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COUNTY OF MECKLENBURG  
STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FAIRINGTON OAKS

NOTE: ALL OWNERS WITHIN FAIRINGTON OAKS MUST GO THROUGH AN ARCHITECTURAL REVIEW AND APPROVAL PROCESS BEFORE CONSTRUCTING ANY STRUCTURES OF ANY TYPE WITHIN FAIRINGTON OAKS OR CHANGING THE EXTERIOR APPEARANCE OF ANY IMPROVEMENTS THEREON, INCLUDING WITHOUT LIMITATION THE CONSTRUCTION OF HOUSES, FENCES, SHEDS AND MAILBOXES.

THE DECLARANT HAS SOME UNILATERAL ABILITY TO AMEND THIS DECLARATION, WHICH IS DESCRIBED IN THIS DECLARATION.

ALL OWNERS WITHIN FAIRINGTON OAKS ARE REQUIRED TO BE MEMBERS OF AN AMENITY, WHICH MAY INCLUDE A POOL AND CLUBHOUSE, AND WILL BE ASSESSED FOR THIS MEMBERSHIP.

ALL OWNERS WILL BE ASSESSED FOR THEIR SHARE OF THE OWNERS ASSOCIATION'S COMMON EXPENSES FOR MAINTAINING COMMON AREAS WITHIN FAIRINGTON OAKS.

DRAWN BY AND MAIL TO:  
G. Lee Cory, Jr.  
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214 North Tryon Street, 47th Floor  
Charlotte, NC 28202-4006

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR FAIRINGTON OAKS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FAIRINGTON OAKS is made as of the 21<sup>st</sup> day of October, 2004, by FAIRINGTON OAKS, LLC, a North Carolina limited liability company, with reference to the following facts:

RECITALS

A. Declarant is the owner of certain real property in Mecklenburg County, North Carolina, comprising a subdivision to be known as FAIRINGTON OAKS, as shown on a map recorded in Map Book 42 at Page 395 in the Mecklenburg County Public Registry ("Phase 1").

B. Declarant owns or may acquire in the future certain real property in Mecklenburg County, North Carolina, located adjacent to or near Phase 1. Declarant may, in its sole discretion and without obligation, by one or more supplemental filings pursuant to Article 16 hereof, make all or any portion of the Additional Land (as herein defined) subject to this Declaration and part of the Project (as herein defined). No act or acts of Declarant, including the recordation of a plat indicating lots included in the subdivision, shall be taken to imply, or be construed as, subjecting the additional land to this Declaration and shall not constitute a common plan and scheme of development until strict compliance with Article 16 has been effected by Declarant. Declarant intends to improve the Project as a planned residential development by developing lots with single-family detached dwellings.

C. Declarant intends to develop Phase 1 under a common scheme and general plan for the improvement and maintenance of Phase 1 and, to the extent determined by Declarant from time to time in the future, all or any part of the Additional Land.

D. For this purpose Declarant intends to subject Phase 1 (and so much of the Additional Land as shall, from time to time, be annexed to the Project in accordance with the provisions of this Declaration) to the covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of the Project and the future owners thereof.

E. Declarant deems it desirable for the management and administration of the planned development and for the preservation of the values and amenities of the planned development to incorporate FAIRINGTON OAKS COMMUNITY ASSOCIATION, INC. as a non-profit corporation under the laws of the State of North Carolina for the purposes of administering and enforcing the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by the Association's Articles of Incorporation and Bylaws.

NOW, THEREFORE, Declarant hereby declares as follows:

## ARTICLE 1

### DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

"Additional Land" means the real property that adjoins the boundaries of Phase 1 or any subsequent Phase, or whose boundary is within 1,000 feet of any boundary line of Phase 1, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article 16.

"Appraisal" means an appraisal by a member of the Appraisal Institute of the National Association of Real Estate Boards (or, if such Institute is not then in existence, a like organization).

"Articles" means the Articles of Incorporation of the Association, including any amendments thereto.

"Association" means Fairington Oaks Community Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

"Board" means the Board of Directors of the Association.

"Builder" means any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale in the Project.

"Bylaws" means the Bylaws of the Association, including any amendments thereto.

"Common Area" means all real property owned by the Association or Declarant for the common use and enjoyment of its Members, including, without limitation, the Recreational Common Area (if any) when conveyed to the Association, but does not include real property over which the Association has only an easement.

"Completion of Sales" means the earlier of (1) conveyance of all portions of the Property to purchasers other than a successor Declarant hereunder or (2) expiration of the later of (i) twenty (20) years from the closing of the first sale of a Lot to a purchaser other than a Builder or a successor Declarant hereunder or (ii) five (5) years from the conveyance of the first Lot in the Phase most recently made subject to this Declaration to a purchaser other than a Builder or a successor Declarant hereunder; provided, however, if Declarant is delayed in developing the Project, constructing improvements or selling Lots and dwellings due to strikes or work stoppages; shortages of materials, supplies, fuel, power, or energy; moratoria or suspensions on issuance of land use permits and approvals or affecting the availability of water, sewer, power or other utilities or necessary services; inclement weather; civil strife; major disaster or other cause beyond Declarant's reasonable control, said twenty (20) year period shall be extended by the period of any such delay.

"County" means Mecklenburg County in the State of North Carolina.

"Declarant" means Fairington Oaks, LLC, a North Carolina limited liability company, and any successor or assign to whom Declarant assigns its rights and interests as Declarant hereunder in whole or in part by instrument recorded in the official records of the County.

"Declaration" means this Declaration and all amendments or supplements hereto.

"Lot" means any numbered single family lot or plot of land, together with any improvements thereon, as shown upon any recorded final subdivision map covering the Project or a part thereof, which is not a dedicated street or Common Area.

"Member" means a member of the Association.

"Mortgage" means a mortgage or deed of trust which constitutes a first lien given to a bank, savings and loan association or other institutional lender for the purpose of securing indebtedness incurred to purchase or improve a Lot.

"Mortgagee" means the holder of the beneficial interest in any Mortgage.

"Notice and Opportunity for Hearing" means giving at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

"Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, and shall include Declarant and Builder as to any Lot owned by Declarant or Builder unless otherwise qualified herein. "Owner" shall not include any person or entity who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

"Person" means an individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

"Phase" means each of Phase 1 and all the real property covered by a Supplemental Declaration recorded pursuant to Paragraph 16.02 of this Declaration.

"Phase 1" means the real estate shown on the plat (the "Plat") recorded in Map Book 42 at Page 395 in the Mecklenburg County Public Registry.

"Project" means the planned development known as Fairington Oaks which shall be developed and constructed on part or all of the Property.

"Property" means collectively Phase 1 and the Additional Land (if any).

"Recreational Common Area" means that portion of the Project, if any, which Declarant may complete and convey or cause to be conveyed to the Association for the common use and enjoyment of its Members as recreational land, together with any and all improvements constructed thereon, including, but not limited to, to the extent applicable, any swimming pool,

gazebo, playground, associated parking areas, sidewalks, bike paths, common open space and/or jogging/walking trails.

"Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Board, provided such rules and regulations have either been attached as an exhibit to this Declaration or been given to Owners in accordance with the requirements of this Declaration. The initial Rules and Regulations for the Project are attached to this Declaration as Exhibit A.

"Substantial Completion" means that the improvement in question has been constructed in such a manner that it can be used for its intended purpose.

"Supplemental Declaration" means a supplemental declaration of covenants, conditions and restrictions which shall be recorded for the purposes of annexing additional property, including all or any portion of the Additional Land, to the Project and causing such property to be subject to the scheme of covenants, conditions and restrictions contained in this Declaration.

"Town" means the Town of Mint Hill in Mecklenburg County, North Carolina.

"Voting Power" means the total number of votes held by all Members (and if there is more than one class of Members, the total of each class of Members) whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Project.

## ARTICLE 2

### SUBMISSION AND TERM

2.01 Submission. The Project shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (i) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Project and (ii) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Project. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Project, shall be binding on and inure to the benefit of each and every person having or acquiring any right, title or interest in the Project, shall be binding upon and inure to the benefit of the successors in interest of such persons, and shall inure to the benefit of the Association, its successors and assigns.

2.02 Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, whether or not the deed makes reference hereto.

## ARTICLE 3

### COMPLIANCE WITH MANAGEMENT DOCUMENTS

3.01 Compliance with Declaration and Other Documents. Each Owner, resident or tenant of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representative, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

3.02 Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and the Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles or Rules and Regulations and this Declaration, then, the provisions of this Declaration shall prevail. In the event that anything shown on a recorded final subdivision map for all or any portion of the Project is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail. If a dispute arises among Owners in regard to the administration of the Project, then the provisions of this Declaration shall prevail.

## ARTICLE 4

### PROPERTY RIGHTS

4.01 Common Area Easements. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area and of access to and from its Lot over any streets comprising a portion of the Common Area (if any), which rights and easements shall be appurtenant to and shall pass with the title to such Owner's Lot, as applicable, and be subject to the following rights and restrictions:

(A) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an Owner, to charge reasonable admission and other fees for the use of the Recreational Common Area facilities, if any, and to limit the use of said facilities to Owners who occupy a residence in the Project (subject to the provisions of Paragraph 4.12 below);

(B) The right of the Association to suspend the right of an Owner to use the Recreational Common Area facilities (1) for any period during which a fine against an Owner or a Member or any assessment against such Owner's Lot remains unpaid; and, (2) after Notice and Opportunity for Hearing, for a period not to exceed ninety (90) days for any infraction of the Rules and Regulations;

(C) The right of the Association to grant easements and to dedicate or otherwise convey all or any part of the Common Area as provided in this Declaration;

(D) The right of the Association to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise

encumber the Common Area for such purposes, subject to any required approval of Members and Mortgagees as provided in this Declaration;

(E) The right of the Association to adopt Rules and Regulations governing use and enjoyment of the Common Area; and

(F) Easements for ingress, egress, use and enjoyment over, in, to and throughout the Common Area for the benefit of Declarant or any successor Declarant

4.02 Delegation. Any Owner may delegate his rights of use and enjoyment of the Common Area and any facilities thereon to the members of his family or household residing on his Lot and to his guests and invitees while he is in possession of his Lot, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Guests and invitees shall not be permitted on the Common Area unless the Owner or household member delegating his rights of use and enjoyment is physically present to accompany such guests and invitees while they are on the Common Area. Provided the notice required by Paragraph 4.03 of this Declaration has first been given to the Association, a tenant of an Owner, while residing on such Owner's Lot shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his obligations hereunder, including, without limitation, the obligation to pay regular and special assessments.

