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**DECLARATION  
OF  
PROTECTIVE COVENANTS  
FOR  
HIGHCROFT RESERVE**

**THE FOLLOWING STATEMENTS ARE REQUIRED BY THE NORTH CAROLINA  
PLANNED COMMUNITY ACT:**

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

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

BK014889PG01622

TABLE OF CONTENTS  
OF  
DECLARATION  
OF  
PROTECTIVE COVENANTS  
FOR  
HIGHCROFT RESERVE

<b>ARTICLE I</b>	
<b>DEFINITIONS</b> .....	1
<b>ARTICLE II</b>	
<b>THE PROPERTIES; ANNEXATION; WITHDRAWAL;</b> .....	10
Section 1. Existing Property .....	10
Section 2. Annexation of Additional Property .....	10
Section 3. Development and Annexation .....	11
Section 4. Withdrawal of Portions of the Properties from the Declaration .....	11
Section 5. Effect of Annexation or Withdrawal .....	12
<b>ARTICLE III</b>	
<b>ASSOCIATION</b> .....	12
Section 1. Board Acts for Association .....	12
Section 2. Powers and Obligations .....	13
Section 3. Functions and Services .....	13
Section 4. Stormwater Management .....	17
Section 5. Dedication, Conveyance or Exchange of Common Elements .....	19
Section 6. Mortgage and Pledge of Common Elements .....	20
Section 7. Liability Limitations .....	20
Section 8. Merger or Consolidation .....	21
<b>ARTICLE IV</b>	
<b>RIGHTS IN AND TO COMMON ELEMENTS</b> .....	22
Section 1. Owners' Easements of Enjoyment and Access .....	22
Section 2. Delegation of Use .....	23
Section 3. Limitation of Liability .....	23
Section 4. Conveyance of Title to the Association .....	24
Section 5. Rights and Responsibilities of Owners as to Common Elements on a Lot .....	25
Section 6. Ingress and Egress; Utilities .....	25
<b>ARTICLE V</b>	
<b>MEMBERSHIP AND VOTING RIGHTS</b> .....	25
Section 1. Membership .....	25
Section 2. Classes of Voting Members .....	26
Section 3. Exercise of Voting Rights .....	26
Section 4. Period of Declarant Control .....	26
<b>ARTICLE VI</b>	
<b>ASSESSMENTS AND OTHER CHARGES</b> .....	26
Section 1. Creation of the Lien and Personal Obligation for Assessments and Other Charges .....	26
Section 2. Liability for Assessments After Change in Membership Status .....	27
Section 3. Nature, Purpose and Use of Assessments .....	27

## Table Of Contents

Section 4. Commencement of Assessments .....	28
Section 5. Annual Operating Budget and Annual Assessments .....	28
Section 6. Declarant's Obligation to Pay Annual Assessments .....	30
Section 7. Reduced Annual Assessments for Builders .....	30
Section 8. Special Assessments .....	30
Section 9. Special Individual Assessment .....	31
Section 10. Stormwater Assessment .....	31
Section 11. Assessment for Governmental Entity Agreements .....	32
Section 12. Collection of Assessments; Penalties for Late Payment .....	32
Section 13. Certification of Assessments Paid .....	33
Section 14. Assessment Lien and Foreclosure .....	33
Section 15. Lien Priority .....	34
Section 16. Exempt Property .....	34
Section 17. Reserve Funds .....	34
Section 18. Working Capital Assessment .....	34
Section 19. Assessments for Limited Common Elements .....	35
Section 20. No Default Under Insured Mortgage .....	35
 <b>ARTICLE VII</b>	
INSURANCE .....	35
Section 1. General Provisions .....	35
Section 2. Property Insurance .....	37
Section 3. Liability Insurance .....	37
Section 4. Other Insurance or Bonds .....	37
Section 5. Owners' Insurance .....	38
 <b>ARTICLE VIII</b>	
REPAIR AND RESTORATION OF THE PROPERTIES .....	38
Section 1. When Required .....	38
Section 2. Eminent Domain .....	39
 <b>ARTICLE IX</b>	
USE OF THE PROPERTIES .....	40
Section 1. Use of the Properties .....	40
Section 2. Animals .....	40
Section 3. Harmful Discharges .....	41
Section 4. Home Businesses .....	41
Section 5. Hunting; Discharge of Firearms .....	41
Section 6. Leases .....	41
Section 7. Legal Requirements .....	42
Section 8. Motorized Vehicles; On-Street Parking .....	42
Section 9. New Construction .....	42
Section 10. Noises .....	42
Section 11. Nuisance and Other Matters .....	43
Section 12. Obstructions, etc. ....	43
Section 13. Owner Liability .....	44
Section 14. Prohibition on Use for Streets .....	44
Section 15. Recreational Areas, Equipment, and Facilities .....	44
Section 16. Restricted Actions by Owners .....	44

## Table Of Contents

Section 17. Soil Erosion Control. ....	44
Section 18. Temporary Structures Prohibited. ....	44
Section 19. Wetlands; Conservation Areas; Buffers. ....	44
Section 20. Exclusion for Declarant. ....	45
 <b>ARTICLE X</b>	
RESTRICTIONS AND RULES. ....	46
Section 1. Framework for Regulation. ....	46
Section 2. Restrictions and Rules. ....	46
Section 3. Rule Making Authority. ....	46
Section 4. Owners' Acknowledgment and Notice to Purchasers. ....	47
Section 5. Protection of Owners and Others. ....	47
 <b>ARTICLE XI</b>	
ARCHITECTURAL APPROVAL. ....	48
Section 1. Architectural Review Committee - Jurisdiction and Purpose. ....	48
Section 2. Composition. ....	49
Section 3. Procedure for Review by Architectural Review Committee. ....	49
Section 4. Landscaping; Utility Lines. ....	52
Section 5. Tree Cutting. ....	52
Section 6. Commencement and Completion of Construction. ....	52
Section 7. Compensation. ....	53
Section 8. Limitation of Liability. ....	53
Section 9. Violation; Enforcement. ....	53
 <b>ARTICLE XII</b>	
EASEMENTS AND OTHER RIGHTS. ....	53
Section 1. Exercise of Easement Rights. ....	53
Section 2. Easements Reserved by Declarant. ....	54
Section 3. Agreements With Other Persons. ....	55
Section 4. Easements Reserved for the Association. ....	55
Section 5. Easement Reserved for the Governmental Entities and Public Utilities. ....	56
Section 6. Easements Shown On Recorded Plats. ....	56
Section 7. Easement for Encroachments. ....	56
Section 8. Restriction on Entry. ....	57
 <b>ARTICLE XIII</b>	
OWNER MAINTENANCE RESPONSIBILITIES. ....	57
Section 1. Duty to Maintain. ....	57
Section 2. Enforcement. ....	58
Section 3. Unimproved Portions of the Properties. ....	58
 <b>ARTICLE XIV</b>	
INSTITUTIONAL LENDERS; MORTGAGEES. ....	58
Section 1. Notice to Board. ....	58
Section 2. Requirements of Institutional Lender. ....	58
Section 3. Obligation of Association to Institutional Lenders. ....	58
Section 4. Institutional Lenders Not Obligated to Collect Assessments. ....	59



## Table Of Contents

<b>ARTICLE XV</b>	
<b>AMENDMENT OF DECLARATION</b>	59
Section 1. Amendment by Declarant	59
Section 2. Amendment by the Members	59
Section 3. Consent of Mortgagees	60
Section 4. Prohibited Effects of Amendment	60
<b>ARTICLE XVI</b>	
<b>DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION</b>	61
Section 1. Duration	61
Section 2. Dissolution of the Association	61
<b>ARTICLE XVII</b>	
<b>RECREATIONAL AMENITIES</b>	62
<b>ARTICLE XVIII</b>	
<b>SHARED RECREATIONAL AMENITIES</b>	62
<b>ARTICLE XIX</b>	
<b>DISCLOSURES AND WAIVERS</b>	62
Section 1. Construction Activities	62
Section 2. Conveyance of Common Elements	63
Section 3. Liability for Association Operations	63
Section 4. Public Facilities and Services	63
Section 5. Safety and Security	64
Section 6. View Impairment	64
Section 7. Water Management	64
<b>ARTICLE XX</b>	
<b>ALTERNATIVE DISPUTE RESOLUTION</b>	65
Section 1. Agreement to Encourage Resolution of Disputes Without Litigation	65
Section 2. Dispute Resolution Procedures	66
<b>ARTICLE XXI</b>	
<b>RETAINING WALLS</b>	67
<b>ARTICLE XXII</b>	
<b>GENERAL PROVISIONS</b>	67
Section 1. Assignment	67
Section 2. Duration of Special Declarant Rights	68
Section 3. Association Contracts and Leases	68
Section 4. Conflicts	68
Section 5. Consent and Notice	69
Section 6. Costs and Reasonable Attorneys' Fees	69
Section 7. Determination of Class of Membership	69
Section 8. Enforcement	69
Section 9. Exclusive Rights to Use Name of Subdivision	70
Section 10. Legal Actions Against Declarant	70
Section 11. Legal Requirements	70

