

**DECLARATION  
FOR 5401 NORTH RESIDENTIAL**

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

**Prepared in part by and Return to: Alison R. Cayton of Manning, Fulton & Skinner, P.A. (Box 133)**

**STATE OF NORTH CAROLINA :**

**DECLARATION  
FOR 5401 NORTH RESIDENTIAL**

**COUNTY OF WAKE :**

This **DECLARATION FOR 5401 NORTH RESIDENTIAL** (herein "Residential Declaration") is made this 16 day of December, 2015, by **EV-5401 North, L.L.C.**, a Louisiana limited liability company ("Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property located in Wake County, North Carolina, being more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference for all purposes, which is intended to comprise the residential portion of a master-planned community known as 5401 North. 5401 North combines a first class, high quality, diverse mix of land uses, including, but not limited to, large and small-scale retail, office space, hotels, single-family and multi-family residential uses (the development hereby called "5401 North"); and

WHEREAS, 5401 North will consist of commercial and residential components, as well as common areas and public rights-of-way; and

WHEREAS, Declarant herein subjects the property described on Exhibit "A" attached hereto and incorporated by this reference for all purposes, ("Residential Property" or "5401 North Residential" as further defined herein) to the additional restrictions set forth herein.

WHEREAS, Declarant desires to subject 5401 North Residential to the terms, conditions, covenants, restrictions, liens and charges hereinafter set forth in order to:

- protect and enhance the value, attractiveness and desirability of 5401 North

- ensure that 5401 North will be developed in a first class, high quality, permanent, orderly, environmentally sound and aesthetically pleasing manner
- ensure that the improvements constructed within 5401 North are soundly designed and constructed, are visually compatible with other improvements and are harmonious with the natural surrounds,
- ensure that no property within 5401 North will be used in a manner that is unlawful or inappropriate for the well-being of the development of 5401 North
- ensure that there will be adequate and well maintained landscaped areas, parks, walking trails, greenways, parking areas, pedestrian ways, streets, roads and other common areas as well as adequate telecommunications and utility systems and easements, and such other systems and facilities as may be reasonably necessary or desirable.

NOW, THEREFORE, Declarant hereby declares that the Residential Property is and shall be held, transferred, sold, conveyed, leased, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, which shall run with title to the Residential Property and which shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Residential Property or any portion thereof, and their respective heirs, successors and assigns.

## ARTICLE I

### GENERAL

1.1 **Declaration.** Declarant hereby establishes, adopts and declares that the Residential Property is and shall be subject to, and that all land and Improvements within the Residential Property shall be acquired, held, owned, encumbered, used, managed, leased, occupied, enjoyed and transferred subject to, the covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, terms and provisions hereinafter set forth, all of which shall be covenants running with the title to land within the Residential Property, and shall be personal covenants and obligations of and shall inure to the benefit of each Owner. Each contract of sale, option, deed, deed of trust, lease, sublease, concession, franchise, license, easement or other instrument which may hereafter be executed with respect to any land and Improvements within the Residential Property shall be deemed to have been executed, delivered and accepted subject to this Residential Declaration and to have incorporated this Residential Declaration by reference therein, regardless of whether any such instrument specifically incorporates this Residential Declaration by reference therein. Declarant is imposing the restrictions set forth herein to satisfy the requirements hereof without in any manner, express or implied, agreeing to or obligating it to undertake development activities.

1.2 **Additions and Deletions.** Declarant (prior to the Conversion Date) and the Residential Association (upon and after the Conversion Date) shall have, and Declarant for itself and the Residential Association hereby reserves, the exclusive unrestricted and unconditional

right to add property to or delete property from this Residential Declaration. Residential Property so added or deleted need not be contiguous to property subject to this Residential Declaration. For purposes of determining contiguity of property, the rights-of-way of public or private roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise contiguous property. Such addition or deletion shall be accomplished by the execution of a "Supplemental Declaration" identifying the property to be added or deleted and the recordation of such Supplemental Declaration in the appropriate public records. More than one Supplemental Declaration may be executed and recorded. Upon the recordation of a Supplemental Declaration adding property to or deleting property from this Residential Declaration, the property so added or deleted shall become or cease to be (as the case may be) acquired, held, owned, encumbered, used, managed, leased, occupied, enjoyed and transferred subject to the covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, purchase options, rights of first refusal, terms and provisions herein set forth and a part of the Residential Property for all purposes hereunder. Any Supplemental Declaration shall incorporate by reference this original Residential Declaration, together with all prior supplements hereto. In addition, as to any Supplemental Declaration which adds property to this Residential Declaration, Declarant or the Residential Association may include such additional or different covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, liens, options, rights, terms and provisions as Declarant or the Residential Association, in its sole discretion, may determine.

## ARTICLE II

### DEFINITIONS

2.1 **Definitions.** In addition to words and phrases defined within the body of this Residential Declaration, the following words or phrases, when used in this Residential Declaration, unless the context shall otherwise clearly indicate or prohibit, shall have the following meanings:

(a) "Act" shall mean the North Carolina Planned Community Act (codified in Chapter 47F of the North Carolina General Statutes) as amended from time to time during the term hereof so long as the same is applicable to the Residential Property. Any specific references to the Act or separate provisions of the Act shall expressly include any modifications or amendments to the provisions of the Act properly enacted by the North Carolina General Assembly.

(b) "Architectural Control Committee" shall mean the Declarant, and upon occurrence of the conditions stated in Section 6.2(b), shall refer to the committee of the Residential Association described in said Section 6.2(b).

(c) "Assessment" shall mean the Regular Assessments, the Special Assessments, Special Lot Assessments and Neighborhood Assessments levied from time to time by the Residential Association in accordance with, and as more fully described in, Article VIII hereof.

(d) "Committee Member" shall mean a member of any committee of the Residential Association. A Committee Member may but need not be (i) an Owner, or (ii) an officer, director,

shareholder, partner, beneficiary or employee of an Owner, Declarant or the Residential Association.

(e) "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Residential Property, or the minimum standards established pursuant to the Development Standards and Rules and Regulations, whichever is the higher standard. Declarant shall initially establish such standard, which may involve both objective and subjective elements. The Community-Wide Standard shall evolve as the Residential Property evolves.

(f) "Conversion Date" shall mean the date Declarant elects to convert its Class B Membership in the Residential Association to a Class A Membership, the timing of which election shall be at the sole discretion of Declarant.

(g) "Declarant" shall mean EV-5401 North, L.L.C., its successors or assigns, and shall include any person or entity to which Declarant may expressly assign its rights, privileges, duties and obligations hereunder in a recorded instrument of assignment, as provided in Section 3-104 of the Act. No person or entity merely purchasing or leasing one or more Lots from Declarant shall be considered as Declarant merely by virtue of such purchase or lease.

(h) "Development Standards" shall mean the "5401 North Development Standards" prepared by Dover, Kohl & Partners, as amended from time to time, and retained in the office of the Association.

(i) "Dwelling" shall mean any above ground improvements constructed on a Lot for occupancy as a residence or for use by a residence.

(j) "Fiscal Year" shall mean the time period beginning January 1 and ending December 31 of each year.

(k) "Governing Documents" shall mean, collectively, this Residential Declaration, any applicable Supplemental Declaration, the Development Standards, the Articles of Incorporation of the Residential Association, the Bylaws of the Residential Association, the Rules and Regulations from time to time in effect, as the same may be amended from time to time.

(l) "Governmental Authority" shall mean any court, board, agency, commission, office or authority of any nature whatsoever of any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

(m) "Improvement" shall mean any structure or other improvement of any kind on a Lot, whether below, at or above grade, located anywhere in the Residential Property, from initial construction through later construction and maintenance, which is intended to be temporary or permanent in nature (other than changes made during a period of construction which will be removed when the construction period is complete) including but not limited to Dwellings and ancillary buildings, cables, conduits, wiring, antenna, microwave dishes, walkways, driveways, fences, berms, landscaping, sculptures and other works of art, fountains, lighting fixtures,

swimming pools, ponds and other water systems, tennis courts, other recreational facilities, site grading and other artificial earth movement.

(n) "Legal Requirements" shall mean any and all (i) judicial decisions, orders, injunctions, writs, statutes, rulings, rules, regulations, promulgations, directives, requirements, permits, certificates or ordinances of any Governmental Authority, insurance underwriter or utility company in any way applicable to any Owner or such Owner's Lot(s), or the Residential Common Areas, including but not limited to any of the aforesaid pertaining to maintenance, operation, use, insurance, zoning, environmental and utility matters and (ii) the Governing Documents.

(o) "Lot" or "Residential Lot" shall mean any separate parcel of land within a Residential Tract designated for separate ownership or occupancy and residential use.

(p) "Limited Residential Common Areas" shall mean a portion of the Residential Common Areas reserved for the exclusive use of one or more, but less than all, of the Lots.

(q) "Master Plan" shall mean the 5401 North Master Plan prepared by Dover, Kohl & Partners and originally dated June 18, 2010, as amended from time to time.

(r) "Member" shall mean a member of the Residential Association, and shall be either a Class A Member or a Class B Member, as defined in Article III below.

(s) "Mortgage" shall mean a deed of trust recorded at the Wake County Registry that is a lien against any Lot. "Mortgagee" shall refer to a beneficiary or holder of a Mortgage. A "First Mortgage" shall be a Mortgage having priority over all other Mortgages encumbering a Lot. "First Mortgagee" shall refer to a beneficiary or holder of a First Mortgage.

(t) "Neighborhood" shall mean any area or areas within the Residential Property, designated by a Supplemental Declaration, to be a distinct or separate residential area within the Residential Property, the residents of which will share or have in common expenses, interests, concerns, responsibilities, needs or uses not shared by or common to all residents within the Residential Property and be governed by the Governing Documents in this Declaration.

(u) "Neighborhood Assessments" shall mean assessments levied in accordance with Section 9.5 below.

(v) "Neighborhood Expenses" shall mean the actual and estimated expenses which the Residential Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include reasonable reserves for capital repairs and replacements and reasonable administrative charges, as may be authorized pursuant to this Residential Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

(w) "Occupant" shall mean any Owner, or tenant of any Lot.

(x) "Owner" shall mean each and every person or entity who is record owner of a fee simple interest in a Lot, except, however, that the word Owner shall not include any person or entity who holds only a lien or security interest in any such Lot as security for the performance of any obligation, including, but not limited to, any mortgagee or trustee or beneficiary under a mortgage or deed of trust unless and until such mortgage or beneficiary shall have acquired record legal title through foreclosure or any proceeding in lieu thereof. If such Lot is subject to a Sub-Association Declaration, the Sub-Association representing such multi-owner regime, and not individual unit owners, shall be deemed the "Owner" of the Lot.

(y) "Recorded Document" shall mean any document, including any map or plat of survey, recorded at the Office of the Register of Deeds of Wake County, North Carolina.

(z) "Residential Articles of Incorporation" shall mean the articles of incorporation on record at the North Carolina Secretary of State's office for 5401 North Residential Owners Association, Inc., a North Carolina nonprofit corporation.

(aa) "Residential Association" shall mean 5401 North Residential Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

(bb) "Residential Board of Directors" or "Residential Board" shall mean the executive board of the Residential Association, as defined by the Act and as created by the Residential Bylaws.

(cc) "Residential Bylaws" shall mean the bylaws of the Residential Association as they now or hereafter exist and as they may be amended from time to time.

(dd) "Residential Common Areas" shall mean all property, and any improvements thereon, wherever located, owned or leased by the Residential Association or subjected to an easement or license in favor of the Residential Association for the common use and enjoyment of Members. Residential Common Areas shall include all water and sewer lines serving more than one Lot and located outside any public rights-of-way or utility easements. Residential Common Areas shall include any drainage easements, stormwater pipes, detention and retention facilities serving more than one Lot and not accepted by any Governmental Authority for maintenance.

(ee) "Residential Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for 5401 North Residential, and any amendments hereto or restatements hereof.

(ff) "Residential Leasing" shall mean the regular, exclusive occupancy of a Lot by any party other than the Owner of the Lot or members of the immediate family of an Owner or the principals of an Owner if the Owner is not an individual

(gg) "Residential Property" or "5401 North Residential" shall mean the real property designated as the residential portion of 5401 North and more particularly described in Exhibit "A" attached hereto and incorporated herein, and any additions thereto or deletions therefrom as permitted under Section 1.2 hereof; provided that any portion of such real property that is subsequently dedicated to either the public, the City or any other governmental agency shall be excluded from this definition from and after the date of such dedication regardless of

whether such dedication conveyance document so provides, so long as such dedicated property remains in use for public purposes.

(hh) "Residential Tract" shall mean any separate parcel of land within the Residential Property designated for subdivision into Lots for use for residential purposes.

(ii) "Rules and Regulations" shall mean the rules and regulations governing behavior and activities on the Residential Property, as promulgated by the Residential Association from time to time and which shall also include Construction Rules and Regulations as defined in Section 4.4 herein.

(jj) "Sub-Association" shall mean a property owners association created to enforce the terms of a Sub-Association Declaration. Examples of a Sub-Association are a property owners association for a townhome subdivision.

(kk) "Sub-Association Declaration" shall mean an additional declaration of restrictive covenants affecting a portion of 5401 North Residential. An example of a Sub-Association Declaration is a townhome declaration for a townhome subdivision.

(ll) "Variance" shall mean any approval granted by the Residential Association to any Owner for a deviation or noncompliance with this Residential Declaration or the Development Standards, which approval has been duly executed by the Architectural Control Committee.

### ARTICLE III 5401 NORTH RESIDENTIAL ASSOCIATION

3.1 **General.** The Residential Association has been formed for the sole benefit of the Residential Property, and shall be operated in accordance with this Residential Declaration and the Act. The Residential Association shall have all of the rights and powers as are conferred upon it in the Residential Articles of Incorporation, the Residential By Laws, this Residential Declaration or in the Act. The Residential Association shall have such additional rights and powers as are reserved unto Declarant in this Residential Declaration, or are otherwise possessed by Declarant, and are subsequently assigned by Declarant to the Residential Association, which Declarant may do at any time or times. The Residential Association shall be managed by the Residential Board in accordance with its Bylaws and the Act.

3.2 **Purposes.** The purposes of the Residential Association shall be:

(a) To maintain and preserve all Residential Common Areas, and all roads, streets, decorative and protective structures (including but not limited to entry monuments and buffer walls), ponds, lakes, utilities, landscaped areas and all other improvements located thereon, if any;

(b) To enforce the provisions of the Governing Documents;

(c) To perform all duties and functions allotted to owners' associations pursuant to Article 3 of the Act;

(d) To promote and to protect the enjoyment and beneficial use and ownership of each Owner's Lot; and

(e) To promulgate and enforce the Rules and Regulations.

3.3 **Membership.** Coincident with and as an incident to its becoming an Owner, each Owner shall automatically become a Member of the Residential Association. Such membership shall be appurtenant to ownership of the requisite interest in the Residential Property and no incidence of such membership may be severed from such interest or otherwise held separately therefrom. Immediately and automatically upon any person or entity ceasing to be an Owner, the membership of such person or entity in the Residential Association shall also immediately and automatically terminate. Such termination shall not, to any extent, extinguish, relieve or reduce any accrued liabilities or obligations of the former member to the Residential Association, or impair any rights, remedies or recourses which the Residential Association or any other Owner has with respect to the former member. Except as may be provided to the contrary in any Governing Document, each Member shall have all rights as provided for in the Act.

#### 3.4 **Classes of Members; Voting Rights.**

(a) **Two Classes.** As may be more fully set forth in the Articles of Incorporation and the Bylaws of the Residential Association, as from time to time amended or restated, the Residential Association has the following two classes of Members:

(i) Class A Members, who shall be (i) prior to the Conversion Date, the Owners other than Declarant and (ii) upon and after the Conversion Date, the Owners including Declarant to the extent that Declarant is an Owner.

