

**DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
STEPHENS GROVE**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 20 day of October, 1999, by SHEA HOMES L.L.C., a North Carolina limited liability company (the "Declarant").

Declarant submits to this Declaration the real property described in **Exhibit "A."** By this Declaration, Declarant imposes upon the Properties (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance thereof, Declarant has caused Stephens Grove Homeowners Association Inc., to be formed as a North Carolina nonprofit corporation to own, operate and maintain Common Areas, as defined below, and to administer and enforce the provisions of this Declaration, the By-Laws, and use restrictions and rules promulgated pursuant to this Declaration. In addition, as part of such Common Area, Declarant reserves the right to construct within the Amenity Area, a Pool, a Tennis Court, a Sport Court, a Clubhouse, a Recreational Area and a Parking Area. The Pool, Tennis Court, Sport Court, Clubhouse, Recreational Area and Parking Area will be for the common use and benefit of all Owners.

Declarant desires to provide for a system whereby all the Owners will pay for the maintenance and upkeep of the Common Areas.

Declarant hereby declares that all of the property described in **Exhibit "A"** and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I below) shall be held, sold, used, and conveyed subject to the following easements, restrictions, covenants and conditions which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

This document does not and is not intended to create a condominium within the meaning of the North Carolina Condominium Act, N.C. Gen. Stat. §47C-1-101, et seq.

Article I

DEFINITIONS

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Amenity Area" shall mean and refer to the portion of the Common Area designated "Common Area" on the map recorded in Map Book 30, Page 819, Mecklenburg County Registry, together with the Pool, Tennis Court, Sport Court, Clubhouse, Recreational Area and Parking Area which may be constructed thereon for the common use and enjoyment of all Owners.

1.2. "Annual Assessment": Assessment levied on all Units subject to assessment under **Article VIII** to fund Common Expenses as more particularly described in **Article VIII**.

1.3. "Area of Common Responsibility": The Common Area, together with such other areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contract, or agreement.

1.4. "Articles of Incorporation" or "Articles": The Articles of Incorporation of the Association, as filed with the Secretary of State of the State of North Carolina.

1.5. "Association": Stephens Grove Homeowners Association Inc., a North Carolina nonprofit corporation, its successors or assigns which Association shall be incorporated no later than the date the first Unit is conveyed to a party other than Declarant.

1.6. "Sport Court" shall mean and refer to the half-court sport court Declarant may construct within a portion of the Amenity Area for the common use and enjoyment of all of the Owners, their respective families, guests and invitees as more particularly set forth in Section _____

1.7. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.

1.8. "Builder": Any Person who purchases one or more Units for the purpose of ~~constructing improvements for later sale to consumers in the ordinary course of such Person's business.~~

1.9. "By-Laws": The By-Laws of the Association, attached as **Exhibit "D,"** as they may be amended.

1.10. "Clubhouse" shall mean and refer to that building which Declarant may construct within a portion of the Amenity Area for the common use and enjoyment of all of the Owners, their respective families, guests and invitees as more particularly addressed in **Section 5.6**.

1.11. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.

1.12. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including, but not limited to the Amenity Area and all improvements located therein. The term shall include the Exclusive Common Area, as defined below.

1.13. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association.

1.14. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

1.15. "Declarant": Shea Homes L.L.C., a North Carolina limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on **Exhibits "A" or "B"** for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.16. "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to **Article IX**.

1.17. "Development" shall mean and refer to Stephens Grove, a single-family residential development proposed to be developed on the Properties by Declarant.

1.18. "Exclusive Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Units, as more particularly described in **Article XII**.

1.19. "General Assessment": Assessments levied on all Units subject to assessment under **Article VIII** to fund Common Expenses for the general benefit of all Units, as more particularly described in **Sections 8.1 and 8.3**.

1.20. "Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines and the Use Restrictions and Rules, as they may be amended.

1.22. "Impervious Cover" shall mean any improvements or materials designated as impervious or partially impervious by the Mecklenburg County Zoning Ordinance; Lake Norman Watershed Overlay or any regulations or ordinances promulgated by the Mecklenburg County Department of Environmental Protection.