BK014889PG01626

**Table Of Contents**

Section 12. Marketable Title Act. ....	70
Section 13. No Exemption .....	70
Section 14. No Timesharing .....	70
Section 15. Notice .....	70
Section 16. Number and Gender .....	71
Section 17. Reserved Rights. ....	71
Section 18. Rule Against Perpetuities .....	71
Section 19. Severability of Provisions .....	71
Section 20. Subdivision, Combination of Lots; Plat Re-recording .....	72
Section 21. Titles .....	72
Section 22. Joinder of Declarant's Trustee and Beneficiary. ....	73
 <b>EXHIBIT A</b>	
<b>EXISTING PROPERTY</b> .....	77
 <b>EXHIBIT B</b>	
<b>ADDITIONAL PROPERTY</b> .....	78

BK014889PG01627

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

**DECLARATION OF PROTECTIVE COVENANTS  
FOR HIGHCROFT RESERVE**

THIS "DECLARATION OF PROTECTIVE COVENANTS FOR HIGHCROFT RESERVE", referred to herein as the "Declaration", is made on the date hereinafter set forth by LANDFALL ASSOCIATES LLC, a North Carolina limited liability company, also referred to herein as "Declarant".

**RECITALS:**

WHEREAS, Declarant is the owner of the real property in the Town of Cary, Wake County, North Carolina described on Exhibit A attached hereto and incorporated by reference, such real property also being referred to herein as the "Existing Property";

AND WHEREAS, Declarant has developed/is developing the Existing Property, and may develop any Additional Property annexed to the Declaration, less any real property withdrawn from the Declaration, into a residential subdivision known as "Highcroft Reserve" (which also is referred to herein as the "Community" or the "Subdivision") under the Legal Requirements of applicable governmental entities, which development may include, but shall not be required by this Declaration to include, any one or more of the following: residential dwellings; public or private streets; utility easements; stormwater drainage systems and facilities; buffers; greenways; open space; recreational facilities; and other uses consistent with the zoning of the Properties and the Governmental Authority approvals for the Subdivision;

AND WHEREAS, Declarant desires, among other things, to establish a general plan of development for the Subdivision, to provide for the maintenance and upkeep of the Lots, Dwellings, and Common Elements within the Subdivision, to provide for enforcement of the Declaration and other covenants and restrictions, if any, applicable to the Subdivision, to protect the value and desirability of the Properties, and, to that end, desires to subject the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Subdivision and each owner of any part or all thereof;

AND WHEREAS, in furtherance of the foregoing, Declarant has incorporated or will incorporate under the nonprofit corporation laws of the State of North Carolina HIGHCROFT RESERVE ASSOCIATION, INC. to own and/or maintain and/or administer Common Elements, to administer and enforce this Declaration and other covenants, restrictions, and agreements applicable to the Subdivision, and to collect and disburse the assessments and charges provided for herein;

NOW, THEREFORE, Declarant hereby declares that the Existing Property, together with all Additional Property, if any, subjected to the Declaration pursuant to Article II hereof, and less any real property withdrawn from this Declaration, all of which together is referred to as the "Properties" as defined herein, is and shall be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed subject to the Declaration, including the covenants, conditions, restrictions, easements, charges and liens set forth herein, all of which shall run with the Properties and, as provided herein, be binding on and inure to the benefit of all Persons owning any right, title or interest in said the Properties or any part thereof, and their heirs, personal representatives, successors and assigns.

**DECLARATION**

**ARTICLE I  
DEFINITIONS**

The following words and terms, when used in the Declaration (including the Recitals) or any amendment hereto, or in any Supplemental Declaration, unless amended or unless the context clearly indicates otherwise, are defined as follows and are subject to the provisions contained in such definitions (when these and other defined words or terms herein have an initial capital letter or letters, however, it is not required that their use in the Declaration have initial capital letters in order



to have the defined meaning). Terms and words used herein without definition shall have the meanings, if any, specified therefor in the "Definitions" section of the Act or, if not defined in the Act, in the "Definitions" section of the Nonprofit Corporation Act, or if not defined in either the Act or Nonprofit Corporation Act, any applicable definitions section of the Code, and, in the event of any conflict between the definitions contained herein and the definitions contained in the Act, the Nonprofit Corporation Act or the Code, the Act or Nonprofit Corporation Act or Code, in that order and as appropriate, shall control. It should be noted that one or more definitions contain provisions in addition to the defined word or terms, and such additional provisions are part of the Declaration in the same manner and to the same extent as if they had been set out in an Article or Section of the Declaration other than this Article I.

(a) "Act" is defined as the North Carolina Planned Community Act, currently contained in Chapter 47F of the North Carolina General Statutes, and including all amendments, supplements and replacements thereof.

(b) "Additional Property" is defined as all real property allowed by the Declaration to be annexed or subjected to the Declaration subsequent to the recording of the Declaration (the words "annex" and "subject" being used interchangeably in the context of adding Additional Property to the Declaration), such Additional Property being any part or all of the real property described on **Exhibit B** attached hereto and incorporated by reference. As the context allows or requires, the term also can apply to such real property after it has been annexed to the Declaration. No such Additional Property shall be subject to the terms of the Declaration until it has been annexed or subjected to the Declaration in one of the ways allowed herein, and, except as required by Legal Requirements, neither the Declarant nor any other Person is required to annex any Additional Property to the Declaration.

(c) "Allocated Interests" is defined as the Common Expense liability and votes in the association allocated to each Lot.

(d) "Approved Plans" is defined as Plans that have been approved by the Architectural Review Committee (or by the Board, on appeal from the Architectural Review Committee).

(e) "Architectural Guidelines" is defined as the guidelines and standards adopted and in effect with respect to Dwellings and other improvements in the Properties.

(f) "Articles" is defined as the Articles of Incorporation of the Association, including all duly adopted amendments thereto.

(g) "Association" is defined as **HIGHCROFT RESERVE ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns, which may be created as a legal entity by the filing of its Articles either before or after the recording of the Declaration. The Association is a "Subdivision Association" as defined in the **Highcroft Village Declaration**.

(h) "Board" is defined as the Board of directors of the Association, and is the "Executive board" as defined in the Act. The Board is responsible for the management and administration of the Association as provided for herein and in the Act.

(i) "Builder" is defined as a Person, other than the Declarant, who regularly is in the business of constructing Dwellings for resale to other Persons, and who purchases or becomes the Owner of one or more Lots within the Community for the purpose of constructing thereon one or more Dwellings for resale to other Persons. "Builders" refers to all such persons or entities collectively.



(j) "Bylaws" is defined as the Bylaws of the Association as they may now or hereafter exist, including all duly adopted amendments thereto.

(k) "City" or "Town" or "Town of Cary" or "Cary" is defined as the Town of Cary, North Carolina, a North Carolina municipal corporation.

(l) "Code" is defined as the Town of Cary Code of Ordinances as it may be amended from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code. The Properties are subject to applicable Code provisions, whether or not the specific Code provision is cited herein, and whether or not any specific Code provision cited herein is cited correctly or incorrectly, or subsequently is amended.

(m) "Common Elements", or "Common Property", or "Common Area" is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Properties, regardless of how such real property is described in a Governing Document. Common Elements may consist of real property or rights in real property owned or leased by the Association or owned by or dedicated to another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one (1) Lot in the Properties, or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the City). Common Elements may include all of the following:

- (1) All of the items included in the definition of common areas (or other word or term used to describe common areas - for example, common open space) in the applicable Section of the Code; and
- (2) All other items included in the definition of Common Elements, Common Area or Common Property in any Governing Document; and
- (3) All Common Areas shown on any map or plat of the Properties or any part thereof recorded by Declarant in the Registry.

Common Elements also shall consist of all retaining walls designated as Common Elements as provided herein. All Common Elements shall be maintained by the Association as provided herein and the costs of such maintenance are Common Expenses. The foregoing definition of Common Elements in the Declaration is broader than the definition of "common elements" in the Act.

(n) "Common Expense" (also "Common Expenses") is defined as all expenditures made by the Association and all financial liabilities of the Association, including allocation to reserves, and including expenditures for all Association liabilities and obligations imposed by the Code and other Legal Requirements and by the Declaration and other Governing Documents.