(ii) Class B Members, who shall be (i) prior to the Conversion Date, Declarant or its designees and (ii) upon and after the Conversion Date, automatically converted to a Class A Member so that, from and after the Conversion Date, there shall no longer be any Class B Members.

#### (b) **Voting Rights.**

(i) Class A Members shall be entitled to vote on all matters, except that, prior to the Conversion Date, Class A Members shall not be entitled to vote on any matter relating to the Governing Documents, other than proposed amendments to or the termination of this Residential Declaration pursuant to Section 12.2 herein.

(ii) Class B Members shall be entitled to vote on all matters.

#### (c) **Basis of Votes.**

(i) Class A Members that are the initial purchasers of a Residential Tract shall have the number of votes corresponding with a fraction, the numerator of which is the number of acres in the Residential Tract and the denominator of which is the number of acres in the Residential Property. Upon

subdivision of a Residential Tract into Lots, the votes allocated to the Residential Tract shall be allocated to the Lots subdivided out of the Residential Tract by the Sub-Association, pursuant to the authority provided in Section 3.12 herein.

- (ii) Prior to the Conversion Date, the Class B Member shall have three times the number of votes a Class A Member would have for either a Residential Tract or a Lot.

(d) Rights of Co-Owners. Where more than one person or entity owns an interest in a Lot, all persons or entities collectively shall be a single Member, and shall cast their entitled vote in such manner as they may determine between or among themselves; provided, however, that, with respect to any Lot, in no circumstances may more than one vote be cast with respect to each Lot therein.

3.5 **Quorum; Voting and Notices.** Members holding 10% of the votes entitled to be cast on any matter to be presented to the Residential Association for a vote shall constitute a quorum for voting. Only Members in good standing shall be entitled to vote; accordingly, for the purpose of determining the votes entitled to be cast, the voting membership shall be decreased by the number of Members who are not Members in good standing as of the date such determination is being made and the total potential votes shall be decreased by the number of votes which the Members not in good standing would otherwise have been entitled to cast. The vote of the majority of those votes entitled to be cast, either present or voting by legitimate proxy at a duly called meeting at which a quorum of Members are represented, or by consent in writing as permitted under the Act, shall be sufficient for the transaction of any business, unless otherwise provided by law or the Governing Documents. Additional notice requirements for actions proposed to be taken by the Residential Association which require approval by its Members may be set forth in the Residential Articles of Incorporation or the Residential Bylaws of the Residential Association, as from time to time amended or restated.

3.6 **Committees.** The Residential Association shall have the authority to establish, at any time and on such terms as the Residential Board in its discretion may adopt, such committees as the Residential Board may desire to carry out the purposes of this Residential Declaration. Each committee established by the Residential Board shall have such membership, rights, powers, duties, authorities and limitations, shall perform such functions and services and shall exist for such period of time, as the Residential Board and in its discretion may determine, consistent with the Act. Without in any way limiting the generality of the foregoing, the Residential Board is expressly authorized and empowered to establish one or more committees which may have up to the same right, power and authority of the Residential Association as permitted by the Governing Documents and the Act with respect to specific categories of property; for example, a committee with jurisdiction over the Residential Common Areas. No committee will be recognized as a governing authority by the Residential Association unless the Residential Board has voted to declare such committee as a governing authority. The Residential Board reserves the right to eliminate any committees in its sole discretion.

3.7 **Residential Articles of Incorporation and Residential Bylaws.** The Residential Articles of Incorporation and Residential Bylaws, as from time to time amended and restated, are incorporated by this reference into this Residential Declaration with the same force and effect as if they have been recited verbatim herein. Accordingly, the Residential Articles of Incorporation and Residential Bylaws, as from time to time amended and restated, shall have the same force, effect and dignity as the provisions of this Residential Declaration. Every reasonable effort shall be made to construe the Residential Articles of Incorporation, the Residential Bylaws and this Residential Declaration, as from time to time amended, supplemented and restated, consistently and so as to give effect to Section 1.1 hereof. However, if any irreconcilable conflict shall arise among the documents, to the extent permitted by law the provisions of this Residential Declaration shall control.

3.8 **Contracts.** The Residential Association shall have the right, power and authority to execute, deliver, perform and enforce any and all contracts (written or oral, with any person or entity), which the Residential Board authorizes and which are necessary or reasonably appropriate to carry out the duties and responsibilities of the Residential Association under the Governing Documents.

3.9 **Creation of Sub-Associations.** Notwithstanding anything to the contrary set forth above, Declarant, and its express assignees, hereby reserves the unrestricted and unconditional right to create or to permit to be created one or more Sub-Associations. Any assignment by the Declarant of the right to cause or permit to be created a Sub-Association shall be in writing, and executed by the Declarant, and recorded in the Wake County Registry.

(a) the Declarant or its assignee shall have the sole and exclusive right, power and authority and obligation to implement a Sub-Association Declaration as to a designated Residential Tract; and

(b) the Owner of the property in the designated Residential Tract shall automatically become a member of the Sub-Association and shall also remain a Member of the Residential Association. The Sub-Association Documentation, (as defined herein) shall expressly provide for the assignment and assumption of membership rights described in Section 3.11 of this Residential Declaration, and the collection and remittance of assessments described in Section 3.12 of this Residential Declaration; and

(c) the Sub-Association shall have all of the rights and powers as are conferred upon it in its articles of incorporation, in its bylaws, in the Sub-Association Declaration (the articles of incorporation and bylaws for the Sub-Association together with the Sub-Association Declaration, as may be amended from time to time, are the "Sub-Association Documentation"), and such additional rights and powers as are reserved unto declarant in the Sub-Association Declaration, or are otherwise possessed by Declarant under the Residential Declaration and assigned by Declarant to the Sub-Association, which Declarant may do at any time or times; and

(d) the Sub-Association shall be managed by its board of directors in accordance with its bylaws and the North Carolina Non-Profit Corporation Act at Chapter 55A of the North

Carolina General Statutes, and shall have all of the powers as are specified by the Residential Association; and

(e) matters pertaining to membership in the Sub-Association, including the classes of members, quorum requirements, voting rights and notices, shall be as set forth in the Sub-Association's articles of incorporation or bylaws; and

(f) all of the functions of the Architectural Control Committee relative to the designated Residential Tract(s) may, upon approval of Declarant, be assigned to an architectural control committee of the Sub-Association; and

(g) notwithstanding anything contrary in the Residential Declaration, cross-access and parking easements, and other easements as necessary for the development of the designated Residential Tract(s) shall be permitted to be established in the Sub-Association Declaration or executed only by the Owners of the affected property; and

(h) notwithstanding anything contrary in the Residential Declaration, the Sub-Association shall be permitted to have and enforce a separate set of development standards which may differ from the Development Standards, provided said development standards are first approved by the Architectural Control Committee; and

(i) the Sub-Association Declaration shall expressly state that it is subject and subordinate to the provisions of the Residential Declaration and that in the event of a conflict between the provisions of the Sub-Association Declaration and the Residential Declaration, the Residential Declaration shall control; provided, however, nothing herein shall be construed to prevent the enforcement of additional covenants, conditions, restrictions and easements therein contained that do not contravene the provisions of the Residential Declaration; and

(j) the Sub-Association Documentation shall be subject to the prior review and approval of the Residential Association; and

(k) the Sub-Association Documentation shall permit the Residential Association, acting through the Residential Board, to enforce the provisions of the Sub-Association Documentation, including, without limitation, the obligations relating to the collection of assessments, and it is expressly understood that the Residential Association hereunder shall have all rights and remedies relating to the Sub-Association Documentation.

**3.10 Sub-Association to Assume Certain Membership Rights.** Contemporaneously with the imposition of Sub-Association Documentation on a Residential Tract(s), the Owner(s) of the Residential Tract(s) shall be deemed to have irrevocably assigned to the Sub-Association, and the Sub-Association shall be deemed to have irrevocably assumed, for so long as the Sub-Association Documentation remains in effect, the following rights of membership in the Residential Association:

(a) The right to attend Member meetings of the Residential Association;

(b) The right to cast any vote and the right to give or withhold any consent, both as a Member of the Residential Association and as an Owner, provided for herein.

Pursuant to the foregoing assignment, the Member meetings of the Residential Association may be attended on behalf of the Owner(s) of the Residential Tract subjected to the Sub-Association Documentation by up to three (3) executive board members, officers, or representatives of the Sub-Association. Other Owners within the Sub-Association may attend Residential Association meetings. The Sub-Association Documentation shall stipulate how any votes to be cast or consents to be given by the Sub-Association will be determined and may provide that such voting rights and consents will be apportioned. Further, the Sub-Association shall be responsible for ensuring performance of the obligations of the applicable Owner hereunder and shall be responsible for ensuring that the terms of this Residential Declaration are upheld as to that Residential Tract.

**3.11 Sub-Associations to Collect and Remit Assessments.** Any Sub-Association Documentation shall provide that the Sub-Association formed pursuant thereto will collect and remit to the Residential Association all assessments levied by the Residential Association pursuant to this Residential Declaration against the Residential Tract subject to the Sub-Association. In addition, such Sub-Association Documentation shall specify the method of apportioning such Assessments among the property subjected thereto and shall authorize the creation of a lien against the property subjected thereto. Should any Sub-Association Documentation fail to so specify a method of apportionment, assessments shall be apportioned pro rata based upon a fraction, the numerator of which is the acreage of a Lot and the denominator of which is the acreage of the Residential Tract. Any Sub-Association Documentation also shall provide for the maintenance of insurance by the Sub-Association formed pursuant to such declaration at a minimum commensurate with (but not in duplication of) the insurance requirements contained herein.

**3.12 Lien Rights Preserved.** Neither the imposition of the Sub-Association Documentation nor the imposition of any subsequent association structure, by condominium or otherwise, shall in any way limit, abridge, allocate or otherwise affect the assessment and lien rights of the Residential Association with respect to the Lots provided for in Article VIII hereof.

**3.13 Reserve Fund.** A reserve fund shall be established under control of the Residential Board, to be used for maintenance, repair and/or replacement relating to the Residential Common Areas. Such reserve fund shall be maintained and accounted for separately from other Residential Association funds collected and maintained for normal operating expenses. Separate accounts may be established in order to better demonstrate that the amounts deposited therein are capital contributions and not income to the Residential Association.

**ARTICLE IV**  
**USE OF LOTS AND RESIDENTIAL COMMON AREAS**  
**AND RESTRICTIVE COVENANTS**

4.1 **General.** No use shall be permitted on the Residential Property which violates any Legal Requirements, and each Owner, occupant or other user of any portion of the Residential Property, shall at all times comply in strict accordance with this Residential Declaration and with any and all Legal Requirements. No Owner may use any portion of the Residential Property, or permit its Lot to be used, other than with all Legal Requirements and, with reference to the Owner's Lot, the Approved Plans, as defined in Section 6.3 herein. All Lots shall be developed in accordance with this Residential Declaration, as it may be amended and modified from time to time in the manner expressly provided in this Residential Declaration. If any Owner proposes to use, or permit to be used, its Lot in any manner other than as specifically permitted by the Governing Documents, or which is different from the use which was described in the Approved Plans, then such Owner shall submit a written proposed use request to the Residential Board which shall state, with reasonable particularity, the use or uses proposed by the Owner. The Residential Board shall thereafter approve (absolutely or conditionally) or disapprove the request. The Residential Board shall give written notification to the submitting party of the Residential Board's action, which shall be final and binding on all Owners. IN SOME INSTANCES LEGAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH LEGAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THIS DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE LEGAL REQUIREMENTS, IN WHICH EVENT THOSE LEGAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY LEGAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION.

4.2 **Fundamental Restriction on Use.** All Lots and Residential Common Areas within the Residential Property shall be used for residential and related purposes only, subject to and consistent with the Governing Documents, including the Rules and Regulations. No trade or business of any kind shall be conducted upon any Lot or part thereof, except (a) Declarant and/or its approved Builders, as defined herein, or their agents may use any unsold Lots for sales or display purposes, (b) Declarant and/or its approved Builders may maintain a sales or rental office on the Residential Property, and (c) as may be approved by the Residential Board in its sole discretion, on a case-by-case basis after petition by an Owner. Provided however, that any such approved business must be conducted entirely within the confines of the Dwelling thereon and must not create, among other things, a nuisance to the neighbors, or create among other things, excessive noise, traffic, odors or unpleasant appearances. Once permission is granted by the Residential Board for such a business, the Residential Board automatically retains the right to terminate approval of such business for violation of the above conditions or any other conditions

stated in the Residential Board's initial approval and the Owner shall terminate such business within ninety (90) days after receipt of notice from the Residential Board.

4.3 **Fundamental Restriction on Occupancy.** All occupants of a single Lot shall be members of a single housekeeping unit. For purposes of this Residential Declaration, a single housekeeping unit is defined as a single family and not more than four (4) unrelated persons. The number of occupants on each Lot shall also be reasonably limited by the Lot's size and facilities and by a policy against disproportionate use of the Residential Common Areas. Nothing herein shall be construed to violate applicable fair housing laws or similar federal or state housing statutes.

4.4 **Rules and Regulations.** The Residential Association shall have, and Declarant hereby reserves on behalf of the Residential Association, the right, power and authority to establish, adopt, revise and restate from time to time such Rules and Regulations regarding the Residential Property as the Residential Association deems appropriate. Such Rules and Regulations may (by illustration and not by limitation) address any and all aspects of the maintenance, repair, replacement, and repainting of Improvements; pedestrian and vehicular traffic; security; landscaping and landscape maintenance; utility usage; trash removal; pest control; exterior signage (or interior signage which is visible from the exterior of an Improvement); exterior lighting; telecommunications; restrictions relating to animals; operation of the Residential Association and any other activities affecting the general purposes set forth in Section 1.1 hereof. There shall also be developed by the Declarant, prior to the Conversion Date, and by the Residential Board following the Conversion Date, Construction Rules and Regulations that will govern activities within the Residential Property during construction and which will include rules that, for example, limit vehicles to one side of the road, or designated parking areas for construction. Upon adoption, such Rules and Regulations shall become a Governing Document and binding on all Owners of the property to which they are made applicable by the Residential Association. After adoption, the Residential Association shall furnish or otherwise make available to each Owner a copy of such Rules and Regulations.

4.5 **Neighborhoods.** Prior to the Conversion Date, Declarant, acting in its sole and absolute discretion, shall have the right, but not the obligation to establish separately developed residential Neighborhoods, recreational areas and amenity areas, or some, all or none of these, within the Residential Property, and to designate Limited Residential Common Areas for the exclusive use of one or more, but less than all of the Neighborhoods. Every Lot situated within a designated Neighborhood may be subjected to additional covenants, conditions, restrictions and additional assessments for services provided to Lots within such designated Neighborhood. Such additional covenants may be set forth in the Residential Declaration or a Supplemental Declaration.

Any Neighborhood and/or Sub-Association may request that the Residential Association provide a higher level of service than that which the Residential Association generally provides, or may request that the Residential Association provide special services for the benefit of Lots in such Neighborhood or Sub-Association. Upon the affirmative vote, of the Owners of a majority of the Lots within a Neighborhood or within a Sub-Association, the Residential Association may provide the requested services. The cost of such services, which may include a

reasonable administrative charge in such amount as the Residential Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Lot to all Neighborhoods or Sub-Associations receiving the same service), shall be a Neighborhood Assessment.

