Builder’s ordinary course of business. Any Person shall cease to be considered a Builder with respect to a Unit immediately upon occupancy of and

residing in the Unit for residential purposes, notwithstanding that such person originally was recognized as a Builder. For avoidance of any doubt, Pulte Home Company, LLC is considered a Builder for purposes of this Declaration.

1.37. “Maintain,” “Maintenance,” “Maintaining,” or any similar term used in this Declaration includes 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.

1.38. “Master Association” means Reed Fork Ranch Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

1.39. “Master Association Assessments” means all assessments, charges and other amounts payable by an Owner to the Master Association under the Master Declaration.

1.40. “Master Association Common Areas” shall have the meaning ascribed to the term “Common Areas” in the Master Declaration.

1.41. “Master Declaration” means the Declaration of Covenants, Conditions and Restrictions for Reedy Fork Ranch recorded in Book 5580, Page 518 in the Registry, together with all exhibits and supplements thereto, as they may be amended, supplemented, or restated from time to time.

1.42. “Member” means each Person who or which holds membership in the Association by virtue of his ownership of a Lot.

1.43. “Mortgage” means any mortgage or deed of trust encumbering a portion of the Property, including a Lot. “First Mortgage” means any recorded Mortgage with first priority or seniority over other Mortgages on a particular portion of the Property.

1.44. “Mortgagee” means any beneficiary, payee or holder of any Mortgage, and the term Mortgage is deemed to refer to both mortgages and deeds of trust. “First Mortgagee” means any beneficiary, payee or holder of a First Mortgage.

1.45. “Operating Deficit” means the difference between the total amount of the 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 (.1) amounts levied against a Lot, but which are not paid, and (.2) Special Assessments for capital improvements.

1.46. “Owner” means the record Owner, whether one or more Persons, of fee simple title to any Lot or Future Development Property, and shall include Declarant as to any Lot or Future Development Property owned by Declarant. “Owner” shall not include any Person who holds an interest in a Lot or Future Development Property merely as security for the performance of an

obligation or as a Tenant or as a purchaser under an executory contract of sale.

1.47. “Party Wall” shall have the meaning set forth in Section 10.3.1.

1.48. “Party Wall Co-Owner” shall have the meaning set forth in Section 10.3.1.

1.49. “Permitted Users” means the Tenants or Guests of an Owner.

1.50. “Person” includes any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental entity (including the City), or other entity.

1.51. “Property” means, collectively, all of the real property and interests in real property subject to any part or all of the terms of this Declaration. The Property is legally described in Exhibit A hereto (including all Improvements thereon), plus whatever additional real property (together with all Improvements thereon) is declared to be Property in any Supplemental Declaration, less whatever portions of the Property (together with all Improvements thereon) are declared to be withdrawn from the provision of this Declaration in any Supplemental Declaration.

1.52. “Registry” means the office of the Guilford County Register of Deeds (or any successor office under applicable law). All references herein to recording or to any requirement to record a document or Subdivision Plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Property is situated.

1.53. “Restore,” “Restoration,” “Restoring” or any similar term used in this Declaration includes any one or more of the following, as the context requires: debris removal, alteration, reconstruction, installation, inspection, examination, repair, replacement, repainting, restoration of an Improvement lost or damaged by fire or other casualty, deterioration or obsolescence, or any taking by condemnation or eminent domain proceedings.

1.54. “Restoration Costs” shall have the meaning set forth in Section 9.4.

1.55. “Site Plan” means the graphic representation of the proposed plan for development of the Community depicted on the Site Plan for North Village Townes, as approved by the City, as amended from time to time. The Declarant reserves the right to alter or modify the Site Plan as it deems desirable in its sole discretion.

1.56. “Stormwater Covenant” means any covenant recorded in the Registry as required by the Code, or otherwise, relating to Stormwater Facilities for the Property or any part thereof, and includes all amendments and supplements to such agreements.

1.57. “Stormwater Facilities” shall have the meaning ascribed to “Facility/ies” set forth in the Stormwater Covenant, together with any one or more of the following devices and measures that serve the Property: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, 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 Property, and which are located outside public street rights-of-way and drainage easements. All Stormwater Facilities are Common Area.

1.58. “Stormwater Facilities Manual” means that manual, however named, referenced in the Stormwater Covenant as establishing the requirements for maintenance of Stormwater Facilities.

1.59. “Subdivision Plat” means any recorded graphic representation drawn to scale showing the showing the location and geographic boundaries of individual lots, tracts, parcels, blocks, subdivisions, open spaces, rights of way, easements and, if applicable, common areas for all or portions of the Community, as approved by the City, as amended from time to time, including, without limitation, the plat map recorded in Book \_\_\_\_ at Page \_\_\_\_ of the Registry. The Declarant reserves the right to alter, modify or replat all or any portion of a Subdivision Plat as it deems desirable in its sole discretion.

1.60. “Supplemental Declaration” means any instrument recorded by the Declarant or the Association in the office of the Registry for the purpose of: adding additional property to the Property; declaring Future Development Property or other property to be Lots, Units, Attached Townhomes, Collections or Common Areas; requiring the Association to perform Lot Landscaping for portions of the Property; requiring the Association to perform Exterior Maintenance for portions of the Property; withdrawing property from the Property; or changing the designation of certain property as Lots, Units, Attached Townhomes, Collections, Common Areas or Future Development Property.

1.61. “Tenant” means any Person who is physically present in or is entitled to occupy a Unit in exchange for consideration. Tenants shall not be Members of the Association, but shall, through the Owner, be entitled to certain rights and undertake certain obligations with respect to the Unit.

1.62. “Unit” means a Lot on which has been constructed an Improvement intended for use as a single residential dwelling unit and as used in this Declaration refers to an Attached Townhome.

1.63. “Working Capital Contribution” shall have the meaning set forth in Section 11.23.

