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Please index in Grantor Index under "Lennar Carolinas, LLC"

Please index in Grantee Index under "Fullerton Place" and under "Fullerton Place Homeowners Association, Inc."

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

FULLERTON PLACE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS IS
SUBJECT TO ARBITRATION.

THIS DOCUMENT REGULATES THE DISPLAY OF POLITICAL SIGNS.

Prepared by and mail to:

Parker Poe Adams & Bernstein LLP
Wachovia Capitol Center
150 Fayetteville Street, Suite 1400
Raleigh, NC 27601

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR FULLERTON PLACE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FULLERTON PLACE (this "Declaration") is made this 27th day of May, 2008 by LENNAR CAROLINAS, LLC, a Delaware limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner and developer of certain real property located in Cabarrus County, North Carolina, which is more particularly described on the attached Exhibit A (which, together with all other real estate that may be annexed into this Declaration, shall be referred to as the "Property");

WHEREAS, Declarant desires to develop, build and create on the Property an exclusive residential community to be known as "Fullerton Place" (the "Subdivision"); and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the common area and amenities within the Subdivision and to provide for the enforcement of covenants and restrictions applicable to the Subdivision by subjecting all of the Property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which are for the benefit of the Property and every owner thereof.

NOW THEREFORE, Declarant declares that the Property shall be held, owned, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall run with the title to the land and shall be binding upon, and inure to the benefit of, each and every party owning any right, title or interest in Property or any part thereof and their heirs, personal representatives, successors and assigns.

ARTICLE 1

CREATION OF COMMUNITY

Section 1.1 Purpose and Intent. Declarant, as the owner of the Property described in Exhibit A, intends by this Declaration to establish a general plan of development for the subdivision known as "Fullerton Place." An integral part of the development plan is the formation of "Fullerton Place Homeowners Association, Inc.," an association comprised of all owners of residential real property in the Subdivision, to own, operate and/or maintain various Common Area and amenities and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration. This document establishes a planned community under the North Carolina Planned Community Act, North Carolina General Statutes § 47F-1-101, *et seq.* (as it may be amended from time to time, the "Act").

Section 1.2 Governing Documents.

(a) The Governing Documents for the Subdivision consist of:

(i) This Declaration and any Supplemental Declarations that may be recorded from time to time;

(ii) The Association's Articles of Incorporation and By-Laws;

(iii) The Rules and Regulations described in Article 4;

(iv) The Architectural Guidelines described in Article 10; and

(v) Such resolutions as the Association's Board of Directors may adopt;

all as they may be amended from time to time. In the event of a conflict between or among any of the Governing Documents, the documents shall be given priority in the order listed above.

(b) Some areas within the Subdivision may be subject to additional covenants, restrictions and easements. If there is a conflict between the Governing Documents and any such additional covenants or restrictions, the Governing Documents shall control; however, if one document is simply more restrictive than another, the more restrictive document shall control.

(c) The Governing Documents apply to all Owners and Occupants of the Property, as well as to their respective Tenants, guests and invitees. If a Dwelling Unit is leased, the Tenant and all occupants of the leased Dwelling Unit shall be bound by and obligated to comply with the Governing Documents, and the lease shall so provide.

(d) The Association, Declarant (during the Development Period) and every Owner shall have the right to take legal action to enforce the Governing Documents. The Association shall have the specific enforcement powers and remedies described in Section 12.1 and elsewhere in the Governing Documents.

(e) If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

ARTICLE 2

DEFINITIONS

Section 2.1 All terms used in this Declaration generally shall be given their natural, commonly accepted definitions unless otherwise specified. All capitalized terms used in this Declaration shall be defined as set forth below, unless otherwise defined in this Declaration or as the context requires.

(a) "Act" shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as it may be amended from time to time.

(b) "Annual Meeting" shall mean the annual meeting of the Members held in the county in which the Property is located within the last quarter of each calendar year, upon proper notice, at a date, time and at a place designated by the Board.

(c) "Architectural Guidelines" shall mean architectural, landscape and construction guidelines, published and promulgated by the Architectural Control Committee, that shall be explanatory and illustrative of the general intent of the development of the Property.

(d) "Articles" or "Articles of Incorporation" shall mean those articles filed with the Secretary of State of North Carolina, as amended from time to time, incorporating the Association as a non-profit corporation under applicable law.

(e) "Assessments" shall mean Regular Assessments, Special Assessments, Capital Contribution, Individual Assessments and Fine Assessments.

(f) "Association" shall mean and refer to "Fullerton Place Homeowners Association, Inc.", formed as a non-profit corporation under applicable law, and its successors and assigns.

(g) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(h) "Bylaws" shall mean the Bylaws of the Association, as they may be amended from time to time.

(i) "Common Area" shall mean all real and personal property, including easements, the Recreational Facilities and all common amenities, the Association owns, leases or otherwise holds possessory or use rights in and for the common use and enjoyment of the Owners. The Common Area shall not include any dedicated public street or utility rights of way as shown on any recorded subdivision plat for the Property.

(j) "Common Expenses" shall mean, refer to and include all charges, costs and expenses incurred by the Association for and in connection with the administration of the Common Area, including: (a) the operation, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Area; (b) the costs of any additions and alterations to the Common Area; (c) all costs for labor, services, professional services, common utilities, materials, supplies and equipment incurred in the Association's performance of its duties under the Governing Documents; (d) all liability for loss or damage arising out of or in connection with the Association's performance of its duties under the Governing Documents; (e) all premiums for hazard, liability and other insurance incurred in the Association's performance of its duties under the Governing Documents; (f) all costs incurred in acquiring a Lot pursuant to judicial sale or otherwise to enforce the terms of this Declaration; (g) all administrative, accounting, legal and

managerial expenses incurred in the Association's performance of its duties under the Governing Documents; (h) all costs for the operation, maintenance, improvement, and replacement of any Recreational Facilities, including establishing reserves in connection with such obligations; and (i) all costs incurred in replacing, or substantially repairing, capital improvements within the Common Area, including private road and parking lot resurfacing. "Common Expenses" shall be construed broadly.

(k) "Declarant" shall mean and refer to Lennar Carolinas, LLC, a Delaware limited liability company, and its successors and assigns.

(l) "Delegate" shall mean any Occupant, Tenant, contract purchaser of a Lot, family member, guest or invitee of an Owner permitted to use the Common Area and/or Recreational Facilities, if any, under Article 4 of this Declaration.

(m) "Development Period" shall mean the period commencing on the Effective Date (as defined below) and terminating on the earlier to occur of:

(i) the date on which Declarant no longer owns a Lot in the Subdivision;

(ii) the date on which Declarant relinquishes in writing Declarant's right to appoint the Board of Directors to the Association; or

(iii) the date that is ten (10) years after the Effective Date, which date may be extended for an additional ten (10) year period with the approval of a majority of Members other than Declarant at a meeting of the Association, provided, the Board records in the Register of Deeds of the county where the Property is located an amendment to this Declaration signed by all of the members of the Board, together with a certificate by the Board's Secretary certifying to the satisfaction of the requisite voting requirements. Upon recordation, such amendment shall be binding on all Lots within the Subdivision and the Owners thereof, without regard to whether an Owner voted for or against the amendment.

(n) "Dwelling Unit" shall mean and refer to each residential unit on an individual Lot.

(o) "Effective Date" shall mean the date on which this Declaration is recorded in the Register of Deeds in the county in which the Property is located.

(p) "Governing Documents" shall mean this Declaration, each Supplemental Declaration, the Articles of Incorporation, the By-Laws, the Rules and Regulations, the Architectural Guidelines and such resolutions as the Association's Board of Directors may adopt, if any, and any other documents or instruments used to create and govern the Subdivision, together with any amendments to the foregoing documents.

(q) "Lot" shall mean and refer to each lot of land delineated on the recorded plat for the Subdivision upon which a Dwelling Unit has been or will be constructed.

(r) "Member" shall mean and refer to each Owner of a Lot, each of whom shall be a member of the Association as provided in this Declaration.

(s) "Occupant" shall mean and refer to any person who is not an Owner residing in a Dwelling Unit, including family members (other than family members that are record owners of a Lot), invitees, agents, temporary guests and Tenants of each Owner.

(t) "Owner" shall mean each person who holds record title to any Lot, including Declarant, but excluding in all cases any party holding an interest solely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale and the contract specifically so provides, the purchaser (rather than the then-fee simple owner of the Lot) will be deemed the Owner.

(u) "Property" shall mean and refer to that certain real property described in the attached Exhibit A, together with any additional real property that may be annexed pursuant to Article 3 of this Declaration, all of which may, in the alternative, sometimes be referred to in this Declaration as the "Subdivision."

(v) "Recreational Facilities" shall mean and refer to any community recreational facilities located in the Subdivision.

(w) "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Board of Directors in accordance with this Declaration to govern the use of Common Area, Recreational Facilities and property, activities and conduct within the Subdivision.

(x) "Tenant" shall mean any person occupying any Dwelling Unit pursuant to a written or oral lease agreement with the Owner of the Dwelling Unit or with any other person or entity claiming under the Owner.

Section 2.2 Inclusiveness. Unless otherwise provided in this Declaration, the words "include," "includes" and "including" are to be interpreted as if they were followed by the phrase "without limitation."

Section 2.3 Headings. The headings and captions used in this Declaration are for convenience only and shall in no way define, limit or enlarge the scope or meaning of this Declaration, nor in any way affect the terms and provisions of this Declaration.