4.6 **Additional Restrictions on Use and Occupancy of Lots.** Without in any way limiting the permissible scope of the Rules and Regulations which may be promulgated pursuant to Section 4.4 hereof but subject to such Variances as the Residential Association may from time to time grant, the following restrictions shall be applicable to the entirety of the Residential Property:

(a) **Restrictions on Rentals.** Any lease of a Residential Lot shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Governing Documents and that any failure by the lessee to comply with all of the terms of such Governing Documents shall constitute a default under the lease. No Residential Lot may be leased for a period shorter than one (1) year; provided, however, that Declarant may lease a Residential Lot owned by it for a period shorter than one (1) year. Any lease of a Residential Lot shall be in writing and shall provide, among other things: (a) that the terms of the lease shall be subject in all respects to the Governing Documents; (b) that any failure by the lessee to comply with all of the terms of such Governing Documents shall constitute a default under the lease; and (c) for the payment by the Owner or the tenant to the Residential Association of a security deposit in the amount of thirty percent (30%) of the monthly rent payable under the lease, to be held by the Residential Association in accordance with the North Carolina Tenant Security Deposit Act, and applied against the cost of repairing any damage to the Residential Common Areas and the Common Areas caused by the negligence or intentional misconduct of such tenant or his or her agents, invitees or family members. In addition, promptly following the execution of any lease for a Residential Lot, the owner of such Residential Lot shall forward a conformed copy of the lease to the Residential Board of Directors.

If an Owner permits its Residential Lot to be used for Residential Leasing in violation of this Section 4.6 (a), then the Owner shall be fined by the Residential Association \$100.00 for each day that the Residential Lot is leased. The Board shall provide the violating Owner with notice of the violation of this Section and of the amount due. Any fine not paid within ten (10) days of the date of the notice of violation or final determination following hearing as provided herein shall be delinquent, in default, and shall bear interest and be collected by the Residential Association pursuant to the provisions of Section VIII of this Residential Declaration.

Within five (5) days of receipt of the notice of violation, the violating Owner may, if it disputes the fine and/or the accusation of violation of this Section, present the Residential Association and the Declarant with a written request for hearing on the violation to dispute the fine and/or the accusation of violation. Within twenty (20) days of receipt of the request for a hearing, the Residential Association shall establish a hearing date and shall provide notice to the Residential Lot Owner of the time and place of the hearing, which time will be not less than ten (10) days from the giving of notice. The hearing will be held in executive session of the Residential Board of Directors pursuant to the notice and will afford the violating Owner a

reasonable opportunity to be heard. The decision of the Residential Board of Directors shall be noted in a written statement of the results of the hearing and shall be retained in the minutes of the meeting.

Notwithstanding the foregoing, the Declarant may lease any Dwelling owned by Declarant.

Residential Leasing is prohibited if by an Owner where the primary purpose of the ownership of the Dwelling is for commercial purposes in that the Dwelling is intended primarily for lease to tenants and not for occupancy by the Owner as the Owner's primary residence.

(b) Time Sharing. No time-share ownership of Residential Lots is permitted without Declarant's approval.

(c) Half-way Houses. No Dwelling or other Improvement on any Residential Lot shall at any time be used as a Half-Way House under supervision of a Supervising Agency. For the purposes of this Section 4.6(c) the term "Supervising Agency" shall mean a Governmental Authority including without limitation thereto the Wake County Sheriff, the police department for the City of Raleigh, the North Carolina Department of Corrections, the United States Department of Justice and the United States Marshal's Service. For the purposes of this Section 4.6(c), the term "Half-Way House" shall mean a place where persons who have been imprisoned or incarcerated for crimes (whether felonies or misdemeanors), or confined for drug or alcohol rehabilitation, are continued under some form of supervision for the primary purpose of aiding said persons in readjusting to society following their imprisonment, incarceration, hospitalization or other form of confinement.

(d) Animals. No animals, birds, livestock or poultry of any kind shall be kept or maintained on any Lot or in any Dwelling except that dogs, cats, pet birds or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners. No pet shall be allowed to make an unreasonable amount of noise. Pets shall be under leash at all times when walked or exercised in any portion of the Residential Common Areas, and the owner of such pet shall clean up after such pet. Chains shall not be used to control pets. Upon the written request of any Owner, the Residential Board may conclusively determine, in its sole and absolute discretion, whether for purposes of this Section 4.6(d), a particular pet is a generally recognized house pet or such pet is a nuisance, and the Residential Board shall have the right to require the owner of a particular pet to remove such pet from the Residential Property if such pet is found to be a nuisance or to be in violation of these restrictions. The Residential Board shall have the further right to fine any Owner for the violation of these pet restrictions by such Owner or any Occupant, or guest, and the Owner shall be liable to the Residential Association for the cost of repair of any damage to the Residential Common Areas caused by an animal kept on the Owner's Lot. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due to which such Dwelling and its Owner are subject. Any Owner who keeps or maintains or permits any pet upon any portion of the Residential Property shall be deemed to have indemnified and agreed to hold the Residential Association, each Lot Owner, and the Declarant free and harmless from any

loss, claim or liability of any kind of character whatever arising by reason of keeping or maintaining such pet within the Residential Property.

(e) Insurance. Nothing shall be kept, and no activity shall be conducted, on the Residential Property which will increase the rate of insurance applicable to residential use for the Residential Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Residential Common Areas which will result in the cancellation of insurance on any portion of the Residential Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Residential Common Areas.

(f) Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Residential Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Residential Property, shall be complied with, by and at the sole expense of the Owner or the Residential Association, whichever shall have the obligation to maintain such portion of the Residential Property.

(g) Structural Integrity. Nothing shall be done in, to, or upon any of the Residential Common Areas which will impair the structural integrity of any building, or other improvement or portion of the Residential Common Areas or which would impair or alter the exterior of any building, improvement or portion thereof, except in the manner provided in this Residential Declaration.

(h) Signs. No Lot Owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or any portion of the Residential Common Areas, except as allowed by the pursuant to the master sign plan adopted by the Declarant as a Governing Document or as required by local Governmental Authority. Any permitted "For Sale" signs shall be placed in the approximate center of a Lot and six feet from the road curb. No sign shall be nailed to trees. The display of political signs is permitted; provided, however, there shall be no display of political signs earlier than 45 days before the day of the election nor later than seven days after an election. Further no political sign may be larger than 24 inches by 24 inches in accordance with Section 3-121 of the Act. For purposes of this section a political sign means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on an election ballot. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about any Lot or in the Residential Common Areas unless approved in advance by the Residential Association. To the extent permitted by law, no signs or flags shall be placed on any building or improvement unless otherwise approved by the Residential Association. In the event that the Residential Association approves installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner shall be in good taste and shall not contain lewd or offensive displays or material. The display of the flag of United States or North Carolina is permitted as long as its size is no greater than 4 feet by 6 feet and it is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. § 5-10, as amended. No flag (North Carolina or United States included) of a size greater than 4 feet by 6 feet shall be displayed or erected on or about any Lot or Residential Common Areas.

(i) Sewerage Disposal Systems. No individual sewage disposal systems will be permitted. All Dwellings constructed in 5401 North Residential shall be connected to approved sanitary sewage facilities.

(j) Incinerators. No incinerator shall be kept or maintained on any Lot.

(k) Mobile Homes, Modular Home, Temporary Structure. No mobile home or modular home shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or storage units on the Residential Common Areas used by the contractor during the construction of a Dwelling, garage or accessory building, for so long as construction is being diligently pursued by the contractor and it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

(l) Vehicles and Other Equipment. None of the following may be kept or stored within a Residential Lot in 5401 North Residential: (i) junk or abandoned vehicles, (ii) commercial vehicles other than company automobiles provided for personal use, (iii) trailers, (iv) tractor-trailers, (v) campers, (vi) motor homes and recreational vehicles, (vii) camp trucks, (viii) house trailers, (ix) boats, (x) boat trailers, or (xi) other machinery or equipment of any kind or character (except for such equipment as may be reasonable, customary and usual in connection with the use and maintenance of any Dwelling or other Improvements located upon the Lot). No repair, maintenance or restoration of automobiles or other authorized vehicles (except for bona-fide emergencies) may be carried out on any Residential Lot or at any location within 5401 North Residential unless and except to the extent such repair, maintenance or restoration can be accomplished inside an enclosed garage with all doors to the said garage closed. This restriction shall not apply to vehicles, trailers, boats, machinery, equipment or the like stored and kept on a Lot within an enclosed garage or in a specified storage area established by the Residential Association or except as otherwise may be permitted by Rules and Regulations. Notwithstanding the foregoing, this prohibition shall not apply to contractor's trucks and vehicles during the construction of any Dwelling, garage or accessory building, it being clearly understood that contractor's trucks and vehicles shall be permitted to park on the roads and streets within the Residential Property until completion of any Dwelling, garage or accessory building, for so long as construction is being diligently pursued by the contractor.

(m) Delivery Receptacle. Any mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall comply with the Development Standards.

(n) Antennae. To the extent permitted by law and subject to the Federal Telecommunications Act, the following applies: Exterior radio and television antennae, aerials, disks and dishes for reception of commercial broadcasts and other aerials, disks and dishes (for example, without limitation, amateur short wave or ship to shore) shall not be permitted on any Lot without permission of the Architectural Control Committee as to design, appearance and location or pursuant to the Development Standards issued for that purpose.

(o) Solar Collectors. To the extent permitted by law and subject to federal and state laws and regulations, the following applies: Solar collectors that gather solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating and generating electricity, shall not be permitted on any Lot without permission of the Architectural Control Committee as to design, appearance and location or pursuant to the Development Standards issued for that purpose. Nothing in this Section 4.6(o) shall have the effect of preventing the reasonable use of a solar collector on a Lot.

(p) Fireworks; Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be conducted on the Residential Property. There shall be no discharging of fireworks on the Residential Property without prior approval of the Residential Board. The Residential Board shall be authorized to fine any person for violation of this Section 4.6(p) in addition to all other enforcement remedies available pursuant to this Residential Declaration and under applicable law.

(q) Drying Areas. Clotheslines or drying yards shall not be located upon any Lot without the prior written consent of the Architectural Control Committee, which consent may be conditioned or withheld in the sole discretion of the Architectural Control Committee, or as set forth in Rules and Regulations established for that purpose.

(r) Unightly Growth. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain thereon, including vacant parcels.

(s) Fuel Tanks. Above-ground and below-ground fuel tanks are prohibited on any portion of the Residential Property except for standard five (5) gallon propane tanks used in the operation of household grills.

(t) Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

(u) Storage of Building Materials. No lumber, brick, stone, cinder block, concrete block, cement or other materials used for building purposes shall be stored upon any Lot longer than a reasonable time for the completion of the construction in which they are to be used.

(v) Underground Utilities. All utility lines serving structures located on Lots shall be placed underground.

(w) Screening. To the extent they are permitted by this Residential Declaration, satellite dishes, antennae, clotheslines, pet enclosures, air conditioning units, generators and the like shall not be located on a Lot so as to be visible from any roadway and shall be placed in a location on a Lot and screened in a manner approved by the Architectural Control Committee. Generators may be exercised at such times as permitted pursuant to the Development Standards.

(x) Fences. Fences shall only be permitted if approved by the Architectural Control Committee pursuant to the Development Standards.

(y) Garage Use. Garages shall be used for parking vehicles only and shall not be converted for living, recreational activities, business or storage that would prevent the ability of an Owner, Occupant or lessee to park the number of vehicles in the garage that the garage was designed for. Doors to garages shall be kept closed except during the removal or entry of vehicles therefrom or thereto. From time to time, the Architectural Control Committee may allow for a Builder (as defined in Section 4.8 herein) to operate a sales office out of a garage based upon approval by the Architectural Control Committee and a properly permitted design.

(z) Recreational and Other Equipment. No recreational equipment (including but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be attached to the exterior of any Dwelling or otherwise placed or kept on any Lot, except with prior approval of the Architectural Control Committee pursuant to the Development Standards.

(i) No such recreational equipment shall be located in such a manner as to constitute a nuisance or unsightly condition. No portable basketball hoops/goals shall be permitted unless located in the driveways and rear of a Dwelling.

(ii) Children's play toys, bicycles, and other moveable equipment of any type (such as lawn mowers, garden tools, etc.) shall not remain overnight within a front yard of any Lot, or within the side yards of any Lot located on a corner, and such play toys, bicycles and other moveable equipment of any type shall be stored in a dwelling or an enclosed garage or in an enclosure specifically approved for such storage by the Architectural Control Committee.

(aa) Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Residential Property. Exterior sculpture, fountains, and similar items are subject to prior approval of the Architectural Control Committee pursuant to the Development Standards.

(bb) Holiday Decorations. Holiday decorations are permitted on a Lot no more than thirty (30) days prior to the holiday, and must be removed within ten (10) days following the holiday. The Architectural Control Committee shall have the ability to limit the amount of holiday decorations on any Lot at its sole discretion.

(cc) Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Residential Common Areas except at the direction or with the express written consent of the Residential Association.

(dd) Residential Common Areas Use. The Residential Common Areas shall be used only for the purposes for which they are intended and reasonably suited and which are incident to

the use and occupancy of the Residential Property, subject to any rules or regulations that may be adopted by the Residential Association pursuant to its Residential Bylaws.

(ee) **Subdividing.** No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Class B Membership and thereafter by the Architectural Control Committee. However, the Declarant, hereby expressly reserves unto itself, and to any assignee to which Declarant makes a specific assignment of this right by a duly recorded document, the right to replat any two (2) or more Lots and/or Residential Common Areas (so long as replatting of the Residential Common Areas conforms with applicable governmental regulations and upon approval by the appropriate Governmental Authority) shown on the plat of any subdivision of the Residential Property in order to create one or more modified Lots; to recombine one or more Lots and/or Residential Common Areas to create a larger Lot; to eliminate from this Residential Declaration Lots that are not otherwise buildable or Lots and/or Residential Common Areas that are needed for access to any area of the Residential Property or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted Lots. If any of the Residential Common Areas is recombined with a Lot, the Residential Association shall execute all necessary documents to effect the recombination.

4.7 **Notice to Purchasers and Mortgagees.** All prospective purchasers and mortgagees are given notice that use of the Lots and the Residential Common Areas is restricted and governed by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Purchaser, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot shall be affected by the Rules and Regulations which may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded Document. **Take notice that the Declarant or the Residential Association may have changed the initial Rules and Regulations since the recording of this Residential Declaration.** The Residential Association shall provide a copy of the current Rules and Regulations to any prospective purchaser Member or Mortgagee upon written request and payment of the reasonable cost of such copy.

4.8 **Declarant Exemption.** The provisions of this Article IV are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Residential Property. The restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the work in the Residential Property. Nor are the restrictions intended to require the Declarant to undertake regular maintenance of undeveloped lots owned by Declarant. The restrictions are not intended to prohibit or limit the Declarant's construction and operation of facilities for sales and marketing purposes for the Residential Property and uses related to sales and marketing of the Residential Property. Such facilities include but are not limited to model homes, sales centers, and parking lots. The restrictions and requirements of this Article IV shall therefore not be binding upon Declarant, in the performance of any of the work required in order to complete construction of and within the Residential Property or otherwise. Furthermore, Declarant shall have the right, in its sole and absolute discretion, to exempt any purchaser of a Lot or Residential Tract from Declarant for the purpose

of developing a residential subdivision and constructing residences thereon for resale to a third party (such purchaser being hereafter referred to as the "Builder") from any one or more provisions hereof during the period during which such Builder is undertaking such development and construction work thereon until a residence on a Lot is sold by such Builder to a third party; and may furthermore grant to any such Builder, in Declarant's sole discretion, the right to exercise any one or more of the rights, easements and privileges reserved to Declarant under this Article IV.

#### 4.9 **Enforcement.**

(a) **Owner's Responsibility.** Each Owner, all family members of Owners and all Owners' guests and Occupants shall conform and abide by the covenants contained in the Governing Documents. Each Owner shall be responsible for assuring such compliance, and any violation by family members, guests or Occupants may be considered to be a violation by the Owner.