1.22. "Map" shall mean and refer to (i) the maps of Stephens Grove recorded in Map Book 30, Page 615 and Map Book 30, Page 819 in the Office of the Register of Deeds for Mecklenburg County, North Carolina, (ii) any additional maps of any of the Properties or other additional property incorporated into the scheme of this Declaration by a Supplemental Declaration and recorded after the date hereof; and (iii) any revisions, supplements or amendments of such map or maps recorded in such office.

1.23. "Member": A Person subject to membership in the Association pursuant to **Section 3.2**.

1.24. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.25. "Mortgagee": A beneficiary or holder of a Mortgage.

1.26. "Mortgagor": Any Person who gives a Mortgage.

1.27. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.28. "Parking Area" shall mean and refer to the parking lot which Declarant may construct within a portion of the Amenity Area for the common use of, benefit and enjoyment of the Owners, as more particularly addressed in **Section 5.4**.

1.29. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.30. "Pool" shall mean and refer to that certain swimming pool which Declarant may construct within a portion of the Amenity Area for the common use and benefit of the Owners, as more particularly addressed in **Section 5.5**.

1.31. "Properties": The real property described on **Exhibit "A,"** together with such additional property as is subjected to this Declaration in accordance with **Article VII**.

1.32. "Public Records": The Office of the Register of Deeds for Mecklenburg County, North Carolina.

1.33. "Recreational Area" shall mean and refer to the area located within a portion of the Amenity Area within which Declarant may construct playground type improvements for the common benefit of the Owners as more particularly described in **Section 5.8**.

1.34. "Special Assessment": Assessments levied in accordance with **Section 8.5**.

1.35. "Specific Assessment": Assessments levied in accordance with **Section 8.6**.

1.36. "Tennis Court" shall mean and refer to the tennis court which Declarant may construct within a portion of the Amenity Area for the common use and benefit of the Owners, as more particularly addressed in **Section 5.7**.

1.37. "Supplemental Declaration": An instrument filed in the Public Records pursuant to **Article VII** which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.38. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records with respect to any portion of the Properties, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common Areas or property dedicated to the public.

If a portion of the Properties consists of a parcel of vacant land or land on which improvements are under construction, but for which a subdivision plat subdividing such vacant land into individual residential building lots has not been recorded, then such parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the site plan for the Properties approved by Declarant (a copy of which Declarant shall make available for each Member's inspection), until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining portion of the Properties shall continue to be determined in accordance with this paragraph.

Units may be combined or further subdivided, and boundary lines of Units may be changed, only by recording of a new or revised subdivision plat in the Public Records (which shall be subject to such other restrictions as may be set forth in this Declaration or rules of the Association). Ownership of adjacent Units by the same Owner shall not, in the absence of recording of a new or revised plat in the Public Records, permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single dwelling.

Article II
PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed(s) conveying the Common Area to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area;
- (d) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to **Section 2.4** and the requirements of North Carolina General Statutes Section 47E-3-112 as may be amended;
- (e) The right of the Association following satisfaction of the requirements of North Carolina General Statute Section 47E-3-112, as may be amended, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- (f) The rights of certain Owners to the exclusive use of those portions of the Common Area, if any, designated "Exclusive Common Areas," as described in **Article XII**.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, the Association shall mail written notice to each Owner within 10 days after such taking or conveyance notifying them of such fact, identifying the property so taken or conveyed and stating whether such taking or conveyance involved any improvements. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in **Exhibits "A" or "B"** of this Declaration, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of **Section 6.1(c)** regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

2.4. Actions Requiring Owner Approval. If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is insuring or guaranteeing the Mortgage on any Unit, then the following actions shall require the prior approval of Members representing not less than two-thirds (2/3) of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists: merger, consolidation or dissolution of the Association; annexation of additional property other than that described on **Exhibit "B"**; and dedication, conveyance or mortgaging of Common Area except as otherwise provided in **Section 4.7**. Notwithstanding anything to the contrary in **Section 2.3** or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Article III **MEMBERSHIP AND VOTING RIGHTS**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board or the membership may adopt pursuant to **Article X**. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of North Carolina.