Section 2.4 Use of Pronouns. Words of any gender used in this Declaration shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

Section 2.5 Calculation of Time Periods. Unless otherwise provided in this Declaration, in computing any period of time provided in this Declaration, the day of the act or event on which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or a date recognized by banks in the State of North Carolina as a holiday, in which event the period shall

run until the end of the next day that is not a Saturday, Sunday or legal holiday. The last day of any period of time described in this Agreement shall be deemed to end at 6 p.m. Eastern Standard Time.

Section 2.6 Governing Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of North Carolina, and any ambiguities herein shall be resolved to give maximum effect to the purposes of this Declaration.

Section 2.7 Exhibits. All exhibits attached to this Declaration are incorporated herein by reference and shall be construed to be a part of this Declaration wherever referenced herein.

ARTICLE 3

PROPERTY SUBJECT TO THIS DECLARATION

Section 3.1 Binding Effect. All of the Property, described in Exhibit A, and any additional property that is made a part of the Subdivision in the future by amendment of this Declaration or by Supplemental Declaration recorded pursuant to this Article, shall be owned, conveyed and used subject to all of the easements, covenants, conditions, restrictions and provisions of this Declaration, which shall run with the title to the land. This Declaration, as it may be amended from time to time, shall be binding upon, inure to the benefit of and be enforceable by all persons having any right, title or interest in any portion of the Property and their heirs, successors, successors-in-title and assigns. This Declaration, as it may be amended from time to time, shall remain in effect for a term of twenty-five (25) years after the Effective Date of this Declaration, after which time it shall automatically be extended for successive periods of ten (10) years each unless terminated or amended by a vote of the Owners as set forth in Article 12.

Section 3.2 Right to Annex Additional Property. So long as Declarant owns a Lot in the Subdivision, Declarant shall have the sole right and authority to annex additional land to the effect of this Declaration and to the jurisdiction of the Association, without the consent or joinder of the Association or any of its Members, by recording a Supplemental Declaration describing the property to be annexed and extending the operation and effect of this Declaration and the jurisdiction of the Association to the property to be annexed. Any property annexed pursuant to this Section may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of annexed property may increase the cumulative number of Lots within the Subdivision and therefore may alter the relative voting strength of the various types of Members in the Association.

Section 3.3 Merger. Additional property may be made subject to this Declaration by merger or consolidation of the Association with another non-profit homeowners association formed for the same or similar purposes. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property and the covenants and restrictions established upon property owned by the other association as one uniform scheme of development for the Subdivision.

Section 3.4 Withdrawal of Property. So long as Declarant has a right to annex additional property pursuant to this Article, Declarant reserves the right, without obtaining the consent or approval of the Owners or the Association, to remove any portion of the Property then owned by Declarant or the Association from the coverage of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Subdivision, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Subdivision. The removal of certain Lots may decrease the cumulative number of Lots within the Subdivision and therefore may alter the relative voting strength of the various types of Members in the Association.

Section 3.5 Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded plat, except by or with the consent of Declarant and, if required, by any applicable governmental authority.

Section 3.6 Declarant's Right to Change Development. So long as Declarant has a right to annex additional property pursuant to this Article, Declarant reserves the right, without obtaining the consent or approval of the Owners or the Association, to create Lots, add Common Area and reallocate and reconfigure Lots within the Property with the approval of any applicable governmental authority.

Section 3.7 Effect of Addition or Removal of Property. Except by amendment of this Declaration as provided in Section 12.3, no addition or removal of property, whether by annexation, merger or consolidation, shall revoke or modify any provision of this Declaration as to the Property already subject to this Declaration or diminish the rights of the Owners of Lots within the Subdivision, except for the dilution of voting strength that occurs as a result of the addition of Lots to the Subdivision and/or the addition of Members to the Association.

ARTICLE 4

PROPERTY RIGHTS IN COMMON AREA

Section 4.1 Owner's Easements of Enjoyment. Except as otherwise provided in this Declaration, each Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with title to each Lot. Each Occupant shall have a non-transferable privilege to use and enjoy the Common Area, if any, which privilege shall derive solely through the right of the Owner to whom the Lot belongs and which right shall terminate when such person ceases to have the status of an Occupant. Any Owner who rents or leases his Lot to a Tenant shall not be entitled to use the Common Area or Recreational Facilities, if any, during the period of such tenancy. In addition to the foregoing, each Owner may extend his right of enjoyment to the Common Area to his immediate and/or extended family members, guests or contract purchasers of the Owner's Lot, provided an Owner must accompany any non-Occupant family member or guests using the Common Area or Recreational Facilities, if any. Such rights and privileges shall be subject to the following:

- (a) The right of the Board under this Declaration to suspend the right of any Owner or the privilege of any Occupant to use the Common Area. The right of any Delegate of an Owner shall be suspended by, upon and during the suspension of such Owner's rights to use the Common Area as provided in this Declaration;
- (b) The right of the Board to adopt, enforce and, from time to time, amend reasonable limitations upon, and Rules and Regulations pertaining to, the use of the Common Area, including regulations limiting the number of guests of Owners and Occupants who may use the Common Area at any one time;
- (c) All applicable provisions of valid easements and/or agreements of the Association relating to the Common Area;
- (d) The right of the Association to grant permits, licenses and public or private easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Subdivision;
- (e) The right of the Association to expand or add to the Common Area and to improve, maintain and operate the Common Area;
- (f) The right of Declarant, prior to the expiration of the Development Period, to dedicate, sell, convey or transfer all or any part of the Common Area to any public or quasi-public agency, authority or utility as may be required, in Declarant's reasonable discretion, to facilitate the development of the Subdivision. After the expiration of the Development Period, the Association shall have the right to make such a dedication, sale, conveyance or transfer for any purpose so long as the Members entitled to cast at least eight percent (80%) of the votes of the entire membership of the Association and at least three-fourths (3/4) of the votes appurtenant to each class of Lots agree to such dedication, sale, conveyance or transfer and signify their agreement by a signed document recorded in the Register of Deeds for the county in which the Property is located. Nothing herein shall be deemed to prohibit the Board, without the consent of the Members, from granting easements over and across the Common Area to any public agency, authority or utility for the installation and maintenance of water, sewer, utility (including telephone and cable television) or drainage facilities when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of property within the Subdivision;
- (g) The right of the Association to borrow money, and after the end of the Development Period, with the consent of the Members entitled to cast at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each class of Lot, mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided, the rights of any such lender or mortgagee shall be subordinate to the property rights of the Members and the Association as set forth herein; and

(h) The right of the Association otherwise to deal with the Common Area as provided in the Articles and the Bylaws.

Section 4.2 Conveyance of Common Area to the Association. No later than the end of the Development Period, Declarant shall convey, and the Association shall accept, fee simple title to all Common Area (including all amenities and improvements thereon) within the Subdivision by form special warranty deed, free and clear of all liens and encumbrances, except ad valorem taxes for the then-current year and all other easements, reservations, conditions and restrictions of record. Notwithstanding the foregoing, so long as Declarant owns a Lot within the Subdivision, Declarant reserves an easement over and across all Common Area and all of the Lots for the purpose of completing the development and construction of the Subdivision and constructing all applicable improvements on the Common Area that it deems necessary or advisable, so long as such improvements comply with the requirements of all applicable governmental authorities.

Section 4.3 Regulation and Maintenance of Common Area. Except as expressly permitted in this Declaration, it is the intent of Declarant that the Common Area shall be operated, preserved and maintained for the perpetual benefit of the Owners and shall not be conveyed except to a governmental entity or another non-profit corporation organized for similar purposes as the Association.

(a) Regulation of Common Area. The Association may adopt and promulgate Rules and Regulations governing the use of the Common Area by Owners and their Delegates. No Owner or other Delegate shall use the Common Area or any portion thereof in violation of the rules and regulations contained in this Declaration or subsequently adopted by the Association. The Association shall have the right to suspend the right of any Delegate to use any recreational portion of the Common Area, as determined by the Board, (i) for any infraction of the Rules and Regulations relating to the Common Area for a reasonable period of time for each such infraction, or (ii) for any non-payment or delinquency in payment of an Assessment against such Owner's Lot for a period not to exceed the period of such non-payment or delinquency.

(b) Prohibited Uses of Common Area. Without limiting the generality of the foregoing, no Owner or Delegate shall, without the specific prior written consent of the Association: (i) damage or waste the Common Area or improvements thereon or remove any trees or vegetation from the Common Area; (ii) erect any gate, fence, structure or other improvement on the Common Area; (iii) place any garbage receptacle, trash or debris on the Common Area; (iv) fill, dredge or excavate any part of the Common Area; (v) landscape or plant vegetation within the Common Area; or (vi) use the Common Area or any part thereof in a manner inconsistent with or in any way interfering with the rights of other Owners.

(c) Damage to the Common Area. Each Owner shall be liable to the Association and Declarant for any damage to property owned by either of them caused by the negligence or willful misconduct of the Owner or his Delegates, contractors or employees. The Owner will be held responsible for any sums or costs expended by the Association or Declarant to repair such damage, including applicable attorney's fees, and

these sums or costs shall constitute a lien against the Lot as allowed in Article 6 of this Declaration.

(d) Rights and Responsibilities of Lot Owners as to Common Area Easements. Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against their Lot, including that portion of such tax or assessment that is attributable to the Common Area easement, provided the Owner shall be entitled to reimbursement or contribution from the Association for any taxes imposed upon any Common Area improvements installed on the Common Area easement intended to benefit the Association or all of the Members.

(e) Rights and Responsibilities of the Association as to Common Area. The Association shall have the right and obligation to ensure that the Common Area is preserved for the perpetual benefit of the Owners, and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its use by the Owners, subject to the provisions of this Declaration; (ii) procure and maintain adequate liability insurance covering the Association and its Members, directors and officers against any loss or damage suffered by any person resulting from the use of the Common Area and adequate hazard insurance covering the real and personal property owned in fee by the Association; and (iii) pay all property taxes and other assessments levied against the Common Area and Common Area improvements owned in fee simple by the Association.

