

(b) The non-exclusive right and power, with respect to any portion of the Properties, to grant and record in the Registry such specific easements as may be necessary, in Declarant's sole discretion, for the complete and orderly development of the Properties or any Additional Property. The Owner of any portion of the Properties to be burdened by any such easement granted by Declarant shall be given written notice in advance of the grant. The location of any such easement on the Lot of an Owner, except for those portions along the boundaries of such Lot as described in the immediately preceding subsection (a), shall be subject to the written approval of the Owner of the Lot to be burdened by the easement (written consent of any one of multiple Owners of the Lot being deemed sufficient), which approval shall not be unreasonably withheld, delayed, or conditioned.

(c) The right to subject the Properties and/or the Association to a contract with Progress Energy (or other utility provider) for the installation and maintenance of above ground or underground electric cables and lines and/or the installation and maintenance of street lighting (including poles and light fixtures), either or both of which may require an initial payment and/or a continuing monthly payment by each Owner and/or by the Association as part of the Common Expenses. The Association shall accept assignment from Declarant of contracts entered into by the Declarant with Progress Energy or other utility provider for such electrical and/or lighting services.

(d) A perpetual, non-exclusive, and alienable easement to maintain all vegetation required or allowed under any planting, landscaping, tree conservation plan, or replanting plan required or approved for the Subdivision pursuant to a Development Plan or Legal Requirements.

Section 3. Agreements With Other Persons. In connection with its exercise of any easements or rights reserved in this Article, Declarant reserves the additional right, which may be exercised by Declarant or its successors or assigns in its sole discretion, in whole or in part, without any obligation to exercise such right, to enter into agreements on behalf of and binding on the Association with other Persons (including other associations of property owners) for any one or more of the following: (i) use and maintenance of any easements and associated improvements and facilities therein located on the Properties or on the properties owned or used by such other Persons, which agreements may provide for financial and/or management responsibilities for the Association and/or for such Persons; and (ii) use and maintenance of Stormwater Control Facilities in the Properties and/or on the properties owned or used by such Persons.

Section 4. Easements Reserved for the Association. Easements are reserved for the Association as follows, which may be exercised by the Association in its sole discretion, without any obligation to exercise any of same, but subject to any restraints on the exercise of such easements contained in any other Sections of the Declaration. These easements specifically include the right to connect to and use and maintain new and existing wires, poles, lines, pipes, conduits, meters, equipment, structures, facilities, and soil and water impoundments and other Stormwater Control Measures in the easement areas, without payment of any charge or fee to any Owner of any part or all of the Properties:

(a) A perpetual, non-exclusive and alienable easement in, over, under, across and through all portions of the Properties to enable the Association to perform its functions and provide the services under the Declaration, and specifically including the same easement reserved for Declarant herein with respect to retaining walls. Provided, however that any such entry by the Association upon any portion of the Properties shall be made with as minimum inconvenience to the Owner of such portion of the Properties as reasonably practicable, and any damage caused by or resulting from the gross negligence or willful misconduct of the Association's employees, contractors or agents shall be repaired by the Association at the expense of the Association.

(b) In addition to the foregoing, and in order to implement effective and adequate soil erosion controls and/or stormwater management, a perpetual, non-exclusive easement to enter upon any portion of the Properties, before and after improvements have been constructed or placed thereon, to maintain or cause to be maintained soil erosion control and/or stormwater management; provided, however, the Association shall not at any time be required to exercise this easement, and

no exercise of the easement shall interfere unreasonably with any permanent improvements constructed on any such portion of the Properties (which improvements have been approved by the Architectural Review Committee as required herein). If the need for stormwater management or soil erosion controls results from the construction of improvements on any portion of the Properties or any excavation, grading, removal, reduction, addition or clearing of any portion of the Properties, the cost of any such work performed by the Association for the purpose of implementing effective and adequate stormwater management or soil erosion control shall be assessed against the Owner of such the portion of the Properties on which such work has been performed as a special individual assessment. Provided, however, if the Association determines that appropriate corrective action is necessary on any portion of the Properties, prior to exercising this easement the Association shall give the Owner of such portion of the Properties written notice of the proposed corrective action and a reasonable opportunity to take the corrective action specified in such notice. If such Owner fails to complete the corrective action by the date specified in the notice, the Association then may exercise this easement.