3.2. Membership. Every Owner shall be a Member of the Association and only Owners may be Members. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in **Section 3.3(c)** and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer,

director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership under **Section 3.2**; provided, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under **Section 8.10**. All Class "A" votes shall be cast as provided in **Section 3.3(c)** below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a majority of the Members of the Board of Directors during the Class "B" Control Period, as specified in Section 3.3 of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.19 of the By-Laws.

(c) Exercise of Voting Rights. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

Article IV

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, improvements and other personal property of the Association used in connection with the Common Areas), and shall keep it in good and clean condition, and in good repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of **Sections 2.4 and 13.4**. The Declarant and its designees

may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in **Exhibits "A" or "B,"** personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the By-Laws, or Association rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote. In addition, in accordance with Section 3.24 of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may, but shall not be obligated to, enforce county and city ordinances, if applicable, and permit local governments to enforce their ordinances within the Properties for the benefit of the Association and its Members.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. For so long as the Declarant owns any property described on **Exhibits "A" or "B,"** the Declarant may designate sites within the Properties for fire, police, and utility facilities, parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member, including members of the committees established under **Article IX**, against all

damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and North Carolina law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to Mecklenburg County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by this Section and Section 2.4. This Section 4.7 may not be amended without the Declarant's written consent so long as the Declarant owns any property described on Exhibits "A" or "B."

4.8. Security. **The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them 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 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 covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.**

Article V MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all landscaping and other flora, signage, lighting, irrigation systems and equipment, fences, walls, and other structures and improvements, if any, situated upon any portion of the Common Area;

(ii) [RESERVED];

(iii) any bioretention areas or ponds located within the Properties;

(iv) [RESERVED];

(v) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(vi) the Clubhouse, including all interior and exterior maintenance (including repair and reconstruction if necessary) of the Clubhouse building, sidewalks, walkways, landscaping and other facilities appurtenant to the Clubhouse;

(vii) the Pool, including repairing and replacing the Pool or any component thereof and all drainage, lighting, fencing, paving and other facilities appurtenant thereto;

(viii) the Parking Area shall include repair, maintenance, re-striping, re-paving and reconstruction when necessary of the Parking Area;

(ix) the Tennis Court shall include repairing or resurfacing the Tennis Court, replacing the nets, repairing the fencing, if any, located around the Tennis Court and any other facilities appurtenant to the Tennis Court;

(x) the Recreational Facilities shall include the maintenance, repair and replacement of the landscaping and any improvements, if any, within the Recreational Area; and

(xi) the Sport Court shall include repairing or resurfacing the Sport Court, ~~replacing the nets, replacing or repairing the backboards and rims, repairing the fencing surrounding~~ the Sport Court, if any, and repairing any other facilities appurtenant to the Sport Court.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(b) There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill such responsibilities.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility and all improvements located within the Area of Common Responsibility and the maintenance of utility service, if any, to such area shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair and replacement of Exclusive Common Areas shall be a Specific Assessment levied against the Unit(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, and other improvements comprising the Unit. In addition, each Owner shall maintain the grassed and/or landscaped area located within any portion of public right-of-way adjacent to such Owner's Unit and shall maintain the portion of the driveway serving such Owner's Unit and located within the public right-of-way. Each Owner shall perform all such maintenance in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration, or other covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility hereunder, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4 Parking Area. Declarant may construct, and if constructed, the Association shall maintain, repair and, if destroyed, replace, as a Common Expense, the Parking Area. The Parking Area may be erected and maintained in order to provide parking for the Owners, and if constructed

may be used only by Declarant and its assigns, the Owners and their families, guests and invitees in connection with their use of the Amenity Area.

5.5 Pool. Declarant may construct, and if constructed the Association shall maintain, the Pool and related improvements. If a Pool is constructed, then such Pool shall be constructed and maintained for the common use and benefit of the Owners, and may be used only by Declarant and its assigns and the Owners, their families, guests and invitees.

5.6 Sport Court. Declarant may construct, and if constructed the Association shall maintain, the Sport Court and related improvements. If a Sport Court is constructed, then such Sport Court shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant and its assigns and the Owners, their families, guests and invitees.