(b) **Notice, Hearing and Fines.** If an Owner is believed to be in violation of this Residential Declaration or the Rules and Regulations of the Residential Association, the Residential Board shall notify the Owner and provide an opportunity to be heard. After such hearing, the Residential Board shall have the right to assess fines, the maximum permitted under the Act and may restrict the Owner's use of the Residential Common Areas for up to sixty (60) days or until remedied, whichever is longer. Fines may be charged against an Owner's Lot as a Special Lot Assessment.

(c) **Violations by Occupants of a Lot.** If an Occupant is believed to be in violation of the covenants set forth in the Governing Documents, the Residential Board shall notify the Owner and Occupant and provide an opportunity for hearing. If the Residential Board determines after notice and opportunity for hearing that an Occupant has violated the Governing Documents, the Residential Board may assess fines against the Owner as provided in Section 4.9(b). In addition, if the Occupant materially violates the Governing Documents more than once in any one-year period, the Residential Association, by a two-thirds (2/3) vote of the Residential Board, shall have right to cause the Owner to evict the Occupant. Any Owner whose Occupant or Occupants (whether under one lease or different leases) violate the Governing Documents three (3) times in any one (1) year period may be prohibited from further leasing of his Lot for a period of up to one (1) year.

(d) **Corrective Action for Lot Maintenance.** If the Residential Board determines after notice and hearing that any Owner has failed to maintain any part of the Lot (including the yard and any wall, fence, or other Improvement) in a clean and attractive manner, in accordance with the provisions of the Governing Documents, the Residential Board shall notify the Owner of its findings and may assess fines as provided in Section 4.9(c). If the violation continues for ten (10) days after notice to the Owner of the Residential Board findings, the Residential Association, by a two-thirds (2/3) vote of the Residential Board, shall have the right without liability to enter upon such Lot to correct, repair, restore, paint or maintain any part of such Lot and to have any objectionable items removed from the Lot. The Residential Board

may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action shall be assessed to the Owner as a Special Lot Assessment.

4.10 **Parking.** No parking shall be permitted on any private Streets located within or bordering the Property except as required by the Master Zoning or the Master Plan or as expressly permitted in the Residential Declaration. Total parking within each Lot or Common Area or Common Facility shall be provided in conformance with the requirements established in the Master Plan.

4.11 **Fire Protection.** All buildings constructed on any Lot or Common Area or Common Facility shall be so designed, constructed and maintained so as to fully comply at all times with any applicable public codes, ordinances, rules, regulations and orders relating to fire protections.

4.12 **Declarant Uses Permitted.** Declarant may conduct its sales and marketing program for the Property from any permanent buildings owned by it or from temporary sales buildings or trailers and may conduct work relating to the installation of roads, utilities, drainage facilities, utility facilities, street, grading and other similar site work and activities on the Property and do all things reasonably necessary or convenient as required to expeditiously commence, continue and complete such work and improvements, including the provision of a temporary building or buildings (including trailers), temporary storage of construction materials and equipment on the Property, and the erection of temporary signage of such types and in such sizes and at such locations as Declarant deems appropriate.

4.13 **Construction Uses.** Any architect, engineer, contractor or subcontractor employed to assist in the design, construction, maintenance, repair, replacement, repainting or alteration of Improvements pursuant to the Development Standards and Approved Plans as defined herein, may use the Lot or that portion of the Property on which the Improvements are (or are to be) situated for such purpose and, in connection therewith, may erect and use temporary facilities for administrative and storage purposes. All such activities and facilities shall be approved as part of the Approved Plans and shall be confined solely within the boundaries of the Lot or portion of the Property, as the case may be, on which the Improvements are (or are to be) situated.

4.14 **Construction Maintenance.** The Owner of the Lot on which construction (including alteration, rebuilding and reconstruction) activities are being conducted shall at all times (a) cause their Lot to be maintained in a safe and reasonably clean condition during the course of the construction activity, (b) assure that no construction materials or equipment are stored or deposited outside of their Lot, (c) take reasonable steps to assure that no construction debris associated with its construction activity is deposited or allowed to remain anywhere within the Property, (d) take care not to damage, and assure that its contractors and subcontractors do not damage, any street, sidewalk, easement, utility facility, landscaped area or other Improvement and (e) remove all mud, debris and other materials which may have been deposited on any street within the Property by vehicles used in connection with the construction or by "run off" from their Lot.

## ARTICLE V RESIDENTIAL COMMON AREAS

5.1 **General.** From time to time Declarant shall designate certain areas within the Residential Property as "Residential Common Areas". The Residential Common Areas shall be used solely for recreational and general welfare purposes. Such Residential Common Areas may include, but need not be limited to restrooms, pedestrian trails, open areas, ponds or lakes, public greenway easements and general park areas. As areas are so designated as "Residential Common Areas", a specific description of those areas and the uses to which they may be placed shall be prepared and retained in the office of the Residential Association for inspection by all Owners and prospective Owners. Declarant shall have the sole and exclusive, unrestricted and unconditional right to determine how areas will be designated as "Residential Common Areas", to designate areas as "Residential Common Areas" and to delete areas previously designated as "Residential Common Areas" from such designation.

5.2 **Maintenance.** The Residential Association shall maintain the Residential Common Areas and their facilities in a safe, clean, sightly, attractive and good state of condition and repair, comparable to other similar communities in the Research Triangle Area of North Carolina. Such maintenance shall include, without limitation and whenever appropriate, repairing, replacing, reconstructing, renewing and repainting any and all facilities constructed within the Residential Common Areas, such as lighting facilities, signs, entrance monuments, markers, traffic control signals, trails, pedestrian walkways, restrooms; removing all litter, trash, garbage and waste; and mowing, watering, fertilizing, weeding, replanting, replacing, pruning and otherwise maintaining all landscaping in the Residential Common Areas. The Residential Association may also maintain areas within public utility easements within or adjacent to the Residential Common Areas. The Residential Association need not perform any maintenance otherwise required under this Section 5.2 if and to the extent that same is performed by a Governmental Authority.

5.3 **Easements.** Declarant hereby declares, creates and reserves, on behalf of the Residential Association, and hereby assigns to the Residential Association, perpetual nonexclusive easements for ingress and egress under, across, over, in and upon all Residential Common Areas for the purpose of performing in the Residential Common Areas functions which the Residential Association is required or permitted to perform pursuant to this Residential Declaration.

5.4 **Transfer and Dedication.** Declarant may, at any time and from time to time, convey to the Residential Association any or all of its right, title and interest in and to any portion of the Property owned by the Declarant and intended to be designated as a Residential Common Area. Declarant may at any time while Declarant owns such portion of the Property, dedicate or otherwise convey in the Common Area any and all water, sanitary sewer, storm water, drainage, street, electrical, telecommunication, gas and other utility easements, lines and facilities and areas in which appurtenances thereto will be constructed and/or maintained to any person, entity or authority. After the transfer of Residential Common Area to the Residential Association, the

Residential Association may, subject to the requirements of the Act, and subject to approval of Declarant if prior to the Conversion Date, at any time and from time to time dedicate or otherwise convey in the Common Area any and all water, sanitary sewer, storm water, drainage, street, electrical, telecommunication, gas and other utility easements, lines and facilities and areas in which appurtenances thereto will be constructed and/or maintained to any person, entity or authority. Neither the conveyance, dedication nor acceptance thereof shall, in and of itself, relieve the Residential Association from the obligation to maintain such areas and the facilities located therein, or relieve the Owners from the obligation to participate in the cost thereof.

5.5 **Ad Valorem Taxes.** Whenever a Lot contains within its boundaries an area designated as a Residential Common Area, the Owner of the Lot and the Residential Association shall seek a division of the parcel for tax assessment purposes and the taxes on the portion designated as a Common Area shall be borne by the Residential Association.

5.6 **Use of Residential Common Areas by Owners.** Each Owner shall have a nonexclusive right to use the Residential Common Areas. The Residential Association shall have the authority to create Rules and Regulations related to the use of the Residential Common Areas, including policies allowing all or portions of the Residential Common Areas to be available to Owners for private events (for which a fee may be charged).

5.7 **Damage or Destruction of Residential Common Areas by Owner.** If any Owner or Owner's guests, Occupants, licenses, agents, employees or members of Owner's family damages any of the Residential Common Areas as a result of negligence or misuse, the Owner hereby authorizes the Residential Association to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become a Special Owner Assessment payable by the responsible Owner. The Residential Association may, but is not required to, seek compensation for damage from the Occupant, guest, agent, employee, member or other party who caused the damage, in which case the Owner shall be jointly and severally liable with the Occupant guest, agent, employee, member or other party who caused the damage.

5.8 **Limitation of Liability.** Neither the Residential Association nor Declarant makes any representation or assumes any liability for any loss or injury caused by its maintenance of the Residential Common Areas.

5.9 **Use of Residential Common Areas for Private Uses.** Certain parts of the Residential Common Areas may be designated by the Residential Association as eligible for reservation for Private Use, as defined below and pursuant to the terms stated below. "Owner" as used in this Section 5.6 shall mean the owner, Occupant or guest of a Member of the Residential Association or the owner, Occupant or guest of a Member of the Residential Association:

(a) Owners who are Members of the Residential Association may only schedule and reserve portions of the Residential Common Areas for private events, parties, gatherings or other functions ("Private Uses") through the Declarant or the Residential Association and subject to

such Residential Association's Rules and Regulations. Deposits and/or fees may be assessed by the Residential Association or the Declarant for use of some areas of the Residential Common Areas for certain types of uses; provided that such fees or deposits are applied equally to all similarly situated users.

(b) The Residential Association has the right to require evidence of compliance with the requirements of this Residential Declaration and the Rules and Regulations governing use of the Residential Common Areas and the right to bar the Private Use of the Residential Common Areas by anyone not complying with these provisions in advance of or during Private Uses. The Declarant or the Residential Association may, in addition to all other remedies provided herein, bar any Owner, Occupant or guest from Private Use of the Residential Common Areas for a period up to twelve (12) months for a violation of the Residential Declaration. This temporary bar to use shall not extend to the Owner's successors in ownership of a Lot within 5401 North Residential. The Residential Association may charge a reasonable scheduling fee to cover costs associated with its duties under this section.

(d) Any Owner reserving a portion of the Residential Common Areas for a Private Use shall take steps necessary to prevent such Private Use from precluding reasonable use of the unreserved portion of the Residential Common Areas by others. Access may be limited to the reserved portions of the Residential Common Areas for a reasonable period.

(e) Any Owner reserving a portion of the Residential Common Areas for a Private Use shall take steps necessary to prevent the Private Use or people arriving or departing from the event from unreasonably interfering with traffic or damaging property within 5401 North Residential.

(f) Any Owner reserving a portion of the Residential Common Areas for a Private Use shall remove or cause to be removed all trash, signs, tables, chairs or other property associated with the Private Use promptly following the event and generally restore the reserved portion of the Residential Common Areas to its condition prior to such Private Use and shall be subject to fees, fines and suspension of Private Use privileges for failure to do so.

(g) Any Owner reserving a portion of the Residential Common Areas for Private Use shall provide proper trash and recycling receptacles and rest room facilities for the event and shall promptly remove or cause to be removed these receptacles and facilities and properly dispose of trash and recyclables and shall be subject to fees, fines and suspension of Private Use privileges for failure to do so.

(h) Any Owner reserving a portion of the Residential Common Areas for a Private Use shall not charge a fee for access to the reserved portion of the Residential Common Areas, though fees may be charged for concessions or otherwise in accordance with applicable laws and the Rules and Regulations.

(i) If any Residential Common Area or Improvement on any Residential Common Area is damaged or destroyed by an Owner, Occupant or by guests or agents of the Owner or Occupant, the Owner shall be liable for such damage or destruction and the Owner must, within

fifteen (15) days after it occurs, repair the damage in a good and workmanlike manner and restore any damaged Residential Common Area Improvement or facility to its existing state before the damage or destruction occurred. In circumstances where the Declarant or the Residential Association determines that a shorter response period is appropriate, the fifteen (15) day period may be shortened to such other reasonable period as Declarant or the Residential Association deems appropriate. If the Owner does not repair the damage as described above, then the Declarant or Association may repair the damage and bring an action to obtain an Assessment lien against the Parcel owned by the Owner. The Declarant or the Residential Association may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity to enforce the provisions of this section.

## ARTICLE VI DESIGN AND CONSTRUCTION OF IMPROVEMENTS

6.1 **General.** All Improvements shall be designed and constructed in accordance with the Development Standards as supplemented by the Governing Documents. Accordingly, without a Variance, any Improvement which is not designed in strict accordance with the Development Standards and other Governing Documents and the procedures adopted pursuant thereto shall not be permitted to be constructed and any Improvement which is not constructed in strict accordance with the Development Standards and other Governing Documents shall not be permitted to remain.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally Approved Plans and specifications. Any Owner may remodel, paint, or redecorate the interior of a dwelling located on his or her Lot without approval; provided that modifications to the interior of a dwelling visible from outside the structure shall be subject to approval.

Any Improvements constructed on a Lot shall be designed by and built in accordance with the Development Standards, unless otherwise approved by Declarant or its designee in its sole discretion.

This Article shall not apply to Declarant's activities or to the Residential Association's activities prior to the Conversion Date.

### 6.2 **Architectural Review.**

(a) **By Declarant.** Each Owner, by accepting a deed or other instrument conveying any legal or equitable interest in a Residential Tract or Lot, acknowledges that, as the developer and owner of real estate in the vicinity of and within the Residential Property, Declarant has a substantial interest in the quality and appearance of improvements within the Residential Property, and in determining that they enhance Declarant's reputation as a developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, no Owner shall commence any activity within the scope of this Article on a Residential Tract or Lot unless and

until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other person or entity. Declarant's rights reserved under this Article shall continue through the Conversion Date, unless earlier terminated by Declarant by a Recorded Document. Prior to the Conversion Date the Declarant shall have all powers described in this Section 6.2(a) as well as all powers of the Architectural Control Committee.

Declarant may, in its sole discretion, designate one or more persons or entities from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to any other person or entity or committee. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (a) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (b) Declarant's right to veto any decision which Declarant determines, in its sole and exclusive discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of any other person or entity or committee shall be limited to such matters as are specifically delegated to it by Declarant.

(b) Architectural Control Committee. Upon delegation by Declarant or upon the Conversion Date, the Residential Association, acting through the Architectural Control Committee appointed by the Residential Board, shall assume jurisdiction over architectural matters. The Architectural Control Committee shall consist of at least three, but not more than seven, persons or entities who shall serve and may be removed and replaced in the Residential Board's discretion. The members of the Architectural Control Committee need not be representatives of Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Residential Board shall establish from time to time.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Residential Association or prior to the Conversion Date, the Residential Association shall have no jurisdiction over architectural matters.

### 6.3 Guidelines and Procedures.

(a) Development Standards. Declarant has heretofore adopted, as applicable to the Residential Property, and does hereby confirm the adoption of, the Development Standards. The Development Standards have been prepared with the utmost due care and attention and with a view toward accomplishing the purposes stated in Section 1.1 hereof. Declarant hereby reserves the exclusive right, power and authority to make any and all revisions to and restatements of the Development Standards as Declarant deems advisable from time to time to accomplish the purposes of this Residential Declaration. The operative Development Standards which are in

effect at any time shall be available for inspection by any Owner or prospective Owner at the Residential Association's office during reasonable business hours. The Development Standards are intended to provide guidance to Owners regarding matters of particular concern to the Architectural Control Committee in considering applications hereunder. The Development Standards are not the exclusive basis for the decisions of the Architectural Control Committee, and compliance with the Development Standards does not guarantee approval of any application. Further, the Development Standards may be more restrictive than guidelines followed by Wake County or as set forth in the International Builder's Code.