(f) Declarant's and Association's Right of Entry. Declarant and the Association and their employees, agents, contractors and subcontractors shall have a non-exclusive right and easement at all times to enter upon any Common Area easement over a Lot for the purposes of: (i) installing and maintaining subdivision entrance signs, features, fencing and landscaping; (ii) making improvements to the Common Area or Recreational Facilities; and (iii) maintaining the Common Area easement in its natural or improved state.

Section 4.4 Use of Common Area by Declarant. In addition to the specific rights and easements reserved herein, Declarant and its affiliates and associates shall have the same rights of use and enjoyment of the Common Area as Class A Members (as defined below) during the Development Period and shall have the right to use the Common Area for promotional, sales and similar purposes.

ARTICLE 5

HOMEOWNERS ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 5.1 Function of Association. The Association has been established to administer the Subdivision in accordance with the Governing Documents. Its responsibilities include:

- (a) management, maintenance, operation and control of the Common Area;

- (b) interpretation and enforcement of the Governing Documents;
- (c) establishing and enforcing the Rules and Regulations; and
- (d) upon the expiration or termination of the Development Period, administering the architectural review process for the Subdivision.

Section 5.2 Board of Directors and Officers. The Board of Directors, and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws, shall conduct the affairs of the Association. The Board of Directors also may appoint committees and managers or other employees and agents, who shall, subject to the direction of the Board of Directors, be responsible for the day-to-day operation of the Association.

Section 5.3 Rules and Regulations. By a majority vote of the Board of Directors, the Association may from time to time adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities, obligations and duties under this Declaration, including the use of Common Area, imposing charges for the use of Recreational Facilities and regulating modifications, improvements and changes to Lots and the Dwelling Units thereon; provided, the Rules and Regulations shall not be inconsistent with the Governing Documents. A copy of the current Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained in the office of the Association and shall be available to each Owner upon request.

Section 5.4 Membership of Association. Every Owner of a Lot shall be a Member of the Association. Each Owner shall abide by the Association's Rules and Regulations shall pay the Assessments provided for in this Declaration when due, shall comply with decisions of the Association's governing body and shall otherwise comply with all terms and conditions of this Declaration and the Governing Documents. Conveyance of fee simple title to a Lot automatically shall transfer membership in the Association without necessity of further documentation. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot that is subject to Assessment.

Section 5.5 Classes of Membership. The Association shall have two (2) classes of Membership:

- (a) Class A Members. Every person, group of persons or entity that is a record Owner of a fee simple interest in any Lot upon which a Dwelling Unit has been erected within the Subdivision automatically shall be a Class A Member of the Association, except Declarant during the Development Period; provided, any party holding an interest solely as security for the performance of an obligation shall not be a Member. Class A membership shall be appurtenant to and may not be separated from ownership of any Lot upon which a Dwelling Unit has been constructed that is subject to Assessment. Each Class A Member shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership in the Association. If more than one person, group of persons or entity is the record Owner of a fee simple interest in any Lot, then the vote for the membership appurtenant to such Lot shall be exercised as they determine among themselves, but in no event shall more than one (1) vote be cast with

respect to any Lot, provided, if agreement cannot be reached with respect to the casting of a vote, the vote attributable to such Lot shall not be cast or counted by the Association.

(b) Class B Members. The Class B Member during the Development Period shall be Declarant. The Class B membership shall cease and be converted to Class A membership upon the expiration of the Development Period. The Class B Member shall be entitled to three (3) votes in the Association for each Lot it owns.

(c) Voting. Until the Development Period ends, Declarant shall be vested with the sole voting rights of the Association on all matters (including election and removal of directors and officers of the Association), except such matters as to which the Act, the Declaration or other Governing Documents specifically require a vote of the Class A Members.

Section 5.6 Leased Dwelling Units. Notwithstanding any other provision of this Declaration or the Governing Documents, the aggregate vote of Owners of Lots leased or rented to, or otherwise occupied by, persons other than Owner shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association.

ARTICLE 6

COVENANT FOR ASSESSMENTS

Section 6.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Assessments, which will be established and collected as provided in this Article. All Assessments that are unpaid when due, together with interest and late charges set forth herein and all costs of collection, including reasonable attorneys' fees, shall be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the Assessment became due, but such personal or corporate obligation shall not be imposed upon an Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of an Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall remain a lien upon the Lot against which the assessment or charge was made.

Section 6.2 Regular Assessments. Assessments levied on all Lots for the payment of Common Expenses ("Regular Assessments") shall be made in the manner provided herein and in the manner provided in the Governing Documents. The Regular Assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses.

(a) Maximum Regular Assessment. Declarant shall establish the maximum Regular Assessment and initial Regular Assessment for Class A Member Lots. Until **December 31, 2008**, the maximum Regular Assessment shall be **Seven Hundred and No/100 Dollars (\$700.00)** for each Class A Member Lot.

(i) From and after **December 31, 2009**, the maximum Regular Assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the Members, provided the percentage of any such increase shall not exceed ten percent (10%) of the maximum Regular Assessment for the previous year unless such increase is approved as set forth in Section 6.2(b).

(ii) From and after **December 31, 2009**, the maximum Regular Assessment for Class A Member Lots may be increased without limitation if such increase is approved by a majority of the votes cast by the Members, in person or by proxy, at a meeting duly called for that purpose.

(b) Annual Assessments: Ratification of Budgets. Notwithstanding the ten percent (10%) increase restriction contained in Section 6.2(a)(i), until the end of the Development Period, the Board, in its sole discretion, shall have authority to adopt an annual budget without a vote of the Members. After the end of the Development Period, the Board shall adopt a proposed budget (including the proposed Regular Assessment) at least annually. Within thirty (30) days after adoption of the proposed budget, the Board shall send a copy of the proposed budget and shall give written notice to all of the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held no sooner than ten (10) days or more than sixty (60) days after the mailing of such notice. Such meeting may be combined with the Annual Meeting. Except as required by Section 6.7, 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, except as otherwise provided in this Declaration). The budget shall be deemed ratified unless at the meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for Regular Assessments not more than ten percent (10%) greater than the Regular Assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least eighty (80%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board. Any Regular Assessment ratified by the Members shall continue thereafter from year to year as the Regular Assessment until changed by the Board and, as applicable, ratified by the Members as set forth herein.

Section 6.3 Special Assessment. In addition to levying Regular Assessments, and to the extent the reserve fund is insufficient, the Board of Directors may levy assessments to construct, structurally alter or replace improvements that are part of the Common Area ("Special Assessments"), provided that any such assessment shall require the same consent of the Members as provided in Section 6.2(b).

Section 6.4 Capital Contribution. Upon the initial transfer of record title to a Lot from Declarant (or a successor or designated declarant) to an Owner (other than a successor or designated declarant), the Owner shall be required to pay, at closing on the Lot, Two Hundred and No/100 Dollars (\$200.00) as an initial contribution to the working capital of the Association ("Capital Contribution"). The Capital Contribution shall not be deemed an advance payment of

the monthly Regular Assessment or applied against the Regular Assessment due on the Lot; rather the sum shall be allocated to a working capital fund to meet unforeseen expenditures and operating expenses and/or to purchase equipment or services for the Association.

Section 6.5 Individual Assessment. If the Association performs any maintenance, repair or replacement work within the Subdivision for which the Association has an obligation to perform under this Declaration to cure or correct any damage or problem caused through the willful or negligent act of an Owner or his Occupants, the cost of such work shall constitute an assessment against the Lot and Owner (an "Individual Assessment") and shall be paid by the Owner within thirty (30) days after receiving from the Association an invoice for such cost. The unpaid cost of such work shall be an Individual Assessment against the responsible Owner and its Lot.

Section 6.6 Declarant's Assessments. Notwithstanding any other provision of this Declaration, the Articles or the Bylaws, Declarant shall not be obligated for, nor subject to, any Assessments for any Lot or other property it owns within the Subdivision, provided, Declarant shall be responsible for paying the Regular Assessment then in effect for Class A Member Lots for each Lot owned by Declarant that contains a Dwelling Unit that is occupied as a residence (but not as a model or sales center). Such Regular Assessment shall be prorated for the number of days from the date of occupancy as a residence until the sale of such Lot by Declarant to a third party (based on a 365-day year). Upon the sale of such Lot by Declarant to a third party, such Lot shall be assessed at the Class A Member rate, commencing on the first day of the month after title to such Lot is transferred to the third party.

Section 6.7 Notice and Quorum. After the end of the Development Period, written notice of any meeting called for the purpose of taking any action authorized in Section 6.2 or Section 6.3 shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members, in person or by proxy, entitled to cast at least sixty (60%) percent of the votes of the entire membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and, if called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

Section 6.8 Date of Commencement of Assessments; Due Dates; Fine Assessments.

(a) Unless a different commencement date is set by the Board or in this Declaration, the Regular Assessment shall commence as to all Lots in any phase on the first day of the month following the conveyance of a Lot within that phase to an Owner other than Declarant. Unless a lower amount is set by the Board and ratified by the Members, the first Regular Assessment shall be the maximum Regular Assessment set forth in Section 6.2(a)(i) and shall be prorated according to the number of months remaining in the calendar year. At least thirty (30) days prior to January 1 of each year, the Board shall fix the amount of the Regular Assessment against each Lot. No later than December 15 of each year, the Board shall send written notice of such assessment to every Owner subject to Assessments. Assessments may be collected on a yearly, semi-

annually, quarterly or monthly basis as determined by the Board, and the due dates for the payment of Assessments shall be established by the Board.

