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*R. MAM* *[Signature]*

FOR REGISTRATION  
Fredrick Smith  
REGISTER OF DEEDS  
Mecklenburg County, NC  
2020 NOV 12 08:52:37 AM  
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TAYLORD



**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**CHANTILLY ON THE GREEN**

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

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

**(See Article VI, Section 1(f) and Article VIII, Section 4  
for specific provisions regarding regulation of flags and signs)**

**NOTE TO TITLE ABTRACTOR: THIS DOCUMENT PROVIDES FOR THE  
PAYMENT OF A WORKING CAPITAL CONTRIBUTION FEE UPON THE  
CONVEYANCE OR TRANSFER OF A LOT**

Drawn By and Mail to:  
William B, Kirk, Jr.  
Kirk, Palmer & Thigpen, P.A.  
1300 Baxter Street, Suite 300  
Charlotte, NC 28204

**DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS  
FOR  
CHANTILLY ON THE GREEN**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CHANTILLY ON THE GREEN (this “Declaration”) is made this \_\_\_\_\_ day of November, 2020 by CHANTILLY ON THE GREEN, LLC, a North Carolina limited liability company (together with its successors and assigns, “Declarant”). Each capitalized term used in this Declaration shall have the meaning for such term defined herein unless otherwise required by context.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the property described in Exhibit A attached hereto and made a part hereof, which property, together with such Additional Property as shall have been from time to time brought under the scheme of this Declaration by Supplemental Declaration filed in the Registry (collectively, the “Property”), has been or will be developed into building lots (each a “Lot” and collectively the “Lots”), upon which either townhome units (each a “Townhome” and collectively the “Townhomes”) or detached single-family homes (each a “Detached Home” and collectively, the “Detached Homes”), said Lots, Townhomes, Detached Homes and related amenities to be a community known as Chantilly On The Green (provided, however, Declarant reserves the right to change said name as to all or any portion of the Property at any time and from time to time); and

WHEREAS, Declarant desires to insure the attractiveness of the Lots and community facilities within the Property and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of the Property, and to provide for the maintenance and upkeep of the Common Areas, the Located Easements, and other community facilities and utilities within the Property; and, in order to accomplish these objectives, Declarant deems it advisable to subject the Property to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth; and

WHEREAS, Declarant deems it desirable, in order to insure the efficient preservation, protection, and enhancement of the values and amenities of the Property and the residents' enjoyment of the specific rights, privileges, and easements in the Common Areas, the Located Easements, and the other community facilities and utilities within the Property, that an organization be created to which will be delegated and assigned the powers of maintaining the Common Areas, the Located Easements, and the other community facilities and utilities within the Property, administering and enforcing this Declaration, and collecting and disbursing the assessments and charges hereinafter imposed; and

WHEREAS, Declarant has caused or will cause to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of Chantilly On The Green Owners Association, Inc. (“Association”);

NOW, THEREFORE, the Declarant declares that the Property is and shall be owned, held, leased, transferred, sold, mortgaged, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges, and liens, which shall run with the title to Property and be binding upon and inure to the benefit of all Owners thereof and their heirs, personal representatives, successors, and assigns.

#### **ARTICLE I. DEFINITIONS**

Without limitation of other capitalized terms defined herein, certain of the capitalized terms used in this Declaration are defined in and shall have the meanings given them in Exhibit B (“Definitions”) attached hereto and incorporated herein by reference.

#### **ARTICLE II. PROPERTY**

Section 1. Property Subject to Declaration. The Property shall be owned, held, leased, transferred, sold, mortgaged, conveyed and occupied subject to this Declaration.

Section 2. Scope of Additional Coverage. Declarant shall have the right, at its election without the consent of any Owner, to bring within the scheme of this Declaration any portion of the Additional Property which Declarant shall elect, by filing a Supplemental Declaration in the Registry. At such time as any Additional Property is brought within the scheme of this Declaration as set forth above, it shall be part of the Property. Declarant is a party with 2650 Sanctuary, LLC (“Sanctuary”) to that certain Easement Agreement and Obligation to Convey (the “Sanctuary Agreement”) recorded in Book 32936 at Page 233 in the Mecklenburg County Public Registry whereby Sanctuary is obligated to convey to Declarant that certain approximately 0.308 acre tract of land (the “Sanctuary Parcel”) adjacent to the Property and more particularly described as Tract 2 as shown on that certain map recorded in Map Book 63 at Page 254 in the Mecklenburg County Public Registry. The Sanctuary Parcel shall be conveyed to Declarant, or directly conveyed to the Association, for no consideration after certain environmental remediation of the Sanctuary Parcel is completed as set forth in the Sanctuary Agreement and further described in Section 19 of Article VIII hereof.

Section 3. Additional Declaration Documents. Declarant may supplement the provisions of this Declaration, whether with regard to the entire Property or any portion thereof, including any modifications as may be necessary to reflect the different character of any portion of the Property, provided the same are not inconsistent with the plan and spirit hereof. So long as Declarant owns any part of the Property, Declarant’s prior written consent shall be required for

any Person to supplement the provisions of this Declaration in regard to any portion of the Property.

### ARTICLE III. RIGHTS IN COMMON AREAS

Section 1. Owner's Easements of Enjoyment. Subject to the provisions of Section 5 of this Article, each Owner shall have a right and easement of use and enjoyment in and to the Common Areas, and such easements shall be appurtenant to and shall pass with the title to such Owner's Lot; provided, however, that such easements shall not give such Owner the right to make alterations, additions, or improvements to any part of any Common Area.

Section 2. Delegation of Use. The rights and easements of use and enjoyment granted to each Owner in Section 1 of this Article may be exercised by the members of the Owner's family who occupy the Owner's Lot, and may be delegated by the Owner to such Owner's tenants who occupy said Lot as their principal residence.

Section 3. Title to the Common Areas.

(a) Declarant shall convey to the Association (by deed without warranty) fee simple title to the portions of the Common Areas lying outside of the boundaries of any Lot, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default, restrictive covenants, utility easements, the easements reserved hereunder and any other encumbrances of record. Common Areas may be conveyed by Declarant to the Association in whole or in part from time to time. Declarant, for itself and for the Association, reserves the right to grant one or more easements to the City of Charlotte or Mecklenburg County or other applicable governmental entity for the purpose of allowing a portion of the Common Areas to be used for public greenway, emergency access or related purposes. Declarant intends to convey the Sanctuary Parcel to the Association, or to have the Sanctuary Parcel conveyed directly to the Association, upon satisfaction of the environmental remediation conditions set forth in the Sanctuary Agreement.

(b) While it is anticipated that the Common Areas shall be limited to those properties specifically set forth in this Declaration or on the Plats, nothing contained herein shall prevent the Declarant, by Supplemental Declaration or otherwise, to create, and to convey to the Association, any Common Areas.

Section 4. Control of Common Areas. Subject to Declarants reserved right to grant easements for greenway and related purposes as set forth in Section 3(a) above, the Association shall have sole and exclusive Authority over the usage of and guidelines applicable to the Common Areas.

Section 5. Extent of Owner's Easement. The rights and easements of use and enjoyment created in this Article shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation, and maintenance of the Common Areas (including limiting the number of guests of Owners who may use such Common Areas) subject to limitations established by the Declarant or the Association, as applicable, on such right to impose regulations;

(b) Subject to affirmative vote of eighty percent (80%) of the votes of the Class A Members and the vote of the Class B Member (for so long as Class B Membership exists), the right of the Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage such Common Areas; provided that the rights of such mortgagee in the Common Areas shall be subordinate to the rights of the Owners hereunder.

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure; and

(d) Subject to the Declarant's reserved rights to grant easements for greenway, emergency access and related purposes as set forth herein and further subject to the affirmative vote of eighty percent (80%) of the votes of the Class A Members and the vote of the Class B Member (for so long as Class B Membership exists), the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or utility for such purposes and upon such conditions as the Board may determine; provided that this paragraph shall not preclude the Association from either granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage, natural gas, utilities and drainage facilities upon, over, under and across the Common Areas without the assent of the Members when such easements are requisite for the convenient use and enjoyment of the Property, as determined by the Board in its sole discretion.

(e) No obstructions may be placed within the area designated on the Plat as (i) "Variable Width Emergency Access Easement" or similar terms to enable emergency responders to access the Townhomes and Detached Homes at all times, or (ii) Shenandoah Avenue Variable Width Private Access Easement (except that vehicles may be parked within certain portions of the Shenandoah Avenue Variable Width Private Access Easement established by the Association or shown on the Plat).