(c) A perpetual, non-exclusive, and alienable easement to maintain all vegetation required or allowed under any planting, landscaping, tree conservation plan, or replanting plan required or approved for the Subdivision pursuant to any Development Plan or Legal Requirements.

(d) The Association has the right to assign its rights under its easements as it deems reasonable in the best interests of the Properties.

Section 5. Easement Reserved for the Governmental Entities and Public Utilities. Perpetual, non-exclusive and alienable easements are hereby reserved and established over all portions of the Properties for governmental entities and for all public utility providers serving the Properties, and their agents, employees and contractors, for the purposes, as applicable to the Governmental Authority or utility provider, of setting, removing and reading utility meters, maintaining Stormwater Control Measures, maintaining utility equipment, facilities and connections, and acting for other purposes consistent with the public safety and welfare, including garbage removal, police protection, fire protection (including access to any and all fire hydrants located outside of public street rights of way or easements dedicated to a Governmental Authority) and delivery of mail. Except in an emergency, these easements shall be exercised in a reasonable manner and at reasonable times. Any pedestrian access easement established by Declarant or the Association over any portion of the Properties for the purpose of providing pedestrian access to and from Governmental Authority greenways or Governmental Authority greenway easements are established for the benefit of the applicable Governmental Authority and the public in general.

Section 6. Easements Shown On Recorded Plats. Declarant, for itself and its successors and assigns (which may include the Association, the applicable Governmental Authority, and public utility providers), and in addition to all other easements reserved in the Declaration, hereby reserves perpetual, non-exclusive and alienable easements in the locations and for the purposes shown and indicated on all plats of the Properties recorded in the Registry. These easements specifically include the right to maintain in the easement areas identified on such plats all improvements deemed necessary, in the reasonable discretion of the Person who exercises the easement rights, for the full exercise of such easements. Except as otherwise required by the Governing Documents or Legal Requirements, the Persons who have the foregoing easement rights shall have no obligation to exercise any part or all of same.

Section 7. Easement for Encroachments. If, in accordance with Approved Plans, any Dwelling is closer than five (5) feet to any boundary line of the Lot on which that Dwelling is located (for the purposes of this Section, the "subject Lot"), then the Owner of the Dwelling, and such Owner's tenants and contractors, shall have a perpetual, non-exclusive access easement over the adjoining Lot or other portion of the Properties as reasonably necessary to facilitate maintenance of the Dwelling on the subject Lot. All such maintenance shall be done expeditiously and the exercise of this easement shall in all respects be reasonable and, upon completion of the maintenance, as reasonably practicable the Owner of the subject Lot shall restore the Lot or other portion of the Properties on which the easement has been exercised, including all improvements thereon that are damaged by the exercise of this easement, to substantially the same or better condition as it was in prior to

the maintenance. When the foregoing easement exists, except in accordance with Approved Plans no fence, wall, storage shed, or similar structure or any other kind of obstruction to the exercise of the easement shall be permitted on the adjoining Lot or other portion of the Properties. Provided, however, the easement established by this Section shall not restrict or impair any other easements established herein in favor of the Declarant, the Association, an Owner, a Governmental Authority, or any public utility provider.

Section 8. Restriction on Entry. Notwithstanding anything to the contrary contained in this Article, no right or easement granted, reserved or established in the Declaration shall be construed to give Declarant, the Association, an Owner, a Governmental Authority or any other Person the right to enter any Dwelling or other building located on any portion of the Properties, except as otherwise specifically stated in the provision of the Declaration relating to the particular right or easement or as reasonably and necessarily implied in order for the right or easement to be exercised (for example, maintenance of a party wall), or as allowed by the Owner of the applicable portion of the Properties. Provided, however, each Owner hereby is given notice that Legal Requirements may allow such entry by a Governmental Authority or other Persons, even though the particular easement granted, reserved or established in the Declaration does not allow such entry.