1.64. Interpretation and Flexibility. In the event of any ambiguity or question as to whether any Person, property or Improvement falls within any of the definitions set forth in this Article 1, the determination made by Declarant in such regard (as evidenced by a recorded Supplemental Declaration stating same) shall be binding and conclusive. Moreover, Declarant may also, by way of Supplemental Declaration, alter or amend the application of any portion of this Declaration as to any specified portion(s) of the Property to reflect any unique characteristics thereof. Provided, however, such altered or amended application may not go so far as to be unequivocally contrary to the overall, uniform scheme of development for the Property contemplated in this Declaration.

## 2. GENERAL PLAN OF DEVELOPMENT; PROPERTY SUBJECT TO THIS

DECLARATION; ADDITIONS THERETO.

2.1. Master Declaration. The Property is part of a larger development known as Reedy Fork Ranch. The Property is subject to and governed by the Master Declaration as well as this Declaration. The Master Declaration contains certain easements, regulations, restrictions, conditions, covenants and obligations relating to the Community, which bind the Owners. The Master Association has delegated to the Association the obligation to collect the Master Association Assessments and impose and enforce liens for unpaid Master Association Assessments. Each Owner, in common with all other Owners, shall be entitled to the benefits, and shall be subject to the restrictions, contained in the Master Declaration, as amended from time to time.

2.1.1. Collections of Assessments. Pursuant to the Master Declaration, certain Master Assessments are or may be imposed by the Master Association on the Owners and their respective Lots. Each Owner is responsible for the payment of all Master Assessments assessed against its Lot. The Master Association shall have the right to impose and foreclose liens on an Owner's Lot in the event such Master Assessments are not paid when due. So long as the Master Association has delegated the obligation to collect Master Association Assessments and to impose and enforce liens for unpaid Master Association Assessments to the Association, the Master Association Assessments will be included in the budget of the Association for Common Expenses.

2.1.2. Declaration Subject to Master Declaration. Every right, title, privilege, license and easement given to any Owner herein or in the Bylaws or rules and regulations shall, to the extent permitted by law, be subject and subordinate to the covenants, obligations, conditions and restrictions contained in, and the rights, privileges, licenses and easements granted under or pursuant to the Master Declaration.

2.1.3. Definitions. Any words or terms used in this Declaration which are not defined herein shall be defined as set forth in the Master Declaration (unless the contents hereof clearly indicate to the contrary).

2.1.4. Membership. Each individual Owner shall also be a member of the Master Association.

2.2. General Plan. Declarant is the owner of the Property. Declarant presently plans to develop all or a portion of the Property as a multi-phased, planned community comprised of residential, recreational and related uses.

2.3. Legal Description. The legal description of the Property is provided on Exhibit A attached hereto. The real property and Improvements thereto described in Exhibit B attached hereto are designated as "Future Development Property."

2.4. Future Development. Declarant does not represent or warrant that the development shown in any Site Plan, drawings, renderings, plans or models for the Future Development Property will be carried out or that the Future Development Property will actually be developed or

built. Any Site Plan or drawings, renderings, plans or models for the Future Development Property are conceptual in nature and do not represent a final development or improvement plan. No portion of the Future Development Property shall be deemed to be a Lot, Unit, Attached Townhome, Collection or Common Area unless and until it is declared to be such in a Supplemental Declaration executed by the Declarant and the Owner of the Future Development Property if other than the Declarant. The Declarant has no obligation to declare all or any portion of the Future Development Property to be Lots, Units, Attached Townhomes, a Collection or Common Areas.

The Owners acknowledge, covenant and agree that Declarant will have no liability to the Owners for any changes to, or failure to complete any development or Improvements in accordance with the Site Plan, or any drawings, renderings, plans or models. Each Owner acknowledges that the development of the Property may extend over a number of years, and agrees and consents to all changes in the uses or density of Units within the Property and the architectural scheme of the Property. Each Owner acknowledges and agrees that the Owner is not entitled to rely upon, and has not received or relied upon, any representations, warranties, or guarantees whatsoever as to the current or future: (.1) design, construction, completion, development, use, benefits, or value of land within the Property; (.2) number, types, sizes, prices, or designs of any Unit, structure, building, facilities, amenities or improvements built or to be built in any part of the Property; or (.3) use or development of any land adjacent to or in the vicinity of the Property.

2.5. Supplements. Declarant has the right, but not the obligation, to develop the land constituting the Property in "phases" from time to time and to declare such portions of the Property to be Lots, Units, Attached Townhomes, a Collection or Common Areas by Supplemental Declaration. As long as the Declarant owns any property in the Community, the Declarant may designate as "Property" other land in the Community or any adjacent property (including the Improvements thereon) by recording Supplemental Declarations, which shall not require the consent of then-existing Owners or the Association. If Declarant is not the owner of the land to be added to the Property as of the date the applicable Supplemental Declaration is to be made, then the owner(s) of such land shall join in such Supplemental Declaration. Once so added, such land shall be deemed a part of the Property for all purposes of this Declaration, except as modified pursuant to Section 1.63 hereof, if at all. Nothing in this Declaration shall, however, obligate Declarant to add to real property designated as the Property or to develop the Future Development Property or any other real property (adjacent or otherwise) under the common scheme contemplated by this Declaration, nor to prohibit Declarant (or the applicable Declarant-affiliated Owner) from changing the development plans with respect to the Property.

All Owners by acceptance of their deeds to or other conveyances of their Lots thereby automatically consent to any such change, addition, withdrawal or deletion thereafter made by the Declarant (or the applicable Declarant-affiliated Owner thereof) and shall evidence such consent in writing if requested to do so by the Declarant at any time (provided, however, that the refusal to give such written consent shall not obviate the general effect of this provision).