5.7 Tennis Court. Declarant may construct, and if constructed the Association shall maintain, the Tennis Court and related improvements. If a Tennis Court is constructed, then such Tennis Court shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant and its assigns and the Owners, their families, guests and invitees.

5.8 Recreational Area. Declarant may set aside, and if set aside the Association shall maintain, the Recreational Area and related improvements. If a Recreational Area is set aside, then such Recreational Area shall be maintained for the common use and benefit of the Owners and may be used only by Declarant and its assigns and the Owners, their families, guests and invitees.

5.9 Clubhouse. Declarant may construct, and if constructed the Association shall maintain, the Clubhouse and related improvements. If a Clubhouse is constructed, then such Clubhouse shall be constructed and maintained for the common use and benefit of the Owners and may be used only by Declarant and its assigns and the Owners, their families, guests and invitees.

Article VI **INSURANCE AND CASUALTY LOSSES**

6.1. Association Insurance. Commencing not later than the time of the first conveyance of a Unit to a Person other than Declarant or Builder, the Association shall maintain, to the extent available, the following insurance coverages:

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has or has assumed responsibility for maintenance, repair, and/or replacement

in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits. If the insurance described in (i) and (ii) above is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent by prepaid US Mail to all Owners;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Charlotte, North Carolina area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon written request, to any Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of **Section 6.1(a)**. In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the

Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to **Section 8.6**.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in the State of North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
- (iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (iv) contain an inflation guard endorsement; and
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition to the above, all insurance coverage obtained by the Board pursuant to **Section 6.1(a)(i) and (a)(ii)** shall provide that:

- (i) each Owner is an Insured Person under the policy to the extent of each Owner's insurable interest;
- (ii) the insurer waives its rights to subrogation under the policy against any Owner or Member of the Owner's household;
- (iii) 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
- (iv) 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 coverage.

(v) the insurer shall issue certificates or memoranda of insurance to the association, and upon written request, to any Owner, Mortgagee or beneficiary under a Deed of Trust;

(vi) the insurer issuing the policy may not cancel or refuse to cancel or renew the policy until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner and each Mortgagee or beneficiary under a deed of trust to whom

certificates or memoranda to whom certificates of insurance have been issued at their respective last known addresses.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (vi) a cross liability provision; and
- (vii) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 80% of the total votes in the Association, and decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension

shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard and the insurance proceeds shall be used to pay for such work.

Any insurance proceeds remaining after paying the costs of repair or reconstruction or clearing the Common Area of debris and ruins, or after such settlement as is necessary and appropriate, shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Common Expense liabilities of all the Units. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

6.2. Owners' Insurance. Each Owner shall be responsible for insuring its own Unit. In the event of damage or destruction of structures on or comprising a Unit, the Owner shall, within 180 days thereafter, complete repair or reconstruction of the damaged structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with **Article IX** or, in the alternative, the Owner shall clear the Lot of all debris and ruins and thereafter maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

Article VII **ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1. Annexation Without Approval of Membership. Until all property described on **Exhibit "B"** has been subjected to this Declaration or ten years after the recording of this Declaration in the Public Records, whichever is earlier, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in **Exhibit "B."** The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the owner or developer of at least a portion of the real property described in **Exhibits "A" or "B"** and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by recording in the Public Records either: (a) a plat describing the property being annexed, provided that such plat contains a statement that the platted property is subject to this Declaration; or (b) a Supplemental Declaration describing the

property being annexed. Such annotated plat or Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such plat or Supplemental Declaration, unless otherwise provided therein.

Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in **Exhibit "B"** in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with **Section 7.1**; provided, if the real property to be annexed is not described on **Exhibit "B,"** such annexation shall require the approval of Members representing at least two-thirds (2/3) of the total Class "A" votes in the Association, in addition to the consent of the owner and the Declarant if otherwise required hereunder.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to **Section 7.1**, for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties and does not reduce the total number of Units then subject to this Declaration by more than 5%. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

7.4. Additional Covenants and Easements. The Declarant may subject any portion of the property submitted to this Declaration to additional covenants and easements by filing a Supplemental Declaration in the Public Records, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the owner(s) of the subject property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property described in **Exhibits "A" or "B."**