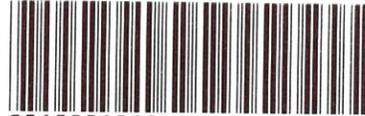


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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS FOR  
SOUTHPOINT TRAILS**

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

After recording, MAIL TO: 751, LLC  
9508 Windy Ridge Road  
Windemere, FL 34786

Drafted by Moore & Alphin, PLLC (rwm)

**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS FOR  
SOUTHPOINT TRAILS**

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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS  
FOR  
SOUTHPOINT TRAILS**

This Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Southpoint Trails is made as of the date on which it is recorded in the Registry (hereinafter defined) by **751, LLC**, a North Carolina limited liability company (“Declarant”).

P R E A M B L E:

WHEREAS, Declarant is the owner of approximately 27.887 acres of land located in the City of Durham, Triangle Township, Durham County, North Carolina, all or portions of which Declarant intends to develop into subdivision, to be known as SOUTHPOINT TRAILS (the “Subdivision”), containing approximately 149 attached, single family residential townhomes lots.

WHEREAS, Declarant desires to provide for the maintenance and upkeep of certain Common Area (hereinafter defined) within the Subdivision and to provide for the enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject the Properties (hereinafter defined) to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Properties and each Owner of any portion thereof.

WHEREAS, Declarant has incorporated under North Carolina law, as a nonprofit corporation, the Southpoint Trails Owners Association, Inc., to carry out the foregoing functions.

NOW, THEREFORE, Declarant hereby declares that the real property identified in **EXHIBIT A** to this Declaration, and such additions thereto as may be hereafter made pursuant to the provisions of Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, each and all of which shall run with the real property and be binding on all Persons owning any right, title or interest therein or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit and be binding upon each Owner thereof.

**ARTICLE I  
DEFINITIONS**

When used in this Declaration, the following terms shall have the meaning set forth below. Capitalized terms not specifically defined in this Article I shall have the meaning of such term as set forth in the Act (defined below), the North Carolina Nonprofit Corporation Act (Chapter 55A of the North Carolina General Statutes), or in any other section of this Declaration.

Section 1. “Act” shall mean and refer to the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time.

Section 2. “Additional Property” shall mean and refer to all real property subjected to this Declaration, by any of the methods set forth in Article II hereof, after the initial recording of this Declaration.

Section 3. “Annexation Declaration” shall mean and refer to a document, by whatever name, that is recorded in the Registry for the purpose of subjecting Additional Property to this Declaration and causing such Additional Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration, and including any additional covenants, charges, conditions and restrictions contained in such Annexation Declaration.

Section 4. “Association” shall mean and refer to the **Southpoint Trails Owners Association, Inc.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 5. “Board of Directors” and “Board” shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws, and is the “Executive Board” as defined in the Act.

Section 6. “Bylaws” shall mean and refer to the Bylaws of the Association, as they may now or hereafter exist, including all duly adopted amendments thereto.

Section 7. “City” shall mean and refer to the City of Durham, a North Carolina municipal corporation.

Section 8. “Code” shall mean and refer to the Durham City-County Unified Development Ordinance, North Carolina, as it exists from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

Section 9. “Common Area” shall mean and refer to the real property, together with any improvements situated thereon, intended for the common use and benefit of the Owners and occupants of the Properties, however such real property is described on a plat or other document recorded in the Registry. Common Area may be owned by the Association or it may be owned by another Person with the Association having a right or easement therein or an obligation in connection therewith (for example, but without limitation, easements located on either a Lot or real property that is not part of the Properties and that serve more than one (1) Lot in the Properties; and an obligation of the Association to maintain any such easements and improvements including, for example, easements not yet dedicated to the City). Common Area includes, without limitation, all of the following:

- (a) All real property owned in fee by the Association, including, without limitation, any recreational amenities constructed thereon.
- (b) All private streets and private walkways in the Properties (except for private walkways located on and solely for the benefit of an individual Lot).
- (c) Storm Water Facilities.

- (d) Any sanitary sewer utility line that serves more than one Lot and which is located outside any City utility easement.
- (e) Any site or facility owned by the Association and designated as Common Area, open space, amenity area, or other similar designation on any recorded plat of the Properties.
- (f) Any public road right-of-way dedicated to the public on plats of the Properties recorded in the Registry but not yet accepted for public maintenance by the appropriate Governmental Entity, provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to maintain such streets and roads prior to acceptance for public maintenance and to take such action as is necessary to cause them to be accepted for public maintenance.
- (g) Any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers.

Common Area as to which the Association has only an easement right is referred to herein as a “Common Area Easement

Common Area, if any, established by the Declarant or the Association for the benefit of some but fewer than all of the Owners and occupants of the Properties is “Limited Common Area”, and such Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Limited Common Area exists are subject to the same provisions as those applicable to Common Area. All references herein or in any recorded plat of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly.