(o) "Community-Wide Standard" is defined as the standard of conduct, maintenance, or other activity generally prevailing in the Subdivision, or the minimum standards established pursuant to the Architectural Guidelines, Restrictions and Rules, and Board resolutions, whichever is a higher standard. Declarant initially may establish the Community Wide Standard and it may contain both objective and subjective elements. The Community-Wide Standard may change as development of the Subdivision progresses and as the needs and desires within the Subdivision change.

(p) "contiguous" or "adjoining" is defined as having any common boundary with the subject property, or separated from a boundary of the subject property by a public or private street right of way or a greenway easement or by property owned by a Governmental Authority.

(q) "Declarant" is defined as **LANDFALL ASSOCIATES LLC**, a North Carolina limited liability company. The term "Declarant" also includes any Person to whom or which Declarant assigns or delegates the rights and/or obligations of Declarant under the Declaration by an assignment of Declarant's rights recorded in the Registry. The term "Declarant" also includes any Person designated by Declarant as its "affiliate".

(r) "Declaration" is defined as this "Declaration Of Protective Covenants For Highcroft Reserve", including all duly adopted amendments hereto. **This Declaration is a "Subdivision Declaration" as defined in the Highcroft Village Declaration.**

(s) "Development Period" is defined as the period of time beginning on the date of recording of the Declaration in the Registry through and including 5:00 p.m. on the last of the following dates to occur:

- (1) December 31, 2037; or
- (2) the date that is five (5) years after the date of recording of the most recent Supplemental Declaration executed by the Declarant subjecting real property to the Declaration; or
- (3) the date of release of the last bond (or letter of credit or other, similar financial guarantee) posted by Declarant with any Governmental Authority in connection with Declarant's development of the Properties or any portion thereof; or
- (4) the date on which a certificate of occupancy is issued for the Dwelling constructed on the last Lot in the Properties for which a certificate of occupancy has not been issued previously (for example, if there are 206 Lots in the Properties and certificates of occupancy have been issued for Dwellings on 205 of the 206 Lots, the date that the certificate of occupancy is issued for the Dwelling on the 206<sup>th</sup> Lot).

Provided, however, Declarant may terminate the Development Period at any time by recording a termination instrument in the Registry. In the event of any assignment of Declarant rights, with respect to the rights assigned the Development Period shall remain in full force and effect through the applicable periods of time unless otherwise provided in the assignment document or earlier terminated by the assignee. Declarant has the sole authority to resolve any issues or disputes regarding the date on which the Development Period ends.

(t) "Development Plan" is defined as the most current land use or development plan approved by a Governmental Authority for the Properties or any part thereof, whether the approval is preliminary or final, and regardless of any name other than Development Plan under which it approved by a Governmental Authority (for example, site plan, subdivision plan, cluster unit development plan, or master plan). Declarant reserves the right, in its sole discretion but subject to Legal Requirements, to amend or modify any Development Plan in any manner and in whole or in part, including re-zoning of any portion of the Properties subject to a Development Plan, or the addition or deletion of property to or from a Development Plan, or the reconfiguration of any portion of the Properties subject to a Development Plan.

(u) "Dwelling" or "Dwelling Unit" is defined as any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one housekeeping unit, whether by the Owner thereof or by tenants or sub-tenants of the Owner. Provided, however, a utility dwelling may be part of a Dwelling as allowed herein.

(v) "Exempt Property" is defined as all portions of the Properties other than Lots, except that each Lot owned by the Association also is Exempt Property. Exempt Property is not subject to assessments under the Declaration and, except with respect to any Exempt Property owned by Declarant, owners of Exempt Property have no membership or voting rights in the



Association with respect to such Exempt Property. Exempt Property owned by, dedicated to, or subject to an easement in favor of, a Governmental Authority or a utility provider, including all Exempt Property within publicly-dedicated street rights-of-way, is exempt from all of the provisions of the Declaration, except for the provisions of the Declaration with respect to any easements over such Exempt Property reserved in the Declaration by or for the Declarant, the Association, a Governmental Authority or any other Person, and except for provisions of the Declaration requiring Approved Plans for Dwellings, other buildings, and associated improvements.

(w) "Existing Property" is defined as the real property described on **Exhibit A**.

(x) "fiscal year" of the Association is defined as the calendar year until such time as the Board establishes a different fiscal year for the Association.

(y) "Force Majeure" is defined as any one or more of the following: acts of God, earthquakes, blizzards, tornadoes, hurricanes, fire, flood, malicious mischief, insurrection, terrorism, riots, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, war (declared or undeclared), landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any court, tribunal or judicial authority of competent jurisdiction, inability to obtain materials or supplies after the exercise of all reasonable efforts, substantial interference in construction activities resulting from construction activities conducted simultaneously on adjacent lands by or under the direction of unrelated parties, and any other similar circumstances beyond the reasonable control of the Person responsible for complying with some provision of the Declaration.

(z) "Governing Documents" is defined as all of the following, as the same may be amended, restated, or supplemented from time to time: agreements with Governmental Authorities; the Declaration; the Articles of Incorporation and Bylaws of the Association; Restrictions and Rules; rules and regulations of the Association; Board resolutions; Architectural Guidelines; all applicable Supplemental Declarations; plats (or maps, those terms being used interchangeably herein) of the Properties or any portions thereof recorded in the Registry; declarations of restrictive or protective covenants applicable to the Properties or any portion thereof; documents withdrawing portions of the Properties from the Declaration; and all duly adopted amendments and revisions to any of the foregoing documents or plats.

(aa) "Governmental Authority" or "Governmental Authorities" or "Governmental Entity" or Governmental Entities" is defined as the City, the County of Wake, North Carolina, the State of North Carolina, the United States of America, and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments, divisions, sections, branches, and agencies of such Governmental Authorities.

(bb) "Highcroft Village Declaration" is defined as the "Declaration Of Protective Covenants For Highcroft Village", recorded in the Wake County, North Carolina Registry in Book 12754, Page 167, as amended by a "First Amendment" recorded in the Wake County, North Carolina Registry in Book 14889, Page 1614, and including all other duly adopted amendments thereto (the "Highcroft Village Declaration"). Owners of Lots in the Properties are "Subdivision Lot Owners" as defined in the Highcroft Village Declaration and are Class C Members of the Highcroft Village Community Association, Inc. (also referred to herein as the Highcroft Village Association).

(cc) "Improvement" is defined as any structure and all appurtenances thereto of every kind and type and any other physical change upon, over, across, above or under any part of the Properties, including any clearing of trees or other vegetation and including grading and any other site preparation, and including any other improvement of, to, or on any portion of the Properties, including Dwellings and other structures (specifically including exterior materials, colors, size, location and architectural style of same). Improvements also include decks, patios, porches, driveways, motor vehicle and other parking areas, storage areas located outside of a Dwelling, recreational areas, equipment and facilities located outside of a Dwelling, mailboxes, exterior antennae, dishes and other apparatus to receive or transmit radio, television, or microwave or

other signals, fences, walls, hedges, other landscaping (including planted areas, grassed areas, natural areas and the plant and other materials therein), poles, flags, decorative features and items attached to or on the exterior of a Dwelling or in the yard, ponds, lakes, swimming pools, exterior lights, signs located outside of a Dwelling or visible inside a Dwelling from a street or adjoining portion of the Properties, and all other exterior improvements and items used or maintained on a Lot outside of the Dwelling. The definition of Improvements includes both initial improvements and all subsequent alterations, changes and additions to same. The term "initial improvements" is defined as all of the improvements constructed or placed or located on any Lot in accordance with Approved Plans or Architectural Guidelines not requiring Approved Plans at the time of issuance of a certificate of occupancy for the Dwelling on the Lot (or the time of issuance of the certificate of occupancy for the last Dwelling on a Lot on which more than one Dwelling is to be located). The examples of improvements stated for the purposes of this definition do not imply that all such improvements will be allowed in the Properties, and all improvements are subject to the architectural approval provisions of the Declaration.

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

(ee) "Institutional Lender" is defined as a Mortgagee who is a commercial bank, savings bank, savings and loan association, trust company, credit union, industrial loan association, insurance company, pension fund or business trust, including real estate investment trust, any other lender regularly engaged in financing the purchase, construction or improvement of real estate, or any assignee of loans made by such lender, or any combination of any of the foregoing entities and who holds a first lien deed of trust encumbering a Lot ("first lien" meaning that it has priority over all other security interests in the Lot). Only for the purposes of the notice and inspection rights contained in the Declaration in the portions hereof dealing specifically with Institutional Lenders, the term "Institutional Lender" also shall include the Federal Housing Administration ("FHA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the Department of Veterans Affairs ("VA"), the Government National Mortgage Association ("GNMA") and any other public or private secondary mortgage market agency participating in purchasing, guaranteeing or insuring mortgages which has notified the Board of such participation in writing (each of whom generically is referred to herein as a "Secondary Mortgage Market Agency"). Where the approval of Institutional Lenders is required, such approval consists of any one or more of the following: (i) written approval; (ii) any written waiver of approval rights; (iii) a letter stating no objection; or (iv) presumptive approval if an Institutional Lender does not respond to a notice from the Association requesting approval by notifying the Association, in the manner required herein for giving notices, within thirty (30) days after the Association gives notice to the Institutional Lender of the request for approval.