ARTICLE XIII OWNER MAINTENANCE RESPONSIBILITIES

Section 1. Duty to Maintain. Except for those items for which the Association has maintenance responsibility under the Governing Documents, or except as otherwise provided in the Governing Documents, each Owner, at such Owner's sole cost and expense, shall maintain such Owner's Lot, including all improvements thereon, in a safe, clean and attractive condition at all times, subject to and in a manner consistent with the Governing Documents and Community Wide Standard, including all of the following:

- (a) Prompt removal of all litter, trash, refuse and wastes.
- (b) Lawn mowing and maintenance on a regular basis, including, subject to any Legal Requirements, any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such Lot that are not maintained in accordance with the Community Wide Standard by either the Association or a Governmental Authority.
- (c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material.
- (d) Maintenance of flower and plant gardens.
- (e) Maintenance of exterior lighting and mechanical facilities.
- (f) Maintenance of parking areas and driveways.
- (g) Complying with all Legal Requirements.
- (h) Soil erosion control as required by the Declaration.
- (i) Maintenance of drainage easements and Stormwater Control Measures as required by the Declaration.

The foregoing responsibilities shall be performed in a manner that does not unreasonably disturb or interfere with the reasonable enjoyment of the Properties by Persons entitled thereto. Provided, however, and notwithstanding anything to the contrary appearing herein, Declarant is exempt from the required maintenance provisions of this Article with respect to all portions of the Properties it owns, except for any of same on which Dwellings are located.

Section 2. Enforcement. If any Owner fails to perform any of the foregoing maintenance responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required maintenance. If any such Owner fails to perform the required maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's Lot and perform such maintenance without any liability for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Person an invoice therefor. If any Owner fails to reimburse the Association as required, the Association may impose a special individual assessment against the Owner and such Owner's Lot for the amount owed.

Section 3. Unimproved Portions of the Properties. Notwithstanding the foregoing provisions of this Article, but subject to the other applicable provisions of the Declaration, Owners of unimproved Lots or other unimproved portions of the Properties shall be required to maintain same only in accordance with such maintenance standards, if any, as are established by the Declarant, during the Development Period, and thereafter, in accordance with such reasonable maintenance standards established by the Board.

ARTICLE XIV INSTITUTIONAL LENDERS; MORTGAGEES

Section 1. Notice to Board. Upon request from the Board, any Owner who mortgages such Owner's Lot shall notify the Association of the name and address of the Mortgagee. No Institutional Lender shall be entitled to any rights under the Declaration unless it has notified the Association as required in this Article and has requested Institutional Lender rights under the Declaration.

Section 2. Requirements of Institutional Lender. Whenever any Institutional Lender desires to avail itself of the rights afforded Institutional Lenders under the Governing Documents, it shall furnish written notice thereof to the Association by certified or registered mail, or by overnight delivery service, identifying the Lot upon which such Institutional Lender holds a first lien mortgage or deed of trust, specifying which rights it wishes to exercise, specifying notices or other information it wishes to receive, and designating the name of the person and mailing address to which notices, reports or information are to be sent by the Association. The Institutional Lender shall be responsible for updating the information required by this Section, and the Association is obligated to give the required notices only to the most current name and address it has received from the Institutional Lender. Such notice shall be deemed to have been received by the Association only upon actual delivery thereof, as evidenced by the return registry receipt or records of the overnight delivery service.

Upon assignment or other transfer, or payment in full, of the indebtedness secured by the lien of the mortgage subject to the notice given to the Association by the Institutional Lender, the Institutional Lender promptly shall notify the Association that it no longer wishes to exercise the rights requested in the previously given written notice, such new notice to be given in the same manner as the previously given notice. To avail itself of the rights of Institutional Lenders under the Governing Documents, any such assignee or transferee must first notify the Association in the manner provided for in this Article of the Declaration.

Section 3. Obligation of Association to Institutional Lenders. Any Institutional Lender who has notified the Association as required in the immediately preceding Section of this Article, shall have each of the following rights that are specifically requested in the notice to the Association, until the earlier of such time as the indebtedness secured by the lien of the mortgage subject to the notice given to the Association has been paid in full or the Institutional Lender has transferred or assigned ownership thereof to another Person.

(a) To inspect and receive copies of Governing Documents and other Association documents and records on the same terms as the Members of the Association. The Association has the right to charge a reasonable amount to Members and

Institutional Lenders for production and delivery of copies of such Governing Documents and other Association documents and records.