(b) The Board, or an adjudicatory panel established by the Board, may levy a reasonable assessment as a fine or penalty for any violation under this Declaration in accordance with the Act ("Fine Assessment"). A lien may be filed for this Fine Assessment, and this Fine Assessment may be enforced by foreclosure and otherwise treated as a Regular Assessment.

Section 6.9 Common Surplus. If the Regular Assessment collected in any given year is in excess of the actual Common Expenses for that year (such amount being the "Common Surplus"), the Board may, at its sole discretion, (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus against the Owner's Regular Assessment due for the following year; or (c) apply the Common Surplus to the Association's reserve account; provided, in no event shall an Owner be entitled to a return or credit of any portion of the Common Surplus if the Owner is in violation of any provision of this Declaration or is in default of any payment obligation under this Declaration.

Section 6.10 Assessment Certificate. The Association shall furnish to any Owner liable for Assessments, upon written request from the Owner, a certificate in writing signed by an officer or other authorized agent of the Association setting forth the status of all currently due, outstanding and delinquent Assessments against such Owner's Lot(s). The certificate shall be conclusive evidence of the status of all Assessments set forth in the certificate. The Association shall have the right to impose a reasonable charge, to be paid in advance, for the administrative costs of providing each certificate.

Section 6.11 Books and Records of the Association. The Association shall keep full and accurate books of account. The Association shall make available to all Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds collected by the Association shall be held and expended solely for the purposes designated in this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Owners. All books and records will be kept in accordance with good accounting procedures and will be reviewed at least once a year by an independent accounting firm.

Section 6.12 Non-Payment of Assessment. Any assessment not paid within ten (10) days after the due date shall incur a late charge, to be established by the Board from time to time, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against any Owner personally obligated to pay the Assessment and/or foreclose the lien against the Lot for which the Assessment is due. Interest, late payment charges, reasonable attorneys' fees and the costs of such action or foreclosure shall be added to the amount of the Assessment. No Owner may waive or otherwise escape liability for the Assessments provided in this Declaration by non-use of the Common Area or by abandonment of their Lot.

Section 6.13 Priority of Association Lien. The liens provided for in this Article shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages that have been filed of record before a claim of lien under this Article has been docketed in the office of the Clerk of Superior Court in the county in which the Property is located, and may be foreclosed in the same manner as a mortgage on real property under power of sale in an action brought by the Association in accordance with the Act. The Association is entitled to recover its reasonable attorneys' fees and court costs and collection costs as part of the lien. In any foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

Section 6.14 Exempt Property. All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the state in which the Property is located shall be exempt from Assessments. Notwithstanding the foregoing, no land or improvements devoted to dwelling purposes shall be exempt from Assessments.

Section 6.15 Owner's Current Address. Each Owner has the sole responsibility of keeping the Association informed of the Owner's current address, if different from the Owner's Lot address. If Owner fails to provide the Association written notice of a different address, all notices sent by the Association to the Owner's Lot will be deemed sufficient for any notice required under this Declaration.

ARTICLE 7

EASEMENTS AND ENCUMBRANCES

Section 7.1 Access and Utility Easements.

(a) Declarant hereby reserves easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage and retention facilities and for all other public utilities, all as shown on the recorded plat(s) of the Property, for the benefit of the Association. The Association may reserve or grant easements over the Common Area as provided in Article 4 of this Declaration. No structure, planting or other material shall be placed or permitted in any such easement that may interfere with the installation or maintenance of the utilities installed thereon or that may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements, without the prior written approval of the Association.

(b) For a period of thirty (30) years after the Effective Date of this Declaration, Declarant hereby reserves for itself and its employees, agents, successors and assigns an easement upon and a right of ingress, egress and regress on, over and under the Property for the purposes of: (i) constructing and maintaining water, sanitary sewer, gas, stormwater drainage and retention, telephone, cable television and electric power and other utility facilities to the extent required by any applicable governmental entity or deemed by Declarant to be necessary or convenient for the development, use

and enjoyment of the Property and Common Area; and (ii) for conducting construction, sales and marketing activities within the Subdivision. Such rights expressly include the right to cut any trees, bushes or shrubbery, grade the soil or take any other similar action that Declarant deems reasonably necessary or appropriate. After any such work has been completed, Declarant shall grade and re-seed the affected land and otherwise restore the affected land to its original condition to the extent reasonably practicable (reasonable wear and tear excepted); provided, Declarant will not be required to replace any trees, bushes or shrubbery removed by Declarant for a purpose specified in this Section. Declarant shall give reasonable prior notice of its intent to take such action to each Owner whose Lot will be affected.

Section 7.2 Easements for Governmental Access. Declarant hereby reserves an easement over the Common Area and every Lot within the Subdivision for the benefit of applicable governmental agencies for installing, removing and reading water meters, maintaining and replacing water and sewer facilities and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, garbage collection and the delivery of mail.

Section 7.3 Owner's Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any Dwelling Unit is located nearer than five (5) feet from the nearest Lot boundary, the Owner of such Lot shall have a perpetual access easement over the adjoining Lot to the minimum extent reasonably necessary to perform repair, maintenance or reconstruction work on their Dwelling Unit. Such work shall be performed expeditiously, and upon completion of the work the Owner shall restore, as reasonably practicable (reasonable wear and tear excepted), the adjoining Lot and any improvements thereon to as nearly the same condition that existed prior to the commencement of the work.

Section 7.4 Association's Easement and Right of Entry. The Association, for itself and its employees, agents, contractors, subcontractors and invitees, shall have a perpetual access easement over the Common Area and each Lot to the extent reasonably necessary to perform the maintenance to be performed by the Association and for exercising its rights under this Declaration, including enforcement of the Architectural Guidelines applicable to the Property.

Section 7.5 Easement Over Common Area. A perpetual, non-exclusive easement of enjoyment over the Common Area is hereby established for the benefit of each Lot and its Owners and their Delegates for the purpose of providing access, ingress and egress to and from streets, parking areas, walkways and/or Recreational Facilities, if any, in the Subdivision.

Section 7.6 Reservation of Construction Easement by Declarant. Declarant reserves the non-exclusive right and easement to go temporarily upon the Subdivision to complete the development of the Subdivision (and surrounding land) and the construction of the improvements therein. This easement shall be construed broadly in favor of Declarant, including giving Declarant the right to store construction materials, equipment or fill-dirt temporarily within the Subdivision. After development of the Subdivision is completed, Declarant shall, at Declarant's cost, repair any damage caused by Declarant in the Subdivision and on any Common

Area and Lots within the Subdivision, including to any landscaping, reasonable wear and tear excepted, and remove all debris, equipment, materials and excess fill-dirt from the Subdivision.

ARTICLE 8

RIGHTS OF LENDERS

Section 8.1 Books and Records. Any owner or holder of a first mortgage on any Lot, or its agent, shall have the right, during normal business hours, to examine copies of this Declaration, the Articles, the Bylaws, the Governing Documents and the books and records of the Association and, upon written request to the Association, to receive a copy of the Association's financial statement for the immediately preceding fiscal year.

Section 8.2 Notice to Lenders. After the Development Period ends and upon written request to the Association, the owner or holder of a first mortgage on any Lot shall be entitled to timely written notice of:

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

Section 8.3 Approval of Owners and Holders of First Mortgage. After the Development Period ends, unless at least seventy-five percent (75%) of the owners and holders of first mortgages on Lots located within the Subdivision have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements therein that are owned, directly or indirectly, by the Association. The granting of easements for utilities or other permitted purposes under this Declaration shall not be deemed a transfer within the meaning of this subsection;
- (b) Change the method of determining the obligations, assessments, dues or other charges that may be levied against a Lot;
- (c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for any purpose other than the repair, replacement or reconstruction of the damaged improvements.

Section 8.4 Payment of Taxes and Insurance Premiums. The owners or holders of first mortgages on Lots, jointly or singly, may pay taxes or other charges that are in default and that have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering any property owned by the Association. The Association shall reimburse the persons, firms or corporations making such payments immediately upon written demand.

ARTICLE 9

RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

Section 9.1 Association. The administration of the Subdivision shall be vested in the Association. The Owner of any Lot, upon acquiring title to such Lot, automatically shall become a Member of the Association and shall remain a Member until such time as their ownership of such Lot ceases for any reason, at which time the membership in the Association shall cease automatically. The Association shall have full power and responsibility to administer, operate, sustain, maintain and govern the Subdivision, including the powers and responsibilities: (a) to make prudent investments of funds held by it; (b) to make reasonable Rules and Regulations; (c) to borrow money; (d) to make Assessments; (e) to bring lawsuits and defend lawsuits; (f) to enter into contracts; and (g) to enforce all of the provisions of this Declaration, the Bylaws and any other Governing Documents or instruments relating to the establishment, existence, operation or alteration of the Subdivision. The Association shall keep the Common Area in good, clean and proper condition, order and repair. The Association shall operate and maintain areas designated by Declarant as Common Area, whether or not title to such areas has been formally conveyed to the Association. The powers of the Association shall be construed liberally and shall include all of the powers set forth in Section 47F-3-102 of the Act and in the North Carolina Non-Profit Corporation Act.

Section 9.2 Board of Directors. Unless otherwise specifically stated in this Declaration, the Association shall act exclusively through its Board. The Association shall choose the Board in accordance with the Bylaws.

Section 9.3 Manager. The Association may employ and pay for the services of a person or entity, including Declarant (the "Manager"), to assist the Association in managing its affairs and carrying out its responsibilities under the Governing Documents and such other persons or entities, including attorneys and accountants, as the Association deems necessary or advisable, whether such persons or entities are engaged, furnished or employed by the Manager or directly by the Association. The Association may enter into a management agreement for such management services upon such terms as the Board may deem appropriate. The payment of management fees due to Declarant may, at Declarant's option, be deferred until such later date as Declarant, in its sole discretion, deems appropriate. Furthermore, any management fees due to Declarant may be, at Declarant's option, credited against any Assessments due or coming due from Declarant.