#### **ARTICLE IV. EASEMENTS**

Section 1. Located Easements. General utility easements on the portion of each Lot outside of the heated floor area footprint of any Townhome or Detached Home on the Lot are hereby reserved by the Declarant (collectively, the "General Utility Easements"). The purpose(s) of the General Utility Easements shall be to provide for installation, maintenance, construction, and operation of drainage facilities and utility service lines to, from, or for each of the Lots. In addition, the Declarant has reserved (and may hereafter reserve) the following other easements

(which, together with the General Utility Easements are collectively sometimes referred to herein as the "Located Easements"), which Located Easements are reserved by Declarant for itself, its successors and assigns, over, under, and across the Property, and which Declarant may modify or extinguish when in its sole discretion adequate easements are otherwise available:

(a) Landscape easements, consisting of: (i) those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of landscaping amenities, including, but not limited to, monumentation, signage, fencing, sidewalks, lighting, gazebos, pavilions, benches, bird houses, fire pits, controlled security gates, walking trails, dog walks or dog parks, outdoor grill areas, landscaping, irrigation lines, controlled access gates and sitework; (ii) street medians, shoulder, and boulevard areas within street rights of way;

(b) Specific utility easements, consisting of those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of public and private utilities, including without limitation gas, electric, telephone, cable, sewer, and water;

(c) Drainage easements, consisting of those areas shown on the Plats as easements dedicated for the installation, maintenance, repair, and removal of drainage facilities.

(d) Construction easements, consisting of those areas over the Lots and adjoining Common Areas as easements for purposes reasonably related to the installation of streets and construction of dwellings on the Lots. Declarant and its contractors shall have full rights of ingress and egress to and through, over, and about the Lots and adjoining Common Areas during such period of time that Declarant is engaged in any construction or improvement work on or with the Property and shall further have an easement for the purpose of storing the materials, vehicles, tools, equipment, etc., which are being utilized in such construction. No Owner or his/her guests or invitees shall in any way interfere or hamper Declarant or its employees or contractors in the exercise of these rights and easements. Each Developer shall be entitled to the exercise of all easements and rights reserved by Declarant under this Section 1 for so long as the Developer owns any Lot.

(e) Repair and maintenance easements are reserved for the benefit of Declarant and the Association over, under, and through that portion of each Townhome Lot upon which is located any screen wall, optional outdoor fireplace, driveway, walkway, fence, gate, or any portion thereof, for the construction, replacement, maintenance, and continued location of such screen wall, optional outdoor fireplace, driveway, walkway, fence or gate, together with a general right of ingress, egress, and regress over and upon each Townhome Lot for the purpose of accessing such construction and location easement. Easements are reserved for the benefit of Declarant and the Association over, under, and through each Lot in order to perform any maintenance, alteration, or repair

required or permitted herein to be performed by the Declarant or the Association, including, without limitation, the matters set forth in Subsections 1(a), 1(b) and 1(c) of Article VI (and the Owner of each Lot shall permit the Declarant and the Association and any representative of either to enter for such purposes at reasonable times and with reasonable advance notice), and for immediate entry onto each Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. The Declarant or the Association may, without consent or approval of any Owner, grant or convey any of the easement rights hereinabove reserved for the purposes set forth herein to any person, public or private utility or service company or any agent of Declarant or the Association.

(f) Settlement and overhang easements consisting of those areas over the Lots and adjoining Common Areas as easements for building encroachments created by initial construction and by subsequent settling and overhangs. A valid easement for said encroachments and for maintenance of same shall continue so long as said encroachments exist. In the event a Townhome is partially or totally destroyed, and then rebuilt, minor encroachments over parts of the adjoining Townhome Lots or Common Area(s) resulting from the reconstruction shall also be permitted and a valid easement for said encroachments and the maintenance thereof shall continue.

(g) Greenway or related easements as more particularly described in Article III, Section 3(a) of this Declaration.

Section 2. Rights and Limitations With Regard to Located Easements. With regard to the Located Easements, the following shall apply:

(a) Since the locations of certain of the Located Easements may not have been finally determined as of the date of recording of this Declaration in the Registry, for a period of twenty (20) years after the date of recording of this Declaration in the Registry, Declarant reserves to itself and its successors and assigns, and shall be vested with, the right to establish and adjust the locations of such of the Located Easements as are not finally established as of such date of recording and to record in the Registry on behalf of each and every affected Owner such revisions or supplements to the Plats as may be necessary or desirable to reflect the final locations of the Located Easements.

(b) Within the Located Easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels. All water lines, storm water lines and sewer lines located outside of the perimeter foundation footprint of any home on a Lot and running through the Lots shall be maintained by the Association. Except as otherwise specifically provided in this Declaration and except for maintenance and repairs for which a public authority or public utility shall be responsible, the Located Easements on each Lot and all Improvements therein shall be maintained continuously by the Owner.

(c) It is anticipated that Declarant shall assign to the Association Declarant's rights with respect to the Located Easements.

(d) Declarant shall have the right to assign to any public authority or public utility company, in whole or in part, any easement reserved by Declarant under this Declaration.

Section 3. Easement of Ingress and Egress. Full rights of ingress and egress are reserved for the benefit of Declarant and the Association for the exercise of the Located Easement rights, as well as the maintenance and repair rights (as set forth in Article XI) in accordance with the provisions hereof for the carrying out by Declarant and/or the Association of the rights, functions, duties, and obligations of each hereunder (to the extent applicable); provided, that any such entry by Declarant or the Association upon any Lot shall be made with as minimum inconvenience to the Owner of such Lot as reasonably practical, and any damage caused as a result of the gross negligence of Declarant's or the Association's employees or agents shall be repaired by Declarant or the Association (as the case may be) at the expense of Declarant or the Association (as the case may be).

Section 4. Easements for Emergency Escape and Rescue. Without limiting any rights or obligations of any party under this Declaration, and only to the extent required by the definition of "Emergency Escape and Rescue Opening" and related provisions within the North Carolina Residential Code (the "NCRC"), Declarant hereby reserves for itself, its successors and assigns a perpetual, non-exclusive right of way and easement over all Common Areas and such portion of any Lot located up to three and one-half (3 ½) feet from the exterior perimeter heated floor area of any home on a Lot (including such area inside the fenced-in patio area of a Townhome Lot) for ingress and egress to access public rights of way. The foregoing reserved easement shall be for the benefit of each Owner and any occupants of a Townhome or Detached Home. If required by the NCRC, no permanent barrier blocking such egress path shall be erected or constructed.

Section 5. Shenandoah Avenue Variable Width Access Easement. Declarant hereby reserves for itself, its successors and assigns as the Owners of the Lots, a perpetual, non-exclusive right of way and easement over the Shenandoah Avenue Variable Width Access Easement area as shown on the Plat for (i) vehicular and pedestrian access purposes, and (ii) vehicle parking purposes over the specific designated area therein as shown on the Plat or otherwise designated by Declarant. Said easement shall be for the benefit of all Owners and their respective families, friends, tenants and invitees. The foregoing reserved easement shall be for the benefit of each Owner and any occupants of a Townhome or Detached Home.

Section 6. Reserved Easements through Townhome Patio Areas. Declarant hereby reserves for itself, its successors and assigns and for the benefit of said parties and the Association, a perpetual easement and right to enter and access the patio area of each Townhome Lot (i.e. the area inside the fenced rear yard of each Townhome Lot) for purposes of exercising

the utility easement rights granted in Article IV Section 1 hereof and to enforce rules and regulations established by the Association with respect to the use of such patio area.

Section 7. Townhome Lot 11 Exclusive Use Easements. Declarant hereby reserves for the benefit of itself, its successors and assigns and any future owner of Townhome Lot 11, a perpetual, exclusive easement and use right over those portions of Townhome Lot 7 and Townhome Lot 8, respectively, that are located within the fenced-in patio area serving Townhome Lot 11 as shown on the Plat of said Townhome Lots.

## ARTICLE V. MEMBERSHIP IN THE ASSOCIATION

Section 1. Membership in the Association. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The voting rights of the Members shall be appurtenant to the ownership of the Lots. When more than one Person owns an interest (other than a leasehold or security interest) in a Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

Section 2. Classes of Members. The Association shall have two classes of membership:

(a) Class A. Class A Members shall be all Members with the exception of Declarant. Each Class A Member shall be entitled to one vote (1) per Lot owned by such Member.

(b) Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to twenty-seven (27) votes for each Lot owned by it.

Notwithstanding anything contained herein to the contrary, Class B Membership shall cease on the earliest of (a) December 31, 2029, (b) the date on which Declarant no longer owns any part of the Property, or (c) the date Declarant shall elect, in its sole discretion, that Class B Membership cease and be converted to Class A Membership (which election may be made upon Declarant giving written notice of the election to the Board).

Section 3. Voting, Quorum, and Notice Requirements. Except as may be otherwise specifically set forth in this Declaration or in the Charter Documents, the vote of the majority of the aggregate votes entitled to be cast by all classes of the Members present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present shall be the act of the Members meeting. The Charter Documents will set forth (a) the number of votes present that will constitute a quorum at a properly called meeting of Members and (b) the notice requirements for all action to be taken by the Members. In the event of default in the payment of any Assessment or other monetary obligation owed hereunder by an Owner, such defaulting

Owner shall not be entitled to vote on matters presented to the Members while such default remains uncured.

In any instance in this Declaration in which the affirmative vote of a number or percentage of votes of the Association is called for, it shall be interpreted to mean the following: The affirmative vote of that number or percentage of votes of the Association that: (i) are entitled to be cast and (ii) are present or represented by proxy at a Proper Meeting. A "Proper Meeting" shall mean a meeting of the members of the Association: (a) at which a quorum is present and (b) which is duly called and held for the purpose of casting such vote.