(b) **Subsequent Revisions to Development Standards.** Declarant shall have sole and full authority to amend the Development Standards as long as it owns any portion of the real property described in Exhibit "A" or has a right to expand the Residential Property pursuant to the terms of this Residential Declaration, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend the Development Standards. Upon termination or delegation of Declarant's right to amend, the Architectural Control Committee shall have the authority to amend the Development Standards with the Residential Board's consent. There shall be no limitation on the scope of amendments to the Development Standards, and such amendments may remove requirements previously imposed or otherwise make the Development Standards less restrictive. Revisions to and restatements of the Development Standards may be adopted by Declarant at any time without any formal requirements therefor. No such revision or restatement shall require the reconstruction or alteration of any Improvement as to which Approved Plans are in existence on the date the revision or restatement was adopted. The previous sentence shall not, however, limit the ability of the Architectural Control Committee to require that any Owner bring its Improvement into compliance with the then operative Development Standards if and when such Owner submits to the Architectural Control Committee a request for approval of any alterations to Improvements previously constructed by it, or of the construction of new Improvements.

(c) **Review Procedures.** Except as otherwise specifically provided in the Development Standards, no activity described in Section 6.1 shall commence on any Lot until an application for approval has been submitted to and approved by the Architectural Control Committee. Such application shall include but not be limited to plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Development Standards and the Architectural Control Committee may require the submission of such additional information as deemed necessary to consider any application.

In reviewing each submission, the Architectural Control Committee may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements. Subject to Declarant's veto power described below, the Architectural Control Committee shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to review so long as they are made in good faith and in accordance with the procedures described in this Article.

The Architectural Control Committee shall make a determination on each application within thirty (30) days after receipt of a completed application and all required information. The Architectural Control Committee may (a) approve the application, with or without conditions; (b) approve a portion of the application and disapprove other portions; (c) disapprove the application; or (d) request further or additional information. The Architectural Control Committee may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections.

In any event, the Architectural Control Committee shall notify the applicant in writing of a final determination within forty-five (45) days after its receipt of a completed application and all required information. In the event that the Architectural Control Committee fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Development Standards unless the Architectural Control Committee has granted a Variance pursuant to Section 6.6.

Notice shall be given in the manner described in Section 12.8 herein. The Architectural Control Committee may by resolution exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

**6.4 Commencement of Construction.** Except for work undertaken in connection with the development of a Residential Tract and the related construction of the initial dwellings by a Builder, if construction does not commence on a project located on a Lot for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed improvements. Once construction is commenced, it shall be diligently pursued to completion. Except for work undertaken in connection with the development of a Residential Tract and the related construction of the initial dwellings by a Builder, all work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Architectural Control Committee grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action as provided herein.

**6.5 No Waiver of Future Approvals.** Each Owner acknowledges that the persons or entities reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Development Standards, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Architectural Control Committee may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

6.6 **Variances**. Notwithstanding anything to the contrary contained in or inferable from this Residential Declaration or any other Governing Document, the Architectural Control Committee shall have the sole, exclusive, right, power, authority and discretion to grant at any time or times, and with or without conditions, any and all variances from the Development Standards as the Architectural Control Committee determines to be appropriate. Variances may be granted prospectively or retroactively. Variances shall be legally effective only if in writing executed by the chairman of the Architectural Control Committee duly authorized to execute such Variance, with the specific nature of the Variance described therein. No Variance shall be effective unless evidenced in such manner; no Variance may be granted orally and no Variance shall be deemed granted by virtue of any inaction or custom of the Architectural Control Committee. Once a Variance is granted, it shall inure solely to the benefit of the issuee Owner, and its successors, assigns and subsequent Owners of the Lot with respect to which the Variance was specifically granted for so long as each owns the Site, and shall become legally binding upon all other Owners. A Variance granted in any one instance shall be applicable only to that specific instance and shall not form a precedent for the granting of any subsequent Variance, nor shall it constitute a diminishment, waiver, dilution or diminution of any provision of any Governing Document. Once granted, Variances shall not be subject to rescission.

6.7 **Limitation of Liability**. The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Residential Property; they do not create any duty to any person or entity. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Architectural Control Committee shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other Legal Requirements, (c) that Lots are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners, (d) that views from any other Lots or the Residential Common Areas are protected, (e) redundancy of building plans or colors of Dwellings, or (f) that no defects exist in approved construction.

Declarant, the Residential Association, the Residential Board, any committee, or any member of any of the foregoing shall not be held liable for redundancy of building plans or colors of Dwelling, soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the Residential Association shall defend and indemnify the Residential Board, the Architectural Control Committee, and any members thereof as provided in the Residential Bylaws.

6.8 **Certificate of Compliance**. Any Owner may request that the Architectural Control Committee issue a certificate of architectural compliance certifying that such Owner's Lot has no known violations of this Article or the Development Standards. The Residential Association shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall stop the Residential Association from taking enforcement action with respect to

any condition as to which the Residential Association had notice as of the date of such certificate.

6.9 **View Impairment.** Neither Declarant nor the Residential Association guarantee or represent that any view over and across any portion of the Residential Property or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Residential Property, may diminish or obstruct any view from Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

6.10 **Enforcement.** If any construction is begun which has not been approved or which deviates from the Approved Plans, the Architectural Control Committee, Declarant, or the Residential Association may bring an action for specific performance, declaratory judgment or injunction and shall be entitled to recover its actual attorney's fees in bringing such action.

## ARTICLE VII

### MAINTENANCE AND REPAIR

7.1 **General** All areas within the Residential Property and all areas covered by easements or licenses owned or held by the Residential Association shall be maintained to the Community-Wide Standard, and to all other standards stated in the Governing Documents. The Residential Association and the individual Owners shall be responsible for such maintenance, as provided in this Article VII.

7.2 **Residential Association Responsibility.** The Residential Association shall maintain the following:

- (a) All landscaped rights-of-way and all entry features;
- (b) All streets and roadways within any easements or licenses owned or held by the Residential Association, unless such streets or roadways are maintained by some Governmental Authority.
- (c) All Residential Common Areas, and all landscaping, paving, streets, structures and improvements of any nature located thereon.
- (d) All ponds, streams and culverts located on the Residential Property which serve as part of any drainage and storm-water retention system unless otherwise maintained by a different entity; and
- (e) All lawns located on any Lot within the Residential Property by providing the following services: lawn mowing, weed control, removing and replacing dead plant material

7.3 **Owner's Responsibility.** Unless otherwise provided by the Residential Association or other designated entity, each Owner shall maintain his Lot and all unimproved Residential Common Areas along the boundaries of his Lot (e.g., area between lot line and curb).

Each owner shall maintain all landscaping, paving, structures and improvements of any nature whatsoever located on his Lot. Each Owner's maintenance of his Lot and adjoining, unimproved Residential Common Areas shall include but not be limited to:

- (a) Prompt removal of all litter, trash, garbage refuse and wastes, in accordance with the Residential Board's requirements regarding trash and garbage storage and removal;
- (b) Lawn mowing;
- (c) Tree and shrub pruning;
- (d) Watering;
- (e) Keeping exterior lighting and mechanical facilities in working order;
- (f) Keeping lawns and landscaping alive, free of weeds and attractive;
- (g) Keeping parking areas, driveways, roads and walkways in good repair;
- (h) Complying with all applicable governmental health, public and code requirements;
- (i) Removing and replacing any dead plant material
- (j) Keeping vacant land well maintained and free of trash and weeds; and
- (k) Repair of exterior of all buildings, structures and improvements.

**7.4 Residential Association's Right to Perform Owner's Responsibility.** If any Owner or Occupant of a Lot fails to perform any of the duties or responsibilities set forth in this subsection, and if such failure continues for ten (10) days after written notice thereof is given to the Owner (which notice shall be deemed to have been received upon deposit in any official depository of the United States mail, addresses to the party to whom it is intended to be delivered at that party's current address as shown by the records of the Residential Association, and sent by certified mail, return receipt requested), then the Residential Association or Declarant may, acting through its authorized agent or agents, enter onto the Lot in question and perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner without any liability for damages for wrongful entry, trespass or otherwise at any time. All Owner(s) of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Residential Association or the Declarant in performing such work computed at the rate of twelve percent (12.00%) per annum from the date(s) such amounts are expended until repaid to the Residential Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and shall reimburse the Residential Association or the Declarant, as the case may be, on demand for such costs and expense (including interest as above provided). If such Owner shall fail to reimburse the Residential Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by the Residential Association or Declarant, the

Residential Association has performed the work on the Lot of the delinquent Owner(s), the Residential Association may charge a Special Lot Assessment for such amounts against the Lot of such Owner(s), and proceed to collect such Special Lot Assessment as provided in Article VIII below.

7.5 **Cost of Maintenance.** All costs of the Residential Association in meeting its responsibilities pursuant to this section shall be Residential Common Expenses as defined herein.

## ARTICLE VIII

### ASSESSMENTS

8.1 **General.** The Residential Association shall have full right, power and authority to assess the Owners for, collect and expend all sums which the Residential Board determines to be necessary or reasonably appropriate for the general enjoyment, health, safety, welfare and protection of the Owners with respect to the Residential Property and, in general, to achieve the purposes of this Residential Declaration (the "Residential Common Expenses"). Without in any way limiting the generality of the foregoing, the Residential Association may assess, collect and expend sums for:

- (a) the payment of any and all expenses of operating the Residential Association and any facilities owned by the Residential Association including, without limitation, payroll salaries and burdens, rent, insurance premiums, ad valorem or other taxes, utility charges, supplies, materials and equipment;
- (b) the design, purchase, installation, replacement and maintenance of facilities or landscaping within (or, with respect to landscaping, adjacent to) the Residential Common Areas;
- (c) all professional fees and all court costs incurred in any litigation in which the Residential Association becomes a party;
- (d) all sums payable by the Residential Association pursuant to any contract entered into by the Residential Association; and
- (e) any other costs and expenses incurred by the Residential Association in connection with the performance of its functions under this Residential Declaration.

The Residential Association shall also have the right to assess the Owners for and collect funds for such reserves and to expend sums out of such reserves as the Residential Board may determine to be appropriate.

Assessments shall be allocated against the Residential Tracts in the same proportion as votes are allocated to the Residential Tracts, as established in Article III herein. The Sub-Association shall have the authority to collect and remit Assessments pursuant to Section 3.12 of this Declaration.

8.2 **Covenants for Assessments.** Declarant, for itself and each successor Owner, hereby covenants to pay to the Residential Association or its designee its Regular Assessment, Special Assessment, and Special Lot Assessment as and when due pursuant to this Article VIII. The covenant contained in this Section 8.2 shall become binding on each Owner by virtue of such Owner's acceptance of a deed, ground lease or other instrument of conveyance of a Lot (or interest therein), regardless of whether the covenant be contained in or otherwise referred to in such deed, ground lease or other instrument of conveyance, and shall be deemed to constitute a portion of the purchase money consideration for the acquisition of the Lot.

8.3 **Budgeting and Allocating Residential Common Expenses.** Until the Residential Association first levies assessments, Declarant shall be responsible for all Residential Common Expenses. Thereafter, assessments for Residential Common Expenses shall be levied at least annually in accordance with this Article.

For or during each Fiscal Year while this Residential Declaration is in effect, the Residential Board shall adopt a budget for the Residential Association for that Fiscal Year at least sixty (60) days prior to the end of that Fiscal Year and it shall be ratified by the Members in accordance with the provisions of the Act. Each budget shall reflect, inter alia, the total anticipated collections and expenditures for such year and a reasonable reserve for replacements and other contingencies. The budget shall include any contributions to be made to a reserve fund for repair and replacement of capital assets, based on a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset and each asset's expected repair or replacement cost. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots and the amount to be generated through the levy of Regular Assessments and Special Assessments against the Lots, as authorized in Article VIII.

It is anticipated that a separate budget will be adopted for each Fiscal Year; however, for any year as to which the Residential Board does not adopt a budget, the budget for the preceding year shall continue and be deemed to be adopted by the Residential Board as the budget for the current Fiscal Year. In such latter event, the date of adoption shall be deemed to be the first day of the current Fiscal Year.

8.4 **Regular Assessment.** The total amount of the Regular Assessment for each Fiscal Year shall be the total amount of the annual budgeted expenditures adopted by the Residential Board with respect to that Fiscal Year which are determined by the Residential Board to be generally applicable to the Residential Property (and thus which will not include any budgeted expenditures for such year which the Residential Board has designated to be covered by a Special Assessment pursuant to Section 8.5 hereof) minus any interest attributable to any prior or the current year's Regular Assessments or other income. A Regular Assessment shall be payable by all Owners of record on the applicable date that the Regular Assessment is levied by the Residential Association. The Residential Association is hereby authorized to levy Regular Assessments against all Lots subject to assessment to fund the Residential Common Expenses. In determining the Regular Assessment rate per Lot, the Residential Board may consider any

assessment income expected to be generated from any additional Lots reasonably anticipated becoming subject to assessment during the Fiscal Year.

Declarant may, but shall not be obligated to, reduce the Regular Assessment for any Fiscal Year by paying any deficit between the Residential Common Expenses and Residential Association funds collected pursuant to the current year's budget, or any portion of any such deficit (in addition to any amounts paid by Declarant under Section 8.12), which may be a contribution, an advance against future assessments due from Declarant or a loan, in Declarant's discretion. Any such deficit payment shall be disclosed as a line item in the income portion of the budget. Payment of such deficit, or portion thereof, in any year shall not obligate Declarant to continue payment of such deficit in future years, unless otherwise provided in a written agreement between the Residential Association and Declarant.

After the Conversion Date, the annual Regular Assessments shall not be increased by an amount greater than ten (10%) percent of the annual Regular Assessment of the immediately preceding calendar year. After the Conversion Date, any increase in excess of ten (10%) percent of the annual Regular Assessment of the immediately preceding calendar year shall require an affirmative vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose.

8.5 **Special Assessments.** In addition to other authorized assessments, the Residential Association shall levy Special Assessments for the purpose of:

- (a) Defraying in whole or in part, the cost of any new construction, reconstruction or unexpected repair or replacement of any of the Residential Common Areas;
- (b) Defraying the cost of repairs or replacements of any of the Residential Common Areas resulting from an uninsured loss or damage or insured loss or damage where there are insufficient insurance proceeds to pay the full cost of the repair or replacement thereof;
- (c) Responding to unusual or emergency needs of the Residential Association as may occur from time to time;
- (d) Maintaining the reserve fund as provided in Section 3.13 hereof;
- (e) Paying the cost of any unanticipated expenses intended to be paid by Regular Assessments; and
- (f) Any other purpose authorized by the Act.

Any such Special Assessment shall be levied against the entire membership. Except as otherwise specifically provided in this Residential Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the Residential Board and the consent of Declarant prior to the Conversion Date. After the Conversion Date any Special Assessment shall require an affirmative vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose. Special Assessments shall be payable in such manner and at such times as determined by the Residential Board and

may be payable in installments extending beyond the Fiscal Year in which the Special Assessment is approved.

**8.6 Special Lot Assessments.** The Residential Association shall have the power to levy Special Lot Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Residential Association may offer; and

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Residential Board shall give the Lot Owner prior written notice and, if required by this Residential Declaration or the Residential Bylaws, an opportunity for a hearing before levying any Special Lot Assessment under this subsection 8.6).

**8.7 Neighborhood Assessments.** The Residential Association may levy assessments against the Lots in a particular Neighborhood or Sub-Association to fund actual and estimated expenses incurred by the Residential Association for the primary benefit of property within such Neighborhood or Sub-Association. Neighborhood Assessments shall be levied as specifically budgeted from time to time by the Residential Board of Directors for expense items such as maintenance, insurance or special services. In addition, the Residential Association shall levy a Neighborhood Assessment upon the request of the Owners holding two-thirds (2/3) of the total votes applicable to all Lots within a Neighborhood or Sub-Association as the case may be.