Section 9.4 Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of such property by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Governing Documents.

Section 9.5 Insurance; Bonds. The Association shall procure and maintain adequate liability insurance covering the Association. The Association shall procure and maintain full replacement value hazard insurance on real and personal property owned by the Association and shall procure and maintain officers', directors' and employees' liability insurance and such other insurance as it deems necessary or advisable. The premiums for such insurance shall be a Common Expense paid from the Regular Assessments. The Association may cause any or all persons responsible for collecting and disbursing monies of the Association to be bonded.

Section 9.6 Rules and Regulations. The Board shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owner of each Lot at least fifteen (15) days before such rules and regulations become effective.

Section 9.7 Limitations on Association's Duties.

(a) The Association did not construct the improvements, including the Dwelling Units. The Association does not warrant in any way or for any purpose the improvements in the Subdivision. Construction defects are not the responsibility of the Association.

(b) The Association shall have a reasonable time in which to make any repair or do any other work that it is required to do under the Governing Documents. The Association must first have actual knowledge of a problem. Any determination of the reasonableness of the Association's response must allow for the fact that the Association is volunteer and that the funds available to the Association are limited.

(c) In case of ambiguity or omission, the Board may interpret the Declaration and the other Governing Documents, and the Board's interpretation shall be final if made without malice or fraud. Notwithstanding the foregoing, Declarant may overrule any interpretation affecting it during the Development Period, and such interpretation may not be enforced against Declarant or its successors or assigns.

Section 9.8 Declarant's Reserved Rights; Association's Obligation of Cooperation. The Association shall accept conveyance of any Common Area conveyed to it, in fee or easement, by Declarant or at the request of Declarant by an owner of any property within or to be annexed into the Property. Upon request of Declarant and without further consideration, the Association shall execute any document necessary to evidence such acceptance. In addition to other rights expressly reserved to Declarant elsewhere in this Declaration and those special declarant rights defined in Section 47F-1-103 of the Act, during the Development Period, Declarant reserves the following rights:

(a) Declarant shall have the right to alter the boundaries of the Common Area, whether or not it has been deeded to the Association, provided that such alteration does not materially and adversely affect the function and use of the Common Area. The Association and each Owner hereby irrevocably appoints Declarant as his attorney-in-fact to execute and/or deliver any documents, plats, deeds or other written matters necessary or convenient to accomplish the addition of Common Area or property to the Subdivision or this Declaration, or both, or to create easements as deemed necessary by Declarant.

(b) Neither the Association nor its Members, nor the use of the Common Area by the Association or its Members, shall interfere with or impede the completion of the development of the Subdivision or the marketing and sale by Declarant of Lots and Dwelling Units within the Subdivision.

(c) Declarant shall have the right to make such use of Lots and the Common Area as may facilitate completion of development of the Subdivision and the sale by Declarant of Lots and Dwelling Units within the Subdivision. Without limiting the foregoing, Declarant shall have the right to maintain or permit others to maintain sales offices, model Dwelling Units, administrative offices and construction offices (which may be trailers or temporary or permanent buildings), or any or all of the foregoing, on Lots or on the Common Area. Declarant shall also have the right to erect and maintain signs on Lots and/or the Common Area, to bring prospective purchasers upon the Common Area, to use the Common Area for sales and marketing activities for the Subdivision, to grant the right to use the Common Area to prospective purchasers or any other individual or group, in Declarant's sole discretion, and to conduct any and all other marketing activities deemed appropriate by Declarant, and to permit others to exercise such rights in conjunction with or separate from Declarant.

(d) Subject to the provisions of Section 4.1(g) of this Declaration, Declarant shall have the right, but not the obligation, to loan money to the Association in such amounts and upon such terms and conditions as to which Declarant may agree. Payments due to Declarant under any such loans, at Declarant's option, may be credited against any Assessments coming due at any time from Declarant.

(e) In addition to all other rights of Declarant, no amendment shall be made to this Declaration and no rule or regulation shall be adopted, interpreted or enforced by the Association to modify the Assessments or other charges applicable to Declarant or assessed against Lots owned by Declarant or that restrict, impair or, in Declarant's sole judgment, materially adversely affect the activities of Declarant with regard to the development of the Subdivision, the use of Common Area and the delegation of the right to use the Common Area, or the marketing and sale of Lots by Declarant, whether or not such activities are enumerated in the preceding paragraphs, without the express prior written consent of Declarant.

(f) In exercising any of the rights provided or granted under this Article, neither Declarant nor the Association shall revoke, modify or amend this Declaration in a manner that reduces the size of the Common Area to less than the area required by the appropriate governmental authority as of the Effective Date of this Declaration.

Section 9.9 Indemnification of Officers and Directors. The Association shall indemnify any and all persons who may serve or who have served at any time as directors or officers of the Association, or as appointed committee members against any and all expenses, including amounts paid upon judgments, attorneys' fees and amounts paid in settlement (before or after a suit is commenced) actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they are made party, that may be asserted against them by reason of their being or having been a director, officer or committee member of the Association. Notwithstanding the foregoing, in the event of a settlement, the indemnification herein shall apply only when the Board approves such settlement and reimbursement as being in the best interest of the Association.

ARTICLE 10

ARCHITECTURAL CONTROL

Section 10.1 General.

(a) Notwithstanding anything in this Declaration to the contrary, no Improvements (as defined below), exterior additions or alterations to any Dwelling Unit or building situated upon the Property, erection of or changes or additions of fences, shrubs, landscaping, walls or construction of other structures or any cutting of trees on any Lot shall be commenced, erected or maintained on any portion of the Property until:

(i) the Architectural Control Committee, appointed as provided in this Article, has received and reviewed the plans and specifications and the location, materials, size and design of such Improvements and has given its written approval for commencement of the changes, all in accordance with the terms and requirements in the Architectural Guidelines (as defined below); and

(ii) any applicable fees have been paid to the Association.

(b) In addition to any standards established pursuant to this Declaration, Declarant, during the Development Period, may establish by supplemental declarations other architectural and landscaping control standards, guidelines and restrictions.

Section 10.2 Definitions of "Improvements". The term "Improvement" or "Improvements" shall mean and include the Dwelling Unit and any and all man-made changes, additions or alterations to a Lot or attached or affixed to a Lot, including all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); landscaping; storage sheds or storage areas; roofed structures; parking or paved areas; fences; "invisible" pet fencing; pet "runs," lines and similar tethers or enclosures; walls, irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings, poles; driveways; ponds; lakes, changes in grade or slope; site preparation; swimming pools; hot tubs; Jacuzzis; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior lights and illumination; and changes in any exterior color, design or shape. The

definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Architectural Control Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances that were previously approved by the Architectural Control Committee.

Section 10.3 Composition of Architectural Control Committee.

(a) During the Development Period, the members of the Architectural Control Committee shall be Declarant and/or persons appointed from time to time by Declarant (which may include architects or other professionals). Control of architectural and landscaping issues and decisions shall remain vested in Declarant until the expiration of the Development Period or until such earlier date as Declarant releases its right to appoint the members of the Architectural Control Committee by recordation of a written instrument in the Register of Deeds for the county in which the Property is located.

(b) The members of the Architectural Control Committee may be appointed by the Board after the expiration of the Development Period. Pending appointment of members by the Board, the Board shall act as the Architectural Control Committee. The Architectural Control Committee will be composed of at least three (3) and not more than seven (7) individuals, the exact number of members of the Architectural Control Committee to be designated from time to time by the Board.

(c) In the event of the death, incapacity or resignation of any member of the Architectural Control Committee, the party or body then having the authority to appoint members to the Architectural Control Committee shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced at any time, with or without cause and without prior notice, by the party or body then having the authority to appoint such members.

(d) Professional fees for services rendered by the Architectural Control Committee may be assessed against an Owner submitting a request and, if unpaid, shall become an Individual Assessment against such Owner's Lot. Notwithstanding anything herein to the contrary, the Architectural Control Committee shall have the right, power and authority to employ and/or use the services of architects, engineers, attorneys or other professionals as it deems necessary or advisable, in its sole discretion, to carry out the duties and obligations of the Architectural Control Committee.

Section 10.4 Architectural and Landscape Guidelines.

(a) The Architectural Control Committee may, from time to time, publish and promulgate architectural, landscape and construction guidelines (the "Architectural Guidelines"). The Architectural Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Control Committee in reviewing the plans and specifications for Improvements. The Architectural Guidelines shall set out, among other things, the procedures for submission, review and approval of plans and specifications to the

Architectural Control Committee and the fees to be imposed by the Architectural Control Committee. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. The Architectural Guidelines shall not be binding upon the Architectural Control Committee, may be revised and amended at any time by the Architectural Control Committee, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications or other materials submitted to the Architectural Control Committee for approval.

(b) Upon submission of a written request for approval, the Architectural Control Committee may, from time to time, in its sole discretion permit Owners to construct, erect or install Improvements that are at variance with architectural or landscaping requirements or provisions that might be otherwise applicable; provided, any approved variance shall be in basic conformity with and shall blend effectively with the general architectural style and design of the Subdivision and shall not materially change the scheme of restrictions set forth in this Declaration. Written requests for variances shall be deemed to be disapproved until the Architectural Control Committee has expressly approved the request in writing. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the grant or denial of any variance to an Owner. Each request for a variance shall be reviewed separately and apart from all other such requests. The grant of a variance to any one Owner shall not constitute a waiver of the Architectural Control Committee's right to enforce strictly the covenants, restrictions and architectural standards provided in this Declaration or in the Governing Documents against any other Owner. Nothing herein shall authorize the Architectural Control Committee to grant a variance with respect to the use or other restrictions specifically set forth in this Declaration or any Supplemental Declaration.