## **ARTICLE VI. POWERS RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 1. Powers and Obligations of the Association. The Association, for the benefit of the Owners, shall have the following specific powers and rights (without limitation of other powers and rights the Association may have) and obligations:

(a) The power, right, and obligation to improve, maintain, or cause to be maintained the Common Areas and Located Easements (or particular portions thereof or particular improvements therein, as determined from time to time by the Association in its discretion), including, but not limited to, such water quality detention features, community trash collection facilities, private streets (including, without limitation, the Private Streets), cluster or individual mailboxes, sidewalks, lighting, gazebos, pavilions, benches, birdhouses, fire pits, fencing, controlled security gates, shared utility areas, walking trails, landscaped areas, bike racks, dog walks or dog parks, outdoor grill areas, lighting and parking areas as may exist in the Common Areas and Located Easements from time to time (including any of such items located outside of a Townhome patio area but without representation as to existence or continuance of existence of any of the foregoing);

(b) Solely with respect to Townhomes and except as expressly otherwise provided herein, the power, right and obligation to periodically paint, stain, repair, replace, and care for exterior surfaces of the Townhomes (including, without limitation: exterior brick, siding, pitched/shingled roof surfaces except any Townhome 4<sup>th</sup> floor patio flat roof systems, which shall be the sole responsibility of the applicable Townhome Owner), entry doors, light fixtures, gutters, downspouts, screen walls, optional outdoor fireplaces and fencing; but the Association shall not be responsible for the maintenance, repair or replacement of any patios, porches, stoops, garage doors (if any) and their appurtenant hardware, and all exterior glass including windows and patio doors, all of which shall be maintained, repaired, and replaced by the Townhome Owner, with any replacement windows and doors being the same as originally installed); the Townhome Owner, and not the Association, shall maintain (i) any exterior improvements made by

the Townhome Owner (any such improvements being required to be approved in advance in writing by the Architectural Control Committee), (ii) all structural components of the Townhome improvements, (iii) all patios, porches, stoops, garage doors (if any) and their appurtenant hardware, and all exterior glass including windows and patio doors, and any 4<sup>th</sup> floor patio flat roof system;

(c) The power, right and obligation to maintain, repair, and replace any screen wall, optional outdoor fireplaces, driveway, walkway, fence, gates, gazebo/ pergolas and landscaping (including lawns and irrigation systems), if any, in the front, rear and side yards of the Townhomes, (including, but not limited to, trees, hedges, shrubs, flowers, ground cover and grass, but excluding any additional landscaping installed by any Owner (any such landscaping being required to be approved in advance in writing by the Architectural Control Committee). The Association shall have no obligation to maintain any of the above-referenced items or anything located within the perimeter of a Townhome patio area.

Notwithstanding Subsections (b) and (c) above, if the need of replacement, maintenance, or repair is caused through the willful or negligent act of the Owner, the Owner's family, guest, or invitees, the cost of such replacement, maintenance, or repairs shall be the obligation of that Owner and shall be assessed by Individual Assessment.

(d) The power and right to own the Common Areas and the facilities and improvements described in subparagraph (a) above;

(e) The power and right to enter into agreements to enable the Association to improve and maintain the Common Areas and Located Easements or portions thereof, including, but not limited to, landscape maintenance contracts and trash removal contracts;

(f) The power and right to make (without being obligated to do so) rules and regulations and establish guidelines for the use and operation of and activities on the Lots and the Common Areas and Located Easements (including, without limitation, guidelines, rules, and regulations related to architectural control), and to amend them from time to time;

(g) The power and right to enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Areas, Located Easements, and the Association (including, without limitation, the casualty insurance to be maintained by the Association pursuant to Article X, Section 6);

(h) The power and right to enter into agreements or contracts with utility companies with respect to utility installation, consumption, and service matters relating to the Townhomes (i.e. water/sewer services), Common Areas, Located Easements, and the Association;

(i) The power and right to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Board sees fit;

(j) The power and right to enter into contracts (specifically including, without limitation, street light leases), maintain one or more bank accounts, and generally to have all the powers necessary or incidental to the operation and management of the Association;

(k) The power and right to sue or defend in any court of law on behalf of the Association and to provide reserves for repairs and replacements;

(l) The power, right, and obligation to make available to each Member within sixty days after the end of each Assessment Year an annual report of the Association and, upon resolution adopted by the Board or upon the affirmative vote of a majority of the Lot Owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose to have such report consist of a more extensive compilation, review or audit (at the expense of the Association), which report shall be made available to each Member within thirty days after completion;

(m) The power, right, and obligation to adjust the amount, collect, and use any insurance proceeds to repair damage to or replace lost property of the Association; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

(n) The power and right to exercise all powers, duties, and authority vested in the Association by this Declaration or the Charter Documents and not reserved to the Members or Declarant by other provisions of this Declaration or the Charter Documents;

(o) The power and right to employ a manager or firm to manage the affairs and property of the Association (including, without limitation, collection of assessments provided for in this Declaration and enforcement of the other provisions of this Declaration), to employ independent contractors, or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;

(p) The power and right to retain the services of legal and accounting firms;

(q) The power and right to the extent permitted hereby, to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and, at its discretion, seek damages or other relief for violation of such provisions or rules;

(r) The power and right to contract with any third party or any Member (including Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be at competitive rates and otherwise upon such terms and conditions and for

such consideration as the Board may deem proper, advisable, and in the best interests of the Association;

(s) The power and right to take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its rights or obligations hereunder or for the operation or protection of the Association; and

(t) The power and right to set the Assessments.

Anything contained herein to the contrary notwithstanding, except as specifically set forth herein, none of the above-described rights and powers of the Association shall be obligatory on the part of the Association, and the failure or refusal by the Association to implement any such rights and powers shall not constitute a breach or default by the Association or the Board or the officers of the Association of any duties or obligations arising hereunder or otherwise owing to its Members.

Section 2. Liability Limitations. Neither Declarant, nor any Member, nor the Board, nor any member or manager of Declarant nor any officer or director of the Association shall be liable for: (a) debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise; (b) any incidental or consequential damages for failure to inspect any premises, improvements, or portions thereof or for failure to repair or maintain the same; or (c) any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, expense, damage, liability, action, or cause of action relating to the performance by the Board of its duties except for any such loss, expense, damage, liability, action, or cause of action resulting from the gross negligence or willful misconduct of the person to be indemnified.

## ARTICLE VII. ASSESSMENTS

Section 1. Covenant for Assessments. The Declarant, for each Lot within the Property, hereby covenants, and each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments; (b) Special Assessments; and (c) Individual Assessments; and (d) Working Capital Contributions (collectively "Assessments").

Section 2. Purposes of Assessments. The Assessments shall be used to carry out of the rights, powers, and obligations of the Association pursuant to the terms of this Declaration, and to promote the enjoyment and welfare of the Property, including in particular, but without limitation, to (i) develop and maintain the Common Areas and Located Easements; (ii) pay ad

valorem taxes, premiums for hazard insurance in connection with the Common Areas and Located Easements, and public liability and other insurance of the Association, including directors and officers liability insurance; (iii) pay water/sewer service charges for the Townhomes (with all Townhomes connected to a master water meter and Assessments charged to Townhomes based on the respective square footages of the Townhomes); (iv) carry out the duties of the Association; (v) carry out the purposes of the Association and its Architectural Control Committee as stated in the Charter Documents and this Declaration; (vi) as more particularly described in Article VI, Subsection 1(b), periodic painting, staining repair, replacement and care of exterior surfaces of the Townhomes (including, without limitation, exterior brick, siding, pitched/shingled roof surfaces [other than any 4<sup>th</sup> floor patio flat roof system of a Townhome which shall be the sole responsibility of the Owner of such Townhome], entry doors, light fixtures, gutters, downspouts, screen walls, optional outdoor fireplaces and fencing; but excluding: patios, porches, stoops and garage doors (if any) and their appurtenant hardware, and all exterior glass including windows and patio doors, all of which shall be maintained, repaired and replaced by the Owner, with any replacement windows and doors being the same as originally installed); (vii) as more particularly described in Article VI, Subsection 1(c), repair and replacement of the landscaping (including irrigation systems, if any) in the front, rear and side yards of the Townhomes on the Lots, including, but not limited to, trees, hedges, shrubs, flowers, ground cover and grass, but excluding any additional landscaping installed by any Owner; (viii) and maintenance of insurance as provided in Article X, Section 6. Anything contained in this Declaration to the contrary notwithstanding, until such time as the Class B Membership shall cease and be converted to Class A Membership, any costs and expenses associated with the initial construction and installation (the "Initial Costs") of the improvements within the Common Areas and Located Easements shall be incurred by the Association only after such Initial Costs are approved by a vote of the majority of the votes of Class A Membership present or represented by proxy at a duly constituted meeting of the Class A Members at which a quorum is present, and if they are not so approved, such Initial Costs shall be borne by Declarant. All costs and expenses associated with operating, maintaining, repairing, and replacing the improvements within the Common Areas and Located Easements benefiting the Property in general (as determined from time to time in the sole discretion of the Board) shall be the responsibility of the Association.