- (b) To receive a financial statement of the Association for the immediately preceding fiscal year of the Association.
- (c) To be notified of any proposed amendments to the Declaration and any meetings of the Association at which such proposed amendments are to be voted on.
- (d) To be notified of any proposed action of the Association that requires the consent of a specified percentage of Institutional Lenders.
- (e) To be notified of any condemnation or casualty loss affecting either a material portion of the Common Elements or the Lot securing its Mortgage.
- (f) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (g) With respect to the Lot that secures its mortgage, to be notified of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days), and to be notified of any other default of the provisions of the Declaration by the Owner of such Lot. Provided, however, any failure of the Association to notify the Institutional Lender of the delinquency or default shall not affect the validity of any Association lien, or any other Association rights and remedies, against the defaulting Owner or such Owner's Lot.
- (h) To be notified of any other matters for which applicable Institutional Lender rules and regulations or other Governmental Authority rules or regulations require the Association to give notice to Institutional Lenders, and the Institutional Lender desiring to be notified of such matters shall described the matters and applicable rules and regulations in the notice it gives to the Association.

Section 4. Institutional Lenders Not Obligated to Collect Assessments. No Institutional Lender shall have any obligation to collect any assessment under the Declaration.

ARTICLE XV AMENDMENT OF DECLARATION

Section 1. Amendment by Declarant. In addition to specific amendment rights, if any, granted elsewhere in the Declaration, during the Development Period Declarant may unilaterally, and in its sole discretion, without the consent, approval, or joinder of any Owner, the Association, or any other Person (except to the extent that Legal Requirements or Article XX of this Declaration may require the consent or joinder of a Governmental Authority), and without any meeting of the Association, amend the Declaration for any purpose that is not prohibited by the Act or other Legal Requirement. Any amendment of the Declaration by the Declarant shall be effective upon the later of the date of its recording in the Registry or the effective date specified therein.

Section 2. Amendment by the Members. Unless amended as allowed under Section 1 of this Article, the Declaration may be amended only as follows:

- (a) Unless a higher percentage or different voting requirement is specified herein or by Legal Requirements, the Declaration may be amended only by the written agreement or consent of those Members, or the affirmative vote at a meeting of the Association of those Members, to whom are allocated sixty-seven percent (67%) or more of the total number of votes

in the Association, and with the consent or joinder of any applicable Governmental Authority if Legal Requirements or Article XX of this Declaration require the consent or joinder of a Governmental Authority and, during the Development Period, with the written consent or joinder of Declarant.

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to the Declaration is to be voted on, together with at least a summary description of the proposed amendment, shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of the date of such meeting.

(c) When any amendment to the Declaration is approved by Members of the Association (and Declarant, when applicable) as provided in this Section, the appropriate officers of the Association (and Declarant, when applicable) shall execute in the same manner as a deed and record in the Registry, a document setting forth the following: the amendment; the effective date of the amendment (if no effective date is stated the amendment shall be effective upon the recording of same in the Registry); and if applicable, the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes required to constitute a quorum at such meeting, the total number of votes present at such meeting, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of such amendment and the total number of votes cast against the amendment. The document shall be recorded in the Registry within thirty (30) days following the date of the meeting at which the amendment was adopted or the written agreement for the amendment is completed. Provided, however, and notwithstanding the foregoing or anything to the contrary appearing herein, no amendment to the Declaration duly adopted by the Members of the Association shall be void or invalid solely because the document describing the amendment is not recorded in the Registry within said thirty (30) day period, and any such duly adopted amendment to the Declaration recorded following the end of said thirty (30) day period shall become effective on the later of the effective date specified therein, if any, or on the date it is recorded in the Registry.

Section 3. Consent of Mortgagees. Unless required by a Legal Requirement, no consent, joinder, or approval of any Mortgagee to any amendment of the Declaration by Declarant during the Development Period is required. No consent, joinder, or approval of any Mortgagee to any other amendment of the Declaration is required unless (i) the amendment materially, adversely affects the rights of Mortgagees under the Declaration, or (ii) a Legal Requirement requires the consent of Mortgagees or a percentage of Mortgagees, or (iii) the mortgage held by such Mortgagee specifically requires the Mortgagee's consent with respect to the Member's Lot subject to the mortgage, and if either (ii) or (iii) is applicable, the Mortgagee has notified the Association of its rights regarding consent to amendments in the same manner required for an Institutional Lender to notify the Association in the Article of the Declaration dealing with Institutional Lenders. If the amendment is adopted by the required percentage of Members exclusive of the Member or Members who own Lots for which consent of a Mortgagee is required under this Section, then the amendment is valid whether or not the necessary Mortgagees have consented to the amendment.