Section 10.5 Enforcement

(a) The architectural control provisions of this Declaration and any Supplemental Declarations are to permit the control of the architectural design, construction, installation and placement of all Improvements and to establish quality standards for the development and to help preserve values of properties in the Subdivision. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable damage to other Owners and to Declarant. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article and to enforce rulings and decisions of the Architectural Control Committee by proceeding at law or in equity against the person or persons violating or attempting to violate any such provision, ruling or decisions and/or through administrative action, including the possible imposition of fines or suspension of rights or privileges. Declarant hereby specifically reserves and grants unto the Architectural Control Committee, the Board and any agent or member thereof, the right of entry and inspection upon any portion of the Property for the purpose of determining whether there exists any Improvement that is not approved or that violates the terms of any approval by

the Architectural Control Committee, the terms of the Architectural Guidelines or the terms of this Declaration or the Governing Documents.

(b) As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction or installation thereof (including the demolition and removal of any unapproved Improvements) if such Improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as an Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed.

Section 10.6 Failure of the Architectural Control Committee to Act. Written approval of any Improvement shall be required for every request presented to the Architectural Control Committee for consideration. No failure or delay by the Architectural Control Committee to approve or disapprove any plans and specifications and other submittals, or to reject them as being inadequate or unacceptable, shall be deemed to be an acceptance or approval thereof. Further, the Architectural Control Committee has no right or power to waive or grant any variances relating to any mandatory use restrictions or requirements specified in this Declaration or any Supplemental Declaration or to waive any of the requirements set forth in this Article. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may take no action with respect to them or may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally, and reject or approve the balance.

Section 10.7 Fees Required by the Architectural Control Committee. The Architectural Control Committee, in its sole discretion, may require that each person submitting plans and specifications for Improvements to the Architectural Control Committee pay one or more fees to the Architectural Control Committee or to Declarant as a condition to review and/or to commencement of construction of such Improvements, including fees of professionals serving on or retained, employed or consulted by the Architectural Control Committee. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established, and may be increased from time to time, by the Architectural Control Committee and shall be set forth in the Architectural Guidelines.

Section 10.8 Limitation of Liability. No member of the Architectural Control Committee shall be liable for claims, causes of action or damages (except when occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article. The Architectural Control Committee, the members thereof, the Association, Declarant and their officers, directors, members, employees, agents or affiliates, shall not be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the Architectural Control Committee shall not be deemed or construed as a representation or warranty of the Architectural Control Committee, Declarant or their officers, directors, members, employees, agents or affiliates that Improvements constructed in accordance with such plans and specifications will

comply with applicable zoning ordinances, building codes or other governmental or quasi-governmental laws, ordinances, rules and regulations or as to the structural soundness or quality. Neither the Architectural Control Committee, the Association, Declarant or their officers, directors, members, employees, agents or affiliates shall have any liability or responsibility for any defect in any structure constructed from such plans and specifications.

ARTICLE 11

USE AND OCCUPANCY RESTRICTIONS

Section 11.1 Use and Occupancy. The Association shall make Rules and Regulations to govern the use and occupancy of the Common Area, Lots and Property, which, together with the following covenants, conditions and restrictions as to use and occupancy, shall run with the land and shall be binding upon each Owner and his heirs, Delegates, successors and assigns.

Section 11.2 Purpose of Subdivision. Except as otherwise provided in this Declaration, no part of the Subdivision shall be used for any purpose other than residential housing and the common recreational purposes for which the Subdivision was designed. Each Lot shall be used only for residential purposes, unless the Board authorizes some other use. Except for Declarant's construction, sales and management activities (including Declarant's right to maintain one or more model Dwelling Units or sales offices), no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained or permitted in any part of the Subdivision. To the extent permitted by law, an Owner may use a portion of his or her Dwelling Unit for an office or studio (other than a music and/or dance studio), provided that the activities conducted therein shall not interfere with the quiet enjoyment or comfort of any other Owner or Occupant and such activities do not increase the normal flow of traffic or individuals in and out of the Subdivision or in and out of such Owner's Lot.

Section 11.3 Obstruction of Common Area. There shall be no storage or parking of any items, including baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs, in any part of the Common Area, except as permitted by the Rules and Regulations. Patios, porches (except screened in and/or enclosed porches) and decks may be used only for their intended purposes.

Section 11.4 Parking. Except for vehicles being used by persons providing services to Declarant, the Association, Owners or otherwise used or authorized to be used in the Subdivision by Declarant, no part of the Subdivision may be used for the parking of any trailer coach, house trailer, mobile home, automobile trailer, motorcycle, camp car, recreational vehicle, camper, truck that exceeds 3/4 ton, boat, boat trailer or any vehicle with letters or other markings over four (4) inches tall or wide or any other similar vehicle (collectively, "Special Vehicles"), unless such Special Vehicles are parked in the garage of the Owner who owns such Special Vehicle and the garage door of such Owner is completely closed at all times when a Special Vehicle is parked therein. Operable vehicles, other than Special Vehicles, used by an Owner or Occupant of a Lot as a primary source of transportation may be parked in the driveway of such

Owner's Lot or in any garage space owned by the Owner, provided the Owner and Occupants of any one Lot may not collectively park more than four (4) operable vehicles other than Special Vehicles in the Subdivision. Inoperative vehicles may not be parked within the Subdivision unless they are parked in the garage and the garage door is completely closed. No automobile maintenance and/or repairs may be performed on vehicles within the Subdivision unless performed inside the garage of an Owner. The parking of any vehicle (other than emergency vehicles in the course of their duties) on public or private streets or alleys within the Subdivision (except within such areas, if any, designated for use as on-street parking) is strictly prohibited. Vehicles, whether owned by an Owner or not, parked in violation of any part of this Declaration or in violation of any Rules or Regulations, shall be towed and stored at the Owner's risk and expense. The Association shall not be obligated to determine the owner of a vehicle and give prior notice before towing the vehicle. If an Owner is not sure about the right to park in any particular area or space, the Owner should request, in writing, a written opinion from the Board. If the Board gives the approval sought by the Owner or if the Board does not answer the written request by the Board, the Owner may park in the space until further written notice to the contrary from the Board. The Association's right to tow a vehicle includes the right to immobilize it.

Section 11.5 Compliance with Insurance Policies and Waste. Nothing shall be done or kept in any Dwelling Unit, in the Common Area or on a Lot that will increase the rate of insurance of the buildings, or contents thereof, applicable for residential use without the prior written consent of the Association. No Owner shall permit anything to be done or kept in a Dwelling Unit, in the Common Area or on a Lot that will result in the cancellation of insurance on the buildings, or contents thereof, or that would be in violation of any law. No waste will be committed in the Common Area.

Section 11.6 Signs. No signs (exclusive of street address identification numbers) shall be displayed on any Lot, except for one "For Sale" or "For Rent" sign not exceeding 36 inches by 24 inches in size and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues that will appear on the ballot of a primary, general or special election; provided, such political signs shall not be placed on a Lot earlier than sixty (60) days prior to an election and shall be removed within seven (7) days after such election. The Association may develop uniform sign standards and specifications to which all Owners must adhere. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot that it owns and on the Common Area in connection with the development and sale of the Subdivision.

Section 11.7 Animals and Pets. No animals of any kind shall be raised, bred or kept on any Lot or in any Dwelling Unit or on the Common Area, except that dogs, cats or other household pets may be kept in a Dwelling Unit, subject to the Rules and Regulations, provided that such pet is not kept, bred or maintained for any commercial purpose and it is kept subject to the Rules and Regulations. Dogs, cats and all other household pets must be kept within the confines of the Owner's Dwelling Unit, except when being held on hand-leash by the owner of the animal. Owners are expressly forbidden from allowing domestic cats to roam free within the Subdivision. No Owner shall install a fence and/or electric fence on any portion of the Common Area without the prior written consent of the Board. No pet may be "staked," housed, tied up or otherwise left in any Common Area or on any Lot. No dog-house, dog run or other structure

used or intended for the housing or keeping of animals may be constructed, placed or maintained on any part of the Common Area or on any Lot. Each Owner shall be responsible for cleaning up after their own household pet, including picking up and properly disposing of the pet's waste on any Lot, Common Area and publicly dedicated right of way. Notwithstanding the foregoing, the Association shall have the right to promulgate Rules and Regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. Additionally, the right of an Owner or Occupant to maintain an animal in a Dwelling Unit shall be subject to termination if the Board in its full and complete discretion determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or its Owners or Occupants. Any animal that has exhibited dangerous behavior such as the threat of and/or attacking any person or other animal may qualify under this section for removal.

Section 11.8 Nuisances. No noxious or offensive activity shall be carried on in any Dwelling Unit or in the Common Area or on any Lot, nor shall anything be done therein, either willfully or negligently, that may be or become an annoyance or nuisance to other Owners or Occupants in the Subdivision.

Section 11.9 Impairment of Structural Integrity of Building. Nothing shall be done in any Dwelling Unit, on any Lot or in, on or to the Common Area that may impair the structural integrity of any building or that, absent the prior written approval of the Board, may structurally change any building.

Section 11.10 Laundry or Rubbish and Open Fires in Common Area and Facilities. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Area or on any Lot. No clothes line of any description or type shall be allowed on any Lot or the Common Area. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials. All trash, garbage and other rubbish shall be deposited only in covered sanitary containers as provided in Section 11.13. No open fires shall be permitted in any part of the Subdivision other than fires in charcoal grills or other similar cooking devices located upon Lots or grills or similar devices (if any) owned by the Association and constituting a portion of the Recreational Facilities, provided the use of such devices does not violate any local governmental rules or regulations.