Upon request, each Owner or tenant shall notify the Secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

#### 4.03 Tenants.

(A) Any Owner who rents or leases his Lot to a tenant shall not be entitled to use and enjoy any recreational or other common facilities on the Common Area during the period the Lot is occupied by such tenant.

(B) No Owner shall lease or rent less than an entire Lot and no more than one family related by blood or marriage shall live in any one Lot. Except as provided in Paragraph 7.20, the Lots shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than six (6) months. Subject to the foregoing restrictions, Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations.

(C) In the event an Owner shall rent or lease his Lot, such Owner shall immediately give to the Association in writing:

- (1) the name of the tenant and the Lot rented or leased;
- (2) the current address of such Owner;
- (3) a true and complete copy of the lease or rental agreement, and
- (4) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

(D) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

4.04 Reciprocal Easements. There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater from gutters and downspouts; provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Lot. If any Common Area or Lot encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed, reconstructed or repaired in accordance with the provisions of this Declaration, including a driveway, an easement for the encroachment and for its maintenance shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between the Common Area and the Lot or between Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall such an easement exist for willful encroachments. If any Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, an easement for the encroachment and for its maintenance shall exist so long as it remains.

4.05 Utility Easements. A perpetual easement is reserved for the benefit of Declarant, the Association and/or the applicable governmental or quasi-governmental authorities, for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage over the front and rear ten (10) feet and side three (3) feet of each Lot, as is reasonably necessary in order to provide such utilities installation, maintenance, use or repair, and as otherwise may be shown on all recorded subdivision maps of the Project. All easements for installation, maintenance, use or repair of public (or quasi-public) utilities, cable television or public (or quasi-public) storm drainage facilities which are dedicated on any final subdivision map of the Project or created in some other way over every Lot shall be kept free of buildings, and within such easements no structure shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public (or quasi-public) utilities, cable television or drainage facilities, or which may damage, interfere, or change



the direction or flow of drainage in the easements. Any portion of a Lot which shares a berm with the Common Area shall be subject to an easement in favor of the Association for landscaping, mowing and maintenance of the berm. All such easements at all times shall be accessible to Declarant until the Project is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such utilities, cable television and drainage facilities. Except for those improvements for which a public (or quasi-public) authority or utility company is responsible, and except as may be otherwise expressly provided herein, the easement area for each Lot and all improvements in it shall be maintained continuously by the Owner of such Lot. Declarant reserves the right to create and impose additional easements or rights-of-way over unsold Lot(s) for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

4.06 Monument Easements. A perpetual easement is reserved for the benefit of Declarant and the Association over any areas designated "sign and landscape easement" on any recorded map of the Property (or any portion thereof) for the purpose of installing, erecting, constructing, maintaining, repairing, replacing and removing landscaping and one or more entrance monuments for the Project, together with any improvements associated therewith, including, without limitation, irrigation systems and ground lighting. Such easement areas shall be kept free of buildings and all other structures so as not to interfere with the installation, maintenance, use or repair of the landscaping or signage to be erected therein. All such easements at all times shall be accessible to Declarant until the Project is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such signage or landscaping.

4.07 Easements for Repair. A perpetual easement is reserved for the benefit of Declarant and the Association over, upon and across the Lots and the improvements constructed thereon for purposes of performing the maintenance and repair obligations described in Paragraph 6.01, and the restoration obligations set forth in Paragraph 11.01.

4.08 No Subdivision of Lots; No Time-Sharing. There shall be no further subdivision or partition of any Lot nor shall any Owner or any other person acquiring any interest in a Lot seek any partition or subdivision thereof. There shall be no time-sharing or other co-ownership which allows multiple Owners sequential possessory interests in a Lot.

4.09 Sale of Common Area. Except as otherwise provided in this Declaration, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall occur or be valid, whether by act or omission of the Association, without the vote or written consent of eighty percent (80%) of the total Voting Power of all Members.

4.10 Rules and Regulations. The Board shall have the right to write, amend, supplement, adopt, publish and enforce Rules and Regulations governing the Project, the design, construction and maintenance of improvements in the Project, the use and enjoyment of the Common Area, the Recreational Common Area and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant or Builder (or have an adverse impact on Declarant or Builder or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws. The initial Rules and Regulations for the Project are attached hereto as Exhibit A.

4.11 Enforcement. The Association shall have the right, after Notice and Opportunity for Hearing, to levy fines for infraction of the provisions of this Declaration or the Rules and Regulations, provided the fine conforms to the provisions of Paragraph 9.11.

4.12 Recreational Common Area. The Recreational Common Area facilities may include, to the extent applicable and in Declarant's sole discretion, without limitation, a swimming pool, gazebo, playground, associated parking areas, sidewalks, bike paths, common open space and jogging/walking trails. Any such Recreational Common Areas, if any, shall be located on portions of the Common Area to be owned by the Association. Declarant or, provided Declarant gives its written consent, the Board may extend licenses to non-Members to use the swimming pool, if any, for a reasonable fee for such periods as the Board determines to offset the Association's costs in maintaining and operating the swimming pool, if any. Without limiting the generality of the foregoing, even if that certain land described in Exhibit B attached hereto and incorporated herein by this reference (the "Exhibit B Property") is not acquired by Declarant and/or incorporated into the Project as Additional Land, the individual lot owners who purchase lots within the Exhibit B Property (the "Exhibit B Property Lot Owners") may each be permitted, on a case by case basis, to enter into a contract with the Association that permits such Exhibit B Property Lot Owner, upon entry into such contract, to use any applicable swimming pool, clubhouse and other Recreational Common Area facilities, conditioned on (i) the payment by the Exhibit B Property Lot Owner of its proportionate share of the costs associated with the repair, replacement and maintenance of such facilities (as reasonably determined by the Association) and (ii) the agreement of the Exhibit B Property Lot Owner to be bound by all rules, regulations and other requirements relating to the use of such facilities then-imposed by the Association on the Members of the Association.

The Board may appoint a pool, grounds or any other committee it so desires composed of one or more members of the Board and one or more Members of the Association to recommend procedures, rules and regulations to the Board for the operation and use of said facilities.

## ARTICLE 5

### COMMON AREA EASEMENTS AND RIGHTS OF WAY; ENCUMBRANCES

5.01 Dedications. The Association shall have the power to grant easements in, on, over, through, and across the Common Area for any public or quasi-public improvements or facilities and their appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (i) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Lot, (ii) the prior written consent of Declarant shall be obtained so long as Declarant owns any Lot and (iii) the U.S. Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") consent to such dedication, if at the time of such dedication HUD and VA are insurers or guarantors of any loan secured by a Mortgage and a Class B Membership exists. If ingress or egress to any Lot is through the Common Area, any conveyance or encumbrance of such Common Area is subject to said Owner's easement. Each Owner, by accepting a deed to a Lot, expressly grants to the Association an irrevocable power of attorney (coupled with an interest) for the purpose of granting easements in, on, over, through and across the Common Area. The President or other duly

designated officer of the Association may execute, acknowledge and record in the official records of the County a certificate stating that the Board is the attorney in fact for the Owners for the purpose of such grant and that such power of attorney is properly exercisable in accordance with this Declaration. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. The power of attorney herein granted shall include authority to do such acts incidental to such grant and to incur such expenses as may be necessary or convenient in connection therewith. The Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any Owner, as his interest may appear, any and all instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02 Encumbrances. The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area, to place liens on the Common Area and otherwise encumber the Common Area for such purposes or to convey the Common Area upon the vote or written consent of sixty-seven percent (67%) of the total Voting Power of all Members.

## ARTICLE 6

### COMMON AREA AND LOT MAINTENANCE

6.01 Maintenance by Association. The Association shall repair and maintain the Common Area, including, without limitation, the Recreational Common Area, and any improvements, utilities and facilities located on or utilized in connection with the Common Area. The Association's maintenance obligation shall arise upon completion of Common Area improvements, or any portion thereof, and the commencement of annual assessments against the Owners. The Association shall be responsible for maintenance, repair and replacement of all of the following (to the extent same, in the Association's sole discretion, constitute common amenities serving the entire Project or portions thereof): landscaping and grassed areas, fencing, private sewer trunk lines (as opposed to sewer lines serving individual Lots), retaining walls, signage, entry features, Common Area driveways and parking areas, sidewalks, walking paths or nature trails, lakes, ponds or streams, retention ponds, swimming pools, playgrounds, gazebos and other recreational facilities, and other improvements or utilities situated on or used in connection with the operation of the Common Area or such other common amenities. Each Owner of a Lot within the Project acknowledges, by acceptance of a deed thereto, that certain Common Areas may be landscaped and others may be left in a natural state, and that all Common Areas may not be landscaped to the same degree and extent.

The Association may contract with the local electrical power utility for the installation and thereafter continuous operation of decorative streetlights to be located within the public streets in the Project and such fees charged by the utility, including without limitation any amounts that the Association may pay to such utility to lease such streetlights, shall be paid from the annual assessments.