Section 4. Prohibited Effects of Amendment. No amendment to the Declaration, whether adopted by the Declarant, by the Association, or by the Members or any applicable group of Members of the Association, shall do or result in any of the following:

- (a) increase the financial obligations of an Owner in a discriminatory manner.
- (b) further restrict development on any portion of the Properties in a discriminatory manner.
- (c) diminish or impair, or in any way adversely affect the rights or protections of Declarant without the written consent of Declarant.
- (d) impose additional obligations upon Declarant without the written consent of Declarant.
- (e) diminish or impair the express rights of Institutional Lenders under the Declaration without the prior written

approval of a majority of the Institutional Lenders who have requested the exercise of such rights as provided herein.

(f) terminate or revise any easement established by the Declaration, without the written consent of the Persons whose Lots or other real property is benefitted by the easement and, with respect to a revision, the written consent of the Persons whose Lots or other real property is burdened by the easement.

(g) without the consent of the applicable Governmental Authority, terminate, reduce, amend, revise, or alter any obligation of the Association or the Members of the Association under any Legal Requirement or under any encroachment agreement, or other agreement entered into with a Governmental Authority by the Association or, as allowed by the Declaration, by the Declarant on behalf of the Association.

(h) alter or remove or attempt to alter or remove any Legal Requirement.

ARTICLE XVI DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION

Section 1. Duration. Unless sooner terminated as required by Legal Requirements, the Declaration shall run with and bind the Properties and each Owner, and shall inure to the benefit of the Association and each Owner of any portion of the Properties, and their respective heirs, successors, and assigns, from and after the recording of the Declaration in the Registry until such time as it is terminated by a written termination agreement, executed or ratified in the same manner as a deed, by those Members to whom eighty percent (80%) or more of the total number of votes in the Association are allocated. Execution or ratification by any one of multiple Owners of a Lot is sufficient for that Lot unless, prior to the time the termination agreement is recorded in the Registry, any other Owner of that Lot files with the Association a written objection to the termination of the Declaration (in which event the vote allocated to that Lot shall be considered as not having been exercised). The termination agreement shall specify a date after which it will be void unless it is recorded in the Registry before that date. The termination agreement may not be recorded in the Registry unless and until the requisite number of signatures have been obtained as provided herein, and it shall be effective only upon recording. If, pursuant to the termination agreement, any real estate in the Properties is to be sold following termination of the Declaration, the minimum terms of the sale shall be set forth therein.

The Declaration shall be deemed incorporated in all deeds and conveyances hereinafter made by Declarant or any other Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Properties shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of the Properties, such Person shall be deemed to have assented to this Declaration and all of the terms and provisions hereof.

Section 2. Dissolution of the Association. The Association shall be dissolved upon the termination of the Declaration. Provided, however, until any sale of the Common Elements authorized by the termination agreement or approved by the Owners in the same manner as required for approval of the termination agreement is completed and the sale proceeds distributed, the Association shall continue in existence with all of the powers it had before termination. The Association, on behalf of the Owners, may contract for the sale of the Common Elements, but the contract is not binding unless such sale has been authorized in the termination agreement or it has been approved by the Owners in the same manner as required for approval of the termination agreement. Proceeds of the sale of Common Elements shall be distributed to the Owners and lienholders as their interests may appear, as provided in the termination agreement or other agreement approved by the Owners in the same manner as required for approval of the termination agreement. If the Common Elements is not to be sold following termination of the Declaration, title to the Common Elements vests in the Owners upon termination, as tenants in common in proportion to their respective interests as provided in the termination agreement.

Upon dissolution of the Association or upon loss of ownership of all of the Common Elements by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Elements as allowed by the Declaration, or by reason of merger and/or consolidation with any other association as allowed by the Declaration), except as otherwise provided in the termination agreement, other agreement approved by the Owners in the same manner as required for approval of the termination agreement, or Legal Requirements (in particular, Section 47F-2-118 of the Act, or any successor Section of the Act), any portion of the Common Elements not under the jurisdiction of and being maintained by another association substantially similar to the Association, together with all other assets of the Association, first shall be offered to the City (or, if the City refuses such offer, then to some other appropriate Governmental Authority or public agency as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Elements and such assets were required to be devoted by the Association. If the City or other Governmental Authority or public agency accepts the offer of dedication, such portion of the Common Elements and assets shall be conveyed by the Association to such Governmental Authority or public agency, subject to the superior right of an Owner to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which that Lot is located, subject to all other applicable rights of way and easements, and subject to ad valorem property taxes subsequent to the date of such conveyance.