Section 11.11 Alteration of Common Area. Nothing shall be altered or constructed in or removed from the Common Area, except as otherwise provided in this Declaration and except upon the written consent of the Association. In addition, each Owner must obtain the prior written consent of the Board prior to installing and landscaping or planting any flowers, herbs or vegetables within any portion of the Subdivision (including within any Lot).

Section 11.12 Leased Dwelling Units. Any Owner may lease or sublet his Dwelling Unit; provided, that any lease or sublease must be for a term of at least six (6) months, must be in writing and must contain the following provision:

"Tenant agrees to obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions and Restrictions for Fullerton Place recorded in the Cabarrus

County Register of Deeds. Tenant acknowledges that he or she has received a copy of, and is familiar with, such Declaration and the Rules and Regulations promulgated thereunder.”

Notwithstanding the lease of any Lot or Dwelling Unit by an Owner or Occupant, the Owner of such Lot and Dwelling Unit shall remain primarily liable under this Declaration for the compliance with the terms and restrictions of this Declaration and the Governing Documents. On or before the fifth (5th) business day after the earlier of the full execution of any lease or rental agreement for a Lot or Dwelling Unit or occupancy of any Lot or Dwelling Unit by any Tenant, each Owner shall deliver to the Association, in writing:

- (a) The name of the Tenant and the address of the rented or leased Lot or Dwelling Unit;
- (b) The current address and telephone number of the Owner and property manager, if any, renting or leasing the Lot or Dwelling Unit;
- (c) A true and complete copy of the lease or rental agreement (Owner may remove financial information prior to submission);
- (d) A certification by the Owner that the Tenant has been given a copy of the Governing Documents and that Tenant has been advised of any obligations he may have thereunder as a Tenant in the Subdivision; and
- (e) A description of the Tenant's vehicles with the license plate numbers if the Tenant owns more than two vehicles.

Section 11.13 Trash Disposal. Each Owner shall dispose of all trash, garbage and other rubbish as directed and instructed by the Board and in accordance with applicable laws and regulations. Owners shall keep trash containers at all times in each Owner's garage or in such other location as approved by the Board, except on the days that trash, garbage or other rubbish is collected by the local waste removal authorities. Any trash containers placed outside by Owners in the location designated for collection by the local waste removal authorities shall only remain in such location for a period not to exceed twenty-four (24) hours. The Board shall have the right to dispose of any trash, garbage or other rubbish of an Owner in violation of this Article and may assess the Owner for the cost of such disposal.

Section 11.14 Use of Accessory Structures. No tent, shack, barn, car-port, metal awnings, metal utility sheds or other building, other than a Dwelling Unit, shall be erected on a Lot or used temporarily or permanently as a residence. Notwithstanding the foregoing, Declarant may use temporary buildings, offices and facilities in connection with the development of the Subdivision and the marketing and sale of Lots and Dwelling Units within the Subdivision.

Section 11.15 Maintenance by Owners.

- (a) The Owner of any Lot shall have the duty and responsibility, at such Owner's sole expense, to keep their Lot, Dwelling Unit and other permitted

Improvements in compliance with this Declaration, the Rules and Regulations, the Architectural Guidelines and the Governing Documents and in a well-maintained, safe, clean and attractive condition at all times.

(b) If an Owner of any Lot has failed to comply with any provision of this Article, the Association shall give the Owner written notice of such failure. The Owner shall have ten (10) days after the date of the notice to cure the breach. Notice shall be deemed to have been given upon deposit in an official depository of the United States mail, with first class postage prepaid and addressed to Owner.

(c) If an Owner fails to cure its breach of this Article within the time period specified, the Association shall have the right and power to enter onto the Lot and cure the breach without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Association in performing such work computed at the highest interest rate permitted by law from the date(s) the amounts are expended until repayment to the Association, and for all costs and expenses incurred in seeking the compliance of the Owner. The Owner shall reimburse the Association on demand for such costs and expenses, including interest as above provided. If such Owner shall fail to reimburse the Association within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Association, the Association may impose and enforce an Individual Assessment and late charges against such Owner and the affected Lot.

Section 11.16 Lawns. All lawns shall be regularly cut and fertilized and mulched areas shall be regularly re-mulched and kept weeded so that their appearance is in harmony with the Subdivision. All improved Lots must have grass lawns; no gravel or similar lawns are permitted. All Lots conveyed with lawns that contain sod must keep the original sod on the lawn or only replace dead sod with sod of the same type of grass. No Owner shall be allowed to install any landscaping in any portion of their Lot located in a public right of way unless otherwise permitted under this Declaration.

Section 11.17 Antennae and Roof Structures. No radio or other electrical towers, aerials, antennae or other devices of any type for the reception or transmission of radio broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any Improvements thereon, except this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. An antenna permissible pursuant to rules adopted by the Association may be installed only if it is approved by the Association pursuant to this Declaration.

Section 11.18 Minimum Size of Units. All Dwelling Units constructed within the Subdivision shall be no less than 1,700 square feet.

Section 11.19 Windows. No curtains, draperies or other window coverings shall be installed or hung in the front or side window of any Dwelling Unit unless they have a white lining or backing on the side exposed to the window.

Section 11.20 Guns. The use or discharge of firearms and weapons of any type within or on the Property is prohibited. The term "weapon" includes "B-B" guns, pellet guns, knives, bows and arrows, paint-ball guns, taser guns, sling shots and firearms of all types.

Section 11.21 Fences. No fencing shall be installed on any Lot without prior written approval of the plans, including location, height and materials, from the Architectural Control Committee as provided in Article 10 of this Declaration. Chain link fencing is strictly prohibited. No fence may exceed five (5) feet in height.

Section 11.22 Swimming Pools. No outdoor "in-ground" swimming pool, hot tub, Jacuzzi, sauna or spa shall be installed or erected on any Lot until the plans and specifications showing the nature, kind, shape, materials, height and location of the proposed facility have been approved by the Architectural Control Committee as provided in Article 10 of this Declaration. All pool equipment shall be screened, housed or stored underground. All governmental requirements and restrictions applicable to swimming pools and similar structures shall be applicable to the construction of swimming pools and similar structures on any Lot, and approval by the Architectural Control Committee shall in no way relieve the Owner of the responsibility and obligation to comply with applicable governmental requirements. In no event shall above ground pools be allowed. "Above ground pools" shall be defined as any pool that is not set in ground and approved as stated by the Architectural Control Committee and that cannot be emptied and stored away at the end of use each day.

Section 11.23 Mailboxes, Newsletter or Newspaper Box. The Architectural Control Committee shall adopt a standard design for approved mailboxes and newspaper boxes, and no mailbox or newspaper box inconsistent with such standard design shall be erected or maintained on any Lot or within any street right-of-way.

Section 11.24 Hoses and Pipes. Except for the temporary use of hoses and similar lawn equipment that are reasonably necessary in connection with normal lawn maintenance and pipe clean-outs, no hose, water pipe, sewer pipe, gas pipe, drainage pipe, television cable or other similar transmission line shall be installed or maintained upon any Lot above the surface of the ground, unless such installation is expressly approved by the Architectural Control Committee.

Section 11.25 Utilities. All utilities and utility connections shall be located underground, including electrical and telephone cables and wires. Unless otherwise required by the applicable public utility, transformers, electric, gas and all other meters and apparatus of any type shall be located at the rear of the buildings constructed on Lots or, if approved by the Architectural Control Committee in accordance with Article 10 of this Declaration, located elsewhere on the Lot, provided they are adequately screened as required by the Architectural Control Committee.

Section 11.26 Governmental Requirements. Nothing in this Declaration shall be deemed to constitute a waiver of any governmental requirements applicable to any Lots, and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots.

Section 11.27 Nondiscrimination. No Owner (including Declarant) or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, age, color, creed or national origin in the sale, lease or rental of any Lot or Dwelling Unit nor in the use of the Common Area.

ARTICLE 12

GENERAL PROVISIONS

Section 12.1 Enforcement; Dispute Resolution.

(a) Enforcement. The provisions of this Declaration were established for the purpose of creating, preserving and maintaining the development and operation of a residential community of the highest quality. The Owner of any Lot, by acceptance of a deed therefore, covenants and agrees that the Association has the right to seek any remedy in connection with a breach or violation of the Declaration, Rules and Regulations, Architectural Guidelines or other Governing Document. The Board shall have the authority to establish a procedure to address any such violation, and the Association may conduct administrative proceedings permitted or provided for under this Declaration or as otherwise provided by law. Among other powers, the Association shall have the right, after notice and an opportunity to be heard, to (i) impose reasonable fines for violations of the Governing Documents; (ii) suspend privileges or services provided by the Governing Documents or by the Association (except rights of access to Lots) for reasonable periods of time or during any period that assessments or other amounts due to the Association remain unpaid; (iii) exercise self-help to cure violations (including the towing of Owner and Occupant vehicles that are in violation of parking rules); or (iv) adjudicate small claims for damages and determine liability for such damages. Prior to imposing a fine or suspension of privileges or services against an Owner, the Association will give the Owner no less than ten (10) days prior written notice, during which the Owner shall have an opportunity to cure the violation or nonpayment. If the violation or nonpayment is not cured within this ten (10) day period, the Board shall conduct a hearing to determine the applicable fine or suspension of privileges or services, if any. The Owner shall be given an opportunity to be heard and present evidence at the hearing before the Board. The Board shall provide written notice to the Owner of the Board's decision. The Board shall have the right to impose a fine of up to One Hundred Dollars (\$100.00) per day for each violation beginning the day after the Board issues a written decision on the violation. All fines shall constitute liens against the Lot and shall be collected as Fine Assessments, as provided in Article 6.