Common Area also includes all other property and improvements, if any, required to be included as such by the Code or other Legal Requirement, and all other property and improvements, if any, declared to be Common Area by this Declaration or by the Declarant or the Association. (Note: The definition of Common Area in this Declaration is broader than the definition of “common elements” in the Act.) Except as otherwise provided in this Declaration or by separate written agreement between the Association and any other Person, Common Area shall be maintained by the Association unless it is maintained by the Person owning real property as to which the Association has only an easement or other right of use, or conveyed to or owned by another nonprofit entity formed for similar purposes, or dedicated to public use and accepted by a public agency, authority, or utility.

Section 10. “Common Expense” shall mean and refer to all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, this Declaration and other Governing Documents and including specifically, but without limitation, all of the following: (i) all expenses of ownership and maintenance of Common Property, including repair, restoration and replacement thereof, and expenses for acquisition, maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members, and including monies allocated to reserve funds for any of the same; (ii) any fees or charges for utilities used in connection with the Common Area;

(iii) *ad valorem* taxes and public assessments, if any, levied against the Common Property owned in fee by the Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained by the Association result in additional taxes on such real property that would not be assessed in the absence of such improvements, in which event such additional taxes shall be paid by the Association as a Common Expense); (iv) any unpaid assessments following the foreclosure of a first mortgage or first deed of trust or an assessment lien; (v) financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment; (vi) costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other Governmental Entity; (vii) premiums for hazard, liability and other insurance insuring the Common Property or the Association, its officers, directors and employees; (viii) fees and expenses of attorneys, accountants, management agents and other Persons employed by the Association for Association business; (ix) expenses declared to be or described as Common Expenses by the Act, the Code, or this Declaration; (x) expenses determined by the Board of Directors or by the Members to be Common Expenses; and (xi) all other expenses incurred by the Association in performing its functions, including operating, management and administrative expenses. (Common expenses for the maintenance of Limited Common Area are Limited Common Expenses, which is a subcategory of Common Expense, and which shall be assessed against and collected only from Owners or Lots who or which have the right of use of or the benefit of such Limited Common Area.)

Section 11. “Common Property” shall mean and refer to Common Area *and* all personal property owned, leased or used by the Association, or with respect to which the Association has a financial obligation, for the common use, enjoyment or benefit of the Members or the Properties, and any substitutions or replacements thereof.

Section 12. “Declarant” shall mean and refer to **751, LLC**, a North Carolina limited liability company. It shall also mean and refer to any Person to whom or which Declarant might assign or delegate all or any of the rights and obligations of Declarant by an assignment of Declarant’s rights recorded in the Registry.

Section 13. “Declarant Control Period” shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors and officers of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2022;
- (b) Not later than three months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, a sufficient number of votes (at the 24-to-1 ratio provided in Section 2(b) of Article III hereof) to cast a majority

of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or

- (c) Relinquishment or transfer by Declarant of all Special Declarant Rights as provided in §47F-3-104 of the Act.

Notwithstanding any other provision of this Declaration, Declarant, in its sole discretion, and any time and from time to time and by written instrument signed by Declarant, may relinquish part, but not all, of its rights and/or obligations as Declarant under this Declaration, but such partial relinquishment shall result in relinquishment of only the rights and obligations set forth in such instrument and shall not be construed as a release of any rights or obligations not specifically set forth therein.

Section 14. “Declaration” shall mean and refer to this “Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Southpoint Trails”, and all amendments thereto and supplements thereof.

Section 15. “Dwelling”, “Dwelling Unit” and “Unit” shall mean and refer to any building or portion thereof within the Properties which is used or occupied, or intended for use or occupancy, as a residence by an individual or by one family unit, whether by the Owner thereof or by tenants or lessees of the Owner, and specifically including attached dwellings located on separate Lots. A Dwelling shall be deemed to constitute a Dwelling Unit upon issuance of a certificate of occupancy therefor.

Section 16. “Exempt Property” shall mean and refer to all portions of the Properties included within any of the following categories: (i) Common Area; (ii) property owned by, or dedicated to and accepted by the City or a public utility, including property within the right-of-way of publicly-dedicated streets and roads; and (iii) property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, provided, however, that any property containing a Dwelling used as a residence shall not be Exempt Property.

Exempt Property shall not be subject to the assessments provided for herein, and the Owner of such Exempt Property shall have no voting rights in the Association based on ownership of such Exempt Property. Furthermore, unless and until such time, if any, as it loses its Exempt status, all Exempt Property owned by the City or a utility provider, and all Exempt Property within publicly-dedicated street rights-of-way, shall be exempt from all of the provisions of this Declaration, except for any easements over such Exempt Property reserved in this Declaration by or for the Declarant, the Association, the City or any other Person. Except as otherwise provided herein, Exempt Property shall be subject to all of the provisions of this Declaration.

Exempt Property that loses its status as Exempt shall be reclassified as a Lot, and shall be subject to all of the terms and provisions of this Declaration in the same manner and to the same extent as other Lots.