In addition to the general purposes set forth above, the Assessments shall expressly be used for repayment of any loan incurred, payment of any sum due under any lease entered into, and satisfaction of any other expense of installation, maintenance, repair, or replacement incurred by Declarant or the Association in connection with the acquisition of decorative street light poles, fixtures, bulbs, wiring, and all equipment related to the use thereof within the Property. However, to the extent that there is any fee or payment due on account of the maintenance of any such poles not located on streets dedicated to the public, such fees or expenses shall be borne entirely by the Owners of Lots and assessed in such manner as shall be determined by the Board.

Section 3. Annual Assessments. For each Assessment Year, in accordance with the provisions of the Act and this Declaration, the Board shall determine the amount of the annual

assessment provided for in this Article VII (the "Annual Assessment") to be assessed against each Lot (which, except as provided in Section 6 below, shall be uniform for all Townhome Lots and uniform for all Detached Home Lots, with Townhome Lots being charged a higher Annual Assessment due to the Association's additional maintenance duties with respect to the Townhome Lots). In making such determination, the Board shall take into consideration, among other things, estimated development and maintenance costs to be borne by the Association under this Article VII, and future needs of the Association under this Article VII. Furthermore, for clarification, the portion of Annual Assessments collected from Detached Home Owners for insurance and reserves shall only be applicable to insurance and reserves deemed necessary by the Board for the Common Areas dedicated to the use of all Owners of Lots.

The time of payment of the Annual Assessment shall be determined by the Board from time to time as set forth in statements of amounts due sent to each Lot Owner. Annual Assessments for Townhome Lots will vary based on their relative square footages and the allocation of water/sewer charges to each floor plan, with the Annual Assessments estimated to initially be in the following monthly amounts: (i) \$302.49/mo for the Townhome Lots with the "Chesterfield Floor Plan", (ii) \$267.71/mo for the Townhome Lots with the "Kingsbury and Laburnam Floor Plan", (iii) \$245.71/mo for the Townhome Lots with the "Shenandoah Floor Plan", and (iv) \$108.33/mo for Detached Home Lots.

Section 4. Special Assessments. In addition to the Annual Assessment, the Board may levy in any Assessment Year, in accordance with the provisions of the Act and this Declaration, special assessments (each a "Special Assessment") against each Lot (which, except as provided in Section 6 below, shall be uniform for all Townhome Lots and uniform for all Detached Home Lots, with Townhome Lots being charged a higher Annual Assessment due to the Association's additional maintenance duties with respect to the Townhome Lots) for the purpose of defraying, in whole or in part, any costs incurred by the Association under this Article VII which are not paid for out of funds on hand in the Association or out of the Annual Assessment collected by the Association, as determined by the Board in its discretion.

Section 5. Individual Assessments. The Board may levy particular assessments against an individual Owner ("Individual Assessments") for: (i) reimbursement to the Association for repairs to the Lots, Common Areas or Located Easements (including, without limitation, Improvements on Lots, Common Areas or Located Easements) occasioned by the willful or negligent acts of such Owner; or (ii) payment of fines, penalties, or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Charter Documents, or any rules or regulations promulgated hereunder, including, without limitation, reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article XI, or otherwise specifically allocable to such Owner hereunder. All costs for the repair and maintenance of the Townhome Lots shall be an Individual Assessment against the Townhome Lot Owners. Further, for those Townhome Owners which have an optional outdoor fireplace, the cost to repair and maintain such fireplaces shall further be an Individual Assessment against the applicable Townhome Lot Owner.

Section 6. Assessment Limitations on Declarant and Developer Owned Lots. Notwithstanding any other provision of this Declaration, no Lot owned by Declarant or a Developer shall be subject to any Assessment; except, however, each Lot owned by a Developer shall be subject to the Working Capital Contribution provided for in Section 15 below at the time of conveyance thereof by Declarant to the Developer.

Section 7. Use of Working Capital Contributions. The Working Capital Contributions provided for in Section 15 below may be used by the Association for any of the purposes described in Section 2 above, as determined from time to time by the Board in its discretion.

Section 8. Commencement of Annual Assessments. The first Annual Assessment shall commence with the Assessment Year in which any Lot is conveyed to an Owner other than Declarant or any later Assessment Year as determined by the Board in its discretion. Annual Assessments shall continue thereafter for each Assessment Year.

Section 9. Due Date of Assessments; Payment. Annual Assessments shall be paid in equal monthly installments of 1/12<sup>th</sup> of the Annual Assessment amount due and payable on the first day of each month of each Assessment Year or on such other basis as shall be determined from time to time by the Board in its discretion. The due date of any Special Assessment or Individual Assessment shall be fixed in the Board resolution authorizing such Special Assessment or Individual Assessment.

Section 10. Notice. In the event of the establishment or revision in the amount or rate of an Annual Assessment, Special Assessment, or Individual Assessment, the Board shall fix the amount thereof, and in regard to any Special Assessment or Individual Assessment, the applicable due date(s) for the payment of such Special Assessment or Individual Assessment, and shall provide written notice thereof to each Owner subject thereto.

Section 11. Omission by Board. The omission by the Board, before the expiration of any Assessment Year, to fix the Annual Assessment hereunder for that or any subsequent Assessment Year shall not be deemed to waive or modify in any respect any of the provisions of this Declaration or to release any Owner from the obligation to pay the Annual Assessment due for that or any subsequent Assessment Year. The Annual Assessment fixed for the preceding Assessment Year shall continue until a new Annual Assessment is fixed.

Section 12. Owner's Personal Obligation for Payment. Each Assessment provided for herein shall be the personal and individual debt of the Owner (as of the due date of the applicable Assessment) to which such Assessment relates. The personal obligation to pay any such Assessment, together with interest thereon and costs of collection, shall not pass to the successors in title of such Owner unless expressly assumed by such successors. Although unpaid Assessment charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, as provided in Section 13 below, the unpaid Assessment charges continue to be a lien on the Lot against which the Assessment has been made. In the event of default in the payment of any such Assessment, the defaulting Owner shall be obligated to pay

interest, late fees, and all costs and expenses of collection, including reasonable attorneys' fees, as determined from time to time by the Board consistent with the provisions of the Act.

Section 13. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, are, together with interest, late fees, and the costs of collection, including reasonable attorney's fees as provided in this Article, a continuing lien and charge on the Lot owned by the defaulting Owner as of the Assessment due date and shall bind and run with the title to such Lot. Except as provided below, the aforesaid lien shall be superior to all other liens and charges against such Lot. Further provided, that the Board shall have the power to subordinate the aforesaid assessment lien to any other lien, and such power shall be entirely discretionary with the Board. The Association may bring an action at law against the Owner personally obligated to pay the Assessment, or to foreclose the lien against the Lot as provided in the Act.

Section 14. Subordination of the Lien to Mortgages. The lien of the Assessments shall be subordinate and inferior to the lien of any first priority mortgage or deed of trust encumbering a Lot; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the foreclosure sale or other transfer of the Lot pursuant to the terms and conditions of any such first priority mortgage or deed of trust. Such sale or transfer shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due or from the lien thereof.

**Section 15. WORKING CAPITAL CONTRIBUTION. IN ADDITION TO, AND NOT IN LIEU OF, THE ANNUAL ASSESSMENTS, SPECIAL ASSESSMENTS, AND INDIVIDUAL ASSESSMENTS PROVIDED FOR ABOVE IN THIS ARTICLE VII, DECLARANT HEREBY IMPOSES AGAINST EACH LOT THE WORKING CAPITAL CONTRIBUTION REQUIREMENTS SET FORTH BELOW. EACH WORKING CAPITAL CONTRIBUTION REQUIRED HEREUNDER IS HEREIN REFERRED TO AS A "WORKING CAPITAL CONTRIBUTION." WITH REGARD TO EACH LOT, A WORKING CAPITAL CONTRIBUTION SHALL BE PAID TO THE ASSOCIATION BY THE PURCHASER OF SUCH LOT AT THE CLOSING OF THE SALE OF SUCH LOT BY THE DECLARANT TO AN OWNER OTHER THAN THE DECLARANT. SUCH WORKING CAPITAL CONTRIBUTION SHALL NOT BE CONSIDERED TO BE AN ADVANCE PAYMENT OF ANY ANNUAL ASSESSMENT, SPECIAL ASSESSMENT, OR INDIVIDUAL ASSESSMENT. THE AMOUNT OF SUCH WORKING CAPITAL CONTRIBUTION SHALL BE EQUAL TO ONE SIXTH (1/6) OF THE AMOUNT OF THE ANNUAL ASSESSMENT ON THE DATE OF THE SALE FOR WHICH A WORKING CAPITAL CONTRIBUTION IS DUE.**

### ARTICLE VIII. USE OF PROPERTY – PROTECTIVE COVENANTS

The Property shall be occupied and used as follows:

Section 1. Residential Purposes Only. Each Lot shall be used exclusively for single-family residential purposes (including attached Townhomes and Detached Homes), and garages (if any), carports (if any), and parking spaces shall be used exclusively for the parking of

passenger automobiles or light (noncommercial) vans or trucks therein or thereon; provided, however, (i) Declarant and each Developer shall have the right to use Lots owned by it for the purpose of construction and operation of sales and marketing centers (and for related uses) for the Property, and (ii) certain portions of the Lots located within the Shenandoah Avenue Variable Width Access Easement may be used as Common Areas as set forth herein. No structure shall be erected, placed, altered, used, or permitted to remain on any Lot outside of Common Area other than one single-family private dwelling and private garage(s), (if any) or carport(s), if any, approved by the Architectural Control Committee in accordance with the requirements of Article IX of this Declaration.