6.02 Maintenance by Owners. Each Owner of a Lot, at all times, shall maintain, repair and otherwise be responsible for his Lot and the improvements thereon, except as otherwise expressly provided above in Paragraph 6.01. In addition, each Owner of a Lot shall also be

responsible for maintaining and irrigating any trees, landscaping, lawns, and other plant material (collectively "Street Plantings") which are located within the street right-of-way lying between the Lot boundary and any curb or paved street improvements; provided that if any such Street Plantings die or should need replacement, such Owner will replace said Street Plantings with substantially similar Street Plantings at such Owner's sole cost and expense. If any Owner of a Lot, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such Street Plantings as required herein, the Association may maintain, repair and replace (including without limitation regularly irrigate) such Street Plantings at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy an individual assessment against such Owner to obtain reimbursement therefor as provided in Paragraph 9.07.

Without limiting the generality of the foregoing, and subject to the requirements of Article 14 of this Declaration and any contrary provisions of Paragraph 6.01 above and Paragraph 11.01 below, an Owner of a Lot shall be responsible for replacement and reconstruction of improvements on his Lot required because of damage or destruction by fire or other casualty and each Owner of a Lot shall maintain, repair and replace all utility facilities serving the improvements on such Lot, including, without limitation, such maintenance and repair of the surface and subsurface drainage facilities and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity (except for such facilities the maintenance of which has been assumed by the Town, County or other governmental entity). If any Owner of a Lot, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such utility facilities and appurtenances as required herein, the Association may fine such Owner in accordance with Paragraph 4.11 herein, and such fine shall become a lien upon said Lot which the Association may foreclose in accordance with Paragraph 9.01 herein.

No building or other structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of drainage facilities and appurtenances and no Owner of a Lot shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area as established in connection with the approval of the subdivision map or maps applicable to the Project by the County and the Town, except to the extent such alteration in drainage pattern is approved in writing by the Association and all public (or quasi-public) authorities having jurisdiction. All such drainage facilities and appurtenances shall at all times be accessible to Declarant until the Project is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing the approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities. If for any reason any such instrument is not accepted for recording, Declarant may deliver such instrument to the Association, and the Association shall maintain the same as part of its permanent records. In either event, each Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in such instrument.

**6.03 Negligence.** The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, shall be the responsibility of and paid for by such Owner. If

such Owner does not repair and replace said improvement, the Association may repair or replace such improvement at the sole cost and expense of such Owner, and the Board, without the vote or written consent of the Members, may levy an individual assessment against such Owner to obtain reimbursement therefor as provided in Paragraph 9.07.

6.04 Right to Enter. The Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and the Association or its agents shall have an easement for purposes of performing such repairs, maintenance or replacements and/or enforcing this Declaration, and each Owner shall accept title to his Lot subject to such right of access and easement of the Association or its agents.

## ARTICLE 7

### USE RESTRICTIONS

In addition to the restrictions set forth in Article 14 below, the following apply to the Project:

7.01 Residential Use. Except as otherwise provided in this Declaration, each Lot shall be used solely for the construction and occupancy of a residence for a single family and for no other purpose. Except as provided in Paragraph 7.20 or in the Rules and Regulations, no Owner shall use or cause or permit his Lot to be used for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose. No structure shall be erected, altered, placed or permitted to remain on any Lot exceeding two and one-half (2-1/2) stories in height, and a private garage for not more than three (3) cars and other outbuildings incidental to residential use of such Lot.

7.02 Unlawful Activity. No unlawful activity shall be conducted on any Lot or in any other part of the Project. Nothing shall be done within the Project that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Project, or that unreasonably interferes with the quiet enjoyment of occupants of Lots. No doorways, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency.

7.03 Parking. Unless otherwise permitted by the Rules and Regulations, no motor vehicle shall be parked, stored or left on any public or private street except in designated parking areas on such public or private street. In addition, unless otherwise permitted by the Rules and Regulations no boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or left (a) on any part of the Common Area or (b) in any driveway or on any other part of a Lot, unless the same are fully enclosed within the garage located on the Lot. This restriction shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant and its agents and contractors in the conduct of their business prior to Completion of Sales.

No boat, truck, trailer, pre-manufactured home, camper, recreational vehicle or tent shall be used as a living or dwelling area within the Project. No repairs to or maintenance of any

automobile or other vehicle shall be made or performed on any driveway within the Project, except in the case of emergency and except as may be permitted by the Rules and Regulations. No unlicensed, wrecked or inoperable vehicles may be left on a Lot outside an enclosed structure.

**7.04 Signs and Curtains.** No Owner shall place on or about any window any metallic foil or other coating, substance or material which acts as a reflector of light, and no Owner shall display, hang, store or use any signs, flags, curtains, draperies, shades, stained glass or other articles whatsoever outside of the dwelling on any Lot so as to be visible from outside, except for seasonal decorations and as may be permitted by the Rules and Regulations. The prohibitions in this section shall not apply to Declarant or its agents, who may erect such signs as Declarant deems desirable to promote the sale of Lots.

**7.05 Antennas.** No radio or television transmission or reception towers, antennas, dishes or disks shall be erected on any Lot, except that one (1) of the following shall be permitted on each Lot: (a) a dish or disk not exceeding one (1) meter in diameter for receiving direct broadcast satellite service or (b) an antenna not exceeding one (1) meter in diameter or diagonal measurement for receiving video programming services via wireless cable or television broadcasting signals. Any dish or antenna permitted hereunder shall: (i) not be located in the area between the street right-of-way line and the minimum building setback lines shown on the recorded plat showing such Lot, (ii) be reasonably screened from view from all public street rights-of-way, and (iii) in all events, be approved by the "Committee" (as hereinafter defined) pursuant to Paragraph 14.01 of this Declaration prior to installation and be installed in compliance with the Rules and Regulations.

**7.06 Laundry.** No laundry or wash shall be dried or hung upon the exterior of any Lot or any place visible within the Project from outside such Lot.

**7.07 Fences.** All fencing must comply with the applicable provisions of the Rules and Regulations, and must be approved by the Committee prior to installation. No fence or wall shall be erected on any Lot closer to the street than the side street setback or the rear of the building facade. It is a violation of this Declaration to install any fence without obtaining prior approval from the Committee in accordance with the terms of this Declaration.

**7.08 Pets.**

(A) No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs and cats, shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Project.

(B) The Board may adopt rules and regulations concerning animals which are more restrictive than the provisions of this Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area and that Owners are responsible for cleaning up any mess that a pet creates within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing in the Project at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Paragraph 7.08(A).

7.09 Trash and Vegetation. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in an appropriate area screened and concealed from view. No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Lot or any portion of the Project which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the occupants of any property in such vicinity. Grass, hedges, shrubs, vines and mass planting of any type on any Lot or any portion of the Project shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants which die shall be promptly removed. If any Owner of a Lot, after Notice and Opportunity for Hearing, fails to maintain such Owner's Lot in the manner provided by this Paragraph 7.09, then the Association, at the expense of such Owner, may take such steps as are necessary in order to remedy such condition, including, without limitation, cutting and removing of weeds, vegetation, rubbish, debris, garbage, waste materials and other accumulations at the sole cost and expense of such Owner of a Lot and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement of the cost thereof as provided in Paragraph 9.07. The Association may, but is not obligated to, contract for the removal of garbage from the Lots no less often than weekly, and the cost thereof shall be assessed to the Owners as part of the annual assessment, as more particularly set forth in Paragraph 9.03.

7.10 Nuisance. No noxious or offensive activity shall be carried on in or upon any Lot or the Common Area nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Project or unreasonably interferes with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common Area or which would be in violation of any law.

7.11 Building Setbacks. No building shall be erected on any Lot nearer to any street line than the building setback lines shown on any recorded map, and with respect to a corner Lot no residence or other building shall be located nearer than the distance shown on any recorded map to the side street line. With respect to corner Lots, the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line. No building, including a residence, shall be located nearer than three (3) feet to any side lot line or ten (10) feet to any rear lot line of a Lot. Provided, however, that this provision shall not be construed to authorize or permit encroachment of any structure on a Lot upon any easement shown on the recorded plat or reserved herein or upon any other Lot. This provision shall also not

be construed to authorize any violation of the zoning provisions of the appropriate governmental authority.

7.12 Temporary Structures. Except as provided in Paragraph 7.20, no residence of a temporary nature shall be erected or allowed to remain on any Lot, and no boat, truck, trailer, shack, tent, barn, detached garage, recreational vehicle or any other building or vehicle of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

7.13 Floor Space. Any detached single-family residence shall contain not less than 1,200 square feet. The square footage requirements hereinafter set forth are for enclosed floor area and are exclusive of the area in basements, garages, porches, decks, balconies and overhangs.

7.14 Accessory Structures. No metal carport, free standing metal garage, free standing metal utility building or other detached accessory structure shall be erected on any Lot or attached to any residence located on any Lot. However, one (1) utility building may be located on any Lot in a location approved by the Committee which is directly behind the residence as viewed from a point on a line of sight perpendicular to the street. Such structure shall not exceed 120 square feet, unless the Committee approves a greater square footage.

7.15 Unintentional Violations. In the event of the unintentional violation of any of the building line restrictions set forth herein, Declarant reserves the right, by and with the mutual written consent of the Owner of such Lot, to change the building line restriction set forth in the instrument, provided however, that such changes shall not be in violation of any provisions of the zoning provisions of the appropriate governmental authority.

7.16 Above Ground Pools. No above ground pools shall be erected or installed on a Lot.

7.17 [INTENTIONALLY DELETED]

7.18 Exercise Equipment. All swing sets, basketball goals and similar equipment must be located within the building setback lines and comply with the Rules and Regulations. No portable or temporary basketball goals shall be permitted.