**8.8 Authority to Assess Owners; Time of Payment.** The obligation to pay assessments shall commence as to each Lot on the first day of the month following the later of: (a) the closing on the sale of a Lot to a person or entity other than Declarant or (b) the issuance of a certificate of occupancy for a residential Dwelling on such Lot. The first annual Regular Assessment levied on each Lot shall be adjusted according to the number of months remaining in the Fiscal Year at the time assessments commence on the Lot.

Assessments shall be paid in such manner and on such dates as the Residential Board may establish. The Residential Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Residential Board so elects, assessments may be paid in two or more installments. Unless the Residential Board provides otherwise, the Regular Assessment shall be due and payable in advance on the first day of each Fiscal Year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Residential Board may require the outstanding balance on all assessments to be paid in full immediately.

**8.9 Enforcement and Personal Obligation of Owners for Payment of Assessments.** The Assessments provided for herein shall be the personal and individual debt of the Owner of a Lot covered by such Assessments. No Owner may, for any reason, exempt itself from liability for such Assessments levied in accordance with the provisions of this Residential

Declaration. In the event that any Assessment or installment thereof is not paid when due, and remains unpaid for a period of thirty (30) days thereafter, then the unpaid amount of any such Assessment or installment thereof shall become delinquent and shall, together with interest thereon as herein provided and costs of collection thereof, become a continuing personal obligation and debt of the non-paying Owner secured by a lien on the Lot, including all Improvements thereon, to which such Assessment or installment thereof pertains in accordance with § 47F-3-116 of the Act. The Residential Association shall have the right to reject any partial payment of any assessment or installment thereof and demand full payment thereof, or the Residential Association may, in its sole discretion, elect to accept any such partial payment on account only, without in so doing waiving any rights established hereunder with respect to any remaining balance due.

The obligation of any Owner to pay any Assessment imposed on a Lot during such Owner's period of ownership shall remain its personal obligation, and a sale or other transfer of title to such Lot shall not release such former owner from said liability notwithstanding an assumption of liability by the purchaser or transferee. The lien for any unpaid Assessments shall be unaffected by any sale or transfer of full or partial ownership interest in a Lot, or subdivided portion thereof, and shall continue in full force and effect. In the event of full or partial sale or transfer of an ownership interest in a Lot, it shall be the sole obligation of the Owner selling or transferring such interest (and not the Residential Association) to disclose to any buyer or transferee that an unpaid Assessment and associated lien against the ownership interest exist prior to that date at which such sale or transfer is to be consummated. A copy of such notice shall be sent to the Residential Association at the same time. Upon written request, the Residential Association shall provide an Owner with a statement reflecting the amount of any unpaid or delinquent Assessments with respect to a Lot owned by said Owner.

The unpaid amount of any Assessment shall bear interest from its due date at eighteen percent (18%) per annum or the maximum legal rate of interest then prevailing, whichever is lesser. In addition, the Residential Board may elect to retain the services of an attorney of its choice for the purpose of collecting any unpaid Assessment and interest charges thereon, and/or to foreclose the lien against the property subject thereto and/or to pursue any other legal or equitable remedy which the Residential Association may have, and there shall be added to the amount of such unpaid Assessment and interest charges thereon, any and all collection costs incurred by the Residential Association, whether judicial or non-judicial, and including, but not limited to, reasonable attorney fees and costs of legal suit.

**8.10 Assessment Lien and Foreclosure.** Any Assessment lien created under this Residential Declaration shall be perfected and enforced in the manner provided in the Act. Such lien(s) for payment of Assessments shall attach with the priority set forth in the Act. In addition, the Residential Association may institute suit against the Owner(s) personally to obtain a judgment for unpaid Assessments. In any foreclosure proceeding, whether judicial or nonjudicial, or in any other suit against the Owner(s), the Owner(s) shall be required to pay the costs, expenses and reasonable attorneys fees incurred by the Residential Association. The Residential Association shall have the power to buy the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any mortgagee holding a prior lien on any part of the Residential Property, the

Residential Association shall report to said mortgagee any Assessments which are delinquent and unpaid at the time of the report.

**8.11 Lien Subordination.** Any lien established as provided for in this Article VIII, shall be subordinate and inferior to any Mortgage recorded before the docketing of the claim of lien by the Residential Association, as provided in § 47F-3-116(b) of the Act; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to a foreclosure sale (whether public or private) of any such Lot pursuant to the terms and conditions of any such mortgage or deed of trust. Such foreclosure sale shall not relieve any new Owner taking title at such sale from liability for the amount of any Assessments thereafter becoming due or from a lien arising from any such subsequent Assessment.

At the time any Mortgage financing or refinancing is obtained for any Lot, the Owner of such Lot shall, within thirty (30) days following the consummation of any such Mortgage deliver to the Residential Association written notice identifying the Mortgagee in terms of its full legal name, its current address and telephone number, and the name of an officer or other person within the entity who is responsible for that particular loan account. Upon the written request of any such Mortgagee, the Residential Association shall report to such Mortgagee any unpaid Assessments which are delinquent as herein defined. The Residential Association may from time to time, at its own initiative, elect to report delinquent Assessments to such Mortgagees.

**8.12 Budget Deficits Prior to the Conversion Date.**

Prior to the Conversion Date, Declarant may (but shall not be required to):

(a) advance funds to the Residential Association sufficient to satisfy the deficit, if any, between the Residential Association's actual operating expenses and the sum of the Regular, Special, Neighborhood and Special Lot Assessments collected by the Residential Association in any Fiscal Year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Residential Association in favor of Declarant. Declarant's failure to obtain a promissory note shall not invalidate the debt.

(b) cause the Residential Association to borrow any amount from a third party at the then prevailing rates for such a loan in the local area of the Residential Property. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Residential Common Areas or any of the improvements maintained by the Residential Association shall be given in connection with such loan.

(c) acquire property for, or provide services to, the Residential Association or the Residential Common Areas. Declarant shall designate the value of the property or the services provided, and such amounts, at Declarant's request, shall be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

**8.13 Statement of Account.** Upon written request of any Member, Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Residential Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to

such Lot, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting person personally or by certified mail, first-class postage prepaid, return receipt requested. The Residential Association may require the payment of a reasonable processing fee for issuance of such statement.

Such statement shall bind the Residential Association in favor of persons who rely upon it in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within fourteen (14) days of receipt of the request, all unpaid assessments that became due before the date of making such request shall be subordinate to the lien of a Mortgagee that acquires its interest after requesting such statement.

**8.14 Exempt Residential Property.** The following property shall be exempt from payment of Regular Assessments, Special Lot Assessments, Special Assessments and Neighborhood Assessments:

- (a) all Residential Common Areas;
- (b) any property dedicated to and accepted by any Governmental Authority or public utility; and
- (c) any and all property owned by the Declarant.

**8.15 Capitalization of Association** Upon acquisition of record title to a Lot by the first purchaser of a Dwelling on a Lot, a contribution shall be made by or on behalf of the purchaser to the working capital of the Residential Association in an amount equal to the greater of \$500.00 or two months of the then current Regular Assessment per Lot. This amount shall be in addition to, not in lieu of, the annual Regular Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the operating account of the Residential Association for use in covering operating expenses and other expenses incurred by the Residential Association pursuant to this Residential Declaration and the Residential Bylaws, including expenses incurred by Declarant in providing infrastructure or other Residential Common Areas.

## ARTICLE IX

### INSURANCE

**9.1 Insurance Coverage.** The Residential Association 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.

- (a) Blanket property insurance for all insurable improvements on the Residential Common Areas to the extent that the Residential Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies the Residential Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under then current building ordinances and codes. The Residential

Association shall be deemed trustee of all Members' interests in all insurance proceeds paid to the Residential Association under any such policies and shall have full power to receive and to deal with such proceeds. The insurance proceeds shall be used by the Residential Association for the repair or replacement of the property for which the insurance was carried, except as otherwise provided in this section.

(b) Commercial general liability insurance on the Residential Common Areas. Coverage shall include, without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Residential Common Areas. The Residential Board shall use its business judgment in deciding upon per occurrence limits for such coverage and shall consider any applicable secondary mortgage guidelines relating to such coverage. The liability insurance shall name, as separately protected insureds, Declarant, any property manager, the Residential Association, the Residential Board, the officers of the Residential Association, the Architectural Control Committee, and their respective representatives, members, agents, and employees with respect to any liability arising out of the maintenance or use of the Residential Common Areas.

(c) Workers' compensation insurance and employers' liability insurance, if and to the extent required by law.

(d) Directors' and officers' liability coverage.

(e) Commercial crime insurance, including fidelity insurance covering all persons responsible for handling Residential Association funds in an amount determined in the Residential Board's business judgment but not less than an amount equal to one-quarter of the annual Regular Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons or entities serving without compensation.

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

9.2 **Premiums**. Premiums for all insurance shall be Residential Common Expenses unless the Residential Board reasonably determines that other treatment of the premiums is more appropriate. The Residential Association shall include such premiums in the assessments it levies. The Residential Board shall review the limits of all Residential Association insurance policies at least once a year and shall adjust the policy limits as the Residential Board deems necessary or appropriate.

9.3 **Review of Coverage**. The Residential Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified persons, at least one of whom must be familiar with replacement costs in the Wake County area. All Residential Association policies shall provide for a certificate of insurance to be furnished to the Residential Association and, upon request, to each Member insured.

The policies may provide for a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Residential Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Residential Board reasonably determines, after notice and an opportunity to be heard in accordance with the Residential Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Residential Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Special Lot Assessment pursuant to Article VIII.

9.4 **Coverage Standards**. All insurance coverage obtained by the Residential Board shall:

(a) be written with a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Residential Board deems appropriate and carries a Best rating of AA or better;

(b) be written in the name of the Residential Association as trustee for the benefited parties (policies on the Residential Common Areas shall be for the benefit of the Residential Association and its Members);

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement, if the policy contains a coinsurance clause;

(f) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Residential Association or interest in the Residential Common Areas as a Member in the Residential Association (provided, this provision shall not be construed as giving any Owner any interest in the Residential Common Areas other than that of a Member);

(g) include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more Owners, or on account of any curable defect or violation without prior written demand to the Residential Association to cure the defect or violation and allowance of a reasonable time to cure; and

(h) include an endorsement precluding the insurer from denying a claim by an Owner or conditioning recovery under the policy based upon or due to the negligent acts or omissions of the Residential Association or any other Owner.

9.5 **Additional Terms**. In addition, the Residential Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds for claims

arising in connection with the ownership, existence, use or management of the Residential Common Areas and provide:

(a) a waiver of subrogation as to any claims against the Residential Association's board of directors, officers, employees and its manager, or the Owners and their Occupants, servants, agents and guests;

(b) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;  
and

(c) an endorsement requiring at least 30 days' prior written notice to the Residential Association of any cancellation, substantial modification or non-renewal.

## ARTICLE X

### REPAIR AND RECONSTRUCTION OF RESIDENTIAL ASSOCIATION PROPERTY

The Residential Association shall have the authority and the duty to repair or reconstruct Residential Common Areas or other property which the Residential Association is obligated to insure ("Insured Property") that is damaged or destroyed unless such repair or reconstruction would be illegal under any state or local ordinance governing health or safety, or Members representing at least eighty percent (80%) percent of the total vote of the Residential Association vote not to repair or reconstruct.

Except as otherwise provided in this section, the Residential Board shall diligently pursue to completion the repair or reconstruction of that part of the Insured Property damaged or destroyed. The Residential Association may take all necessary or appropriate action to affect such repair or reconstruction. Such repair or reconstruction shall be in accordance with the original plans and specifications unless other plans are approved by the Residential Board.

The proceeds of any insurance collected shall be available to the Residential Association for the purpose of repair or reconstruction of Insured Property. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Residential Board, pursuant to Article VIII may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Article VIII. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction. The insurance proceeds held by the Residential Association and the amounts of any such Special Assessments shall constitute a fund for the payment for costs of repair or reconstruction after casualty. If a balance exists after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners of the Lots in proportion to the vote allocated to each Lot.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the Residential Association shall clear the affected property of all debris and ruins and thereafter shall maintain such improvements in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The cost of removal and

landscaping shall be paid for with insurance proceeds. The Residential Association shall retain the remaining proceeds in its general or other funds or shall allocate or distribute such funds as the Residential Board determines appropriate, provided any such distribution of insurance proceeds shall be proportionate to the Members' interests.

## ARTICLE XI

### EASEMENTS

11.1 **Owners' Easements of Enjoyment.** Except as limited by this Residential Declaration and the Act, every Owner shall have a right of use and enjoyment in and to the Residential Common Areas which shall be appurtenant to and shall pass with the title to every Lot. Except as limited by this Residential Declaration and the Act, any Owner may delegate his rights of use and enjoyment of the Residential Common Areas to the members of his family, Occupants, contract purchasers who reside on the Residential Property, or his guests.

11.2 **Walks, Drives, Parking Areas, and Utilities.** All areas of the Residential Property shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities and for the maintenance of and general access to all stormwater control structures, gas lines, telephone and electric power lines, television antenna lines, other utilities, ingress, egress and regress and otherwise as shall be established by the Declarant or by its predecessor in title, prior to the conveyance of the Residential Property designated to be the Residential Common Areas to the Residential Association; and the Residential Association shall have the power and authority to grant and establish further easements upon, over, under, and across the Residential Common Areas.

11.3 **Easement for Entry Features.** There is hereby reserved to the Declarant and the Residential Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Residential Property, over and upon each Lot and all Residential Common Areas. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

11.4 **Easement to Government Entities.** An easement is hereby established for municipal, State or public utilities serving the area, their agents and employees, over all Residential Common Areas hereby or hereafter established for setting, removing and reading utility meters, maintaining and replacing utility connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, garbage collection, mail delivery, police and fire protection.

11.5 **Rainwater Capture Easement.** Declarant reserves a perpetual easement for capture and use of rainwater runoff from the Residential Common Areas and improvements located on Lots including the right to install or require installation of and utilize a system of gutters and piping and other facilities as necessary to capture said runoff.

**11.6 Encroachments and Declarant's Easement to Correct Drainage.** All Lots and the Residential Common Areas shall be subject to easements for the encroachment of initial improvements constructed on any Lots or Residential Common Areas to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. For a period of twenty-five (25) years from the date of conveyance of the first Lot in a parcel or section, the Declarant reserves a blanket easement and right-of-way on, over, and under the ground within that parcel, phase or section to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the affected Residential Property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected owners. These rights and reservations are assignable by the Declarant.

**11.7 Construction and Sale Period Easement.** Notwithstanding any provisions contained in the Residential Declaration, the Residential Bylaws, the Residential Articles of Incorporation, use restrictions, Rules and Regulations, Development Standards, and any amendments thereto, until Declarant's right unilaterally to subject property to this Residential Declaration terminates and thereafter so long as Declarant owns any property in the Residential Property for development or sale, Declarant reserves an easement across the Residential Property for Declarant to maintain and carry on development, construction, and sales activities related to property within or near the Residential Property, upon such portion of the Residential Property as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient or incidental to the development, construction and sales activities related to property within or near the Residential Property. This easement shall include, without limitation: (i) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of the Residential Property as well as any Lot in the Residential Property; (ii) the right to tie into any portion of the Residential Property with driveways, parking areas and walkways; (iii) the right to tie into or otherwise connect and use (without a tap-on or any other fee for doing so), replace, relocate, maintain and repair any device which provides utility or similar services; (iv) the right (but not the obligation) to construct recreational facilities on the Residential Common Areas; (v) the right to carry on sales and promotional activities in the Residential Property; (vi) the right to place direction and marketing signs on any portion of the Residential Property, including any Lot or Residential Common Areas; and (vii) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities. Further, the Declarant, may use residences, offices or other buildings owned or leased by Declarant or an assignee of Declarant as model residences and sales offices, and may also use recreational facilities available for use by the Residential Property as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the person causing the damage at its sole

expense. This section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Residential Declaration. Declarant reserves the right to assign some or all of the easement rights established in this Section 11.7 to a Builder or developer approved by Declarant in Declarant's sole discretion.