Section 2. Obstructions, etc. Except with the prior written consent of the Association and except as otherwise provided in Section 1 of Article IV hereof, there shall be no obstruction of the Common Areas or Located Easements, nothing shall be kept or stored in the Common Areas or Located Easements, nor shall anything be altered, or constructed or planted in, or removed from the Common Areas or Located Easements. Notwithstanding the above, Declarant shall have the right to install signs in the Common Areas and Located Easements.

Section 3. Restricted Actions by Owners. No waste shall be committed in the Common Areas or Located Easements. Each Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances), and other governmental rules and restrictions in regard to such Owner's Lot.

Section 4. Signs. No sign of any kind shall be displayed to the public view on any Lot except no more than one professional sign which is consistent with such rules, regulations, and guidelines as shall from time to time be issued by the Architectural Control Committee, approved in writing by the Architectural Control Committee (and, for so long as Class B Membership exists, approved in writing by Declarant), and which is for the purpose of (i) advertising the Lot for sale or rent, and/or (ii) advertising the building contractor constructing improvements on the Lot during the initial construction and sales period, and/or (iii) identifying the sales office and/or model home of a building contractor who owns the Lot; however, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property, or to restrict the Association from posting permanent signs designed to aid in vehicular access and related information.

Section 5. Attachments. No permanent attachments of any kind or character whatsoever shall be made to the roof or exterior walls of any dwelling on a Lot, except for: (a) a satellite disc or dish no larger than one (1) meter in diameter that is not (nor is any cable, wire, or other apparatus connected thereto) visible from any front, side or rear of the applicable dwelling or visible from any street adjoining the Lot.

Section 6. Animals. No animals, livestock (including, without limitation, any pig or horse), or poultry shall be raised, bred, or kept on any Lot except that dogs, cats, or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board in its sole discretion) such as, but without

limitation, by noise, odor, damage or destruction of property, or refuse. At any time and from time to time the Board, in its sole discretion, may require any animal to be removed from any Lot. No dog run may be constructed or maintained on any Lot unless such dog run has been approved in writing by the Architectural Control Committee prior to commencement of construction. Notwithstanding the foregoing, in no event shall more than two (2) household pets be maintained on any Lot, nor shall any Pit Bull, Doberman Pinscher or Rottweiler breed of dog (whether or not mixed) be maintained on any Lot.

Section 7. Vehicles/Parking. All vehicles must be parked in carport (if any), garages (if any) or driveways on the Lots or in parking spaces within the Common Areas as designated by the Association. No parking will be allowed on any street, including, without limitation, the Private Streets and Public Roads except as designated by the Association. Parking in the Common Areas shall be in the areas designated by the Association only and shall be on a first-come, first-serve basis and subject to any rules or regulations that may be promulgated by the Association. No house trailer or mobile home, school bus, truck or commercial vehicle over three-fourths (3/4) ton capacity or having ladders, pipes, or similar racks or utility beds, boat or boat trailer, jet ski or jet ski trailer, motor home, camper, or van (not to include passenger vans for non-commercial use), junked or wrecked vehicles, or vehicles on blocks shall be kept, stored, or parked overnight on any street, Common Area, or Lot. The foregoing shall not be interpreted, construed, or applied to prevent Declarant or any Developer from locating construction and/or sales trailers within the Property as necessary. No significant automobile repair shall be allowed on the Property. The Association shall have the right to tow any vehicle in violation of this Section at the vehicle owner's expense.

Section 8. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. No waste or waste container of any nature shall be kept on any part of the Property outside of a Townhome except for such community trash collection facilities as may be installed and maintained within the Common Area from time to time by the Association.

Section 9. New Construction. Construction of new buildings only shall be permitted on Lots, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot.

Section 10. No Temporary Structures. No structure of a temporary character on any Lot, such as a trailer, tent, shack, or other outbuilding, shall be used at any time as a dwelling.

Section 11. Mailboxes. The only mailboxes allowed within the Property are (i) the cluster mailboxes maintained by the Association pursuant to Section 1(a) of Article VI unless individual mailboxes are authorized within the Property, or (ii) if individual mailboxes are authorized within the Property, then such individual mailboxes as are approved by the Architectural Control Committee.

Section 12. No Drilling or Mining. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted on any Lot, nor shall oil

wells, tanks, tunnels, mineral excavations, or shafts be permitted on any Lot. No derrick or other structure designed for use in quarrying or for drilling for oil or natural gas shall be erected, maintained, or permitted on any Lot.

Section 13. Diligent Construction. All construction, landscaping, or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion.

Section 14. No Subdivision of Lots. No Lot shall be subdivided by sale, lease, or otherwise so as to reduce the total Lot area as shown on the Plat of such Lot. The foregoing shall not apply to Declarant.

Section 15. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirement applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to each Lot.

Section 16. Fencing. With respect to the Detached Lots, no fencing shall be permitted in front of the front elevation of the Detached Home located thereon.

Section 17. Swimming Pools. No above-ground swimming pools will be allowed within the Property.

Section 18. Statuary. No statuary or related artwork shall be permitted in the front yard or any Lot.

Section 19. Sanctuary Parcel Restrictions. Until the Sanctuary Parcel is conveyed to the Association and added to the Property, the Sanctuary Parcel is subject to certain use restrictions pursuant to that certain Notice of Residual Petroleum (the "NORP") recorded in Book 32917 at Page 879 in the Mecklenburg County Public Registry. The Sanctuary Parcel was the former site of a gas station and environmental contamination was found thereon related to such past usage. The restrictions contained in the NORP prohibit use of the Sanctuary Parcel for residential purposes, schools, daycare centers, nursing homes, playgrounds, parks, recreation areas or picnic areas until completion of certain environmental remediation of the Sanctuary Parcel as set forth in the NORP. After the required environmental remediation is completed, as evidenced by a recorded concurrence from the North Carolina Department of Environmental Quality or its successor in function, the restrictions set forth in the NORP shall be released, after which time the Sanctuary Parcel shall be conveyed to the Association and made a part of the Common Area.

Section 20. Townhomes with 4<sup>th</sup> Floor Patio Flat Roof Systems. No roof penetrations may be made to a patio flat roof system on a Townhome. Further, scuppers to flat roof systems must be kept clear of debris to allow proper water drainage from the flat roof system.

**ARTICLE IX.  
ARCHITECTURAL CONTROL**

Section 1. General. Notwithstanding any other provision of this Declaration, but subject to such contractual commitments as Declarant may have, no Improvement, including, without limitation, site preparation on any Lot or change in grade or slope of any Lot or erection of building or exterior addition or alteration to any building situated upon the Property or erection of or changes or additions to front doors, fences, hedges, walls, storage buildings, mail boxes, and other structures, or construction of any swimming pools or other improvements, shall be commenced, erected, or maintained on any portion of the Property until the Architectural Control Committee appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements. Subject to approval by the Board, the Architectural Control Committee shall have the authority to issue and amend from time to time (but shall not be required to do so) guidelines, rules, and regulations with respect to construction of Improvements.

Section 2. Composition. The Architectural Control Committee shall be composed of at least three and not more than seven individuals (the exact number to be designated by the Board from time to time), annually appointed by the Board, each to be generally familiar with residential and community development design matters and knowledgeable about the Association's concern for high level design standards within the Property. In the event of the death, removal, or resignation of any member of the Architectural Control Committee, the Board shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced by the Board at any time, with or without cause, and without prior notice. For so long as Declarant has the rights with respect to appointment and removal of Board members set forth in the Definitions, Declarant shall also have the right at any time and from time to time to appoint and remove any and all members of the Architectural Control Committee.

Section 3. Procedure. No Improvement of any kind or nature shall be erected, remodeled, or placed on any portion of the Property until all plans and specifications and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee.

Section 4. Authority. The Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on any portion of the Property which may, in the opinion of the Architectural Control Committee, affect the living enjoyment of any Owner or the general value of the Property or any portion thereof.

Section 5. Enforcement. The Architectural Control Committee shall have the specific right (but no obligation) to enforce the provisions contained in this Article IX, and/or to prevent any violation of the provisions contained in this Article IX by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article IX. The Association shall also have the right (but not obligation) to enforce these provisions.

Section 6. Limitation of Liability. Neither the Architectural Control Committee, nor the members thereof, nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

Section 7. Miscellaneous. No member of the Architectural Control Committee shall be entitled to compensation for, or be liable for claims, causes of action, or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of, services performed pursuant to this Article IX. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses associated with its activities hereunder.