7.19 Removal of Obstructions.

(A) The Declarant, its successors or assigns, without notice, may remove any obstructions of any nature located within road rights-of-way (including, but not limited to, trees, shrubs, fences, basketball goals and mailboxes) which, in the opinion of the Declarant, its successors or assigns, either might produce a hazard or might interfere with the ability or willingness of the State of North Carolina, the Town or the County (or any agency or department of any of the foregoing, or any other applicable governmental authority) to take over the responsibility for maintenance of the roads.

(B) The Declarant, its successors or assigns, shall have the right, in its sole discretion, to charge back the actual cost to it of removing obstructions against the Lot Owner who directly or through his agents, contractors or invitees caused or permitted the obstruction to be placed in the road right-of-way, and such Lot Owner shall indemnify and save the Declarant, its



successors or assigns, harmless from all liability, claims, damages and expense imposed upon the Declarant, its successors or assigns, at law or in equity, caused by or resulting from the placement of the obstruction in the road right-of-way. In the event that the Lot Owner responsible for such charge or liability as aforesaid fails and refuses, after demand by the Declarant, its successors or assigns, to pay said charge or liability, then the Declarant, its successors or assigns, shall have a lien against his Lot and may enforce collection of the charge or liability, together with reasonable attorneys' fees, by any and all remedies afforded by law or in equity including, without limitation, the filing of a notice of lien and perfecting the same as by law provided, to the end that such charge or liability shall become a charge against the said Lot.

**7.20 Declarant's Rights.** Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, its agents, employees and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Project as a residential community and for the sale, rental or other disposition of Lots in the Project. In the event of any conflict between a Builder and Declarant, the Declarant will be the prevailing party. The rights of Declarant or Builder, their agents, employees and contractors shall include, without limitation:

(A) The right and easement of ingress in, over and upon the Common Area for the purpose of performing on any part or parts of the Project acts deemed necessary, advisable or convenient for the completion and improvement of the Project as a residential community and for the sale, rental or other disposition of Lots;

(B) The right to erect, construct, maintain, demolish or remove structures and other improvements on any Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Project as a residential community and for the sale, rental or other disposition of Lots; and

(C) The right to use Lots and improvements owned by Declarant or Builder as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Project.

The rights of Declarant and, to the limited extent set forth herein, Builder under this section shall terminate one (1) year after the Completion of Sales. Amendment of this section shall require (i) if a two-class voting structure is in effect, the vote or written consent of seventy-five percent (75%) of the Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, the vote or written consent of seventy-five percent (75%) of the total Voting Power of the Association. Further, no amendment of this section can be made without the written approval of Declarant and any Builder.

**7.21 Right to Enter.** Any governmental agency, including, but not limited to the County, its agents, and employees, shall have the right of immediate access to the Common Area at all times if necessary for the preservation of public health, safety and welfare.

## ARTICLE 8

### MEMBERSHIP AND VOTING RIGHTS

8.01 Governing Body. The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Project, as provided by this Declaration and the Bylaws.

8.02 Membership. Membership in the Association shall be composed of and limited to Owners of Lots and such parties, including, without limitation, Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be apportioned to and may not be separated from ownership of a Lot. Upon termination of ownership of a Lot, such Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Lot.

8.03 Voting. The Association shall have two classes of voting membership.

Class A. Class A Members shall be all Owners of Lots with the exception of Declarant and Builder; provided, however, that Declarant and Builder shall become Class A Members when their Class B membership ceases as provided hereinafter. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the vote of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

Class B. Declarant and Builder shall be Class B Members. Builder shall be entitled to three (3) votes for each Lot owned. Declarant shall be entitled to three (3) votes for each Lot owned, including, without limitation, each lot as shown on the Master Plan of the Project approved or to be approved by the Town, a copy of which is or shall be on file in the office of Declarant. In any event, Declarant's and Builder's Class B memberships shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

- (1) when the total number of votes of the Class A Members equals the total number of votes of the Class B Members; provided, that the Class B membership shall be reinstated with all rights, privileges and responsibilities, if after conversion of the Class B membership to Class A membership hereunder, additional land containing Lots is annexed to the existing Project; or
- (2) on December 31, 2024; or
- (3) when Declarant, in its option, so determines.

8.04 Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not commence until the first assessment against that interest has been levied by the

Association as provided in Article 9; provided, however, that voting rights shall immediately commence with respect to amendments to this Declaration pursuant to Paragraph 17.08.

8.05 Declarant's and Builder's Voting Rights. If and to the extent applicable, no requirement for the approval of a prescribed majority of the Voting Power of Members of the Association other than Declarant or Builder for action to be taken by the Association is intended to preclude Declarant or Builder from casting votes attributable to Lots owned by Declarant or Builder.

8.06 Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first to occur of the following: (i) when seventy-five percent (75%) of the total number of Lots permitted by the Master Plan of the Project approved by the Town have been conveyed to parties other than Builders, (ii) on December 31, 2024 or (iii) upon the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant (and which such amendment shall not require the approval of any Builder or Owner). Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Paragraph 8.06, such right shall automatically pass to the Owners, including, without limitation, Declarant and Builder if they then own one or more Lots; and a special meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Paragraph.

## ARTICLE 9

### COVENANTS FOR ASSESSMENTS

9.01 Covenant to Pay Assessments; Lien. Declarant, for each Lot owned by Declarant, hereby covenants to pay, and every Owner of any Lot (including, without limitation, Builder) by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay, to the Association such regular annual assessments or charges and such special assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. No assessment shall be due except with respect to Lots shown on a recorded subdivision plat. The amount of any such annual or special assessment plus any other charges thereon, such as interest, late charges, costs and fines (including, without limitation, attorneys' fees), as such may be provided in this Declaration, shall be and become a lien upon the Lot assessed when the Association causes to be recorded in the official records of the County a notice of assessment, which notice shall state:

(A) The amount of such assessment, fines and such other charges thereon as may be authorized by this Declaration;

(B) A description of the Lot against which the same has been assessed; and

(C) The name of the record owner of the Lot assessed.

Such notice shall be signed by an authorized representative of the Association. Upon payment of such assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The lien provided for herein shall be prior to all other liens recorded subsequent to the recordation of such notice of assessment. The lien may be enforced by foreclosure in accordance with North Carolina law, or in any other manner permitted by law. The Association shall have the power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same. Assessments with respect to any Lot shall be the obligation of the Owner thereof. Failure to pay any assessment described herein shall not constitute default under an insured Mortgage.

9.02 Personal Obligation. Each regular annual or special assessment, together with any late charges, interest, collection costs, fines and reasonable attorneys' fees, shall be the personal obligation of each person or entity, other than any Mortgagee, who held an ownership interest in the Lot at the time such assessment was levied. If more than one person or entity held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment respecting such Lot shall be both joint and several. No Owner may exempt himself from payment of assessments, or installments, by waiver of the use or non-use of common facilities within the Common Area or of any other portion of the Common Area or by abandonment or leasing of his Lot.

9.03 Use of Assessments. Regular annual or special assessments paid by Declarant and other Owners shall be used to pay for operation, maintenance, preservation, enhancement, repair and improvement of the Common Area; for the premiums for any insurance procured by the Association as contemplated in Article 10 hereof; for the other maintenance, preservation, enhancement, repair and improvement activities performed by the Association pursuant to the terms of Paragraph 6.01 hereinabove; for trash removal, if undertaken by the Association, pursuant to Paragraph 7.09; and for any other purposes reasonably related to the foregoing. Regular annual or special assessments paid by Declarant and other Owners shall also be used to pay for, and to promote, the recreation, health, safety and welfare of the Owners. In addition, such assessments shall be used to pay the cost of administration of the affairs of the Association, including payment of applicable taxes, and for the preservation of the Association's existence, to the extent properly allocable to the performance and exercise of the Association's duties and powers under this Declaration. The foregoing is intended as an authorization to the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

9.04 Reserve Funds. The Board may, in its sole discretion, establish and maintain reasonable reserves in accordance with standard accounting practices and procedures for Common Area replacements and maintenance and the initial budget of the Association.

9.05 Initial Assessment and Regular Assessments. Upon acquisition of record title to a Lot from Declarant or Builder, each purchaser thereof other than Declarant or Builder shall contribute to the capital of the Association \$500.00 per Lot. Such contributions shall be placed in an interest-bearing account maintained by the Association and to be used by the Association for application towards the costs of the Association in performing its obligations hereunder.

The regular annual assessment shall commence as provided in Paragraph 9.09, and shall be payable by all Lot Owners. The annual assessments shall cover the costs of maintenance, repair and replacement and other costs to be expended by the Association as contemplated hereunder for items which, in the reasonable estimation of the Association, benefit the Project. The amount of annual assessments for the first assessment year shall be a maximum of \$595.00 per Lot.

Notwithstanding the foregoing, with respect to each such Lot owned by Declarant, the regular annual assessments shall be one fourth (1/4) of the amount of the regular annual assessments applicable to Lots owned by Owners other than Declarant. The regular annual assessments for Builders are set forth in Paragraph 9.09 herein.

If the first assessment year shall have fewer than twelve (12) months, the regular annual assessment shall be proportionately reduced. The Board shall fix the amount and due date of the annual assessments on a yearly basis as set forth in the paragraph below; provided, however, that the assessment for Lots owned by Declarant shall always be one-fourth (1/4) the amount of the assessment established for Lots owned by Owners (not including Declarant), prorated for partial years due to ownership changes during the year. In setting the amounts of such regular assessments, the Association shall take into account such reduced assessments payable by Declarant.