11.8 **Irrigation.** There is hereby reserved to the Declarant and the Residential Association a blanket easement to pump water from ponds, lakes and other bodies of water located within the Residential Property for irrigation purposes subject the requirements of any Governmental Authority.

11.9 **Access and Fence Easement.** Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the Development Standards or Governmental Authority.

11.10 **Easement and Right of Entry for Repair, Maintenance and Reconstruction.** If any dwelling is located closer than four (4) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his home. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which existed prior to the commencement of the work as is reasonably practicable.

11.11 **Pedestrian Easements.** To the extent that they are not maintained by the Owners of those portions of the Properties on which they are located, the Residential Association shall maintain all pedestrian access easements required to be located on any portion of the Properties pursuant to approved subdivision plan approvals and/or pursuant Recorded Documents, and/or pursuant to written maintenance agreements.

11.12 **Police Powers.** Declarant reserves for itself, its successors and assigns, and grants to the Residential Association, a blanket easement throughout 5401 North Residential for private patrol services, and for police powers and services supplied by the local, state and federal governments. Declarant may, at any time, in Declarant's sole and absolute discretion, install security cameras, gates or other security devices as it deems necessary for the protection of 5401 North Residential. All security measures shall be paid for out of Assessments. Declarant and the Association may adopt Rules and Regulations providing for security measures, parking and traffic regulations, or such other policing power, which may include enforcement through fines and penalties, with failure to pay such fines permitting the Declarant or the Residential Association to file a lien against any Lot owned by the person or entity found to be in violation of such Rule or Regulation.

11.13 **Property Identification Signs.** Declarant hereby excepts and reserves a nonexclusive perpetual easement for the construction, reconstruction, replacement, operation, maintenance and repair of a sign structure, landscaping and entry features over, under, upon and across certain portions of 5401 North Residential, together with reasonable access over,

under, upon, through and across the Residential Property to install, replace, maintain, repair and operate such utility lines necessary to provide power to illuminate any of the same.

11.14 **Restoration Obligation.** As to the easements reserved in this Article XI, the holder of an easement right shall use its best efforts to cooperate to assure the reasonable, mutual use of the burdened property with the owner of the burdened property. After use of the easement areas or exercise of the rights herein granted, the easement holder shall restore the surface of the property subject to the easement to a condition as close as is reasonably possible to that which existed prior to such use or exercise, provided that the easement holder shall not be required to replace, or otherwise repair any improvements, trees, shrubs or other obstructions which interfere with use of the easement granted pursuant to this Article XI and which are damaged through the reasonable exercise of the right granted pursuant to this Article XI.

## ARTICLE XII

### MISCELLANEOUS

12.1 **Term.** The covenants, conditions, restrictions, easements, uses, privileges, charges, assessments, burdens and liens set forth in this Residential Declaration shall be personal covenants of each Owner, shall run with the title to the land subject to this Residential Declaration and shall be binding upon and inure to the benefit of Declarant, the Residential Association and each Owner, and their respective heirs, successors and assigns. This Declaration shall become effective upon the date it is recorded in the Register of Deeds Office in Wake County, North Carolina and, subject to the provisions of Section 13.2 hereof, shall remain effective for fifty years thereafter after which time this Residential Declaration shall automatically be extended for successive periods of ten (10) years unless an instrument has been recorded in the Office of the Register of Deeds of Wake County, North Carolina (or such other place as may be required by law at the time of such recording), agreeing to terminate this Residential Declaration pursuant to the terms of Section 12.2 hereof.

12.2 **Amendment; Termination.** This Residential Declaration may be amended and terminated only in accordance with this Section 12.2.

(a) Prior to the Conversion Date, Declarant shall have the sole and exclusive right, power and authority to amend this Residential Declaration, subject to the limitations that no amendment shall be adopted, or if adopted shall become effective, which materially and adversely affects the rights of any lender holding a superior lien on a Lot without the prior written consent of such lender.

(b) Upon and after the Conversion Date, this Residential Declaration may be amended by the affirmative vote, by the Class A Members, of at least sixty-seven (67%) percent of the total votes which those Class A Members in good standing at the time are entitled to cast.

(c) This Residential Declaration may be terminated at any time only by the affirmative vote of at least eighty percent (80%) of votes of the Residential Association, and prior to the Conversion Date, approval of the Declarant.

No amendment to or termination of this Residential Declaration shall become effective until the requisite votes are affirmatively cast therefor and a written instrument, duly executed by Declarant (prior to the Conversion Date) or a duly authorized officer of the Residential Association (upon and after the Conversion Date), setting forth the specific amendment to this Residential Declaration or stating that this Residential Declaration has been terminated, is executed and recorded in the appropriate public records.

**12.3 Correction of Errors.** During the existence of this Residential Declaration, the Residential Board shall have full right, power and authority to correct errors in this Residential Declaration which the Residential Board determines to be of a clerical or otherwise nonsubstantive nature. Such correction shall not be deemed an amendment hereto for purposes of the voting requirements of Section 12.2 hereof but shall, upon being made by the Residential Board, become binding on all Owners.

**12.4. Enforcement.** The enforcement of this Residential Declaration shall be vested in the Residential Association. Accordingly, the Residential Association shall initially have the exclusive right, power and authority to enforce (or to elect not to enforce) any or all of the terms of this Residential Declaration by any legal proceedings, at law or in equity, against any person or entity violating or attempting to violate any of them, or to seek any other recourse against any such person whether the recourse sought is an injunction, the recovery of damages, the foreclosure of the Residential Association's Lien or otherwise. If the Residential Association fails or refuses to exercise any right, remedy or recourse afforded it for a violation of this Residential Declaration as to which no Variance was granted, then any Owner may give written notice to the Residential Association demanding that the Residential Association exercise such rights, remedies or recourses. If, within thirty days after its receipt of the Owner's notice, the Residential Association does not commence to exercise such rights, remedies or recourses against the person or entity violating this Residential Declaration, then the Owner sending the notice may exercise any or all of the rights, remedies and recourses afforded the aggrieved Owner at law or in equity as a consequence of such violation. Notwithstanding any other provision herein, the Residential Board may impose fines on an Owner and/or suspend an Owner's right and privilege to use certain Residential Common Areas for failure of that Owner, his Occupants, agents or invitees, to abide by this Residential Declaration, or the Rules and Regulations. The procedure for the Residential Board to do so shall be as set forth in the Residential Bylaws. The Residential Board shall not impose any such fine or suspension unless and until the Owner charged has been given notice of the charge, opportunity to be heard by and present evidence to the Residential Board and notice of the Residential Board's decision. Suspensions may be imposed for a reasonable period of time and/or until a violation or delinquency is cured.

12.5 **Responsibility of Owner.** Each Owner shall be responsible for any breach of this Residential Declaration which is the result of the acts or omissions of the Owner, or its officers, directors, shareholders, partners, employees, contractors, agents, invitees or Occupants. Any breach of this Residential Declaration relating to the use or maintenance of a Lot is hereby declared to be a nuisance. Accordingly, every remedy, remedy or recourse allowed by law or equity as a result of, or with respect to the abatement of, any such nuisance is hereby declared to be available to the Residential Association or, subject to the provisions of Section 12.4 hereof, any aggrieved Owner.

12.6 **Applicable Law.** This Residential Declaration shall be governed by, and construed in accordance with, the laws of the State of North Carolina. All monetary and other obligations of any Owner hereunder are performable in Wake County, North Carolina.

12.7 **Compliance Certificate.** Upon the written request of any Owner or Mortgagee, the Residential Association shall issue a certificate stating whether the Owner is delinquent in the payment of any sum due the Residential Association or whether, to the knowledge of the Residential Association, the Owner is otherwise in violation of this Residential Declaration. The Residential Association may impose and collect from the Owner with respect to which the certificate is requested a reasonable charge as a condition to the issuance thereof.

12.8 **Notices.** All notices and other communications given pursuant to this Residential Declaration shall be in writing and shall either be mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, and addressed as set forth in this Section 12.8, or delivered in person to the intended addressee, or sent by recognized overnight delivery carrier or sent by electronic mail to the email address on file with the Residential Association. Notice sent in the aforesaid manner shall become effective three days after deposit for notice sent by United States Mail, immediately upon delivery in person and one day after deposit with overnight delivery carrier and immediately upon sending by electronic mail; notice given in any other manner, and any notice given to Declarant or the Residential Association, shall be effective only upon receipt by the intended addressee. For the purpose of notice, the address of (a) Declarant shall be EV-5401 North, L.L.C. with an address of 7780 Brier Creek Parkway, Suite 420, Raleigh, NC 27617 (b) the Residential Association shall be 7780 Brier Creek Parkway, Suite 420, Raleigh, NC 27617, and (c) any Owner shall be its last address as shown on the records of the Residential Association at the time the notice is sent. Declarant, the Residential Association and any Owner shall have the continuing right to change its address for notice hereunder by: in the case of a change of address by an Owner, the giving of fifteen days prior written notice to the Residential Association in accordance with this Section 12.8, or, in the case of a change of address by Declarant or the Residential Association, at the election of Declarant or the Residential Association either the execution of a supplement to this Residential Declaration reflecting such change of address and the recording of same in the appropriate public records or the giving of written notice to each Owner of record in the manner set forth above.

12.9 **Severability.** This Residential Declaration and the other Governing Documents are to be performed in accordance with and only to the extent permitted by applicable legal requirements. If any provision of this Residential Declaration or any other Governing Document or the application thereof to any person or entity or circumstance shall, for any reason and to any

extent, be invalid or unenforceable, the remainder of this Residential Declaration and the other Governing Documents and the application of such provision to other persons or entities or circumstances shall not be effected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.10 **Number and Gender, Captions and References.** As the context of this Residential Declaration may require, pronouns shall include all persons or entities, the singular number shall include the plural and neuter shall include the masculine and the feminine gender. Article and section headings in this Residential Declaration are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define any article or section hereof. Whenever the word "hereof", "herein", "hereunder" or a word of similar import is used in this Residential Declaration, it shall be construed as referring to this Residential Declaration in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "section" shall be construed as referring to the indicated section of this Residential Declaration.

12.11 **Attorney's Fees.** If Declarant, the Residential Association or any Owner entitled to do so initiates any litigation against any Owner relating to this Residential Declaration, and prevails in such litigation, or if Declarant or the Residential Association defends against any litigation brought against it by any Owner relating to this Residential Declaration and prevails in such litigation, then such prevailing party shall be entitled to recover, in addition to all damages and other relief allowed by law, all court costs and reasonable attorney's fees incurred in connection with such litigation.

12.12 **Interest on Owner's Obligations.** Any amount due from an Owner to the Residential Association pursuant to this Residential Declaration which is not paid when due shall bear interest at the maximum rate allowed by law (or, if there is no maximum rate on the date the amount became due, at the rate of twenty percent per annum) from the date the amount becomes due until the date the amount is paid, but the payment of such interest shall not excuse or cure the default in payment. It is the specific intent of Declarant to, at all times, comply with applicable usury law with respect to this Residential Declaration. Accordingly, if, at any time, it is determined that any amount called for, charged or collected pursuant to this Residential Declaration exceeds the amount which may be lawfully called for, charged or collected under applicable usury law then all excess amounts theretofore collected by the Residential Association shall be immediately refunded to the payor, the provisions hereof shall be immediately deemed reformed and the amounts thereafter collectible hereunder shall be immediately deemed reduced without the necessity of the execution of any new document so as to comply with applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

12.13. **Incorporation by Reference.** The exhibit hereto is incorporated herein for any and all purposes.

12.14 **Interpretation.** If any disagreement shall arise between Members as to the interpretation or application of this Residential Declaration or any other Governing Document, the disagreement shall be resolved by the Residential Board and the determination of the

Residential Board shall be final and binding upon all Members unless the determination was fraudulently induced or arbitrarily or capriciously rendered.

12.15 **Waiver.** This Residential Declaration may not be waived orally or impliedly, but only by Declarant (prior to the Conversion Date) or the Residential Association (upon and after the Conversion Date) evidencing such waiver in writing. Thus, neither the acceptance of a payment by the Residential Association nor any other custom or practice followed in connection with this Residential Declaration shall constitute a waiver of any provision hereof. Further, neither the failure of the Residential Association to complain of any violation of this Residential Declaration, regardless of how long such failure continues, nor the failure of the Residential Association to invoke (or the election by the Residential Association not to invoke) any right, remedy or recourse for a violation hereof, shall extinguish, waive or in any way diminish the rights, remedies and recourses of the Residential Association with respect to such violation. No waiver by the Residential Association of any provision of this Residential Declaration as to any Owner shall be deemed to be a waiver of any other provision hereof as to such Owner, or a waiver of the same provision as to any other Owner. The Residential Association's consent to any act requiring the Residential Association's consent hereunder or under any other Governing Document shall be not be deemed to render unnecessary the attaining of the Residential Association's consent as to any other act. No consent shall be binding upon the Residential Association unless such consent is evidenced in writing executed by an officer of the Residential Association duly authorized to execute the same.

12.16 **Owner's Liability; Subsequent Sale.** Except as provided herein, upon the divestiture (voluntarily or involuntarily) of the interest of an Owner in all or a portion of its Lot, the prior Owner shall thereupon be relieved of all liability accruing under this Residential Declaration with respect to such Lot or the portion thereof as to which the Owner has been divested after the date of divestiture. The preceding sentence shall not, in any way and to any extent, impair the Residential Association's Lien against the Lot for sums due the Residential Association by the prior Owner or any subsequent Owner, or the obligation of the subsequent Owner for any liabilities accruing after the date of divestiture.

12.17 **Exculpation.** Neither Declarant nor the Residential Association, nor any of their officers, directors, shareholders or Members, nor any Committee Member (individually and collectively, an "exculpated person"), shall be personally liable to any person or entity for any act or omission of any nature whatsoever occurring in the course of acting under or in connection with this Residential Declaration, except gross negligence, willful misconduct or criminal conduct. Without in any way limiting the generality of the foregoing, no exculpated person shall have any nature whatsoever by virtue of any action taken or not taken with respect to any plans, drawings, specifications, documents, materials and requests for Variances presented to it for review and approval, and under no circumstances shall any such person be deemed to have passed upon the structural integrity or safety of any Improvement described on or in any such materials. In addition to such indemnification as may be contained in the Residential Articles of Incorporation or Residential Bylaws, the Residential Association hereby agrees to defend, indemnify and hold harmless all officers, directors, Members and Committee Members of the Residential Association, and their heirs and legal representatives, against all liability (contractual and otherwise) arising out of any contracts entered into by the Residential Association, or any

acts or omissions of such officers, directors, Members or Committee Members when acting on behalf of the Residential Association unless such liability arises out of the gross negligence, willful misconduct or criminal conduct of any such person. The foregoing indemnification shall extend to all costs and expenses (including, but not limited to, reasonable attorney's fees and court costs, amounts of judgment paid and amounts paid in settlement) actually or reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or otherwise, in which any such indemnified person may become involved; provided, however, that such indemnification shall not be operative to an indemnified person with respect to any matter settled or compromised unless, in the opinion of independent counsel selected by the Residential Board, there is no reasonable ground for such indemnified person being adjudged liable for gross negligence, willful misconduct or criminal conduct in the claim at issue.