(ff) "landscaping" is defined as any or all of the following: flowers, plants, shrubs, trees, grass, natural areas (for example, areas covered with pine straw, mulch, or naturally growing vegetation), fences, walls, statues, brick pavers or other decorative ground covering of a similar nature, ornamental water features, and any other items that the Board, in the exercise of its reasonable discretion, determines should be included in the term "landscaping" under the Declaration.

(gg) "Legal Requirement" is defined as any or all of the following: any duly adopted and applicable law, ordinance, regulation or requirement, including the Code, of any Governmental Authority or quasi governmental authority or agency having jurisdiction over the Properties or any portion thereof, including any branch, department, division, section, branch, or agency of any of the foregoing Governmental Authorities or quasi governmental authorities agencies. Legal Requirements apply to the exercise of all rights or the taking of all actions under the Declaration by Declarant, the Association, or any other Person, whether or not the Declaration states that a specific right or action is subject to Legal Requirements or must be exercised or taken in accordance with Legal Requirements.

(hh) "Limited Common Elements", or "Limited Common Property", or "Limited Common Area" is defined as any Common Elements that are established by the Declarant or the Association for the benefit of the Owners of less than all of the Lots in the Properties, and which have been designated (or allocated) as Limited Common Elements for certain Lots by



the Declarant or the Association. Limited Common Elements may include, for example, private streets, private alleys or landscaped medians in streets, and private alleys adjacent to Lots in particular sections of the Subdivision.

(ii) "Limited Common Expenses" is defined as all expenses of the type included within the term Common Expenses, but that are related solely and specifically to Limited Common Elements. Limited Common Expenses shall be paid out of assessments against Members who own Lots for which the Limited Common Elements has been designated. All references in the Declaration to Common Expenses in the context of Limited Common Elements are deemed to refer to Limited Common Expenses for the applicable Limited Common Elements.

(ij) "Lot" is defined as any numbered or lettered portion of the Properties, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is on which there is a completed or under construction Dwelling or on which it is intended that a Dwelling be constructed. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new or revised plat, the newly platted lot thereafter shall constitute a Lot under the Declaration, except as otherwise may be provided herein with respect to allocation of votes and assessments applicable to the newly platted Lot. With respect to the Class B membership in the Association, Unsubdivided Land also constitutes one (1) Lot.

(kk) "maintain", "maintaining", "maintenance", or any similar term used herein, is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation. In addition, maintenance also includes any action necessary for real or personal property to be maintained so that it functions for the purposes for which it is intended and so that it complies with the Community Wide Standard.

(ll) "Member" is defined as each Person who owns a Lot in the Properties.

(mm) "mortgage" or "deed of trust" is defined as any mortgage, deed of trust or other instrument that creates a security interest in real property, and includes all acts required to create such security interest.

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

(oo) "Nonprofit Corporation Act" is defined as the "North Carolina Nonprofit Corporation Act", currently contained in Chapter 55A of the North Carolina General Statutes, and including all amendments, supplements and replacements thereof as enacted from time to time.

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

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

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

(ss) "Plans" is defined as the plans and specifications for a proposed improvement on a Lot, showing (where applicable) the size, shape, dimensions, materials, exterior finishes and colors, location on the Lot, driveway, parking areas, provisions for handling stormwater, decorative landscape planting and other decorative landscaping features, floor plans and elevations, and other items specified in any applicable Architectural Guidelines or required by the Architectural Review Committee or the Board. "Approved Plans" is defined as Plans that have been approved by the Declarant or by the Architectural Review Committee (or by the Board, on appeal from the Architectural Review Committee).

(tt) "present" at a meeting of the Association is defined as being present in person or by a proxy that has been executed and is effective under Legal Requirements and the Governing Documents.

(uu) "Properties", or "Community", or "Subdivision" is defined as the Existing Property, together with all Additional Property annexed to the Declaration pursuant to Article II hereof, less and except all real property that is withdrawn from the Declaration as allowed herein. References to the Properties includes any part or all of the Properties, as applicable, in accordance with the context of such reference herein, whether or not the reference specifically states that it is referring to any part or all of the Properties. **The Properties are "Subdivision Property" as defined in the Highcroft Village Declaration.**

(vv) "property manager" or "management company" is defined as a Person employed by the Association to manage or assist in the management of the business and property of the Association.

(ww) "Recreational Amenities" is defined as those portions of the Common Elements, if any, on which active or passive recreational equipment, facilities, or areas, including associated parking and other improvements, have been constructed, placed, or designated for use, subject to the Governing Documents, by the Declarant, by Lot Owners and their family members, tenants and guests. Provided, however, nothing herein shall be construed as imposing any obligation on the Declarant or any other Person to construct or provide for any Recreational Amenities, except to the extent, if any, that Declarant or such other Person is so obligated under Legal Requirements.

(xx) "Recreational Amenities User" is defined as each natural Person, other than Declarant, Builders, Lot Owners and their family members, tenants and guests who, subject to rules, regulations and fees adopted by the Board, has been granted the right to use part or all of the Recreational Amenities. A Recreational Amenities User shall have no voting rights in the Association, but a Recreational Amenities User shall be subject to payment of such charges for use of the Recreational Amenities as established by the Board and subject to all of the rules and regulations for use of the Recreational Amenities applicable to Owners, as well as any additional rules and regulations adopted from time to time by the Board, including rules and regulations relating to use of the Recreational Amenities by family members, tenants, and guests of Recreational Amenities Users.

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

(zz) "Restrictions and Rules" or "Rules and Regulations" is defined as rules, regulations, requirements, prohibitions, and/or conditions for any one or more of the following as are adopted, amended, or repealed by the Declarant or the Association: (i) matters governing use of the Properties or any part thereof, including the Common Elements, or (ii) matters governing conduct of Persons while in or on the Properties or any part thereof, including the Common Elements, or (iii) providing for the implementation and enforcement of the Governing Documents, or (iv) any other matters that the Declarant or Board, as applicable, determines to adopt as part of the Association's Restrictions and Rules.



In addition to any other provisions of the Declaration authorizing the Association to adopt rules and regulations, the Association, separate and apart from the Restrictions and Rules, may adopt, amend, modify, and enforce reasonable rules and regulations for the use and operation of the Common Elements and/or for the implementation and enforcement of the Governing Documents.

(aaa) "Shared Recreational Amenities" is defined as the Shared Recreational Amenities pursuant to the Highcroft Village Declaration.

(bbb) "Special Declarant Rights" or "development rights" is defined as all rights granted to, or reserved by, or established for the benefit of, Declarant in the Act or in the Declaration and other Governing Documents, whether or not such rights are referred to as Special Declarant Rights or development rights in the Act, the Declaration, or other Governing Documents. Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, subject to such terms and conditions as Declarant specifies in the assignment document. Unless the Declaration or other Governing Documents specify that Special Declarant Rights may be exercised by any Person other than the Declarant or that they become rights exercisable in whole or in part by the Association at any time, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, executed by the assignee, and the assignment becomes effective only upon the recording of the document in the Registry or any later date specified therein.

(ccc) "Stormwater Control Measures" or "Stormwater Control Facilities" is defined as one or more of the following devices and measures, together with associated private drainage easements utilized for conveying stormwater (however identified on a plat, map or in a recorded document) that serves more than one (1) Lot or parts of more than one (1) Lot in the Properties and which are located outside of public street rights-of-way and drainage easements accepted into public use by the applicable Governmental Authority, including, but not limited to, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties. Private drainage easements, however identified on a recorded plat or recorded map or in a recorded document, that serve more than one (1) Lot in the Properties are deemed to be dedicated to the Association for the benefit of the Properties or applicable portions thereof.

Except as otherwise provided herein, Stormwater Control Facilities are part of the Common Elements or Limited Common Elements, as applicable, and maintenance of Stormwater Control Facilities is a Common Expense or Limited Common Expense, as applicable. References in the Declaration to stormwater management include all applicable Stormwater Control Facilities.

(ddd) "Supplemental Declaration" is defined as any document, recorded subsequent to the Declaration and as allowed by the Declaration, that annexes Additional Property to the Declaration, withdraws any portion of the Properties from the Declaration, or is recorded for any other purpose for which the Declaration allows a Supplemental Declaration to be recorded. A document that annexes Additional Property to the Declaration also may be referred to herein or in that document as an "Annexation Declaration" and a document that withdraws any portion of the Properties from the Declaration also may be referred to herein or in that document as a "Withdrawal Declaration".