The Board may not impose a regular annual assessment which is more than ten percent (10%) greater than the regular assessment for the immediately preceding fiscal year without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the Voting Power of the Association. Written notice of the regular annual assessments shall be sent to every Owner subject thereto. If the Board fails to so fix the regular annual assessments, the assessments applicable for the previous assessment year shall remain in effect until the Board shall fix new regular annual assessments. Regular annual assessments shall be payable annually on the first day of each January or at such other time as the Board may fix. The Association shall, upon demand, and for a reasonable charge, furnish to any person having a legitimate interest a certificate signed by an officer of the Association stating whether the regular annual assessments and special assessments, if any, on a specified Lot have been paid and, if not, the amount due.

Notwithstanding the foregoing, the Declarant may elect annually to pay the Association either (i) the regular annual assessments set forth in this Paragraph 9.05 for each Lot owned by Declarant or (ii) the difference between the amount of assessments collected on all Lots subject to assessment (other than Lots owned by Declarant) and the amount of actual expenditures, including budgeted contributions to reserves, required to operate the Association during the fiscal year. Declarant shall notify the Association at least thirty (30) days prior to the beginning of each fiscal year of its election.

9.06 Special Assessments. In addition to the regular annual assessments authorized herein, the Board may levy, in any assessment year, a special assessment against all Owners applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property on or comprising a part of the Common Area; provided, however, any such assessment for Lots owned by Declarant or Builder shall be one-fourth (1/4) the amount of such assessment established for Lots owned by Owners other than Declarant and Builder, and further provided in any fiscal year, special assessments which exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without (i) if a two-class voting structure is in effect, the vote or written consent of a majority of the Voting Power of each class of Members of the Association or (ii) if a two-class voting structure is not in effect, the vote or written consent of a majority of the total Voting Power of the Association.

9.07 Individual Assessment as Remedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy an individual assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in maintaining, repairing and replacing Street Plantings as set forth in Paragraph 6.02 herein, or for sums expended by the Association to repair or remedy any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of an Owner, as more particularly set forth in Paragraph 6.03 herein.

9.08 Allocation of Assessments. Except as otherwise provided in this Declaration and except for the reduced assessments on Lots owned by Declarant or Builder, all regular and special assessments shall be levied equally against all Owners.

9.09 Commencement of Assessments. The regular annual assessments provided for herein shall commence as to all Lots at the discretion of the Board. The first assessment year shall be the period commencing on the date regular annual assessments commence as designated by the Board and ending on the December 31 next following. The regular annual assessment for the first assessment year shall be prorated from the amounts fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. Assessments of Lots within each Phase of the Project which is annexed in accordance with the provisions of Article 16 below shall commence on the first day of the month next following the conveyance of the first Lot to a purchaser, other than a successor Declarant, for use as a residence.

Upon acquisition of record title to a Lot from Declarant, each Builder shall contribute \$350.00 per Lot, which payment shall constitute a credit for assessments for the following nine (9) month period. If at the end of such nine (9) month period Builder still owns a Lot, Builder shall then pay assessments at a rate of twenty-five percent (25%) of the amount of regular annual assessments until such Lot is sold to a third party home buyer, at which time such third party home buyer shall pay the full amount of regular assessments.

9.10 Revised Assessments. Subject to the provisions of Paragraph 9.05, if at any time during the course of any year the Board shall deem the amount of the regular annual assessment to

be inadequate or more than adequate by reason of a revision of its estimate of either expenses or income or otherwise, the Board shall have the right, at a regular or special meeting, to revise the regular annual assessment for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the month next following the date of adoption, and additional amounts payable shall be due (or refunds of overages shall be made by the Association) at such time as determined by the Board.

9.11 Delinquent Assessments; Fines. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided herein shall not exceed those permitted by applicable law.

The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after Notice and Opportunity for Hearing, the Association may suspend a delinquent Owner's membership rights in the Association while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorneys' fees.

## ARTICLE 10

### INSURANCE

#### 10.01 Duty to Maintain Insurance.

(A) The Association shall have the duty and the authority to maintain fire and extended coverage casualty insurance on the Common Area in an amount not less than the full insurable value thereof (based upon current replacement cost), and liability insurance with limits in and amounts adequate, under standards in the insurance industry existing from time to time, to protect the Association and the Owners in the event of property damage, personal injury or death occurring in or about the Project. The Board shall have the authority to settle or enforce on behalf of the Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Association.

(B) Each Owner of a Lot shall maintain casualty and personal liability insurance pertaining to his Lot or such dwelling in such form and in such amounts as the Rules and Regulations may require (or, if the Rules and Regulations contain no such requirements, in such form and in such amounts as is customarily required by mortgage lenders).

(C) All policies of insurance carried by the Association or the Owners shall include a waiver of subrogation if such waiver can be obtained, unless otherwise provided in the Rules and Regulations.

(D) Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance meeting the insurance requirements for planned unit development projects established by the Federal National Mortgage Association, Government National Mortgage Association, Veterans' Administration,

Department of Housing and Urban Development, and/or Federal Home Loan Mortgage Corporation, as applicable, so long as any such entity is a Mortgagee or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by the applicable entity.

10.02 Proceeds of Insurance. The proceeds of casualty insurance carried by the Association shall be paid to and held by the Association as trustee for the Owners, Declarant and Mortgagees for disbursement in accordance with the provisions of this Declaration.

Except as otherwise provided herein, casualty insurance proceeds shall be used for repair, replacement or reconstruction to the extent required to effectuate repair, replacement or reconstruction.

#### ARTICLE 11

##### DAMAGE AND DESTRUCTION

11.01 Damage to Lots. Restoration and repair of damage to any Lot and all improvements thereon caused by any casualty event shall be made by and at the expense of the Owner thereof.

11.02 Repair, Restoration, Reconstruction. If damage occurs, the Association shall promptly contract for the repair, restoration or reconstruction of the Common Area or improvements which have been damaged or destroyed and apply any proceeds of insurance as received toward cost of such repair, restoration or reconstruction. The difference, if any, between the insurance proceeds payable by reason of such damage and the cost of such repair, restoration and reconstruction may be recovered by one or more special assessments levied by the Board equally against all Owners as provided herein.

#### ARTICLE 12

##### EMINENT DOMAIN

12.01 Eminent Domain. If all or any portion of the Common Area is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees and the Association as the court may determine. A condemnation award which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each affected Owner shall be allocated first to the repair, restoration and reconstruction of any remaining portion of the Common Area and then any excess shall be distributed equally among the affected Owners (or any Mortgagee of an Owner to the extent such Mortgagee is entitled to such Owner's share of the proceeds). If requested by the court, an insurance trustee shall be employed to make disbursement of the award.

12.02 Repair, Restoration, Reconstruction. If only a portion of a Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the



Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a special assessment levied equally against all Owners as provided herein.

#### ARTICLE 13

[INTENTIONALLY DELETED]

#### ARTICLE 14

#### ARCHITECTURAL CONTROL

14.01 Architectural Control. NO BUILDING, POOL, FENCE, WALL, SOLAR PANEL, ANTENNA, ANTENNA TOWER, SATELLITE DISH OR DISC, DECK, PATIO, STATUARY OR ANY OTHER STRUCTURE OR IMPROVEMENT ON ANY LOT SHALL BE ERECTED, CONSTRUCTED, DEMOLISHED, OR ALTERED UNTIL AN APPLICATION, INCLUDING PLANS AND SPECIFICATIONS SHOWING THE NATURE, KIND, SHAPE, HEIGHT, MATERIAL, COLOR, AND LOCATION OF THE SAME, SHALL HAVE BEEN SUBMITTED TO AND APPROVED IN WRITING BY THE ARCHITECTURAL REVIEW COMMITTEE (the "Committee") which is hereinafter described; provided, however, that no such approval shall be required for alterations to the interior of any residential structure. The Board may require a reasonable fee to accompany each application for approval. The restrictions herein contained shall have no application to the development, improvement, maintenance and repair of the Property by Declarant or by the Association, and neither the Board nor the Committee shall have any power or authority to review or require modifications in plans and specifications for construction or installation of improvements by Declarant.

The Committee shall consist of at least three (3) and not more than five (5) persons who shall have exclusive jurisdiction over all construction on any portion of the Property, except as otherwise set forth in the preceding paragraph. Until one hundred percent (100%) of the Property has been developed and conveyed to Owners (other than Declarant and Builder) in the normal course of development and sale, the Declarant hereby retains the right to appoint all members of the Committee who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant and recorded in the office of the Register of Deeds for the County. Upon the expiration of such right, the Board shall appoint the members of the Committee, who shall serve and may be removed at the discretion of the Board. The members of the Committee need not be members of the Association or representatives of the Members but may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board.

14.02 Reconstruction of Residences. In the event of damage or destruction to a residence located on a Lot by fire or other casualty, the Owner thereof shall within six (6) months diligently commence to reconstruct such residence and complete such reconstruction as soon as reasonably possible and substantially in accordance with the original plans and specifications thereof;

provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence on a Lot may request permission from the Board or the Committee to reconstruct or repair a residence in accordance with revisions in the plans and specifications. The Board or said Committee shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Project in a manner generally consistent with the plan and development thereof.

#### ARTICLE 15

##### MORTGAGEE PROTECTION

15.01 Interpretation. In the event any provision of this Article 15 is inconsistent with or contrary to any other provision of this Declaration, the provisions of this Article 15 shall control.

15.02 Notices. Any Mortgagee of any Lot, by written notice to the Association setting forth the Lot encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of (i) any default which is outstanding for sixty (60) days or longer by the Owner of such Lot in the performance of his obligations under or in compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, (ii) any substantial damage to or destruction of the Common Area, including the improvements located thereon, or, if known to the Association, any substantial damage to or destruction of a Lot, including the improvements located thereon, and (iii) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or of any Lot or portion thereof.