Any such Supplemental Declaration may submit the Property added by it to such additions to and modifications of the Governing Documents as may be necessary or convenient in the Declarant's judgment to reflect or adapt to any changes in circumstances or difference in the

character of the added properties or Improvements thereon.

The Declarant reserves the right to modify the voting interests, Assessment rates and Assessment commencement dates by Supplemental Declaration. In the event that any additional real property becomes subjected to this Declaration pursuant to a Supplemental Declaration, every Owner within such additional property 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.

2.6. Withdrawal. Declarant reserves the right to amend this Declaration unilaterally at any time, without the consent of any Owner, for the purpose of removing any portion of the Property then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration for any reason. Any withdrawal of land not owned by Declarant shall not be effective without the written consent or joinder of the then-owner(s) of the withdrawn land.

2.7. Disclaimer of Implication. Only the Property described in Exhibit A hereto is submitted to the Governing Documents by this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required by Section 2.4 with respect to it, no other portion of the Community, if any, shall be in any way affected by the Governing Documents, and every such portion may be freely sold, conveyed or otherwise disposed of by their owner or owners free and clear of the Governing Documents.

2.8. Amendment. This Article 2 shall not be amended without the prior written consent of the Declarant, so long as Declarant (or any of its affiliates) owns any portion of the Community.

### 3. COMMON AREA PROVISIONS.

3.1. Common Areas. Certain portions of the Property are designated as Common Areas and are designed and intended for the common, non-exclusive use of the Declarant, Owners of all Lots, and all of the respective Permitted Users and invitees of the Declarant and the Owners, all as provided and regulated herein or otherwise by the Association. Declarant shall have the right, subject to obtaining all required governmental approvals and permits, to construct on the Common Areas such facilities as Declarant deems appropriate. The timing and phasing of all such construction shall be solely within the discretion of Declarant.

Without limiting the generality of Section 1.63, in the event that Declarant determines that a particular portion of the Property is or is not a Common Area hereunder (in the manner provided in Section 1.63), such determination shall be binding and conclusive. It is specifically contemplated that the Common Areas may change from time to time in connection with changes in development plans and other factors not now known (including by increase, decrease or transfer to the Master Association or a governmental entity). Accordingly, references in this Declaration to the Common Areas shall be deemed to refer to the Common Areas as they may exist as of the relevant time.

3.1.1. This Declaration is subject to any other easement currently of record which affects any of the Property. Any easement in favor of the Association and its benefits and burdens shall be deemed Common Area. Additionally, Declarant reserves on behalf of the Association the right to accept any easements in favor of the Association over, under, across or through any portion of the Property or real property which abuts or is adjacent to the Property, and such easements shall be deemed Common Area to the extent of such easements created. Any real property shall be considered adjacent to or abutting the Property even though a street, lake, canal or similar geographic separation may lie between any of such properties.

3.1.2. Declarant will endeavor to specifically identify (by recorded legal description, signage, physical boundaries, site plans or other means) the Common Areas of the Property, but such identification shall not be required in order for a portion of the Property to be Common Area hereunder. The Association need not have fee simple title to a portion of the Property in order for such portion to be designated as a Common Area.

3.2. Prior to Conveyance. The Owners shall have no right in or to any portion of the Community unless and until same is declared to be a Common Area in this Declaration or any Supplemental Declaration and actually constructed, completed, and conveyed to, leased by, dedicated to, and/or Maintained by the Association. The Declarant has no obligation or responsibility to construct or supply any such Common Area of the Association, and no party shall be entitled to rely upon any statement contained in this Declaration as a representation or warranty as to the extent of the Common Areas to be owned, leased by, or dedicated to the Association. So long as Declarant (or any of its affiliates) owns any portion of the Community, the Declarant shall retain the right to add to, delete from, and modify any of the Common Areas.

3.3. Conveyance or Dedication of Common Areas. Except for those areas which the Code requires be conveyed to the City, the Common Areas shall be conveyed to the Association or Master Association, subject to this Declaration, the Master Declaration, drainage, greenway, utility, conservation and other easements, restrictions, reservations, conditions, limitations, and declarations of record at the time of conveyance, zoning, land use regulations and survey matters and the lien of real property taxes not yet due and payable. Title to Common Areas shall be conveyed to the Association or Master Association at such time as may be determined by Declarant in its sole discretion, or when required by the Code or Act. The Association shall accept all Common Areas deeded to it and/or dedicated to it on any recorded Subdivision Plat of the Property, including any Improvements installed thereon by Declarant, 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 Property. The Association shall be responsible for the Maintenance of all Common Areas (whether or not conveyed or to be conveyed to the Association) in a continuous and satisfactory manner provided, however, Declarant, in its sole discretion may elect, but shall not be obligated, to maintain such Common Areas in such manner as Declarant deems reasonable prior to its conveyance of such Common Area(s) to the Association or Master Association.

The conveyance or transfer of Common Areas shall be "As Is." The Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership, Maintenance and operation of the Common Area and other

obligations relating to the Common Area imposed herein. The Association hereby agrees to indemnify and hold the Declarant harmless on account thereof. The Association, by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. THE ASSOCIATION AGREES TO ACCEPT "AS IS" THE CONVEYANCE OF THE COMMON AREA AND THE PERSONAL PROPERTY AND IMPROVEMENTS APPURTENANT THERETO, WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION OR FITNESS OF THE COMMON AREA, OR PORTIONS THEREOF AND THE PERSONAL PROPERTY AND IMPROVEMENTS THEREON.

3.4. Operation After Conveyance. After the conveyance or transfer of any portion of the Common Area to the Association, the portion of the Common Area so conveyed or transferred shall be owned, operated, Maintained and administered by the Association for the use and benefit of the Owners, in accordance with the Governing Documents. Subject to the Association's right to grant easements, leaseholds and other interests as provided herein, the Association may not convey, transfer or encumber all or a portion of the Common Areas to a third party without (a) the approval of eighty (80%) percent of the total voting interests of the Owners; and (b) the written consent of the Declarant so long as Declarant (or any of its affiliates) owns any portion of the Community.