(eee) "Unsubdivided Land" is defined as all portions of the Properties owned by the Declarant, other than Lots. With respect to the Class B membership in the Association, all Unsubdivided Land owned by the Declarant together constitutes one (1) Lot. Unsubdivided Land owned by Declarant is not subject to assessment under the Declaration.

(fff) "utility" or "public utility" is defined as any one or more of the following used in any part or all of the Properties: electricity; telephone; Internet service; water; sanitary sewer; natural gas; propane gas; television; refuse collection; collection of materials for recycling; and any other service or facility generally recognized as a public utility or

determined to be a public utility by the Declarant (during the Development Period, and thereafter, by the Board); "utility provider" or "public utility provider" is defined as the Person who provides a utility to any part or all of the Properties.

(ggg) "utility dwelling" is defined as that portion of a Dwelling that complies with all of the following requirements: (i) it physically is within or connected to the Dwelling, or is part of a garage attached to or detached from the Dwelling; (ii) it is occupied by one or more Persons who either are related to an Owner of the Dwelling by blood or marriage and within the third degree (such person also being referred to herein as a "related person"), or who are providing physical care for an Owner of the Dwelling or a related person who is residing in the Dwelling or in the utility dwelling; (iii) the utility dwelling contains a gross livable floor area not in excess of  $\frac{1}{2}$  of the gross livable floor area of the Dwelling, including the utility dwelling (for example, if the Dwelling contains 2,000 gross livable square feet including the utility dwelling, the utility dwelling may contain a maximum of 1000 gross livable square feet); and (iv) the utility dwelling complies with all Legal Requirements and with any Restrictions and Rules applicable thereto. Notwithstanding anything to the contrary in the Declaration, a utility dwelling that complies with all of the requirements of the Declaration is an allowed use under the Declaration. Subject to Legal Requirements and subject to the provisions of Article XI of the Declaration with respect to Architectural Approval, the Architectural Review Committee has the authority to determine what constitutes "gross livable floor area" of a Dwelling and of a utility dwelling and to determine all other issues with respect to whether or not a utility dwelling complies with the requirements of the Declaration.

## ARTICLE II THE PROPERTIES; ANNEXATION; WITHDRAWAL;

**Section 1. Existing Property.** The Properties shall be owned, held, transferred, sold, conveyed, leased, used, occupied, and mortgaged subject to the Declaration. The Existing Property constitutes the Properties at the time of the recording of the Declaration.

### **Section 2. Annexation of Additional Property.**

(a) Annexation by the Declarant. Prior to the end of the Development Period, Declarant, in its sole discretion and without the approval or joinder of the Association or any Owner or other Person except the Owner (if not Declarant) of the Additional Property being annexed, may annex Additional Property to the Declaration by recording an Annexation Declaration extending the operation and effect of the Declaration thereto. Subject to the requirements or restraints of Legal Requirements, nothing herein shall be deemed to require the Declarant to annex any Additional Property to the Declaration or to develop it in any manner whatsoever and nothing herein shall be deemed to prohibit the Declarant from annexing any Additional Property to the Declaration.

(b) Other Annexation. If the Declarant desires to annex Additional Property to the Declaration other than as allowed in the immediately preceding subsection (a), or if a Person other than the Declarant desires at any time to annex Additional Property to the Declaration, such Additional Property may be annexed to the Declaration only upon obtaining the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting of the Association for which the notice of the meeting includes notice of the proposal to annex such Additional Property, and the recording in the Registry of an Annexation Declaration signed by the owner of such Additional Property and by the appropriate officers of the Association certifying the required meeting and vote. In addition to the foregoing, at any time during the Development Period that a Person other than Declarant desires to annex Additional Property to the Declaration, to be effective such annexation must have the written consent of Declarant, as evidenced by Declarant's execution of the Annexation Declaration or other document specifically consenting to the annexation.



(c) Approval by Governmental Entities. Notwithstanding the foregoing subsections (a) and (b), if any Legal Requirement requires approval of annexation of Additional Property by a Governmental Authority, the annexation shall not be effective until the requisite approval of the Governmental Authority is obtained.

(d) Annexation Declaration. Each Annexation Declaration shall be effective to annex Additional Property to the Declaration only upon obtaining all approvals required by the Declaration and upon its recording in the Registry, and the effective date of such annexation shall be the later of the date specified therein, if any, or the date of recording. Each Annexation Declaration shall contain a description of the Additional Property annexed sufficient to determine its size and location, either by reference to a plat or deed recorded in the Registry or by a metes and bounds description, and shall indicate that the Additional Property is being annexed to the Declaration. An Annexation Declaration need not be in any specific form and need not be titled Annexation Declaration or Supplemental Declaration (for example, the annexation language may be contained in a deed from the Declarant conveying the Additional Property being annexed), but it shall indicate clearly the intention to annex such Additional Property to the Declaration. Any Annexation Declaration may specify such use restrictions and may contain such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such Additional Property as the Person annexing such Additional Property to the Declaration may determine. Provided, however, the Declaration shall control over any provision of any Annexation Declaration that conflicts with the Declaration.

(e) Votes Allocated to Additional Property. Except as otherwise provided herein or in any Annexation Declaration annexing Additional Property to the Declaration, votes in the Association shall be allocated to such Additional Property in the same manner that votes are allocated to the Properties already subject to the Declaration.

(f) Conveyance of Common Elements in Additional Property. Common Elements, if any, located within any Additional Property or the applicable phase or portion thereof annexed to the Declaration, shall be conveyed to the Association pursuant to the requirements of the Declaration for conveyance of other Common Elements to the Association.

**Section 3. Development and Annexation.** Subject to Legal Requirements that provide otherwise, no Development Plan shall obligate the Declarant to develop any portion of the Properties now or in the future, whether for the purposes shown therein or for any other purpose, the Declarant shall not be required to follow any particular sequence or order of development of the Properties, and the Declarant may annex or consent to annex Additional Property to the Declaration whether or not development of all of the Properties previously subjected to the Declaration has been completed.

**Section 4. Withdrawal of Portions of the Properties from the Declaration.**

(a) Withdrawal by the Declarant. Prior to the end of the Development Period, Declarant, in its sole discretion and without the approval or joinder of the Association or any Owner or other Person except the Owner (if not Declarant) of the portion of the Properties being withdrawn, may withdraw portions of the Properties from the Declaration by recording a Withdrawal Declaration to withdraw the applicable portion of the Properties from the operation and effect of the Declaration. Provided, however, Declarant may not withdraw from the Declaration Lots on which there are Dwellings at the time of the withdrawal unless the conditions of subsection (b) of this Section 4 are satisfied with respect to such withdrawal. Except for the foregoing, and subject to the requirements or restraints of Legal Requirements, nothing herein shall be deemed to require the Declarant to withdraw any portion of the Properties from the Declaration and nothing herein shall be deemed to prohibit the Declarant from withdrawing any portion of the Properties from the Declaration.

(b) If the Declarant desires to withdraw any portion of Properties from the Declaration other than as allowed in the immediately preceding subsection (a), or if a Person other than the Declarant desires at any time to withdraw any portion of the Properties from the Declaration, such portion of the Properties may be withdrawn from the Declaration only upon obtaining the affirmative vote of sixty-seven percent (67%) or more of the votes cast by the Members present at a meeting

of the Association for which the notice of the meeting includes notice of the proposal to withdraw such portion of the Properties, and the recording in the Registry of a Withdrawal Declaration signed by the owner of such portion of the Properties and by the appropriate officers of the Association certifying the required meeting and vote. Provided, however, the required percentage vote of the Members for withdrawal of any Lot on which there is a Dwelling at the time of the proposed withdrawal is eighty percent (80%) or more. In addition to the foregoing, at any time during the Development Period that a Person other than Declarant desires to withdraw a portion of the Properties from the Declaration, to be effective such withdrawal must have the written consent of Declarant, as evidenced by Declarant's execution of the withdrawal declaration or other document specifically consenting to the withdrawal.

(c) Approval by Governmental Entities. Notwithstanding the foregoing subsections (a) and (b), if any Legal Requirement requires approval of withdrawal of any portion of the Properties by a Governmental Authority, the withdrawal shall not be effective until the requisite approval of the Governmental Authority is obtained.

(d) Withdrawal Declaration. Each Withdrawal Declaration shall be effective to withdraw portions of the Properties from the Declaration only upon obtaining all approvals required by the Declaration and upon its recording in the Registry, and the effective date of such withdrawal shall be the later of the date specified therein, if any, or the date of recording. Each Withdrawal Declaration shall contain a description of the portion of the Properties withdrawn sufficient to determine its size and location, either by reference to a plat or deed recorded in the Registry or by a metes and bounds description, and shall indicate that the applicable portion of the Properties is being withdrawn from the Declaration. A Withdrawal Declaration need not be in any specific form and need not be titled Withdrawal Declaration or Supplemental Declaration (for example, the withdrawal language may be contained in a deed from the Declarant conveying the portion of the Properties being withdrawn), but it shall indicate clearly the intention to withdraw such portion of the Properties from the Declaration.