15.03 Mortgagee's Right to Information. Upon written request to the Association, a Mortgagee is entitled to: (1) inspect the books and records of the Association during normal business hours; and (2) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Project; and (3) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

15.04 Damage and Destruction Rights. In the event of substantial damage to or destruction of any Lot or improvements to a Lot or any part of the Common Area, no provision of this Declaration, the Bylaws or the Rules and Regulations shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

15.05 Condemnation Rights. If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, no provision of this Declaration, the Bylaws or the Rules and Regulations shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of the proceeds of any award or settlement.

15.06 Right of First Refusal. Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee

acquiring such Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

15.07 Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against the Lot which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Lot; and provided further, that except as otherwise provided in this section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale, transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

15.08 Payments by Mortgagees. Any Mortgagee, after at least ten (10) days' prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area, and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

15.09 Collection of Assessments. No Mortgagee shall be required to collect assessments pursuant to this Declaration.

#### ARTICLE 16

#### ANNEXATION

16.01 Right to Annex. Declarant shall have the right to annex to Phase 1 and thereby bring within the scheme of this Declaration and subject to the jurisdiction of the Association part or all of the Additional Land provided that such property is developed for single family detached residential purposes. Declarant is under no obligation to annex the Additional Land and may elect to develop the Additional Land for single family, multi-family or other purposes which are not a

part of the Project. Annexation of any real property other than the Additional Land shall require approval of HUD and VA so long as, at the time of such annexation, HUD or VA are insurers or guarantors of any loan secured by a Mortgage and a Class B Membership exists, and (i) if a two-class voting structure is in effect, sixty-seven percent (67%) of the Voting Power of each class of Members or (ii) if a two-class voting structure is not in effect, the vote or written consent of not less than sixty-seven percent (67%) of the total voting power of the Association residing in Members other than Declarant. Annexation of additional property may be accomplished in Phases.

16.02 Procedure for Annexation. Any annexation shall be made by recordation in the office of the Register of Deeds for the county wherein the property is located of a Supplemental Declaration covering the real property to be annexed. The Supplemental Declaration shall describe the real property to be annexed and state that annexation is being made pursuant to this Declaration for the purpose of extending the jurisdiction of the Association to cover the Phase of the Project being annexed. The Supplemental Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Phase being annexed and as are not inconsistent with the general scheme of this Declaration. Annexation shall be effective upon recordation in the applicable public registry of the Supplemental Declaration and thereupon the real property described therein shall be subject to all of the provisions of this Declaration, to the extent made applicable by the Supplemental Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration, the Articles and Bylaws.

16.03 Annexed Property. Each Owner of a Lot in an annexed Phase automatically shall be a Member of the Association and such Owners and annexed real property shall be subject to assessment by the Association for the benefit of the Project or any part thereof. Assessments of Lots in an annexed Phase shall commence upon the last to occur of: (a) commencement of regular annual assessments for the Project, and (b) the first day of the month next following the first conveyance of a Lot in such Phase to a purchaser, as provided in Paragraph 9.09. The Association shall have the duties, responsibilities and powers set forth in this Declaration, the Articles and Bylaws with respect to annexed real property. Except as may otherwise be expressly provided in this Declaration or any Supplemental Declaration, the Project shall be managed and governed by the Association as an entirety. Assessments collected from Owners in the Project may be expended by the Association anywhere in the Project without regard to the particular Phase, area or subdivision from which such assessments came. All Owners shall have ingress and egress to and from all the Common Area throughout the Project and any Phase thereof and shall have use and enjoyment of any recreational facilities and other amenities contained within the Common Area throughout the Project, provided that any such use shall be subject to the provisions of this Declaration, any Supplemental Declaration, the Bylaws and the Rules and Regulations.

## ARTICLE 17

### MISCELLANEOUS PROVISIONS

17.01 Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a

condition or defect common to all or a majority of the Lots or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payments or other consideration necessary therefor or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney in fact, coupled with an interest, to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board.

17.02 Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

17.03 Notices. Notices shall be in writing and shall be addressed as follows: (i) if to an Owner: to the address of his Lot; (ii) if to Declarant, to Fairington Oaks, LLC, 1518 East Third Street, Charlotte, NC 28202; and (iii) if to the Association, to the address of the Project. The Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

17.04 Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

17.05 Enforcement. The failure of any Owner to comply with the provisions of this Declaration, the Bylaws or the Articles shall entitle the Association, any Owner, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

17.06 Equal Opportunity Housing. The Project provides equal opportunity housing. Each Lot sold shall be sold without regard to the race creed, color, national origin, ancestry, religion, marital status, age or sex of the purchaser.

17.07 Exhibits. Exhibit A which is attached to this Declaration is incorporated herein and made a part hereof by this reference.

17.08 Amendments. During any period in which a two-class voting structure is in effect, Declarant may amend this Declaration without the approval of any Owner or Mortgagee provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or the Common Area as set forth in this Declaration and the amendment does not adversely affect the title to any Lot.

Also, notwithstanding anything contained herein to the contrary, Declarant may amend this Declaration without the approval of any Owner or Mortgagee in order to address and incorporate herein the applicable requirements of the Federal National Mortgage Association, Government National Mortgage Association, Veterans' Administration, Department of Housing and Urban Development and/or Federal Home Loan Mortgage Corporation, as applicable; and should the Federal National Mortgage Association, Government National Mortgage Association, Veterans' Administration, Department of Housing and Urban Development and/or Federal Home Loan Mortgage Corporation, as applicable, subsequently delete any of their respective requirements which necessitate certain provisions of this Declaration or make such requirements less stringent, Declarant, without approval of the Owners or any Mortgagee, may cause an amendment to this Declaration to be recorded to reflect such changes.

Any other amendments of this Declaration shall require (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Association as such classes are set forth in the Bylaws and this Declaration; or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association; provided, however, that the percentage of the Voting Power necessary to amend a specific provision of this Declaration (as may be set forth in other Paragraphs of this Declaration) shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that specific provision; provided further, such amendment shall require the prior written consent of HUD and VA, if at the time of such amendment a Class B Membership exists and either HUD or VA is an insurer or guarantor of any loan secured by a Mortgage.

Any instrument amending this Declaration must be recorded in the official records of the County. Any such amendment shall be effective upon the date of recordation. Declarant and the Association are authorized to execute and record any such amendment on behalf of the Members and/or Mortgagees, as applicable, once the requisite consents of said Members and/or Mortgagees to such amendment have been obtained.

17.09 Consent of Mortgagee and Second Mortgagee. The Property is currently encumbered by (i) the lien of a Deed of Trust and Security Agreement executed and delivered by Declarant to BB&T Collateral Service Corporation, as trustee ("Primary Trustee") for Branch Banking and Trust Company ("Primary Beneficiary"), as recorded at Book 16794, Page 531 of the Mecklenburg County Public Registry ("Primary Deed of Trust") and (ii) the lien of a Deed of Trust, Security Agreement and Assignment of Leases and Rents executed and delivered by Declarant to Matthew D. Brunner and Daniel P. MacCrain, as trustee (together, "Secondary Trustee") for Atlantic Residential Fund IV, LLC ("Secondary Beneficiary"), as recorded at Book 16794, Page 552 of the Mecklenburg County Public Registry ("Secondary Deed of Trust"). Consents of Mortgagee executed by Primary Beneficiary, Primary Trustee, Secondary Beneficiary and Secondary Trustee, consenting to the execution and recordation of this Declaration, are attached to and made a part of this Declaration.

IN WITNESS WHEREOF, Declarant has executed and sealed this Declaration as its act and deed this 29<sup>th</sup> day of October, 2004.

FAIRINGTON OAKS, LLC, a North Carolina  
limited liability company

By: *R. J. Barton Hopper*  
Name: J. Barton Hopper  
Title: General Manager

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

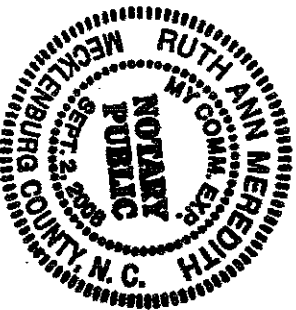
This 1<sup>st</sup> day of October, 2004 personally came before me, a Notary Public for said County and State, J. BARTON HOPPER, who, being by me duly sworn, says that he is General Manager of FAIRINGTON OAKS, LLC, a North Carolina limited liability company, and that the foregoing instrument was signed by him on behalf of said company by authority duly given.

WITNESS my hand and notarial seal or stamp.