3.5. Taxes. It is intended that all real estate taxes assessed against the Common Areas owned or to be owned by the Association shall be (or have been, because the purchase prices of the Units have already taken into account their proportionate shares of values of the Common Area) proportionally assessed against and payable as part of the Assessments of the Units within the Property. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Areas, the Association shall be responsible for the payment (subject to protest or appeal before or after payment) of the same, including taxes on any Improvements and any personal property thereon accruing from and after the date this Declaration or Supplemental Declaration designating the portion of the Property as Common Areas was recorded. Such taxes shall be prorated between Declarant (or the then Declarant-affiliated Owner thereof) and the Association as of the date of such recordation. Any taxes on the Common Areas shall be Common Expenses of the Association. For avoidance of any doubt, the Association shall be responsible for the payment of any assessments for public or private Improvements made to or for the benefit of the Common Areas. Upon default by the Association in the payment to the jurisdiction entitled thereto of any assessments for public Improvements or ad valorem taxes levied against the Common Areas, which default shall continue for a period of six (6) months, each Owner of a Lot within the Community shall become personally obligated to pay to the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of Lots in the Community. If the sum is not paid by an Owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the Lot of said Owner, his heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the owner personally obligated to pay the same, or may elect to foreclose the lien against the Lot of the Owner.

3.6. Assumption of Risk. Without limiting any other provision herein, each Person using any portion of the Common Areas accepts and assumes all risk and responsibility for liability, injury, loss or damage connected with use of such Common Areas. The Person also expressly indemnifies and agrees to hold harmless the Declarant, the Association and all employees, directors, representatives, officers, agents, and partners of the foregoing, from any and all damages, whether direct or consequential, arising from or related to the Person's use of the Common Areas, including attorneys' fees and costs at trial, upon appeal or otherwise.

3.7. Negligence. The expense of any Maintenance, repair or construction of any portion of the Common Areas necessitated by the negligent or willful acts of an Owner, such Owner's Permitted User, or other Person utilizing the Common Areas, through or under such Owner, shall be borne solely by such Owner and the portions of the Property owned by that Owner shall be subject to an Individual Assessment for that expense.

3.8. Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Areas or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any judicial partition of the Common Areas or any part thereof, unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

#### 4. MEMBERSHIP, GOVERNANCE AND VOTING RIGHTS IN THE ASSOCIATION.

4.1. Membership. Declarant and every Owner within the Property 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. The Owner of the Future Development Property shall be a Member of the Association but no votes shall be allocated to any portion of the Future Development Property unless and until such portion is declared to be Lots by the Declarant and Owner of the Future Development Property, if other than the Declarant.

4.2. Voting Rights. Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. The Association shall have two (2) classes of Members:

4.2.1. Class A. Class A Members shall be all Owners of Lots, with the exception of the Declarant so long as the Declarant is a Class B Member. Unless otherwise provided in a Supplemental Declaration, a Class A Member shall be entitled to one (1) vote for each Lot developed or intended to be developed on a Lot owned by the Class A Member.

4.2.2. Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot developed or intended to be developed on a Lot owned by the Class B Member. The Class B membership shall cease on the expiration of the Declarant Control Period, and shall be converted to Class A membership if Declarant is an Owner of any Lot on the expiration of the Declarant Control Period.

4.2.3. Eighty Percent Threshold. Notwithstanding anything herein to the contrary, for the sole purpose of exercising the rights specified in Section 5.3, below, Declarant shall, at all times during the Declarant Control Period, be deemed to have no less than an eighty percent (80%) voting interest in the Association.

4.2.4. Co-Owners. When more than one Person holds an interest in any portion of the Property, all such Persons shall be Members of the Association and may attend any meeting of the Association. The vote or votes for such portion of the Property shall be exercised as such Persons may determine among themselves, but in no event shall more votes be cast with respect to any portion of the Property than the number provided in this Declaration. If a Lot is owned by two or more co-owners and only one of the co-owners is present at a meeting of the Owners, the co-owner who is present is entitled to cast all the votes allocated to that Lot. If more than one of the co-owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple co-owners. Majority agreement is conclusively presumed if any one of the co-owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other co-owners of the Lot. The President of the Association shall have the authority to require that such multiple Owners of a Lot file a certificate with the Secretary of the Association, signed by all of the Owners, designating the person entitled to cast the vote or votes for such Lot. Such certificate shall be valid until revoked by a subsequent certificate. If such certificate is not filed when required, the vote of such Owners shall not be considered in determining the requirements for a quorum or for any other purpose.

4.3. Modifications. The Declarant shall have the right in its sole discretion to modify the voting allocations set forth in Section 4.2 and to set forth such modified allocations in a Supplemental Declaration.

4.4. General Matters. When reference is made in the Governing Documents to a majority or specific percentage of Owners or Members, such reference shall be deemed to be reference to a majority or specific percentage of the voting interests of Members represented at a duly constituted meeting thereof (i.e., one for which proper notice has been given and at which a quorum exists) and not of the number of the Members themselves or number of Lots or the total aggregate number of voting interests unless this Declaration or Act expressly requires a majority or specific percentage of the "total voting interests," in which case the majority or specific percentage shall be computed on the total aggregate number of voting interests in the Association.

## 5. CERTAIN EASEMENTS AND RIGHTS.

5.1. Owners' Rights of Use. Each Owner and Permitted User on the Property shall have

a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right of ingress and egress to and from all Common Areas throughout the Property and the non-exclusive right to utilize any parking areas which are part and parcel of the Common Areas, 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 §3-107.1 of the Act. But the right of access and support, the right to drain stormwater and the right to use Stormwater Facilities, private streets, private utility services provided to the Lot or Future Development Property through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

5.2. Limitations on Use of Common Areas. All rights of use and enjoyment in the Common Areas are subject to the following:

5.2.1. Easements over and upon the Common Areas in favor of the Association and its Members shall not be deemed to grant any easements or use rights which are not specifically granted elsewhere herein or in any other documents to which the Property (or any applicable portion(s) thereof) are now or hereafter made subject.