### ARTICLE XIII

#### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, and guarantors of First Mortgages on Lots in the Residential Property. The provisions of this Article apply to both this Residential Declaration and to the Residential Bylaws, notwithstanding any other provisions contained therein.

13.1 **Notices of Action.** An institutional holder, insurer, or guarantor of a First Mortgage which provides a written request to the Residential Association, such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an ("Eligible Holder"), shall be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Residential Property or which affects any Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage or such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days of receiving notice of such violation;

(c) any lapse, cancellation or material modification of any insurance policy the Residential Association maintains; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders.

13.2 **No Priority.** No provision of this Residential Declaration or the Residential Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of

the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Residential Common Areas.

13.3 **Notice to Residential Association.** Upon request, each Owner shall be obligated to furnish to the Residential Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

13.4 **Failure of Mortgagee To Respond.** Any Mortgagee who receives a written request from the Residential Board to respond to or consent to any action shall be deemed to have approved such action if the Residential Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Residential Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

13.5 **Construction of Article XIII.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Residential Declaration, the Residential Bylaws, or the Planned Community Act for any of the acts set out in this Article.

## ARTICLE XIV

### DECLARANT RIGHTS

14.1 **Reasonable Rights To Develop.** Declarant and/or its approved Builders, contractors or transferees may construct improvements to or within the Residential Property including to the Lots. The completion of such construction and the sale or other disposal of the Lots is essential to the establishment and welfare of the Residential Property. Therefore, prior to the Conversion Date, nothing in this Residential Declaration or the other Governing Documents shall be construed to:

(a) prevent Declarant, approved Builders, or their contractors or subcontractors from doing whatever is reasonably necessary or advisable in connection with the commencement or completion of the above-described work throughout the Residential Property;

(b) prevent Declarant, approved Builders or their representatives from erecting, constructing, and maintaining anywhere in the Residential Property such structures as reasonably may be necessary for the conduct of its business of completing the work, establishing 5401 North Residential as a residential development and disposing of the Lots by sale, lease, or otherwise;

(c) prevent Declarant or approved Builders from maintaining such signs and conducting such activities in any part of the Residential Property owned by Declarant or the Residential Association as Declarant may deem to be reasonably necessary for the sale, lease, or disposition of Lots; or

(d) prevent Declarant or approved Builders from placing and utilizing on Lots or other property which they own one or more mobile trailers or temporary structures as sales offices or for construction activities.

Nothing in this section shall give Declarant or approved Builders the right to damage any Lot or other property not owned by Declarant.

14.2 **Marketing and Sales Activities.** Prior to the Conversion Date, Declarant and approved Builders may construct, relocate, maintain and carry on upon any Lot owned by the Declarant or the approved Builder, as the case may be, or upon portions of the Residential Common Areas, such facilities and activities as may be reasonably required, convenient or incidental to the construction, marketing or sale of Lots, as determined in Declarant's sole opinion. Such facilities and activities may include, without limitation, business offices, signs, model homes, and sales offices. There shall be no limit on the number or size of such facilities. Declarant and approved Builders shall have easements for access to and use of such facilities. Declarant reserves the right to remove any personal property used in connection with its activities on the Residential Common Areas upon completion of the construction, marketing or sale of Lots, as determined in Declarant's sole opinion.

14.3 **Construction of Improvements.** Prior to the Conversion Date, Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Residential Common Areas for the purpose of making, constructing and installing such improvements to the Residential Common Areas as it deems appropriate in its sole discretion.

14.4 **Right to Approve Additional Covenants.** Prior to the Conversion Date, no person or entity shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Residential Property without Declarant's prior written approval. Any instrument recorded without such consent shall be void and of no force and effect unless Declarant subsequently consents in a Recorded Document.

14.5 **Right to Transfer or Assign Declarant Rights.** Any or all of Declarant's rights or obligations set forth in this Residential Declaration, including but not limited to those set out in this Article XIV, or the Residential Bylaws may be transferred in whole or in part to other persons; however, the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Residential Declaration or the Residential Bylaws. No such transfer or assignment shall be effective unless evidenced by a Recorded Document. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one-time or limited basis, any right reserved to Declarant in this Residential Declaration where Declarant does not intend to transfer such right in its entirety. In such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

14.6 **Exclusive Rights to Use Name of Development.** Prior to the Conversion Date, no person or entity shall use the name "5401 North Residential" or any derivative of such name

in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "5401 North Residential" in printed or promotional matter where such term is used solely to specify that particular property is located within the community and the Residential Association shall be entitled to use the words "5401 North Residential" in its name.

14.7 **Right to Approve Changes in Residential Property Standards.** Prior to the Conversion Date, no amendment to or modification of any Rules and Regulations or Development Standards shall be effective without Declarant's prior written approval.

14.8 **Easement to Inspect and Right to Correct.**

14.8.1 **Easement.** Declarant reserves for itself and such other persons as it may designate perpetual non-exclusive easements throughout The Residential Property to the extent reasonably necessary for the purposes of accessing, inspecting, testing, redesigning or correcting any portion of the Residential Property including Lots and Residential Common Areas. Declarant shall have the right to redesign or correct any part of the Residential Property, including Lots owned by Declarant and Residential Common Areas.

14.8.2 **Right of Entry.** Entry onto a Lot shall be after reasonable notice, except in an emergency. Entry into a structure on a Lot shall be only after Declarant notifies the Lot's Owner and agrees with the Owner regarding a reasonable time to enter the structures on such Lot to perform such activities.

14.8.3 **Damage.** Declarant shall promptly repair any damage to a Lot or the Residential Common Areas resulting from the exercise of the easement or right of entry described in subsections 14.8.1 and 14.8.2 of this section at its own expense.

14.9 **Appointment or Removal of Members of the Residential Board and Officers.** Prior to the Conversion Date, Declarant shall have the right to appoint or remove any member of the Residential Board or officer of the Residential Association.

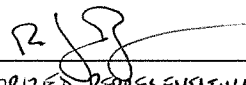
14.10 **Amendment to Residential Declaration.** Prior to the Conversion Date, Declarant shall have the right to amend or rescind and restate this Residential Declaration by a Recorded Document, without approval or joinder of the Residential Association or any other Party.

14.11 **Review of Design and Construction.** Prior to the Conversion Date, Declarant shall have the right to control the design, quality, installation and construction of improvements within the Residential Property as provided herein above.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, EV-5401 North, L.L.C., as the Declarant hereunder, has caused this instrument to be executed by its duly authorized Manager, all by order and authority duly granted by its members, as of the day and year first above written.

**EV-5401 North, L.L.C., a Louisiana limited liability company**

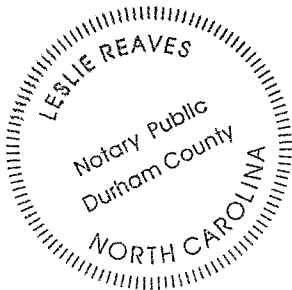
By:   
~~AUTHORIZED REPRESENTATIVE, Manager~~

STATE OF NORTH CAROLINA :

COUNTY OF Wake :

I, the undersigned Notary Public of the County and State aforesaid, certify that Ric Rojas personally came before me this day and acknowledged that he is the ~~Manager~~ of EV-5401 North, L.L.C., a Louisiana limited liability company and acknowledged the due execution of the foregoing instrument as the act of said company.  
*\*Authorized Representative*

Witness my hand and official stamp or seal, this 16<sup>th</sup> day of DECEMBER,  
2013  
2015.



  
Notary Public  
Type/Print Name: LESLIE REAVES  
My Commission Expires: OCTOBER 5, 2018

**EXHIBIT "A"****Parcel 1**

BEGINNING at an iron pipe recovered marking the southeastern terminus of Perry Creek Road, a 100' public right-of-way, as shown on that recombination plat recorded in Book of Maps 2007, page 2832, Wake County Registry; runs thence along new lines the following courses and distances: (1) along a curve to the left having a radius of 1,444.400 feet and an arc distance of 660.919 feet to a point; (2) South 42° 40' 41.93" East 1,249.560 feet to a point; (3) along a curve to the right having a radius of 1,556.947 feet and an arc distance of 819.895 feet to a point; (4) South 77° 55' 12.83" West 5.000 feet to a point; and (5) along a curve to the right having a radius of 1,552.000 feet and an arc distance of 664.167 feet to a point located in the northern right-of-way line of U.S. Highway 540, a variable width right-of-way; runs thence along the northern right-of-way line of U.S. Highway 540 the following courses and distances: (6) North 77° 38' 54.93" West 2,075.112 feet to a point; (7) North 71° 39' 17.95" West 195.129 feet to a point; (8) North 74° 58' 38.37" West 404.828 feet to a point; (9) North 67° 03' 25.32" West 241.287 feet to a point; (10) North 61° 58' 59.32" West 241.227 feet to a point; (11) North 56° 52' 58.32" West 241.357 feet to a point; (12) North 51° 54' 29.32" West 241.347 feet to a point; and (13) North 41° 35' 43.32" West 70.679 feet to a point; runs thence leaving the northern right-of-way line of U.S. Highway 540 and along new lines the following courses and distances: (14) along a curve to the right having a radius of 1,835.50 feet and an arc distance of 549.290 feet to point; (15) North 63° 32' 54.71" East 59.609 feet to a point; (16) along a curve to the right having a radius of 1,844.00 feet and an arc distance of 249.192 feet to a point; (17) North 80° 24' 25.34" East 254.537 feet to a point; (18) South 09° 35' 34.66" East 8.000 feet to a point; (19) North 80° 24' 25.34" East 372.368 feet to a point; (20) North 23° 46' 51.18" East 5.380 feet to a point; (21) along a curve to the left having a radius of 278.500 feet and an arc distance of 338.239 feet to a point; (22) North 88° 37' 38.30" West 499.035 feet to a point; (23) North 00° 03' 38.61" West 842.385 feet to a point; (24) North 90° 00' 00.00" East 559.642 feet to a point; (25) South 87° 25' 16.13" East 65.376 feet to a point; (26) South 85° 56' 51.31" East 393.053 feet to a point; (27) North 75° 01' 13.62" East 237.384 feet to a point; (28) along a curve to the right having a radius of 1,687.848 feet and an arc distance of 183.003 feet to a point; and (29) North 73° 33' 04.76" East 106.600 feet to the point and place of Beginning, containing approximately 123.72 acres, and being designated as the "West Parcel".

**Parcel 2**

Beginning at an iron pipe, said iron pipe having NC Grid NAD 83 coordinates of N.769697.15 and E.2138468.41; thence S 00°00'23" W a distance of 610.11 feet to a point; thence S 00°00'23" W a distance of 396.28 feet to a point; thence S 38°37'52" E a distance of 120.24 feet to a point; thence S 53°32'21" W a distance of 759.83 feet to a point; thence N 42°40'40" W a distance of 635.39 feet to an iron pipe; thence N 42°40'40" W a distance of 35.20 feet to an iron pipe; thence N 42°40'40" W a distance of 265.07 feet to an iron pipe; thence with a curve turning to the right an arc length of 475.83 feet, radius of 1443.00 feet, chord bearing of N 33°13'52" W, chord length of 473.68 feet to an iron pipe; thence N 73°58'30" E a distance of 576.76 feet to an iron pipe; thence N 73°58'30" E a distance of 186.12 feet to an iron pipe; thence S 88°24'26" E a distance of 225.66 feet to an iron pipe; thence N 01°35'34" E a distance of 259.12 feet to a point; thence N 69°28'27" E a distance of 44.88 feet to an iron pipe; thence S 86°26'46" E a distance of

180.17 feet to an iron pipe; thence S 89°58'02" E a distance of 242.13 feet to the point of beginning, having an area of 1352270.82 square feet, 31.04 acres.

TOGETHER WITH AND INCLUDING rights of ingress, egress and access over and across those certain easements designated as "New 100' Access & Utility Easement" and "New 60' Access & Utility Easement" as shown on that plat recorded in Book of Maps 2012, pages 883 – 885, inclusive, Wake County Registry.

### Parcel 3

Beginning at a concrete monument that is located along the northern right of way of Interstate 540; said monument also having NC Grid NAD 83 coordinates of N 766343.92 and E.2139398.13; runs thence along and with said right of way N 77°39'35" W a distance of 900.33 feet to a point; leaving said right of way and runs thence with a curve turning to the left an arc length of 663.76 feet, radius of 1552.00 feet, chord bearing of N 00°15'21" W, chord length of 658.72 feet to a point; thence N 77°55'13" E a distance of 5.00 feet to a point; thence with a curve turning to the left an arc length of 734.53 feet, radius of 1557.00 feet, chord bearing of N 26°01'18" W, chord length of 727.74 feet to a point; thence N 40°38'19" W a distance of 59.89 feet to a point; thence N 42°12'33" W a distance of 25.47 feet to a point; thence N 42°40'40" W a distance of 314.08 feet to a point; thence N 53°32'21" E a distance of 759.83 feet to a point; thence S 38°37'52" E a distance of 392.89 feet to a point; thence N 52°22'08" E a distance of 230.02 feet to a point; thence S 51°16'58" E a distance of 223.77 feet to a point; thence N 79°23'45" E a distance of 27.46 feet to a point; thence S 66°40'28" E a distance of 182.46 feet to an iron pipe; thence S 16°03'12" E a distance of 380.47 feet to an iron pipe; thence S 72°26'51" E a distance of 298.30 feet to an iron pipe along the western edge of the Neuse River; runs thence along and with western edge of the Neuse River the following twenty-nine (29) courses and distances: (1) S 26°46'56" W a distance of 72.06 feet to a point; (2) S 17°40'35" W a distance of 43.61 feet to a point; (3) S 16°34'12" W a distance of 30.19 feet to a point; (4) S 18°20'31" W a distance of 82.09 feet to a point; (5) S 23°06'42" W a distance of 54.92 feet to a point; (6) S 12°28'00" W a distance of 38.41 feet to a point; (7) S 07°55'18" W a distance of 39.25 feet to a point; (8) S 09°57'57" W a distance of 47.68 feet to a point; (9) S 37°37'10" W a distance of 13.39 feet to a point; (10) S 02°06'01" W a distance of 50.73 feet to a point; (11) S 17°12'53" W a distance of 33.48 feet to a point; (12) S 09°06'02" W a distance of 98.99 feet to a point; (13) S 14°55'50" W a distance of 64.68 feet to a point; (14) S 03°00'07" W a distance of 61.77 feet to a point; (15) S 26°47'22" W a distance of 37.35 feet to a point; (16) S 03°57'25" W a distance of 64.50 feet to a point; (17) S 06°32'57" W a distance of 67.94 feet to a point; (18) S 07°22'58" E a distance of 57.96 feet to a point; (19) S 03°44'59" E a distance of 52.70 feet to a point; (20) S 07°30'19" E a distance of 52.98 feet to a point; (21) S 01°29'27" W a distance of 43.84 feet to a point; (22) S 03°47'34" W a distance of 18.76 feet to a point; (23) S 12°29'03" W a distance of 49.90 feet to a point; (24) S 14°28'18" W a distance of 57.84 feet to a point; (25) S 11°42'23" W a distance of 49.95 feet to a point; (26) S 09°50'23" W a distance of 55.66 feet to a point; (27) S 12°09'54" W a distance of 52.83 feet to a point; (28) S 33°47'24" W a distance of 51.21 feet to a point; and (29) S 31°37'06" W a distance of 42.11 feet to a point on the northern right of way of Interstate 540; following said right of way thence N 77°39'35" W a distance of 32.86 feet to the point of beginning, having an area of 2271681.90 square feet, 52.15 acres.

TOGETHER WITH AND INCLUDING rights of ingress, egress and access over and across those certain easements designated as "New 100' Access & Utility Easement" and "New 60' Access & Utility Easement" as shown on that plat recorded in Book of Maps 2012, pages 883 – 885, inclusive, Wake County Registry.