**Section 5. Effect of Annexation or Withdrawal.** Other than as specifically limited by the Governing Documents or any Legal Requirement, the Declarant shall have full power to add to, subtract from, or make changes in, any Development Plan, and annex real property to and withdraw real property from the Declaration, regardless of the fact that such actions may affect the relative voting strength of any Member or class of membership in the Association or increase or reduce the number of Owners subject to assessment under the Declaration. Any portion of the Properties that is withdrawn from the Declaration may be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed in any manner allowed under Legal Requirements, and shall be released from the terms and provisions of the Declaration on the date the withdrawal becomes effective as provided herein, subject to any terms of the withdrawal declaration and except that all easements specifically affecting such withdrawn portions of the Properties, as shown on plats recorded in the Registry or as described in documents recorded in the Registry, shall remain in force and effect unless released or terminated by all Persons having rights to exercise such easements.

### ARTICLE III ASSOCIATION

**Section 1. Board Acts for Association.** All obligations required or allowed to be performed by the Association shall be performed in accordance with Legal Requirements and applicable provisions of the Governing Documents. Unless reserved by or for the Declarant in the Declaration, other Governing Documents or Legal Requirements, or unless otherwise required by Legal Requirements, all rights, powers, easements, functions, services, obligations and duties of the Association may be performed, exercised, directed, or contracted for by the Board on behalf of the Association. There is no distinction intended in the Declaration between items that may be adopted, enforced, acted upon, or waived by the Board and items that may be adopted, enforced, acted upon, or waived by the Association, except where a vote of the Members of the Association is required therefor. The officers of the Association may act on behalf of the Association as authorized in the Governing Documents and/or as directed by the Board.



**Section 2. Powers and Obligations.** Subject to Legal Requirements and the Governing Documents, the Association has the following powers and obligations (the matters addressed in this Section may not constitute a complete list of the powers and obligations of the Association, as other powers and obligations may be addressed in other Sections of the Declaration, other provisions of Governing Documents, and in Legal Requirements):

(a) The Association shall satisfy or perform the obligations required of the Association by Legal Requirements and the Governing Documents, and the Association shall have all powers conferred upon the Association by the Governing Documents and Legal Requirements.

(b) The Association may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property.

(c) The Association has the sole and exclusive power and authority to regulate use of the Common Elements by Owners and other Persons, including establishment of rules and regulations for use and user fees or charges.

(d) The Association has the power and authority to enter into such encroachment agreements and other agreements with Governmental Authorities, utility providers, and other Persons as are reasonably necessary to enable the Association to maintain Common Elements, and to perform its obligations under the Declaration. During the Development Period, the Declarant has the power and authority to enter into encroachment agreements and other agreements with Governmental Authorities, utility providers, and other Persons as Declarant, in its sole discretion, determines, each of which agreements are binding on the Association and all Owners, unless otherwise provided therein.

(e) The Association shall accept transfer of ownership from Declarant of any and all Common Elements and any and all improvements thereon, including transfer or assignment of any and all associated rights, easements, permits, and obligations.

(f) The Association shall accept from Declarant any and all assignments of Declarant rights and obligations under any part or all of the Declaration, any Supplemental Declaration, any easements, any encroachment agreement with a Governmental Authority, or any other agreement with or permit issued by a Governmental Authority, a utility provider, or any other Person, and any document required to be executed with respect to the Properties by a Governmental Authority, including assumption of all Declarant or Association obligations which are contained in such documents and agreements or which are incident to such assignments, as they relate to any Common Elements, architectural approvals or other functions or services performed or provided by the Association.

(g) The Association shall accept from Declarant any and all appointments of the Association as the agent of Declarant for administration and enforcement of any of the provisions of the Declaration or any Supplemental Declaration, and shall assume all obligations which are incident to such appointments as they relate to any Common Elements, architectural approvals or other functions or services performed or provided by the Association.

(h) All rights and powers granted to, or reserved for, or established for the benefit of, the Association may be exercised by the Association (or, as the case may be, on behalf of the Association by the Board or a Committee of the Board), at any time and from time to time.

**Section 3. Functions and Services.** The Association shall or may, as indicated, do, provide, provide, for, perform, accept, or be responsible for the following, the expenses for which are Common Expenses, and in carrying out these and other functions and providing services as required or allowed by the Governing Documents, the Association has all of the following described or referenced rights and powers.

(a) The Association shall carry out the Association's obligations and business under the terms of Legal Requirements and the Governing Documents, including legal, financial, accounting and communications services, and shall provide or procure the administrative services necessary in connection therewith.

(b) The Association shall maintain the Common Elements and any other real or personal property owned or leased by the Association, or subject to an easement granted to or reserved for the Association, in such manner and to such extent as reasonably determined by the Board, giving due consideration to the Community Wide Standard and to the level of maintenance, if any, that may be performed by a Governmental Authority or other Person (including Owners - for example, mowing of grass in a stormwater drainage easement on a Lot or in a general utility easement around the boundaries of a Lot typically would be the responsibility of the Owner of the Lot, unless the Association determines it is in the best interest of the Association to provide such maintenance).

(c) The Association shall operate the Architectural Review Committee(s) as and when provided in the Declaration.

(d) The Association shall keep records of all its acts and corporate business, and, in particular, the Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act.

(e) The Association shall provide an annual financial report to each Member making written request therefor and paying the reasonable charge for same established by the Board and, upon either the (i) the affirmative vote of majority of the votes cast by the Members present at a meeting of the Association, or (ii) the written request of the Members possessing twenty-five percent (25%) or more of the total number of votes of all the Members of the Association, shall have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Member making written request therefor.

(f) The Association shall make available for inspection by the Members and Mortgagees, upon reasonable request, during normal business hours and upon payment of reasonable copying and administrative costs, current copies of the Governing Documents, and the books, records and financial statements of the Association.

(g) As required by the Governing Documents and Legal Requirements, the Association shall establish an annual operating budget, shall establish the amount of and collect assessments, and shall establish reserve funds.

(h) The Association shall hold meetings and give proper notice thereof, as required by the Governing Documents and Legal Requirements.

(i) The Association shall pay all applicable *ad valorem* property taxes and Governmental Authority assessments, if any, on the Common Elements owned by the Association and on other property or assets owned by the Association.

(j) The Association shall obtain and maintain insurance and fidelity bonds as required in the Governing Documents.

(k) The Association shall be responsible for stormwater management and maintenance of Stormwater Control Measures as provided in the Declaration and in any other Governing Document or as required by Legal Requirements.

(l) The Association shall be responsible for all financial and other obligations of the Association pursuant to any agreement entered into by or on behalf of the Association as contemplated by the Declaration, including the following: encroachment agreement or other agreement with a Governmental Authority; agreement with a utility provider; agreement with any other Person.



(m) The Association may take all actions and do all things its deems necessary or desirable to enforce and implement the provisions of Legal Requirements and the Governing Documents, and to exercise the rights, satisfy the obligations, and perform the functions or services the Association is required or allowed to do by the Governing Documents, and in connection therewith, except as specifically limited by the Declaration the Association shall have all of the rights and powers under the Act and the Nonprofit Corporation Act.

(n) The Association may grant easements, leases, licenses and concessions through or over the Common Elements, as the Board determines to be in the best interests of the Association.

(o) The Association may enter into contractual agreements or covenants to share costs with any neighboring property owner or association of property owners to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Elements maintenance.

(p) Subject to Legal Requirements, the Association may maintain grass, landscaping, decorative paving or other decorative features, and all equipment and facilities associated therewith, within street rights of way and on sidewalks in or adjacent to the Properties, with such frequency and in such manner as determined by the Board. In determining the level of maintenance to be performed by the Association, the Board may give due consideration to the extent to which a Governmental Authority or any other Person is responsible for and performs such maintenance and to the terms of any encroachment agreement between the Declarant or the Association and a Governmental Authority. The Association may enter into encroachment and other agreements with a Governmental Authority or other Persons with respect to such maintenance.

(q) To the extent that such services are not, in the opinion of the Board, provided adequately by a Governmental Authority, the Association may provide services of a governmental nature for maintenance of portions of the Properties not owned by the Association.

(r) As provided in the Governing Documents, the Association may adopt, amend, and repeal Restrictions and Rules.

(s) The Association may enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Elements.