5.2.2. The right of the Association to:

5.2.2.1. Suspend the rights of an Owner and his Permitted Users to use the Common Areas (except legal access and drainage easements) as set forth in Subsection 11.16.6 for any period during which any applicable Assessment remains unpaid subject to the requirements of the Act, Article 13 and Subsection 11.16.6 of this Declaration.

5.2.2.2. Adopt and enforce rules and regulations governing the use of the Common Areas. Any rule and/or regulation so adopted by the Association shall apply until rescinded or modified.

5.2.3. The Declarant shall have the right to construct, erect and build Improvements over such streets, drives, roadways, sidewalks, paths, walks and parking areas within or upon the Common Area. Notwithstanding the foregoing, as long as the Declarant or any of its affiliates owns any property in the Community, the Declarant, by Supplemental Declaration or other written instrument, may limit or restrict access to certain private streets, drives, roadways, walkways, paths and parking areas within or upon the Common Area.

5.2.4. Declarant and Declarant's Permittees shall have the right from time to time to enter upon the Common Areas and other portions of the Property (including Lots and Units) for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion or alteration of any Improvements or facilities on the Common Areas or elsewhere in the Property that the Declarant and Declarant's Permittees, as appropriate, elect to effect.

5.2.5. Declarant shall have the right to convert Common Areas to Lots or Lots to

Common Areas, in which event Declarant shall record an amendment to this Declaration in the Registry, together with such plats showing the boundaries of any such Lots or Common Areas so converted.

5.2.6. Declarant and the Association shall have the right to use funds of the Association to purchase, lease, finance, and otherwise acquire interests in real property and improvements for addition to the Community as Common Area and related amenities. Declarant and the Association shall further have the right to borrow funds in the name of the Association for such purposes, on such terms as may be determined by Declarant or the Board.

5.2.7. Declarant and the Association shall have the right to enter into agreements with other communities, neighborhoods, municipalities or other third parties for the use of amenities and facilities owned or operated by such third parties. Any cost to the Association with respect to such agreements may be included as a part of Common Assessments.

5.3. Right to Grant or Relocate Easements. The Declarant (as long as the Declarant or any of its affiliates owns any property in the Community) and thereafter the Association shall have the right to grant, convey and relocate easements, licenses or rights of way in, on, over or under the Common Areas for purposes consistent with the terms of this Declaration, including constructing, installing, erecting, operating or Maintaining thereon, therein and thereunder: (.1) streets, walks, trails, driveways, parkways, landscaping, parks and open space areas; (.2) lines, cables, wires, conduits, facilities and other devices for the transmission of electricity, heating, cooling, water, sanitary sewerage, gas, television, telephone, voice or electronic data and other similar purposes; (.3) Stormwater Facilities; (.4) irrigation systems; (.5) any Improvements or uses for the general health or welfare of the Owners, for the Maintenance of the Property, or any portion thereof, or for the purpose of carrying out any provision of this Declaration; and (.6) any similar Improvements or uses not inconsistent with the use of such property pursuant to this Declaration as the Declarant shall deem necessary or desirable. Notwithstanding the foregoing, such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use and enjoyment of the Common Areas or the use of or ingress and egress to the Lots and Future Development Property for their intended purposes.

5.4. Association Easements over Lots and Units. The Association and its duly authorized agents, employees or independent contractors shall have an easement over each Lot and Unit as may be reasonably necessary to carry out any provision of this Declaration, including the Maintenance of Common Areas, performance of Lot Landscaping, Exterior Maintenance, Restoration of portions of the Property, enforcement of this Declaration, inspection (in a reasonable manner) in order to determine whether any Maintenance is necessary, performance of remedial work, and to the extent that the Association is obligated or authorized to perform any Lot Landscaping, Exterior Maintenance, or Restoration, to perform such Lot Landscaping, Exterior Maintenance, or Restoration provided that any such entry is during reasonable hours. Nothing contained in this Section shall be construed or interpreted to impose upon the Association the obligation to Maintain any of the Property except as expressly set forth in this Declaration. Neither the Declarant, the Association, nor any of their respective directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any portion of the

Property or failure to Maintain the same. The Declarant, the Association, or any other authorized Person undertaking such Maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the Maintenance of any portion of the Lots, Units, Common Areas or Improvements thereon or portion thereof. In addition, the Association may, without notice, perform such emergency Maintenance as it may determine is necessary for the safety of any Person or to prevent damage to any property. The provisions of this Section shall not be deemed to create any right of the Association to enter upon the property of the Declarant.

5.5. Utility Easements. Utilities in the Common Areas for the service of the Property shall be installed underground except as otherwise permitted by Declarant.

5.6. Access for Governmental Agencies; Service and Emergency Easements. A non-exclusive, perpetual right of access over all Lots, and Future Development Property and Common Areas (including private streets, if any) on the Property is established for the benefit of governmental entities for installing, removing and reading utility meters, Maintaining and replacing utility facilities and lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and public or private mail and package delivery.

5.7. Easements for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Common Area reserved herein, there shall be, and the Declarant hereby reserves and grants for itself and all future Owners and their family members, Permitted Users, invitees, contractors, Mortgagees and the Association, a perpetual, non-exclusive easement for: (.1) vehicular traffic over all streets dedicated to the public use, if any, and private streets, roadways and alleys within or upon the Common Area; (.2) pedestrian traffic over, upon and across all sidewalks, walkways, walking trails and paths within or upon the Common Area; and (.3) vehicular parking on such portions of the Common Area as from time to time may be intended and designated for general parking purposes by the Board of Directors.