If the City or other appropriate Governmental Authority or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Elements and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Elements was required to be devoted by the Declaration, such transfer and conveyance to be made subject to the rights of Owners and the other matters set forth in the immediately preceding paragraph of this Section. If there is no nonprofit corporation, association, trust or other entity who will accept such transfer and conveyance of the Common Elements and assets of the Association, then such Common Elements and assets shall be distributed as provided in the plan of termination/dissolution adopted by the Association.

ARTICLE XVII RECREATIONAL AMENITIES

Nothing in the Declaration or other Governing Documents shall be construed as imposing any obligation on the Declarant or any other Person to construct or provide for any Recreational Amenities on or for any part or all of the Properties or any Owner, occupant, or user thereof, except to the extent, if any, that Declarant or such other Person is so obligated under Legal Requirements.

ARTICLE XVIII SHARED RECREATIONAL AMENITIES

Shared Recreational Amenities are governed by the Highcroft Village Declaration and the Members of the Association are Class C Members of the Highcroft Village Association for the purposes of the Shared Recreational Amenities as provided in the Highcroft Village Declaration.

ARTICLE XIX DISCLOSURES AND WAIVERS

The following are in addition to any other disclosures and waivers in the Declaration.

Section 1. Construction Activities. All Owners and other Persons who use the Properties hereby are notified

that Declarant and/or its agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, conduct blasting, excavation, construction, and other activities within the Properties. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Properties generally, such Owners and such other Persons acknowledge, stipulate, and agree: (i) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (ii) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the portion of the Properties where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (iii) that Declarant and its agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shareholders, directors, officers, partners, members, managers, agents and employees shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (iv) that any purchase or use of any portion of the Properties has been and will be made with full knowledge of the foregoing; and (v) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of the Properties.

Section 2. Conveyance of Common Elements. Declarant may convey or transfer all Common Elements, including all improvements thereon, to the Association in an "AS IS, WHERE IS" condition, and in such conveyances may reserve such easements as Declarant, in its sole discretion, deems necessary or advisable for completion or maintenance of any improvements in the Common Elements and any development of the Subdivision. Declarant hereby disclaims and makes no representations, warranties or other agreements, express or implied, by law or fact, with respect to the Common Elements and improvements thereon, including, without limitation, representations or warranties of merchantability regarding the condition, construction, accuracy, completeness, design, adequacy of size or capacity thereof in relation to the utilization, date of completion, or the future economic performance or operations of, or the materials, furniture, or equipment used therein. Neither the Association nor any Owner or any other Person shall make any claim against Declarant, its successors and assigns, relating to the condition, operation, use, accuracy or completeness of the Common Elements, or for incidental or consequential damages arising therefrom.

Declarant shall transfer and assign to the Association, without recourse, all warranties received from manufacturers and suppliers relating to any of the Common Elements or improvements thereon, or relating to any personal property transferred by Declarant to the Association, which exist at the time of transfer and are assignable, but Declarant's failure to do so shall not constitute any grounds for any claim, cause of action or other legal recourse against Declarant for failing to do so, other than to compel Declarant to transfer or assign same.

Section 3. Liability for Association Operations. The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant, its successors and assigns, and its shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of Common Elements and the collection of assessments.

Section 4. Public Facilities and Services. Certain facilities and areas within and adjoining the Properties may be open for use and enjoyment of the public. Such facilities and areas may include, for example, greenways, trails and paths, parks, and other neighborhood spots conducive to gathering and interaction, roads, sidewalks, and medians. In addition to any such facilities and areas that are open for use and enjoyment of the public pursuant to Legal Requirements, Declarant may designate facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Common Elements or the Board may so designate at any time thereafter.

Section 5. Safety and Security. Each Owner and occupant of a Dwelling, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Subdivision. The Association may, but shall not be obligated to, maintain or support certain activities within the Subdivision designed to enhance the level of safety or security which each Person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Subdivision, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Subdivision, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing such Owner's tenants and all occupants of its Dwelling that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Subdivision assumes all risks of personal injury and loss or damage to property, including Dwellings and the contents of Dwellings, resulting from acts of third parties.