(t) The Association may provide, or provide for, services and facilities for Owners and their Lots and Dwellings (as distinguished from services and facilities relating to Common Elements), and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided to or for an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the annual assessment if provided to all Owners. By way of example, such services and facilities might include landscape maintenance, insect and pest control service, cable television service, security, caretaker, transportation, refuse and recycling collection, fire protection, utilities, and similar services and facilities. Provided, however, prior to providing any such service to all Owners that will be paid for as part of the annual assessment, the Association first shall obtain a vote or consent of the Members that is equal to or greater than sixty-seven percent (67%) of the total number of votes in the Association (such vote is not required in connection with services that the Association is required to provide by the Governing Documents or Legal Requirements), and (ii) prior to the end of the Development Period, upon obtaining the written consent of Declarant. In addition, the Association shall accept assignment of all such contracts entered into by the Declarant when the Declarant is the owner of all of the Properties, or entered into at any time by all of the Owners (the execution of the contract by any one of multiple owners of a Lot being sufficient with respect to that Lot).

Nothing in this subsection shall be construed as a representation, promise, warranty, or guaranty by Declarant or the Association as to what, if any, services will be provided or the extent to which any service will be provided.

(u) The Association may borrow funds to pay costs of operation of the Association, which borrowing may be secured by assignment or pledge of Association rights to receive and collect assessments or by liens on Common Elements or other Association assets, as determined by the Board, subject to the Governing Documents and Legal Requirements.

(v) The Association may maintain one or more bank accounts and enter into contracts or other agreements reasonably necessary in connection therewith.

(w) The Association may sue or defend in any court of law on behalf of the Association, and may employ attorneys and other necessary professionals in connection therewith.

(x) The Association may adjust the amount, collect, and use insurance proceeds to repair damage to or replace Common Elements, and if proceeds are insufficient to repair damage to or replace same, levy special assessments (in the manner provided herein) to cover the deficiency.

(y) The Association may employ a property manager and may employ or contract with independent contractors or other Persons as the Board deems necessary.

(z) The Association may retain the services of attorneys, accountants, and such other professionals and/or tradesmen as it deems necessary and appropriate.

(aa) The Association may contract with Declarant or any other Person for performance of services provided by the Association, such contracts to be at competitive rates and upon such terms and for such consideration as the Board deems proper, advisable and in the best interests of the Association.

(bb) The Association may establish and maintain the nonprofit corporation tax status of the Association for federal and State of North Carolina income tax purposes, as determined by the Board to be in the best interests of the Association.

(cc) The Association may contract with other nonprofit corporations or associations which exist for purposes substantially similar to those for which the Association exists, with respect to the maintenance of property owned by such corporation or association.

(dd) The Association may impose reasonable charges for late payment of assessments and, subject to any applicable notice and hearing requirements of the Act, may suspend privileges or services provided by the Association (except rights of access to Lots and rights of access to easements and facilities in the Common Elements that provide stormwater drainage or public utility services to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer after the payment due date.

(ee) Subject to any applicable notice and hearing requirements of the Act, the Association may impose reasonable fines or suspend privileges or services provided by the Association for reasonable periods for violations of the Declaration or other Governing Documents, except that the Association may not suspend rights of access to Lots over Common Elements or rights of access to easements and facilities in the Common Elements that provide stormwater drainage from or public utility services to Lots.

(ff) In addition to the insurance coverages required by the Declaration, the Association may obtain and maintain such other insurance coverage as the Board determines to be in the best interests of the Association, and may adjust the amount, collect, and use the proceeds of such insurance as the Board determines.



(gg) As a Common Expense, the Association may provide educational and training opportunities within the Subdivision, including providing funding and permitting facilities use for such purposes. As examples, the Association may provide education and training activities as a tool for fostering Owner and resident awareness of the Subdivision and the facilities and services provided by the Association, as well as governance and operation of the Association. Other appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and benefitting from and contributing to the Subdivision. The Association also is authorized to fund and support the education and training required for officers, directors, and committee members.

**Section 4. Stormwater Management.** Except for maintenance responsibilities (i) placed on Owners by the Governing Documents or Legal Requirements, or (ii) assumed or undertaken by other Persons (for example, a Governmental Authority), the Association shall maintain the Stormwater Control Measures and shall pay for the maintenance thereof as part of the Common Expenses. As used in the immediately preceding sentence, the word "maintain" includes provision for maintenance of, which may include financial contributions toward maintenance of Stormwater Control Measures located on and/or shared with other properties not subject to the Declaration. Provided, however, such maintenance obligations shall cease and terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time as a Governmental Authority accepts responsibility to maintain, in whole or in part, the Stormwater Control Measures for the Properties, or some other Person is providing the necessary maintenance therefor (for example, pursuant to an agreement which requires monetary payments by the Association to the Person who is performing the maintenance). Following any such assumption of maintenance by a Governmental Authority or other Person, the Association may, without obligation, continue to provide maintenance to the extent that the Governmental Authority or other Person fails to provide adequate maintenance, in the opinion of the Board, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the Governmental Authority or such other Person has not assumed maintenance responsibility, or following termination of the Governmental entity's or such Person's maintenance responsibility. Notwithstanding anything to the contrary herein, the Owner of any Lot on, over or through which any Stormwater Control Measures or portion thereof is located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable, unless the Association assumes such responsibility; and (ii) removal of debris and other materials to the best of the Owner's ability, where such debris or materials has impeded or threatens to impede the free flow of stormwater on, over or through the Stormwater Control Measures located on the Lot. An Owner's responsibility shall include notification of the Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter which the Owner reasonably believes is beyond the Owner's ability to remove, and any excessive erosion or other problem within any such Stormwater Control Measures. The Owner of a Lot on which a Stormwater Control Measure is located shall not obstruct it or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all stormwater drainage easements and stormwater management facilities located on and used exclusively in connection with such Owner's Lot or the improvements thereon, including guttering, and pipes and drains on the Lot used exclusively for transportation of stormwater from such Lot into any Stormwater Control Measures. All issues as to whether a stormwater drainage easement or stormwater management facility is part of the Stormwater Control Measures for which the Association is responsible or whether it is the responsibility of an Owner shall be determined by the Declarant during the Development Period (unless Declarant assigns such right to the Association), and thereafter by the Association.

Declarant, during the Development Period, and thereafter, the Association, subject to any approval required by a Governmental Authority, may grant, relocate, abandon and/or release one or more stormwater drainage easements in the Properties, subject to the following: (i) the grant of any such stormwater drainage easement also shall be consented to in writing by the Owners of all portions of the Properties on which such stormwater drainage easement is located, unless the stormwater drainage easement is shown on a recorded plat of such portions of the Properties, in which event the consent of the Owners is not required and the Declarant or the Association, as applicable, also may grant the stormwater drainage easement by written instrument; (ii) no such relocation, abandonment or release shall materially adversely affect the portions of the Properties on which the stormwater drainage easement then is located or the portions of the Properties served thereby,



or if it does have such material adverse effect it is consented to in writing by the Owners of all portion of the Properties on which such stormwater drainage easement is located and which are served thereby; and (iii) no such grant, relocation, abandonment or release shall materially adversely affect the Stormwater Control Measures for the Properties. The provisions of this paragraph also are applicable to any access easement over any portion of the Properties that provides pedestrian or vehicular access from a public street right of way or other public easement or facility to and from any Stormwater Control Measures.

With respect to its obligations under this Section, the Association shall pay, post, provide for or comply with all bonds and other financial obligations under Legal Requirements and agreements related to Stormwater Control Measures that are executed by the Association (or, during the Development Period, by the Declarant on behalf of the Association or for later assignment to the Association), and the Association (and, during the Development Period, the Declarant on behalf of the Association) may enter into one or more agreements, and amend, add to, or supplement existing agreements (and when such agreements are referred to in the Declaration, the reference includes amendments, additions, and supplements thereto), with a Governmental Authority, another property owners' association, or any other Person with respect to inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating, and managing any part or all of the stormwater on, to, or from any part or all of the Properties and/or any or all of the Stormwater Control Measures for the Properties, whether such Stormwater Control Measures are located within or outside of the Properties, and with respect to maintenance of the Stormwater Control Measures and access to Stormwater Control Measures. Such other agreements shall be binding on all Owners (or, with respect to Limited Common Elements, all Owners to whose Lots such Limited Common Elements is allocated), and may require payments from the Association or the Owners whose Lots are served by the applicable Stormwater Control Measures for the services provided by a Governmental Authority, such other association or such other Person in inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such and agreements may include all other terms and obligations required by Legal Requirements. In connection with the foregoing purposes expressed in this paragraph, the Association (and, during the Development Period, the Declarant on behalf of the Association) may grant rights over, in, under, upon and through any and all stormwater drainage easements in the Properties, and may grant rights over, in, under, upon and through all easements in the Properties that provide pedestrian and/or vehicular access from a publicly dedicated street right of way to and from stormwater drainage easements and/or Stormwater Control Measures. Provided, however, during the Development Period no such agreement shall be valid unless the same shall have been consented to in writing by the Declarant.