5.8. Encroachments; Easements. If (.1) any Improvement on the Common Area encroaches upon any Lot; (.2) any Improvement on any Lot encroaches upon the Common Area or another Lot; or (.3) any encroachment shall hereafter occur as a result of (a) construction of a Unit or Improvement to a Common Area; (b) settling or shifting of a Unit, Attached Townhome Building or Improvement to Common Area; (c) any alteration or repair to a Unit, Attached Townhome Building or Improvement to Common Area made by or with the consent of the Owner, Association or the Declarant, as appropriate, or (d) any Restoration of the Improvements to a Unit, Lot, Attached Townhome Building or Common Area (or any portion thereof) damaged by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit, Lot or Common Area, then, in such event, a valid easement is granted and shall exist for such encroachment and for the maintenance of the same so long as the Improvements causing the encroachment shall stand. This provision shall not entitle any Owner to intentionally construct Improvements which encroach upon any other portion of the Property and no easement for encroachment shall exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, Permitted User or the Association.

5.9. Support and Other Easements for Attached Townhomes. Each Attached Townhome shall have the following easements: (.1) for lateral and subjacent support of, in and to all exterior walls, Party Walls, structural members, roof, footings and foundations of the Unit or other Improvements which abut or support the Attached Townhome; (.2) for Maintenance of common construction improvements, such as footings, supports and foundations, which abut or support the Attached Townhome; (.3) for attachment of the Attached Townhome to the Party Wall(s) it shares with the adjacent Attached Townhome(s); and (4) of necessity in favor of, all other Units within Attached Townhome Building in which it is located and any other structure or improvement which abuts or supports an Attached Townhome.

5.10. Utility and Other Services; Stormwater Facilities. In the event that any Attached Townhome Building contains utilities, telecommunications and security systems, irrigation and other services and systems and/or Stormwater Facilities which serve more than one Unit or Lot, then there shall be an easement reserved in favor of the Association and/or the entities providing such utilities, telecommunications and security systems, and irrigation and other services and systems and/or drainage facilities under, through and over each Unit therein and the Lot on which it is located as may be required from time to time in order to Maintain such utilities, telecommunications and security systems, irrigation and other services and systems and drainage facilities so long as the easement does not materially adversely affect the Owner's use and enjoyment of its Unit as a residence. Stormwater Facilities serving more than one Lot shall be Maintained continuously in good condition by the Association and easements are granted hereby over all Lots in favor of all Owners and the Association with respect thereto. Without limiting the foregoing, the Association is responsible for maintaining the completed permanent wet detention / retention ponds which are part and parcel of the Stormwater Facilities as directed by the governmental office having jurisdiction for watershed protection. If the Association should be dissolved or cease to exist, then in that event all the Owners of record at the time of required maintenance shall be jointly and severally liable for any and all costs attendant thereto. Amendments to the Governing Documents relating to the maintenance and ownership of the permanent wet detention pond shall not be permitted without review and approval by the governmental office having jurisdiction for watershed protection. The Assessments levied by the Association shall be used as required or deemed appropriate by the Association for the repair and/or maintenance of the permanent wet detention / retention ponds which are part and parcel of the Stormwater Facilities. Repairs and maintenance shall include but are not limited to the cost of repairs, replacements, and additions, and the cost of labor, equipment materials management and supervision. Assessments shall also provide for the procurement and maintenance of liability insurance, the provision of adequate reserves for the replacement of major structures incorporated into the permanent wet detention / retention ponds, and such other needs as may arise.

No Owner shall do anything within or outside its Unit that interferes with or impairs, or may interfere with or impair, the provision of such utilities, telecommunications and security systems, and other services and systems and/or Stormwater Facilities or the use of easements for the foregoing purposes. The Association or its agent shall have a right of access to each Lot and Unit thereon to Maintain the pipes, wires, ducts, vents, cables, conduits and other facilities for utilities, telecommunications and security systems, and other services and systems and for

Stormwater Facilities located on the Lot or elsewhere in the Property and serving an Attached Townhome Building, and to remove any improvements interfering with or impairing such facilities or easements reserved herein. Such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit. Except in the event of an emergency (which shall not require prior notice), entry shall be made on not less than one (1) day's notice (which notice shall not, however, be required if the Owner is absent when the giving of such notice is attempted).

5.11. Easements of Support. Whenever any structure included in the Common Areas adjoins any structure included in any other portion of the Property, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure.

5.12. Easements Appurtenant. The easements provided in Article 5 shall be appurtenant to and shall pass with the title to each Lot and, if applicable, title to Future Development Property.

## 6. FUNCTIONS OF THE ASSOCIATION.

6.1. Powers and Duties. Subject only to such limitations expressly set forth in the Governing Documents, the Association (.1) shall have all of the powers of a North Carolina not-for-profit corporation; (.2) shall have and may exercise any right or privilege given to it expressly in the Governing Documents; (.3) shall have and may exercise any right or privilege given to it by the Act or other law and (.4) shall have and may exercise every other right, privilege, power or authority necessary or desirable to fulfill its obligations under the Governing Documents.

6.2. Assessments. The Association shall have the power and duty to impose Assessments on the Owners of Lots with respect to which Assessments have commenced and to collect and enforce payment of such Assessments in accordance with the provisions of Article 11.

6.3. Maintenance of Other Property. The Association may Maintain other property which it does not own, including common areas of the Master Association or property dedicated to the public, (.1) if such Maintenance is required by this Declaration, any covenants binding the Property or any governmental order, (.2) if the Board of Directors determines that such Maintenance is necessary or desirable to cause compliance with this Declaration or to enhance the appearance or value of the Property, or (.3) if the Maintenance is requested by the Person responsible for such Maintenance and the cost of it is charged to such Person with security or other assurances for payment acceptable to the Board. As to any Maintenance performed by the Association pursuant to the Governing Documents as to property it does not own, the Association shall have the right to file, amend, release and terminate claims of lien pursuant to N.C. Gen. Stat. §44A.