[NOTARIAL SEAL/STAMP]

*Ruth Ann Meredith*  
Notary Public

My Commission Expires: Sept. 2, 2008



**EXHIBIT B**

**[Description of Option Property  
(Currently Owned by Pittinger)]**

**TRACT 1**

Tax Parcel # 195-211-08

LYING AND BEING in the Town of Mint Hill, Mecklenburg County, North Carolina, and being more particularly described as follows:

BEGINNING at a # 4 existing iron rebar located in the westerly margin of the sixty foot (60') public right-of-way of Thompson Road and the northeasterly corner of the property owned, now or formerly, by Carol S. Conder, as described in Deed recorded in Deed Book 4773, Page 650, Mecklenburg County Public Registry, said point also being located N 32-52-54 W 1268.03 feet from Mecklenburg County monument number 1432, having North Carolina grid coordinates of N=510,040.5055 and E=105,303.5412; thence from said beginning point and running with the southerly margin of Carol S. Conder S 78-21-49 W 523.44 feet to an existing iron rebar (pent) located in the northwest corner of Carol S. Conder; thence with the westerly margin of said Carol S. Conder S 05-18-32 E 493.24 feet to a point located in the center line of Stevens Creek; thence with the center line of Stevens Creek, the following eleven courses and distances: (1) N 34-59-00 W 63.93 feet; (2) N 60-47-45 W 52.32 feet; (3) N 73-30-18 W 67.03 feet; (4) N 69-21-27 W 83.17 feet to a point; (5) N 73-27-43 W 168.68 feet to a point; (6) S 72-46-50 W 42.77 feet to a point; (7) N 70-06-34 W 279.46 feet to a point; (8) N 81-11-12 W 119.88 feet to a point; (9) N 73-38-54 W 227.74 feet to a point; (10) N 79-03-55 W 217.22 feet to a point; (11) N 74-16-47 W 44.15 feet to a point located in the northeast corner of the property owned now or formerly, by Robert F. Cox, as described in Deed recorded in Deed Book 6321, Page 345, aforesaid Registry, said point also being the southeast corner of the property owned, now or formerly, by Richard R. Russell, described in Deed recorded in Deed Book 8523, Page 793, aforesaid Registry; thence with the westerly margin of Russell N 17-46-50 W 674.29 feet to an existing one and three-quarters inch (1  $\frac{3}{4}$ ") old iron pipe located in the southeast corner of the property owned, now or formerly, by Ruby W. Cox, as described in Deed recorded in Deed Book 3051, Page 230, aforesaid Registry; thence with the easterly margin of Ruby W. Cox, N 17-42-46 W 488.07 feet to a # 4 existing iron rebar located in the southeast corner of the property owned, now or formerly, by Jeffrey T. Rudisill, as described in Deed recorded in Deed Book 7590, Page 316, aforesaid Registry; thence with the property of Jeffrey T. Rudisill N 17-31-18 W 242.85 feet to a # 5 existing iron rebar; thence N 17-56-18 W 69.45 feet to a # 4 existing iron rebar located in the southeast corner of the property owned, now or formerly, by Jeffrey T. Rudisill, as described in Deed Book 7741, Page 948, aforesaid Registry; thence with the easterly margin of the property of Rudisill N 17-56-18 W 67.64 feet to a # 4 existing iron rebar located in the southeast corner of the property owned, now or formerly, by Carl R. Griffin, as described in Deed recorded in Deed Book 7331, Page 778, aforesaid Registry; thence with the easterly margin of Griffin, the following two courses and distances: (1) N 17-56-18 W 61.08 feet to a # 8 existing iron rebar (0.22 feet off line); (2) N 17-56-18 W 35.71 feet to a # 4 existing iron rebar located in the southwest margin of



the property owned, now or formerly, by L.P. Mayhew, as described in Deed recorded in Deed Book 2629, Page 392, aforesaid Registry; thence with the southerly margin of Mayhew, N 58-16-41 E 1036.14 feet to a # 4 existing iron rebar; thence N 59-55-02 E 312.99 feet to a # 4 existing iron rebar located in the southeast corner of the Mayhew property; thence with the easterly margin of Mayhew N 23-55-32 W 191.65 feet to an existing iron rebar located in the southerly terminus of the sixty foot (60') public right-of-way of Mintwood Drive; thence with the southerly margin of said Mintwood Drive, N 49-28-10 E 26.79 feet to a # 8 existing iron rebar; thence crossing the southeast corner of said Mintwood Drive, N 03-16-42 E 74.94 feet to a # 4 existing iron rebar located N 28-10-22 W 12.05 feet from a concrete monument and being the southeast corner of the property owned, now or formerly, by Donald M. Revels, as described in Deed recorded in Deed Book 3831, Page 521, aforesaid Registry; thence with the southeasterly margin of Revels, the following two courses and distances: (1) N 66-01-30 E 63.17 feet to a # 4 existing iron rebar; (2) N 45-38-16 E 202.34 feet to a # 4 existing iron rebar located in the southwest corner of Lot 12 of Cedar Mint Section 1, recorded in Map Book 17, Page 572, aforesaid Registry; thence with the southerly margin of Lots 12 and 11 N 45-41-56 E 270.18 feet to a # 4 existing iron rebar located in the southwest corner of Lot 10 of said Cedar Mint Section 1; thence with the southerly margin of Lots 10, 9 and 8 of Cedar Mint Section 1, North 45-36-50 E 502.31 feet to a # 4 existing iron rebar located in the southerly margin of the property owned, now or formerly, by Robert P. Zboch, as described in Deed recorded in Deed Book 9556, Page 349 of the aforesaid Registry; thence with the southerly margin of Zboch S 70-20-00 E 1370.59 feet to an existing one inch (1") old iron pipe located in the northerly margin of the property owned, now or formerly, by Clyde C. Crump, as described in Deed recorded in Deed Book 3223, Page 17, aforesaid Registry; thence with the northerly margin of Clyde C. Crump S 45-42-18 W 215.14 feet to a # 7 existing iron rebar located in the northeast corner of the property owned, now or formerly, by Cary K. Berryhill, as described in Deed recorded in Deed Book 6738, Page 398, aforesaid Registry; thence with the northerly margin of Cary K. Berryhill, S 45-42-18 W 438.84 feet to a # 5 existing iron rebar (0.11 feet off line) located in the northeast corner of the property owned, now or formerly, by James T. Mullis, as described in Deed recorded in Deed Book 3708, Page 535, aforesaid Registry; thence with the northerly margin of James T. Mullis, S 45-42-18 W 451.51 feet to an existing angle iron located in the northwest corner of the property of Mullis; thence with the westerly margin of Mullis S 20-33-09 E 109.08 feet to a # 5 existing iron rebar located in the northwest corner of the property owned, now or formerly, by Ronald E. Hunnicutt, as described in Deed recorded in Deed Book 9285, Page 775, said Registry; thence with the westerly margin of Hunnicutt S 20-33-09 E 230.21 feet to a # 4 existing iron rebar located in the northwest corner of the property owned, now or formerly, by Richard D. Hinnant, as described in Deed recorded in Deed Book 4196, Page 732, aforesaid Registry; thence with the westerly margin of Hinnant S 20-33-09 E 307.95 feet to a # 5 existing iron rebar located in the northeast corner of the property owned, now or formerly, by William A. Thompson, Jr., as described in Deed recorded in Deed Book 31111, Page 277, aforesaid Registry; thence with the westerly margin of Thompson S 20-33-09 E 205.57 feet to an existing # 1 old iron pipe located in the northerly margin of the property owned, now or formerly, by William A. Thompson, Sr., as described in Deed recorded in Deed Book 7131, Page 244, aforesaid Registry; thence with the northerly margin of Thompson N 85-03-11 W 49.50 feet to an existing one-half inch (1/2") old iron pipe located in the northeast corner

of the property owned, now or formerly, by John L. Carriker, as described in Deed recorded in Deed Book 9813, Page 593, aforesaid Registry; thence with the northerly margin of Carriker N 85-03-11 W 666.77 feet to an existing one quarter inch (1/4") old iron pipe; thence in a new direction S 31-12-03 E 840.65 feet to a # 4 existing iron rebar; thence S 31-12-03 E 33.29 feet to a point located in the center line of the sixty foot (60') wide public right-of-way of Thompson Road; thence with the center line of said Thompson Road S 18-38-14 W 74.45 feet to a point; thence N 72-19-48 W 29.75 feet to a # 4 existing iron rebar located in the westerly margin of the said Thompson Road, said point also being the northeast corner of the property owned, now or formerly, by Kenneth R. Fincher, as described in Deed recorded in Deed Book 4400, Page 844, aforesaid Registry; thence with the northerly margin of Fincher N 72-19-48 W 295.25 feet to a point located in the northernmost corner of Fincher; thence S 19-52-56 W 80.00 feet to a # 4 existing iron rebar; thence with the southerly margin of Fincher, S 72-19-48 E 295.65 feet to an existing one-half inch (1/2") old iron pipe located in the westerly margin of the sixty foot (60') right-of-way of Thompson Road; thence S 72-19-48 E 29.35 feet to a point located in the center line of said Thompson Road; thence with the center line of Thompson Road S 19-23-52 W 172.38 feet to a point; thence S 78-21-49 W 35.06 feet to the point and place of beginning; containing 135.519 acres, as shown on a survey prepared by Carolina Surveyors, Inc. dated February 15, 2002, referenced to which survey is hereby made for a more particular description of the property.

## TRACT 2

Parcel Number 195-211-04

Lying and being in the Town of Mint Hill, County of Mecklenburg, State of North Carolina and being more particularly described as follows:

BEGINNING at an existing 1/2" old iron pipe located in the westerly margin of Thompson Road (60' public right-of-way), said 1/2" old iron pipe being located the following two (2) courses and distances from Mecklenburg County Monument #1432 having GRID coordinates of North = 510,040.5055 feet and East = 1,505,303.5412 feet, with a combined GRID of 0.99984772: (1) N 32-52-54 W 1268.03 feet to a #4 existing iron rebar; and (2) N 19-36-38 E 189.57 feet; said 1/2" old iron pipe also being located in the northerly property line of Ruth D. Fisher, now or formerly, as described in Deed recorded in Deed Book 1860, at Page 386 of the Mecklenburg County Public Registry; thence from said Point of Beginning and running three (3) courses and distances with the property line of Fisher: (1) N 72-19-48 W 295.65 feet to a #4 existing iron rebar; (2) N 19-52-56 E 80.00 feet to a #5 set iron rebar; and (3) S 72-19-48 E 295.25 feet to a #4 existing iron rebar located in the westerly margin of Thompson Road (60' public right-of-way); thence leaving the westerly margin of Thompson Road (60' public right-of-way) and running S 72-19-48 E 29.75 feet to a point located within the right-of-way of Thompson Road (60' public right-of-way); thence running within the right-of-way of Thompson Road (60' public right-of-way) S 19-52-56 W 80.00 feet to a point; thence N 72-19-48 W 29.35 feet to the POINT AND PLACE OF BEGINNING, containing 25,981 square feet or 0.596 acres, as shown on a survey prepared by Hugh E. White, Jr., dated April 23, 2002, reference to which survey is hereby made for a more particular description of the property.