## **ARTICLE X. INSURANCE**

Section 1. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds. Sections 2 through 5 of this Article X set forth the requirements of Section 47F-3-113 of the Act. In the event the insurance requirements set forth in the Act or any portion of the Act are changed, amended, or deleted, the insurance requirements set forth in Sections 2 through 5 of this Article X shall likewise be changed, amended, or deleted to conform with the insurance provisions of the Act without the requirement of a formal amendment to this Declaration. The insurance requirements set forth in Sections 6 and 7 of this Article X are in addition to those provided for in Sections 2 through 5 of this Article X.

Section 2. Property Insurance. The Association shall maintain a Master Policy for each Townhome which covers the roof, structural components, drywall and exterior features of each Townhome. Each Owner will be required to maintain an HO-6 Policy for their Townhome. The Association shall maintain, to the extent reasonably available, property insurance on the Common Areas and Located Easements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by this property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee

designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lien holders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lien holders are not entitled to receive payment of any portion of the proceeds, unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

Section 3. Liability Insurance. The Association shall maintain, to the extent reasonably available, liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas and Located Easements. The liability insurance shall be for the benefit of the Owners, occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, members, managers, agents, and employees in such amounts and with such coverage that shall be determined by the Board; provided that such liability insurance shall be for at least One Million Dollars (\$1,000,000.00) per occurrence for death, bodily injury, and property damage.

Section 4. Required Provisions for Property and Liability Insurance. Insurance policies carried pursuant to Sections 2 and 3 above shall provide that:

- (a) Each Owner is an insured person under the policy to the extent of the Owner's insurable interest;
- (b) The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household;
- (c) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and
- (d) If, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 5. Insurance Repairs. Any portion of the planned community for which insurance is required under Sections 2 and 3 hereinabove which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the planned community is terminated; (b) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or (c) the Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If any portion of the planned community is not repaired or replaced, (a) the insurance proceeds attributable to the damaged Common Area or Located Easement shall be used to restore the damaged area to a condition compatible with the remainder of the planned community; (b) the insurance proceeds attributable to limited common elements which are not rebuilt shall be

distributed to the Owners of the Lots to which those limited common elements were allocated, or to lien holders, as their interests may appear; and (c) the remainder of the proceeds shall be distributed to all the Lot Owners or lien holders, as their interests may appear, in proportion to the common expense liabilities of all the Lots. Notwithstanding the provisions of this Section 5, Section 47F-2-118 (termination of the planned community) governs the distribution of the insurance proceeds if the planned community is terminated.

Section 6. Casualty Insurance Maintained By the Association for Townhome Lots. The Association shall procure and maintain casualty insurance upon the Townhome Lots for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and provisions shall be made for the issuance for certificates or mortgagee endorsements to the mortgagees of Owners upon request therefor by any Owner. Each Townhome Lot shall be insured in an amount equal to one hundred percent (100%) of its insurable replacement value of the Townhome thereon as determined annually by the Association with the assistance of the insurance company providing coverage. The Association shall not procure any casualty insurance with respect to the Detached Homes, which shall be the sole responsibility of each Detached Home Owner.

(a) Coverage. Such coverage for the Townhome Lots shall provide protection against: loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and such other risks as from time to time shall be reasonably required by the Association.

(b) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the Annual Assessment.

(c) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Townhome Lot Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Association, the Owners and their mortgagees in the following shares:

- (i) If an insured casualty shall occur resulting in damage to a Townhome Lot or Townhome Lots, proceeds from insurance shall be held in undivided shares for the affected Townhome Lot Owners in proportion to the cost of repairing the damage insured against in said policy, which cost shall be determined by the Association;
- (ii) In the event a mortgagee endorsement has been issued for any Townhome Lot, the share of the Owner of that Townhome Lot shall be held in trust for the mortgagee and the other Owners, as their interests may appear.

(d) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner: First, all expenses of the insurance trustee shall be first paid or provisions made therefor; and then any remaining proceeds shall be paid to defray the cost of the covered item.

(e) Responsibility for Repair. If the proceeds of insurance are insufficient to repair damage or destruction to any portion of the Townhome Lot or Townhome Lots by fire or other casualty, or if such casualty is not insured against, then the reconstruction or repair of any damaged improvements contained within any Townhome Lot shall be accomplished promptly by the Owner(s) of such Townhome Lot or Townhome Lots, and the extent of such repairs shall be an expense of such Owner(s). If the Owner of the affected Townhome Lot fails to promptly accomplish such repair or reconstruction, the Association may perform such repairs or reconstruction on his behalf, and the expense of such repair or reconstruction may be assessed against that Townhome Lot, and if not paid shall be a lien on the Townhome Lot having all of the priorities provided in this Declaration.

Section 7. Public Liability Insurance. The Association shall procure public liability insurance with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability to a single Owner of the Owners as a group. If an insured casualty shall occur resulting in damage or injury to a claimant whose claim is insured against in said policy, proceeds from the Association shall be applied as follows: all expenses of the insurance trustee shall be first paid or provisions made therefor; and the balance held in undivided shares for compensation for injuries suffered by each claimant whose claim is insured against in said policy, all as determined by the Association.

Section 8. Insufficient Proceeds. If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 9. Owner's Personal Property. The Association or Declarant shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or such Owner's family, guests, or invitees, located on or used at the Common Areas or Located Easements. Further, the Association or Declarant shall not be responsible or liable for any damage or loss to any personal property of any Owner, such Owner's family, guests or invitees located on or used at the Common Areas or Located Easements. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

Section 10. Security. The Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures, and maintain or support certain other activities within the Property designed to make the Property safer than it might otherwise be. Provided, however, should the Association provide, maintain, or support any such

measures or activities, then neither the Association, the Board, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Property, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason of failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner of any Lot and each tenant, guest, and invitee thereof acknowledges and understands that neither the Association, the Board, Declarant nor any successor of Declarant are insurers, and each such Owner of a Lot, and such Owner's tenants, guests, and invitees hereby assume all risks for loss or damage to persons, property, or contents belonging to any such persons.

## **ARTICLE XI. MAINTENANCE**

Section 1. Duty of Maintenance. The Owner of each Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot owned by such Owner in a well-maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse, and waste;
- (b) Keeping exterior lighting and mechanical facilities in working order;
- (c) Complying with all governmental health regulations;
- (d) Solely with respect to Townhomes with a patio flat roof system, such Townhome Owners shall be solely responsible for the maintenance, repair and replacement, if necessary of such patio flat roof systems;
- (e) Solely with respect to Detached Homes, such Detached Home Owner shall be solely responsible for maintenance, repair and replacement of all aspects of the Detached Home Lot and any improvements thereon (including, without limitation, all utilities and trash collection and removal). Townhome Owners shall be solely responsible for maintenance, repair and replacement of all structural components of the Townhome that are not expressly maintained by the Association under Article VI, Section 1.
- (f) Repair of any damage to Improvements; it being understood and agreed that if any Improvements are damaged or destroyed by fire, or other casualty covered by the policy of insurance maintained by the Association pursuant to Article X, Section 6, the proceeds from such insurance policy shall be used to repair the damage insured against in said policy. In the event that the proceeds are insufficient to repair the damage or destruction to any portion of the Lot or Lots of if such casualty is not insured against, then the Owner(s) of the damaged Lot or Lots shall be responsible for the reconstruction or repair of any damaged improvements as provided in Article X, Section 6(e) of this Declaration.

Section 2. Enforcement. If the Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration, then the Association and Declarant, jointly or severally, may enforce the duties and responsibilities of such Owner in any manner available at law or in equity (subject, however, to any limitations imposed by the Act), including, without limitation, by entering onto the Lot of such Owner and performing such care and maintenance without any liability for damages for wrongful entry, trespass, or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work and, without limiting any other remedy, the Association may impose an Individual Assessment against such Owner. Declarant has the right to assign to the Association the rights of Declarant under this Section.

Notwithstanding the foregoing, if an Owner is in violation of Article VIII, Section 4 of this Declaration, the Association and Declarant, jointly or severally, may give such Owner written notice of such failure and such Owner must within 24 hours after receiving such notice (which notice shall be deemed received when handed to Owner or prominently posted on the front entry door of the dwelling on the Lot) remove the unauthorized sign(s). Should such Owner fail to fulfill this duty within such 24 hour period, then the Association and Declarant, jointly or severally, shall have the right and power to enter onto the Lot and remove and dispose of such unauthorized sign(s) without any liability for damages for wrongful entry, trespass or otherwise to any Person.

## **ARTICLE XII PARTY WALLS**

Section 1. Definition. Each wall or fence separating two Townhomes as a part of the original construction of the Townhomes, and any replacement thereof, shall constitute a “party wall” for purposes of this Article.

Section 2. General Law. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all party walls.

Section 3. Encroachment. If any portion of any structure originally constructed by Declarant or any Developer, or any party wall, or any common fence, protrudes over an adjoining Lot or into any Common Area, such structure, wall, or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall, or fence, nor any action for damages. In the case of such a protrusion, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner for continuing maintenance and use of the encroaching structure, wall, or fence. The foregoing provision shall also apply to any replacements in conformance with the original structure, wall, or fence constructed by Declarant or any Developer.