6.4. Rules. The Association shall have the power to adopt, amend and enforce rules and regulations applicable within the Property with respect to any Common Areas and those portions of a Lot or Unit Maintained by the Association, and to implement the provisions of the Governing Documents. All rules and regulations adopted by the Association shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of the

Property and Owners, Permitted Users, invitees and contractors. Notwithstanding the foregoing provisions of this Section, the Association shall not have the right or power to amend this Declaration or impose rules and regulations which limit or interfere with the rights of the Declarant under this Declaration. A copy of the rules, as they may from time to time be adopted, amended or repealed, shall be posted in a conspicuous place in the Association's office or may be mailed or otherwise made available to each Owner. Thereafter, the rules and regulations shall have the same force and effect as if they were set forth herein; provided, however, that the rules and regulations shall be enforceable only to the extent that they are consistent with the Governing Documents, and may not be used to amend any of such documents. If any Owner has actual knowledge of any rules and regulations, such rules and regulations shall be enforceable against such Owner as though notice had been given.

6.5. Borrowing. The Association has the right with the consent of the Declarant, as long as the Declarant or any of its affiliates owns any property in the Community, to borrow money for any purpose, subject to any limitation in this Declaration, to execute promissory notes, other documents evidencing or securing the indebtedness; provided that in the event the aggregate amount of principal indebtedness incurred by the Association in any Fiscal Year exceeds the greater of \$250,000, as adjusted by the CPI, or forty (40%) percent of the Association's budget for the previous year, then such actions must be approved by Owners holding a majority of the voting interests present in person or by proxy at a duly called meeting of the Association at which a quorum is attained. In the event that the Association desires to mortgage, pledge or encumber any or all of its Common Area as security for money borrowed or debts incurred, then the Association must obtain the approval of eighty (80%) percent of the total voting interests of the Owners.

6.6. Marketing. The Association or a Builder may provide a suitable and continuing program to promote the Community as a desirable residential community, including advertising, organizing and coordinating major events, advertising, placing articles in news media, and establishing uniform standards for promotional events.

6.7. Special Events. The Declarant and the Board of Directors shall have the right, but not the obligation, to grant special use rights, permits and privileges in the Common Area and Improvements thereon for special events, festivals, street fairs, valet parking and other usage. In addition, the Association shall have the right to enter into agreements with the Master Association or others for purposes relating to, the joint or cooperative marketing, advertising and promoting of the Community, regulating and providing parking within the Community, including special event parking, and other areas of interest to the Association and its Members.

6.8. Indemnification. The Association shall be obligated to and shall indemnify the Declarant and hold it harmless from all liability, loss, cost, injury, damage and expense, including attorneys' fees, arising with respect to any operations of or services provided by the Association hereunder.

## 7. MAINTENANCE OF UNITS, LOTS AND COMMON AREAS.

### 7.1. Exterior of Improvements.

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7.1.1. To the extent that the Association has the express obligation to perform Attached Townhome Maintenance for any Improvements to a Lot pursuant to this Declaration, any Supplemental Declaration, or other declaration of covenants and restrictions or similar recorded instrument, then the Association shall be responsible for performing those obligations which have been delegated to it in a neat, orderly and attractive manner consistent with the standards set forth in Section 7.6.

7.1.2. The Maintenance of all Improvements located on the Lot which has not been expressly delegated to the Association pursuant to this Declaration, any Supplemental Declaration, or pursuant to a declaration of condominium or declaration of covenants and restrictions or similar recorded instrument shall be the sole obligation of the Owner(s) of such Lot or Unit. Other than the Lot Landscaping Maintained by the Association, each Owner shall Maintain the trees, shrubbery, grass and other landscaping, and all parking, pedestrian, recreational and other open areas on his Lot in a neat, orderly and attractive manner and consistent with the standards set forth in Section 7.6.

7.1.3. By way of example and not limitation, the Association shall provide Attached Townhome Services for each Attached Townhome. However, each Attached Townhome Owner is solely responsible for all other Maintenance to the Unit and Lot which is not expressly included in the definition of Attached Townhome Services. Without intending to limit the foregoing sentence, each Attached Townhome Owner shall Maintain or cause to be Maintained all portions of the Lot and Improvements thereon (including all appliances, interior walls, structural components, and plumbing, electrical and mechanical systems of his Unit) located on his Lot in a neat, orderly and attractive manner consistent with the standards set forth in Section 7.6.

7.2. Lot Landscaping. The Association shall Maintain the Lot Landscaping for each Lot as determined by the Board in the front, side and back yards of each Lot in a neat, orderly and attractive manner. The Association shall not be obligated to Maintain any Lot Landscaping within any enclosed or fenced areas on a Lot, unless gate(s) wide enough for the necessary equipment are left open, not just unlocked, for the Association's maintenance contractor(s). Nor shall the Association be required to perform Lot Landscaping when an unsafe condition exists on a Lot, including a loose animal. The Maintenance of the Lot Landscaping may include, but shall not necessarily be limited to: the cutting or trimming of grass, trees and shrubs; the re-mulching and weeding of mulched areas; removal of lawn debris and leaves; and the routine, customary application of fertilizer, pesticide and algacide or fungicide, if necessary or recommended. The Association shall not be required to Maintain any shrubbery, grass and other landscaping on any Lot other than the usual and customary landscaping provided by the Declarant, Builder, or its replacement provided by the Association. The Association shall have the sole discretion to determine the time at which such Lot Landscaping shall take place, and the manner and materials to be used. Each Owner, except for Declarant, shall Maintain the trees, shrubbery, grass and other landscaping that is not part and parcel of the Lot Landscaping, and all parking, pedestrian, recreational and other open areas on his Lot in a neat, orderly and attractive manner and consistent with the standards set forth in Section 7.6. The Association shall have the right to remove any Lot Landscaping which becomes a nuisance, except as to a Lot owned by Declarant. Notwithstanding

anything in this Declaration to the contrary: (.1) the Declarant shall have the express right to exempt a Builder from its obligations under this Article 7 on any Lots it owns, and (.2) the obligations under this Article 7 shall not apply to any Lot owned by Declarant.