Section 6. View Impairment. Neither Declarant nor the Association guarantee or represent that any view from, over, or across any portion of the Properties will be preserved without impairment or change. Neither Declarant nor the Association shall be obligated to relocate, prune, or thin trees or other landscaping except as otherwise required under a separate covenant or agreement, if any. The Association (with respect to the Common Elements) has the right to add or remove trees and other landscaping to and from the Common Elements, subject to Legal Requirements. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 7. Water Management. Each Owner and any other Person who uses any portion of the Properties acknowledges and agrees that any or all bodies of water (including lakes, ponds, creeks, streams, and wetlands in the Properties), together with any dams or other facilities or devices that contain, control, or direct such waters, may be designed as water management areas (including stormwater management) and not designed solely as aesthetic features, and that, with respect to those that are water management areas, due to fluctuations in ground water elevations within the immediate area and/or the receipt or discharge of stormwater, the water level of such lakes, ponds, and wetlands may rise and fall. Each Owner and other such Person further acknowledges and agrees that Declarant has no control over such elevations. Therefore, each Owner and other such Person releases and discharges Declarant, and its successors, assigns, contractors, subcontractors, shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water elevations.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the perpetual, non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within or adjoining the Properties to do any or all of the following: (i) install, operate, maintain, and replace pumps to supply irrigation water to the Common Elements; (ii) construct, maintain, and repair structures and equipment used for retaining water; and (iii) maintain such areas in a manner consistent with the Community Wide Standard.

Declarant further reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Elements and Lots (but not the Dwellings thereon) adjacent to or within 50 feet of bodies of water within or adjoining the Properties, in order to do any or all of the following: (i) temporarily flood and back water upon and maintain water over such portions of the Properties; (ii) alter in any manner and generally maintain the bodies of water within and adjoining the Properties; and (iii) maintain and landscape the slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage to a Lot resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other

natural occurrences.

Owners and other Persons who use any portions of the Properties shall not alter, modify, expand, or fill any lakes, ponds, or wetlands located in the Properties without the prior written approval of the governmental entities having jurisdiction over such matters, including the U. S. Army Corps of Engineers if applicable, and the Declarant, during the Development Period, and the Association thereafter.

ARTICLE XX ALTERNATIVE DISPUTE RESOLUTION

Section 1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Owners and other Persons subject to the Declaration, and any other Person not subject to the Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree or are deemed to agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in this Article in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to any of the following:

- (1) the interpretation, application, or enforcement of the Governing Documents;
- (2) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (3) the design or construction of improvements within the Community, other than matters of aesthetic judgment, which shall not be subject to review.

(c) Provided, however, that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in this Article (the word "action" includes any legal or equitable action or procedure filed in any court, as well as any other procedure):

- (1) any action by the Association to collect assessments or other amounts due from any Owner, or to enforce any financial or monetary obligation of any Person under the Governing Documents.
- (2) any action by the Association to obtain a temporary restraining order or other emergency equitable relief and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions the Declaration relating to creation and maintenance of the Community Wide Standard;
- (3) any action between Owners, which does not include Declarant or the Association as a party, if such action or matter asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (4) any action in which any indispensable party is not a Bound Party; and

(5) any action as to which any applicable statute of limitations or statute of repose would expire within one hundred eight (180) days of date of the filing of the action, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and

(6) any action to enforce any financial or monetary obligation of any Person under the Governing Documents;

Section 2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice (the "Notice") to each Respondent and to the Board stating plainly and concisely:

- (1) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (2) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
- (3) the Claimant's proposed resolution or remedy; and
- (4) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

Within thirty (30) days of receipt of the Notice, the Respondent, subject to all of the foregoing requirements for the giving of the Notice, shall give the Claimant a Notice of any Claim the Respondent has against the Claimant.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing by either the Claimant or the Respondent, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the Bound Parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice, or within such other period as the Bound Parties may agree upon, either of the Bound Parties shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Wake County, North Carolina area.

If the Claim is not submitted to mediation within such time, or if the Bound Party who submitted the Claim to mediation does not appear for the mediation when scheduled, that Bound Party shall be deemed to have waived the Claim, and the other Bound Party shall be relieved of any and all liability to the Bound Party who submitted the Claim to mediation (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. Either the Claimant or Respondent thereafter shall be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Bound Party shall share equally all fees charged by the mediator.