Section 4. Sharing of Repair and Maintenance. The cost of replacement, repair, and

maintenance of a party wall shall be equally divided by the Owners which share the wall, except that (i) if the damage necessitating the replacement, repair, or maintenance is covered under the terms of any fire or casualty insurance policy maintained by the Association, the proceeds of such policy shall first be used to effect such replacement, repair, and maintenance; and (ii) if the portion of the wall which requires the replacement, repair, or maintenance is an outside wall for one of the Townhomes, but not for the other (that is, not common to both Townhomes) the replacement, repair, or maintenance cost of that portion of the wall shall be borne by the Owner of the Townhome utilizing that portion of the wall, if, and to the extent that, the Association does not have that responsibility.

Section 5. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty or requires replacement, repair, or maintenance in excess of the benefits payable under any fire or casualty insurance policy maintained by the Association, and one of the common Owners of the wall repairs, replaces, or performs necessary maintenance work, the other Owner shall promptly reimburse the Owner who effects the work in an amount equal to one-half of the cost thereof; provided that this obligation shall not be absolute, but shall be subject to the general rules of law regarding negligence and wrongful acts.

Section 6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner of a Townhome shall have an easement and right of entry upon the Townhome Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or construction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to the commencement of the work as possible.

### **ARTICLE XIII EMINENT DOMAIN (CONDEMNATION)**

In the event of a taking of all or any portion of a Townhome Lot or all any portion of the Common Areas or Located Easements by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act.

**ARTICLE XIV  
TERMINATION OF PLANNED COMMUNITY**

The Property, a planned community under the Act, may be terminated only in strict compliance with Section 47F-2-118 of the Act.

**ARTICLE XV  
AMENDMENT**

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no amendment altering or impairing rights reserved by Declarant hereunder may be made without the written consent of the Declarant.

**ARTICLE XVI  
GENERAL PROVISIONS**

Section 1. Enforcement. The Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, condition, covenant, reservation, lien, and charge now or hereafter imposed by the provisions of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure or forbearance by the Declarant, the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Each Owner, resident or tenant of a Lot shall comply with the provisions of this Declaration, the Charter Documents, rules and regulations duly adopted by the Association and decisions and resolutions of the Association and its duly authorized representatives, 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, or both. Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Charter Documents, rules and regulations duly adopted by the Association and decisions and resolutions of the Association and its duly authorized representatives, all as may be amended from to time.

Section 2. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits this Declaration to override the Act, in which event this Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph, or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability, or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph, or clause to any other person or circumstance.

Section 3. Term. This Declaration shall run with the title to and bind the Property for a term of twenty-five (25) years from the date this Declaration is recorded in the Registry, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless terminated or altered in accordance with the provisions of the Act; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be properly recorded in the Registry and shall take effect only upon such recording. For the purposes of this section, additions to the Property as provided in Article II, Section 2 hereof shall not constitute an "amendment".

Section 4. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

Section 5. Captions. The captions herein are only for convenience and reference and do not define, limit, or describe the scope of this Declaration, or the intent of any provision.

Section 6. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

Section 7. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Conflicts. In the case of any conflict between this Declaration and any of the Charter Documents, this Declaration shall control.

Section 9. Condemnation. In the event any Common Area or Located Easement or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

Section 10. Disclaimer. Notwithstanding anything contained herein or in the Charter Documents, rules or regulations issued by the Association, or any other document governing or binding the Association (collectively the "Association Documents"), the Association and the Declarant shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety, or welfare of any Member, occupant, or user of any portion of the Property, including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors, or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The

Association and the Declarant are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual's or entity's compliance with the laws of the United States, State of North Carolina or any other jurisdiction or the prevention of criminal, tortuous, or like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association and the Declarant, and their respective directors, trustees, officers, members, managers, agents, parties, and affiliates from and against all claims of any kind whatsoever by an invitee, licensee, family member, employee, or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership, or occupancy of any portion of the Property.

Section 11. Construction Activities. All Owners, occupants, and users of Lots are hereby placed on notice that Declarant, each Developer and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within the Property. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Property generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant, each Developer and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant and each Developer to sell, convey, lease, and/or allow the use of Lots within the Property.

Section 12. No Liability for Third Party Acts. Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property. The Association may, but is not obligated to, maintain or support certain activities within the Property which promote or enhance safety or security within the Property. However, the Association and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Property, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including fire protection, burglar alarm, or other security monitoring systems, or any mechanism or system for limiting access to the Property cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of such Owner's

Lot that the Association, the Board and its committees and Declarant are not insurers or guarantors of security or safety and that each Person within the Property assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

Section 13. Assignment. Declarant may assign its rights hereunder (either in their entirety, or with respect to a portion of the Property) by a written instrument recorded in the Registry.

Section 14. No Exemption. No Owner shall become exempt from the coverage hereof or obligations imposed hereby (including, without limitation, the obligation to pay Assessments) by non-use of such Owner's Lot or the Common Areas.

Section 15. Changes to Master Plan for the Property. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the Property, and Declarant reserves the right to change any master plans for the Property at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions and Declarant's plans for the Property shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof.

Section 16. Reservation of Special Declarant Rights. Declarant hereby reserves all Special Declarant Rights as defined in Section 47F-1-103(28) of the Act, including, but not limited to the following: the right to complete, repair, maintain, replace and operate improvements on the Property; the right to exercise any development rights; the right to maintain sales offices, management offices, models and signs advertising the Property; the right to use easements through the Common Areas and through any Lot or Lots for the purpose of making, repairing, maintaining, replacing and operating improvements within the Property; and the right to elect, appoint or remove any officer or board member of the Association during the period Declarant owns any portion of the Property. These Special Declarant Rights shall expire one year after the conveyance of Declarant's last Lot in the Property.

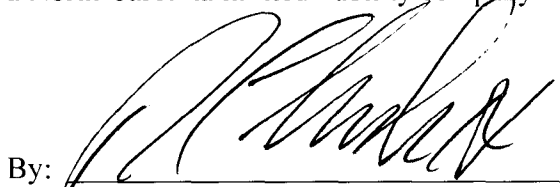
Section 17. Asserting Certain Claims. Notwithstanding any other provision in this Declaration or the Charter Documents, in no event shall the Association assert a claim against, or institute any legal proceeding against, the Declarant, nor shall the Association file any complaint with any governmental agency or authority which has regulatory or judicial authority over Chantilly On The Green on account of any alleged act or omission of the Declarant, unless the asserting of such claim, the instituting of such legal proceeding or the filing of such complaint shall be approved in writing by the Owners of no less than seventy-five percent (75%) of the Lots prior to the date any such claim is asserted, legal proceeding instituted or complaint filed, as the case may be. In the event that such claim is asserted, legal proceeding instituted or complaint filed without the approval of the Owners of the Lots that is herein required, then the Declarant shall have the right to require the claim, legal proceeding or complaint be dismissed. No

amendment to this Section 17 shall be effective unless such amendment is approved in writing by the Declarant.

*[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed this 10<sup>th</sup> day of NOVEMBER, 2020.

CHANTILLY ON THE GREEN, LLC  
a North Carolina limited liability company



By:  
Name: Royden L. Goode II  
Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, MELISA K. GOODMAN, a Notary Public for said <sup>CABARRUS (area)</sup> County and State, do hereby certify that Royden L. Goode II as Manager of Chantilly On The Green, LLC either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument by him for the purposes stated therein.

Witness my hand and Notarial stamp or seal, this 10<sup>th</sup> day of NOVEMBER 2020.

My commission expires: 7/23/2022

[OFFICIAL SEAL]

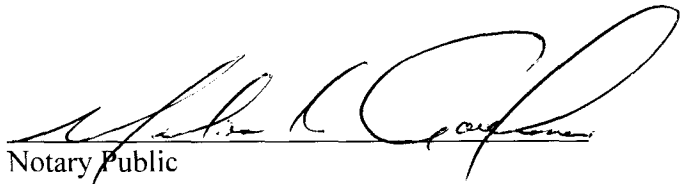
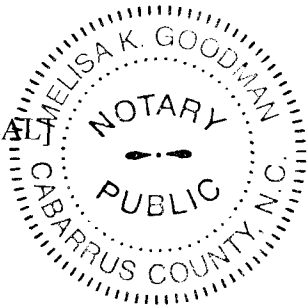
  
Notary Public

Exhibit A

## Property

Being all of that certain tract or parcel of located in the City of Charlotte, Mecklenburg County, North Carolina, and being more particularly described as follows:

**BEGINNING** at a calculated point in the southwesterly margin of Independence Boulevard, N.C. Highway #74 (a variable public right-of-way), said point being at the east corner of the Jason R. Weis property as described in Deed Book 28713, Page 259 of the Mecklenburg County Public Registry; thence with the margin of Independence Boulevard, the following four (4) courses and distances:

- 1) S 56°30'32" E - 25.00 feet to an 1 / 2" existing iron rod ;
- 2) N 33°29'28" E - 8.13 feet to an 1 / 2" existing iron rod;
- 3) with the arc of a circular curve to the right, having a radius of 1809.83 feet, an arc length of 66.27 feet, (Chord: S 32°43'58" E, - 66.27') to an existing nail;
- 4) S 28°09'36" E - 224.33 feet to a new 1 / 2" iron rod set: thence in a northerly direction and with the property of 2650 Sanctuary LLC as recorded in deed book 32936 page 222 for the following 3 courses and distances: 1) S 39°48'40" W - 38.33 feet to a 1/2 " new iron rod; 2) S 14°39'21" W - 78.87 feet to a 1/2 " new iron rod; 3) S 34°40'18" E - 118.19 feet to a point in the centerline of Briar Creek; thence with the center of Briar Creek, the following nine (9) courses and distances:

- 1) S 59°44'57" W - 37.67 feet to a point;
- 2) S 42°25'43" W - 45.17 feet to a point;
- 3) S 50°19'49" W - 69.57 feet to a point;
- 4) S 45°10'13" W - 89.97 feet to a point;
- 5) S 24°20'42" W - 146.87 feet to a point;
- 6) S 35°20'15" W - 122.40 feet to a point;
- 7) S 25°14'59" W - 24.41 feet to a point;
- 8) S 04°33'19" W - 24.17 feet to a point;
- 9) S 16°52'41" E - 25.10 feet to a point in the center of Briar Creek, said point being a corner of the Mecklenburg County Property as described in Deed Book 6192, Page 656 of said registry; thence leaving Briar Creek and running with the line of Mecklenburg County, N 56°28'02" W, passing a new 1 / 2" iron rod set at 50.00 feet, a total distance of 133.75 feet to a new iron rod set in the southeasterly margin of Wyanoke Street (an unopen sixty (60) foot public right-of-way as shown on Map Book 230, Page 249 of said registry); thence with the margin of Wyanoke Street, N 33°46'23" E - 155.98 feet to a calculated point; thence in a northerly direction N 56°19'17" W a total distance of 200.55 feet to an 1" existing iron pipe passing through a 1/2" new iron rod at 50.00 feet and an 1/2" existing iron rod at 99.70 feet; thence with the property of Jason Mcauliffe as recorded in deed book 20274 page 343 N 33°57'50" E a distance of 149.79 feet to an 1/2" existing iron rod point being situated on the southerly right of way of Chesterfield Avenue being a 60 foot public right of way; thence with the right of way of Chesterfield Avenue for the following three (3) courses and distances: 1) , S 56°18'23" E a total distance of 150.05 feet to a 1/2" new iron rod passing through an 1/2" existing iron rod at 50.00 feet; 2) N 33°46'23" E -

60.00 feet to a 1/2" new iron rod; 3) N 56°18'23" W - 150.00 feet to an existing 1 / 2" iron rod found at the southern corner of the Nell Kiser Hyland property as described in Deed Book 1097, Page 175 of said registry; thence with the line of Nell Kiser Hyland, N 33°42'53" E, passing an existing 1" iron pipe at 3.48 feet, a total distance of 150.07 feet to a new 1 / 2" iron rod set in the southwesterly margin of a 12.5 foot alley as shown on Map Book 230, page 249 of said registry; thence with the margin of the 12.5 foot alley, N 71°59'16" E - 15.93 to an existing nail in washer at the top of curb, said point being the southern corner of the Mark A. Sprinkle property as described in Deed Book 8229, Page 89 of said registry; thence with the line of Mark A. Sprinkle, the following two (2) bearings and distances:

1) N 33°39'39" E - 149.21 feet to an existing nail in washer at the back of curb;  
2) N 56°18'23" W - 10.00 feet to an existing punchhole set at the southeasterly terminus of Shenandoah Avenue; thence with the margin of Shenandoah Avenue, the following two (2) bearings and distances: 1) N 33°38'21" E - 60.00 feet to an existing 3 / 4" iron rod found; 2) N 56°18'23" W - 75.05 feet to an 1 / 2" existing rod set at the southern corner of the aforementioned Jason R. Weis property; Thence with the line of Jason R. Weis, N 33°29'28" E - 105.00 feet to the **POINT AND PLACE OF BEGINNING**, containing an area of 183,111 sq. ft. or 4.2037 acres, as shown on a survey R. B. Pharr & Associates, P. A. dated October 15, 2019 Job No. 90634.

Exhibit B  
Definitions

The following words, when used in this Declaration, shall have the meanings set forth beside them below:

1. "Act" shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.
2. "Additional Property" shall mean any property located within two (2) miles from the perimeter of the property described in Exhibit A hereto.
3. "Annual Assessment" shall have the meaning set forth in Article VII, Section 3.
4. "Assessment Year" shall mean such one year period as shall be specified by the Board in its discretion.
5. "Association" shall mean Chantilly On The Green Association, Inc., a North Carolina non-profit corporation.
6. "Authority" over any parcel of property shall mean a right of ownership or control (whether in whole or in part) over such parcel of property.
7. "Board" shall mean the Board of Directors of the Association. Notwithstanding anything to the contrary set forth in this Declaration or the Charter Documents, so long as Declarant owns any portion of the Property, Declarant shall have the right at any time and from time to time to appoint and remove any and all members of the Board.
8. "Charter Documents" shall mean the Articles of Incorporation and Bylaws of the Association, as applicable, as the same may be amended.
9. "Common Areas" shall mean (i) any areas within the Property but outside the boundaries of the Lots, (ii) any areas specifically included as Common Area in this Declaration, and (iii) any areas designated on any Plat as Common Area or Common Open Space or otherwise clearly dedicated to the use of all Owners of Lots (including, without limitation, the Private Streets, which are private streets to be maintained by the Association), including any and all improvements thereto (for example, without limitation, street improvements, fencing, sidewalks, lighting, security gates, walking trails, landscaped areas, mail kiosks, bike racks, dog parks or dog runs, grilling areas, gazebos, pavilions, benches, birdhouses, fire pits and parking areas).
10. "Declarant" shall mean Chantilly On The Green, LLC, its successors and assigns.
11. "Developer" shall mean the Declarant, its successors and assigns, and any other Person whose primary business is construction and sale of townhomes and who is designated from time to time as a Developer by Declarant by instrument recorded in the Registry.

12. "General Utility Easements" shall have the meaning set forth in Article IV, Section 1.
13. "Improvement" shall mean any structure and all appurtenances thereto of every type and kind, including but not limited to: buildings, outbuildings patios, tennis courts, garages, doghouses, swimming pools, basketball goals, mailboxes, aerials, roads, driveways, parking areas, fences, walls, retaining walls, stairs, decks, landscaping, plantings, planted trees and shrubs, ponds, lakes, changes in grade or slope, site preparation, poles, signs, exterior air conditioning, external facilities used in connection with utilities (including water, sewer, gas, electric, telephone, regular, cable or satellite television or computer service), exterior illumination, changes in any exterior color, and any new exterior construction or exterior improvement not included in any of the foregoing. The definition of Improvement includes both original Improvements and all later changes and/or repairs to Improvements, except that it does not include replacement of trees or shrubs with those of the same or similar species or replacement or repair of Improvements previously approved by the Architectural Control Committee provided such replacement or repair does not change any exterior color, material, design or appearance from that previously approved by the Architectural Control Committee.
14. "Individual Assessments" shall have the meaning set forth in Article VII, Section 5.
15. "Located Easements" shall have the meaning set forth in Article IV, Section 1.
16. "Lot" shall mean a portion of the Property which has been included as a numbered or lettered plot of land on a Plat.
17. "Member" shall have the meaning set forth in Article V, Section 1.
18. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.
19. "Person" shall mean any individual, corporation, partnership, association, trust, or other legal entity.
20. "Plats" shall mean such plats of all or any portion of the Property as shall have been from time to time recorded in the Registry (each a "Plat").
21. "Private Streets" shall mean and refer to the private streets shown on any Plat, all to be privately maintained by the Association as set forth in Section 1(a) of Article VI and Section 2 of Article VII hereof. The Private Streets are part of the Common Areas. At any time during the period ending on December 31, 2028, Declarant may in its sole discretion upon compliance with the requirements of the governmental authorities having jurisdiction convert any or all of the Private Streets to Public Roads.

22. "Property" shall mean the property described in Exhibit A hereto, together with such Additional Property as shall have been from time to time brought under the scheme of this Declaration by Supplemental Declaration filed in the Registry.
23. "Public Roads" shall mean and refer to any publicly maintained roads providing access to the Property.
24. "Registry" shall mean the office of the Register of Deeds for Mecklenburg County, North Carolina.
25. "Special Assessments" shall have the meaning set forth in Article VII, Section 4.
26. "Supplemental Declaration" shall mean a Supplemental Declaration of Covenants, Conditions and Restrictions filed in the Registry pursuant to Article II, Section 2.
27. "Townhome" shall have the meaning set forth in the Preamble.
28. "Working Capital Contributions" shall have the meaning set forth in Article VII, Section 15.