7.3. Remedies for Noncompliance.

7.3.1. In the event an Owner fails to Maintain or cause to be Maintained his Improvements and Lot in accordance with this Article 7, the Association shall have the right (but not the obligation), upon five (5) days' prior written notice to the Owner at the address last appearing in the records of the Association, to enter upon the Owner's Lot and perform such work as is necessary to bring the Lot or Improvements, as applicable, into compliance with the standards set forth in Section 7.6. Such work may include, but shall not necessarily be limited to, the repainting or restaining of exterior surfaces of an Improvement, the repair of walls, fences, roofs, doors, windows and other portions of Improvements on a Lot; and such other remedial work as is judged necessary by the applicable entity.

7.3.2. The remedies provided for herein shall be cumulative with all other remedies available under this Declaration or other applicable covenants or deed restrictions (including the imposition of Individual Assessments or the filing of legal or equitable actions).

7.4. Costs of Remedial Work; Surcharges. In the event that the Association performs any remedial work on an Improvement or Lot pursuant to this Article or any other applicable covenants or deed restrictions, the costs and expenses thereof shall be deemed an Individual Assessment under Article 11 of this Declaration and may be immediately imposed by the Association. In order to discourage Owners from abandoning certain duties hereunder and, additionally, to reimburse itself for administrative expenses incurred, the Association may impose a surcharge of not more than twenty-five (25%) percent of the cost of the applicable remedial work, such surcharge to be a part of the Individual Assessment. No bids need be obtained for any of the work performed pursuant to this Section and the Person(s) performing such work may be selected by the applicable enforcing entity in its sole discretion.

7.5. Right of Entry; Right to File Notices of Lien Rights.

7.5.1. There is hereby created an easement in favor of the Association and its designees, over each Lot including the Unit thereon for the purpose of entering onto the Lot in the performance of Lot Landscaping, Attached Townhome Services, and any other Maintenance for which the Association has Maintenance responsibility, or for which the Association is otherwise permitted or required to perform the Maintenance and any other herein described, provided that the Association shall exercise such easement for entry into a Unit during reasonable hours.

7.5.2. In addition to the assessment and lien rights created hereby, the Association shall have, pursuant to N.C. Gen. Stat. §44A, the right to file notices of lien rights, claims of lien, amendments thereto, notices of termination and satisfactions as to any Lot for which it has the obligation to perform Lot Landscaping, Attached Townhome Services, or any other Maintenance, or for which the Association is otherwise permitted or required to perform the Maintenance.

7.6. Standards for Maintenance; Restoration. All Maintenance and Restoration of Property, Units, Lots and the performance of Lot Landscaping and Attached Townhome Services shall be performed in a manner consistent with the general appearance of the developed portions of the Property and, as to Units, the portion of the Property in which the Unit is located. The minimum (though not sole) standard for the landscaping shall be the more stringent of the following: the Community standard or the general appearance of the Property (and the applicable portion thereof as aforesaid) as initially landscaped (such standard being subject to being automatically raised by virtue of the natural and orderly growth and maturation of applicable landscaping, as properly Maintained). The minimum (though not sole) standard for Maintenance and Restoration of Property, Units and Lots shall be the more stringent of the following: the Community standard or the prevailing standard for the portion of the Property in which the Unit is located taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness, in the judgment of Declarant or the ARC. The Person responsible for Maintenance (the Association or Owner, as applicable) shall repaint, restrain, or refinish, as appropriate, the exterior portions of his Improvements (with the same colors and materials as initially used or as approved by Declarant or the ARC) as often as is necessary to comply with the foregoing standards.

7.7. Other Maintenance Services. The Association may also assume Maintenance responsibilities with respect to any other Lots in addition to those that may be designated in this Declaration or in any Supplemental Declaration. This assumption of responsibility may take place by agreement with Owners of Lots or because, in the opinion of the Board of Directors, the level and quality of service then being provided is not consistent with the standards set forth in Section 7.6. All costs of Maintenance pursuant to this Section 7.7 shall be assessed as a Special Assessment or Individual Assessments only against the Lots to which the services are provided, unless specifically provided otherwise in a Supplemental Declaration. The provision of services in accordance with this Section shall not constitute discrimination within a class.

7.8. Common Area Maintenance. The Association shall at all times Maintain in good repair, operate, manage, insure, and replace as often as necessary the Common Areas and all Improvements situated on the Common Areas (upon completion of construction by Declarant or its affiliates, if applicable) in a neat, orderly and attractive manner consistent with the standards set forth in Section 7.6. Without limiting the generality of the foregoing, the Association shall assume all of Declarant's, its affiliates' (and its and their predecessors') responsibility to the City, its respective governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Common Areas, including roads and entry features, and shall indemnify Declarant and its affiliates and hold Declarant and its affiliates harmless with respect thereto.

7.9. Maintenance of Stormwater Facilities. If the Stormwater Facilities are not owned or Maintained by the City or Master Association, the Declarant reserves the right to require the Association to Maintain, operate, repair and replace the Stormwater Facilities in accordance with the Stormwater Facilities Manual (as defined in the Stormwater Covenant) as a Common Expense in order to provide drainage, water storage, conveyance, or other stormwater management capabilities as required by the City.







































