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the Properties or phases of the Subdivision (for example, because of the topography of the Properties it may be desirable for a portion of the Properties to have Stormwater Control Measures separate from and/or in addition to, other Stormwater Control Measures in or serving the Properties and it may be desirable for other portions of the Properties to utilize Stormwater Control Measures located outside of the Properties), and in further recognition of the desire of the Declarant for the provisions of the Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Properties of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by a Governmental Authority, in fulfilling its obligations under the Declaration the Association (or, during the Development Period, the Declarant on behalf of the Association or for later assignment to the Association) may enter into different agreements for different portions of the Properties, and/or may amend, add to, or supplement existing agreements, subject to all of the other terms of the Declaration. It further is recognized and contemplated by the Declaration that if such multiple Stormwater Control Measures and/or other agreements are determined to be necessary or desirable, that the costs of maintaining such Stormwater Control Measures and/or funding such agreements may be different for different portions of the Properties and annual assessments may be different for Lots in different portions of the Properties to the extent that one or more Stormwater Control Measures are Limited Common Elements. For example, there may be different portions of the Subdivision that have different Stormwater Control Measures or different portions of the Subdivision that share some of the same Stormwater Control Measures but also have one or more separate Stormwater Control Measures. During the

Development Period Declarant has the right to designate any Stormwater Control Measures as Limited Common Elements, including existing and new Stormwater Control Measures in the Properties as well as existing and new Stormwater Control Measures associated with Additional Property. Stormwater Control Measures not designated by the Declarant as Limited Common Elements are Common Elements.

Declarant hereby informs all Owners and other Persons who deal with or come in contact with the Properties, that as stormwater drains from the Properties or other properties onto or into the Properties, including Lots, Stormwater Control Measures, and other Common Elements, it is possible that substances or materials that may be classified or regulated as "hazardous substances" or "toxic substances" or other regulated substances or materials under Legal Requirements relating to the environment, may flow through and/or accumulate on or in the Properties, including Lots, Stormwater Control Measures, and other Common Elements. Accordingly, each Owner and other Person assumes the risk of the existence of such hazardous substances, toxic substances, or other regulated substances or materials that enter and/or accumulate in the Properties. In addition, each Owner further acknowledges that if it becomes necessary (as determined by Legal Requirements or by the Board) for such substances to be removed from the Stormwater Control Measures or other Common Elements or otherwise handled in accordance with Legal Requirements, and for such Stormwater Control Measures or other Common Elements to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling and/or clean-up are Common Expenses, and that an additional assessments may be required to pay for such removal and/or resultant clean-up of the Stormwater Control Measures or other Common Elements.

Declarant reserves for itself and the Association a blanket easement across all Lots for maintaining satisfactory storm water drainage in the Properties; provided, however, such easement area shall not include any portion of a Dwelling on a Lot. It is anticipated that increased storm water run-off across downstream Lots may result from the construction of impervious surface within the Properties. Neither the Declarant nor the Association with respect to Improvements it constructs in accordance with Legal Requirements applicable at the time of construction, and neither any other Builder or Owner constructing Improvements according to Approved Plans and Legal Requirements applicable at the time of construction, shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from construction of such Improvements.

Declarant may assign to the Association, and the Association shall accept from Declarant the assignment of, all obligations of the Declarant under agreements entered into by the Declarant with respect to Stormwater Control Measures for the Subdivision, provided the Declarant has performed, or made adequate provision for the performance of, all obligations, if any, specifically required of the Declarant under the agreement being assigned to the Association. The provisions of this Section shall be construed liberally in order to allow the Declarant and the Association, on behalf of the Subdivision and all Owners, the necessary flexibility to comply with all Legal Requirements with respect to stormwater, including the execution of agreements with a Governmental Authority or other Persons and the granting of easements to a Governmental Authority or other Persons.

**Section 5. Dedication, Conveyance or Exchange of Common Elements.** The Association, (i) upon obtaining the minimum required voting percentage under applicable provisions of the Act for conveyance of Common Elements (at the time of recording of the Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) or more of the total number of votes in the Association), and (ii) upon compliance with any applicable provisions of the Code and other Legal Requirements, and (iii) prior to the end of the Development Period, upon obtaining the written consent of Declarant, may dedicate portions of the Common Elements to public use and/or convey or exchange portions of the Common Elements with the Declarant or any other Person, for any purpose approved by any required vote of the Members, including any one or more of the following purposes: (i) to eliminate unintentional encroachments of improvements or easements; (ii) to correct any building or other setback violations; (iii) to adjust boundary lines of portions of the Properties; (iv) to facilitate the orderly subdivision and development of the Properties; or (v) to conform the configuration of the Properties to any applicable Development Plan. All conveyances and exchanges of Common Elements are subject to the following: (i) no such



conveyance or exchange (either alone, or in conjunction with other conveyances or exchanges) shall result in a reduction of the portion of the Common Elements that constitutes "open space" below the minimum amount of open space, if any, required by the applicable Governmental Authority; (ii) if required by Legal Requirements, the applicable Governmental Authority must approve any exchange or boundary line adjustment; (iii) any boundary line adjustment must be approved by the Owners of all portions of the Properties affected by the adjustment; (iv) properties received by the Association in an exchange must be of like value and utility as the Common Elements that are part of the exchange transaction; (v) each Lot contiguous to Common Elements prior to the conveyance shall remain contiguous to Common Elements after the conveyance, unless otherwise approved by the Owner of the Lot that no longer will be contiguous; (vi) the conveyance shall not materially conflict with any applicable Development Plan; (vii) no conveyance of Common Elements shall deprive any Lot of its rights of access and support; and (viii) any conveyance of real property to the Association must be free and clear of all encumbrances except for the Declaration and any applicable Supplemental Declaration, or other agreement executed as allowed by the Declaration, Legal Requirements, street rights of way or access easements, greenway easements, easements for utilities, and stormwater drainage easements.

All real property owned by the Association is part of the Common Elements and, without further act of the Association or its Members, is released from all provisions of the Declaration (and any applicable Supplemental Declaration) except those applicable to the Common Elements, but it remains subject to the easements and other matters listed in numbered item (viii) of the immediately preceding paragraph of the Declaration. Any Common Elements dedicated to public use, conveyed or exchanged by the Association, without further act of the Association or its Members, ceases to be Common Elements and shall be subject to those provisions of the Declaration and any applicable Supplemental Declaration that would have been applicable to such real property had it not been Common Elements, except that, if required by a Governmental Authority or a utility provider, such portion of the Common Elements may be conveyed by the Association to the Governmental Authority or utility provider, as the case may be, free and clear of all of the terms of the Declaration and any applicable Supplemental Declaration. Further provided, with respect to any Common Elements conveyed by the Association, including any Common Elements exchanged by the Association for other real property, that is not going to be part of the Subdivision following such conveyance or exchange (for example, Common Elements conveyed to an owner of real property adjoining, but not part of, the Subdivision to settle a boundary issue), it shall be released from the provisions of the Declaration or any applicable Supplemental Declaration upon the recording in the Registry of the deed or other instrument used for the conveyance or exchange.

**Section 6. Mortgage and Pledge of Common Elements.** The Association, (i) upon complying with the minimum required voting percentage under applicable provisions of the Act for conveyance or dedication of Common Elements (at the time of recording of the Declaration Section 47F-3-112 of the Act requires the affirmative vote of eighty percent (80%) or more of the total number of votes in the Association), and (ii) prior to the end of the Development Period upon obtaining the written consent of Declarant, shall have the power and authority to mortgage the Common Elements and to pledge its assets as security for loans made to the Association, which loans shall be used by the Association in performing its functions and providing services under the Declaration. Declarant may, but shall not be required to, make loans to the Association, subject to the foregoing and further subject to approval by the Declarant of the use of such loan proceeds and the terms pursuant to which such loans will be repaid. Notwithstanding anything in the Declaration to the contrary, at any time that there is any unpaid amount owed to Declarant under any loan made by it to the Association, without Declarant's written consent the annual assessments shall not be reduced below the amounts in effect at the time such loan first was made.

**Section 7. Liability Limitations.** Except as required by Legal Requirements or the Declaration, or agreed to by any of the following Persons otherwise excluded from liability by the provisions of this sentence, neither Declarant, nor any Builder, nor any current or former Member of the Association, nor the Board, nor any director on the Board, nor any officer of the Association, nor any member of the Architectural Review Committee or any other Association committee, nor any shareholder, director, officer, partner, member, manager, agent or employee of any of the foregoing, shall be personally liable for debts contracted or incurred by the Association or for a tort of another current or former Member, whether or not