**LESS AND EXCEPT:**

All that certain tract or parcel of land lying in the Town of Mint Hill, Mecklenburg County, North Carolina and being more particularly described as follows:

BEGINNING at a #4 existing iron rebar located in the northwesterly right-of-way margin of Thompson Road (currently a 60-foot public right-of-way), said iron rebar being located N 32-52-54 W 1,268.03 feet from Mecklenburg County Monument #1432 having North Carolina Grid Coordinates as follows: North: 510,040.5055 feet and East: 1,505,303.5412 feet (Combined Grid: 0.99984772); thence leaving the northwesterly right-of-way margin of Thompson Road, S 78-21-49 W 523.44 feet to an existing iron rebar (bent); thence S 05-18-32 E 493.24 feet (passing through an existing ½" old iron pipe on bank at 463.75 feet) to a point located in Stevens Creek; thence running within Stevens Creek, the following two (2) courses and distances: (1) N 34-59-00 W 63.93 feet to a point and (2) N 60-47-45 W 52.32 feet to a point; thence leaving Stevens Creek, N 25-24-44 W 445.99 feet to a point; thence N 03-21-03 W 150.76 feet to a point; thence N 03-21-03 W 108.56 feet to a point; thence N 00-11-52 E 212.23 feet to a point; thence N 15-09-06 W 130.66 feet to a point; thence N 29-03-41 W 131.32 feet to a point; thence N 21-33-10 W 130.01 feet to a point; thence N 18-18-44 W 137.04 feet to a point; thence N 07-08-27 E 241.87 feet to a point; thence N 54-29-38 W 30.79 feet to a point; thence N 20-09-42 W 257.98 feet to a point; thence N 24-33-15 W 261.23 feet to a point; thence N 36-34-02 W 222.27 feet to a point; thence N 00-11-04 W 195.24 feet to a point; thence N 59-55-02 E 199.37 feet to a #4 existing iron rebar; thence N 23-55-32 W 191.65 feet to a #4 existing iron rebar located in the westerly right-of-way margin of Mintwood Drive (currently a 60-foot public right-of-way); thence running within the right-of-way of Mintwood Drive, the following two (2) courses and distances: (1) N 49-28-10 E 26.79 feet to a #8 existing iron rebar and (2) N 03-16-42 E 74.94 feet to a #4 existing iron rebar located in the easterly right-of-way margin of Mintwood Drive; thence leaving the easterly right-of-way margin of Mintwood Drive, N 66-01-30 E 63.17 feet to a #4 existing iron rebar; thence N 45-38-16 E 202.34 feet to a #4 existing iron rebar; thence N 45-41-56 E 270.18 feet (passing through a #4 existing iron rebar at 144.99 feet) to a #4 existing iron rebar; thence N 45-36-50 E 502.31 feet (passing through a #4 existing iron rebar at 124.76 feet) to a #4 existing iron rebar; thence S 70-20-00 E 1,370.59 feet to an existing 1" old iron pipe; thence S 45-42-18 W 1,105.49 feet (passing through a #7 existing iron rebar at 215.14 feet) to an existing angle iron; thence S 20-33-09 E 852.81 feet (passing through a #5 existing iron rebar at 109.08 feet, a #4 existing iron rebar at 339.29 feet and a #5 existing iron rebar at 647.24 feet) to an existing 1" old iron pipe; thence N 85-03-11 W 716.27 feet (passing through an existing ½" old iron pipe at 49.50 feet) to an existing ¼" old iron pipe; thence S 31-12-03 E 744.08 feet to a point; thence N 86-41-17 W 75.96 feet to a point; thence S 16-33-37 W 333.35 feet to a point; thence S 73-26-23 E 127.55 feet to a point located in the northwesterly right-of-way margin of Thompson Road; thence running within the right-of-way margin of Thompson Road the following three (3) courses and distances: (1) S 73-26-23 E 29.78 feet to a point, (2) S 19-23-52 W 63.06 feet to a point and (3) S 78-21-49 W 35.06 feet (passing through a #4 existing iron rebar at 30.23 feet) to a #4 existing iron rebar located in the northwesterly right-of-way margin of Thompson Road, the POINT AND PLACE OF BEGINNING, containing approximately 82.00± acres, as shown on that certain plat of survey entitled "A Boundary Survey for New South Properties of the Carolinas, LLC," prepared by Carolina Surveyors, Inc., dated January 19, 2004, last revised January 29, 2004, reference to which is hereby made for a more particular description.

**CONSENT OF MORTGAGEE**

Branch Banking and Trust Company, a North Carolina banking corporation ("Mortgagee"), owner and holder of a note secured by that certain Deed of Trust and Security Agreement recorded in Book 16794 at Page 531 of the Mecklenburg County Public Registry ("Deed of Trust") and BB&T Collateral Service Corporation, a North Carolina corporation, Trustee under said Deed of Trust ("Trustee"), hereby agree that they have consented to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions For Fairington Oaks (hereinafter called the "Declaration"); that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish this Declaration but shall merely vest in Mortgagee the rights and duties set forth herein, provided, however, that should Mortgagee acquire title to the property secured by this Deed of Trust, any liability Mortgagee shall have for the duties set forth in the Declaration shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the Declaration shall be entitled to the full rights and easements to the extent the same are granted herein; and that upon payment of the loan secured by the Deed of Trust, the rights of Mortgagee and Trustee (or such successor trustees as permitted by the Deed of Trust) set forth in this Declaration shall terminate.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 21<sup>st</sup> day of October, 2004.

**MORTGAGEE:**

BRANCH BANKING AND TRUST COMPANY, a  
North Carolina banking corporation

By: George MacBain  
Name: George MacBain  
Title: Senior Vice President

**TRUSTEE:**

BB&T COLLATERAL SERVICE CORPORATION, a  
North Carolina corporation

By: [Signature]  
Name: Frank R. Knox  
Title: Senior Vice President

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Amy K Shin, a Notary Public of the County and State aforesaid, certify that George MacBain personally came before me this day and acknowledged that s/he is Senior Vice President of BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, and that he/she, as Senior Vice President, being authorized to do so, executed the foregoing instrument on behalf of the banking corporation.

Witness my hand and official stamp or seal, this 27 day of October, 2004.

Amy K Shin  
NOTARY PUBLIC

My Commission Expires: 11-27-2008

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Amy K Shin, a Notary Public of the County and State aforesaid, certify that Frank H. Knox personally came before me this day and acknowledged that s/he is Senior Vice President of BB&T COLLATERAL SERVICE CORPORATION, a North Carolina corporation, and that he/she, as Senior Vice President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this 27 day of October, 2004.

Amy K Shin  
NOTARY PUBLIC

My Commission Expires 11-27-2008

[NOTARIAL SEAL]

**CONSENT OF MORTGAGEE**

Atlantic Residential Fund IV, LLC, a Maryland limited liability company ("Mortgagee"), owner and holder of a note secured by that certain Deed of Trust and Security Agreement recorded in Book 16794 at Page 552 of the Mecklenburg County Public Registry ("Deed of Trust") and Matthew D. Brunner and Daniel P. McGrain, Trustees under said Deed of Trust (together, "Trustee"), hereby agree that they have consented to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions For Faldington Oaks (hereinafter called the "Declaration"); that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish this Declaration but shall merely vest in Mortgagee the rights and duties set forth herein, provided, however, that should Mortgagee acquire title to the property secured by this Deed of Trust, any liability Mortgagee shall have for the duties set forth in the Declaration shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the Declaration shall be entitled to the full rights and easements to the extent the same are granted herein; and that upon payment of the loan secured by the Deed of Trust, the rights of Mortgagee and Trustee (or such successor trustees as permitted by the Deed of Trust) set forth in this Declaration shall terminate.

29<sup>th</sup> IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the  
day of October, 2004.

**MORTGAGEE:**

ATLANTIC RESIDENTIAL FUND IV, LLC, a  
Maryland limited liability company

By: Chesapeake Capital Partners, LLC, its  
Manager

By: Daniel P. McGrain  
Name: Daniel P. McGrain  
Title: Managing Director

**TRUSTEE:**

Matthew D. Brunner  
Matthew D. Brunner  
Daniel P. McGrain  
Daniel P. McGrain

STATE OF Maryland  
COUNTY OF CHESBROUGH

I, Patricia A. McHale, a Notary Public of the County and State aforesaid, certify that DANIEL P. MCCGRATH personally came before me this day and acknowledged that he is Managing Director of Chesapeake Capital Partners, LLC, being the Manager of ATLANTIC RESIDENTIAL FUND IV, LLC, a Maryland limited liability company, and that he, as Managing Director, being authorized to do so, executed the foregoing instrument on behalf of said company, as Manager of ATLANTIC RESIDENTIAL FUND IV, LLC.

Witness my hand and official stamp or seal, this 29th day of October, 2004.

My Commission Expires: 11-26-2006

[NOTARIAL SEAL]

Patricia A. McHale  
NOTARY PUBLIC

STATE OF Maryland  
COUNTY OF CHESBROUGH

I, Patricia A. McHale, a Notary Public of the County and State aforesaid, certify that MATTHEW D. BRUNNER, Trustee, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 29th day of October, 2004.

My Commission Expires: 11-26-2006

[NOTARIAL SEAL]

Patricia A. McHale  
NOTARY PUBLIC

STATE OF Maryland

COUNTY OF Chesow

I, Patricia A. Nettie, a Notary Public of the County and State aforesaid, certify that DANIEL P. MACGRAIN, Trustee, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 24<sup>th</sup> day of October, 2004.

My Commission Expires: 12/26/2006

Patricia A. Nettie  
NOTARY PUBLIC

[NOTARIAL SEAL]