(b) No Obligation to Enforce. The Association shall not be obligated to take action to enforce any covenant, restriction or rule that the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

(c) Dispute Resolution.

(i) Consensus for Association Action. Except as provided in this Section, the Association may not commence a legal proceeding or an action under this Article without the approval of at least two-thirds (2/3) of the Members. The foregoing shall not apply to: (i) actions brought by the Association to enforce the provisions of the Governing Documents; (ii) the imposition and collection of Assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings against it. Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including a proceeding based on an alleged defect in any improvement, Declarant shall have the right to be heard by the Members, or the affected Member, and to have access to inspect and correct the condition of or redesign any portion of any improvement as to which a defect is alleged or to otherwise correct or resolve the dispute.

(ii) Alternative Method for Resolving Disputes. Declarant and its officers, directors, employees and agents, the Association and its officers, directors and committee members, all Owners, Members and any other person or entity not otherwise subject to this Declaration who agrees to submit to this Section (each such person or entity being herein referred to as a "Bound Party" or, in groups, as the "Bound Parties") each agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances and disputes described in Section 12.1(c)(iii) of this Declaration (herein referred to as the "Claims") to the procedures set forth in Section 12.1(c)(iv) hereof.

(iii) Claims. Unless specifically exempted below, all Claims between any of the Bound Parties, regardless of how such Claims might have arisen or on what they might be based, including Claims: (i) arising out of or relating to the interpretation, application or enforcement of the Governing Documents or the rights, obligations and duties of any Bound Party under the Governing Documents; (ii) relating to the design and construction of Improvements; or (iii) based on any statements, representation, promises, warranties or other communications alleged to have been made by or on behalf of any Bound Party, shall be subject to the provisions of Section 12.1(c)(iv) hereof. Notwithstanding the foregoing, unless all parties to any such dispute otherwise agree in writing, the

following shall *not* be deemed to be Claims covered by this Section and shall *not* be subject to the provisions of Section 12.1(c)(iv):

(A) any proceeding by the Association against any Bound Party to enforce the provisions of Article 6 of this Declaration:

(B) any proceeding by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent equitable relief) and such other ancillary relief as the court may deem necessary to maintain the *status quo* and preserve the Association's or the Declarant's ability to act under and enforce the provisions of Articles 10 and 11 of this Declaration;

(C) any proceeding between or among Owners that does not include Declarant or the Association as a party, if such proceeding asserts a Claim that would constitute a cause of action independent of the Governing Documents; or

(D) any proceeding in which no Bound Party is an indispensable party.

With the consent of all parties thereto, any dispute involving any of the foregoing excepted actions may be submitted to the alternative dispute resolution procedures set forth in Section 12.1(c)(iv).

(iv) Mandatory Procedures.

(A) Notice. Any Bound Party having a Claim (the "Claimant") against any other Bound Party (the "Respondent") (the Claimant and the Respondent being herein individually referred to as a "Party" and collectively as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely: (i) the nature of the Claim, including the persons or entities involved and the Respondent's role in the Claim; (ii) the legal basis of the Claim (i.e., the specific provisions of the Governing Documents or other authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(B) Negotiation and Mediation.

a. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board of Directors of the Association may appoint a representative to assist the Parties in their negotiations.

b. If the Parties do not resolve the Claim within thirty (30) days after the date of the Notice (or within such other time period as may be agreed upon by the Parties), Claimant shall have an additional thirty (30) days in which to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

c. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, 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 the Respondent from any liability to any person or entity other than the Claimant.

d. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to AAA mediation, or within such other time as may be determined by the mediator or agreed to by the Parties, the mediator shall issue a written notice of termination of the mediation process, which notice shall state that the Parties are at an impasse and shall set forth the date that mediation was terminated (the "Termination of Mediation").

e. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees and expenses of the mediator and the administrative fees of mediation. If the Parties agree to a resolution of a Claim through negotiation or mediation as set forth in this Section, and any Party thereafter fails to abide by the terms of the settlement agreement, any other Party may file suit or initiate arbitration proceedings to enforce the agreement without the need to comply again with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or, if more than one Party is in non-compliance, from all non-complying Parties pro rata) all costs incurred by such Party in enforcing the agreement, including attorneys' fees and court costs.

(C) Binding Arbitration.

a. After Termination of Mediation, Claimant shall be entitled to submit the Claim to final, binding arbitration under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. No

Claim subject to this Section, whether by the provisions thereof or by agreement of the Parties, shall be submitted to or decided by or in a court of law. Any judgment upon the award entered by the arbitrator may be entered in and enforced by a court of competent jurisdiction. If the amount claimed by the Complainant, or by the Respondent in a counterclaim, exceeds \$250,000, the Claim shall be heard and determined by three arbitrators. Otherwise, unless the Parties otherwise agree, the Claim shall be heard and determined by one arbitrator. An arbitrator shall have expertise in the area(s) of the Claim, which may include legal expertise if legal issues are involved.

b. Each Party shall bear its own costs of the arbitration, including attorneys' fees, and each Party shall share equally all fees and expenses of the arbitrator and the administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions regarding the arbitration of any Claim shall be decided by the arbitrator(s).

c. The award of the arbitrators shall be accompanied by detailed written findings of fact and conclusions of law. Except as required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all Parties involved in the arbitration.

(v) Amendment of Section. Notwithstanding any other provision of this Declaration, this Section 12.1(c) may not be amended prior to the expiration of twenty (20) years from the date of recording of this Declaration without the prior written consent of the Declarant.

Section 12.2 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

Section 12.3 Amendment.

(a) By Declarant. During the Development Period, Declarant may amend this Declaration without the consent or joinder of any other Owner or the Association. Any such amendment of this Declaration shall be recorded in the Register of Deeds of the county in which the Property is located, and no amendment shall be binding upon any Lot or Owner until fifteen (15) days after a copy of the amendment has been provided to such Owner. After the Development Period has ended, Declarant may amend this Declaration without the consent or joinder of any other Owner or the Association only for the purpose

of: (i) bringing any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (ii) enabling any reputable title insurance company to issue title insurance coverage on the Common Area or Lots; (iii) enabling any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Lots; (iii) adding or removing property from the effect of the Declaration and as otherwise permitted in Article 3; or (iv) complying with the requirements of any state or federal law or any local, state or federal governmental agency; so long as such amendment does not materially and adversely affect (1) the allocation of voting rights or assessment burdens among the Lots (except as to amendments adding or removing property from the effect of the Declaration and as permitted in Article 3) or (2) title to any Lot, unless the Owner of such Lot shall consent in writing (which consent shall be attached to the amendment).

(b) By Association. Subject to the provisions of Section 12.1(c)(v) and after the Development Period has ended, this Declaration may be amended during the first twenty-five (25) years after the Effective Date by a written instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots and after such 25-year period by a written instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots. Notwithstanding the foregoing, until the end of the Development Period, no amendment adopted by the Owners shall be effective unless and until the amendment is approved in writing by Declarant. Any amendment of this Declaration shall be evidenced by a written instrument signed by all of the members of the Board, together with a certificate by the Board's Secretary certifying to the satisfaction of the requisite voting requirements, both recorded together in the Register of Deeds of the county in which the Property is located. Upon recordation, such amendment shall be binding on all Lots within the Subdivision and the Owners thereof, without regard to whether an Owner voted for or against the amendment.

Section 12.4 Termination. This Declaration may be terminated by a written instrument signed by the Owners of not less than eighty percent (80%) of the Lots in the Subdivision. The written termination instrument shall also be signed by all of the members of the Board and recorded in the Register of Deeds of the county in which the Property is located with a certificate by the Board's Secretary certifying to the satisfaction of the requisite voting requirements. Upon recordation, such termination shall be binding on all Lots within the Subdivision and the Owners thereof, without regard to whether an Owner voted for or against the termination.

Section 12.5 Notices. Except as otherwise provided in this Declaration, any notice to any Owner under this Declaration shall be in writing, shall be effective on the earlier of the date when received by such Owner or the date that is three days after mailing (certified mail, return-receipt requested) to the last address of such Owner set forth in the books of the Association. The Articles and Bylaws shall specify the permissible manner of giving notice for voting and all other Association matters for which the manner of giving notice is not prescribed in this Declaration.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Declarant has caused this instrument to be signed as of the day and year first above written.

LENNAR CAROLINAS, LLC,
a Delaware limited liability company

By: Ric J. Rojas

Print Name: Ric J. Rojas

Title: VICE PRESIDENT

STATE OF North Carolina

COUNTY OF Mecklenburg

I certify that Ric J. Rojas personally appeared before me this day and acknowledged that he is Vice President of **LENNAR CAROLINAS, LLC**, a Delaware limited liability company, and that he, as Vice President, being authorized to do so, voluntarily executed the foregoing on behalf of the company for the purposes stated therein.

Date: May 20, 2008

Christina C. Thurman
Official Signature of Notary

Christina C. Thurman, Notary Public
Notary Public Notary's printed or typed name

My Commission Expires: March 13, 2013

[AFFIX NOTARY STAMP-SEAL]

EXHIBIT A

Legal Description of Property

BEING all of that property in Cabarrus County, North Carolina more particularly shown on that plat titled, "Final Subdivision Plat of: Fullerton Place Subdivision Phase 1 Map 1," recorded in Plat Book 54, Page 75, Cabarrus County Registry.

BEING all or a portion of that land more particularly described in that Warranty Deed recorded in Book 6661, page 83, Cabarrus County Registry.