Section 17. “Fiscal Year” shall mean and refer to the calendar year, unless and until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

Section 18. “Governing Documents” shall mean and refer to all of the following: this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations of the Association, Annexation Declarations, and other restrictive or protective covenants applicable to the Properties, all as the same may be amended, restated or supplemented from time to time.

Section 19. “Governmental Entity” shall mean and refer to the City, the County of Durham, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Entity or entities is/are applicable.

Section 20. “Legal Requirements” shall mean and refer to any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, the City, Durham County, North Carolina, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the Properties, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

Section 21. “Lot” shall mean and refer to any portion of the Properties with delineated boundary lines, as shown on a plat recorded in the Registry or as identified by metes and bounds description, that is intended for construction of a Dwelling Unit thereon, or on which a Dwelling has been constructed. A Lot shall become a “Lot” upon recording in the Registry of a plat creating such Lot.

In the event that any Lot is increased or decreased in size by recombination or re-subdivision through the recording of a new plat, the newly-platted lot thereafter shall constitute a Lot.

Section 22. “Member” shall mean and refer to every Person who or which holds membership in the Association.

Section 23. “Mortgagee” shall mean and refer to the beneficiary or payee under any mortgage or deed of trust, and the terms mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

Section 24. “Operating Deficit” shall mean and refer to the negative difference, if any, between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements.

Section 25. “Owner” shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. The term “Owner” shall not include any Person who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

Section 26. “Person” shall mean and refer to any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the City), or other entity.

Section 27. “Properties” shall mean and refer to the “Existing Property” described in Article II of this Declaration and any additional property annexed pursuant to said Article II.

Section 28. “Registry” shall mean and refer to the office of the Register of Deeds for Durham County, North Carolina (or any successor office under applicable law in which deeds, maps, plats, easements, mortgages and deeds of trust for the Properties are recorded). All references herein to recording or to any requirement to record a document, plat refer to recording in the Registry.

Section 29. “Special Declarant Rights” shall mean and refer to all rights granted to, or reserved by, or established for the benefit of, Declarant in the Act, this Declaration, the Articles of Incorporation and Bylaws of the Association (whether or not such rights are referred to as Special Declarant Rights in such documents). Declarant may assign Special Declarant Rights, in whole or in part, temporarily or permanently, at any time and from time to time, subject to such terms and conditions as Declarant specifies in the assignment document, including, without limitation, any assignment as security for certain obligations of Declarant. Except as specifically provided herein, any assignment of Special Declarant Rights must be in writing and recorded in the Registry, and the assignment becomes effective upon the recording of the document in the Registry or on any later date specified therein.

Section 30. “Stormwater Agreement” shall mean and refer to any document between or among the Declarant, the Association and the City, or any two or more of them, pertaining to the construction, installation, use, operation and maintenance of any Stormwater Control Facilities within the Subdivision including, without limitation, that certain Stormwater Facility Agreement and Covenants between Declarant and the City recorded, or to be recorded, in the Registry.

Section 31. “Stormwater Facilities” and “Stormwater Control Measures” (the terms used interchangeably) shall mean and refer to one or more of the following devices and measures, together with associated private storm water drainage easements (however identified on a plat or in a document) that serves the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control storm water runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside of City drainage easements. Private storm water drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION; ADDITION OF PROPERTY**

Section 1. Existing Property. The real property which, at the time of recording of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto.

Section 2. Additions to Existing Property.

(a) By Declarant. At any time during the Declarant Control Period, Declarant may subject Annexed Property to this Declaration, without approval of any Person other than the owner of the property to be annexed and, if required by Legal Requirements, the City, by recording an Annexation Declaration extending the operation and effect of this Declaration to such Annexed Property. Except to the extent required by the Legal Requirements, nothing in this Declaration shall be deemed to require the Declarant to subject any property to this Declaration.

(b) By the Members. If a Person other than the Declarant desires at any time to subject Annexed Property to this Declaration, such Annexed Property may be annexed only by the affirmative vote of at least sixty-seven percent (67%) of the votes cast by the Members present at a duly-called meeting of the Association for which the notice of meeting includes notice of the proposal to annex such Annexed Property and the recording in the Registry of an Annexation Declaration signed by the owner of such Annexed Property and by the appropriate officer(s) of the Association certifying the required meeting and vote. In addition to the foregoing, during the Declarant Control Period, such annexation shall be valid only with the consent of Declarant, as evidenced by Declarant's execution of the Annexation Declaration.

(c) Approval by Governmental Entities. If required by the Code, subsection of Annexed Property to this Declaration must be approved by the City.

(d) Annexation Declaration. Each Annexation Declaration shall be effective to subject Annexed Property to this Declaration only upon obtaining all required approvals and upon its recording in the Registry, and the effective date of such annexation shall be the date of recording. Each Annexation Declaration shall describe the Annexed Property and indicate that the Annexed Property is being subjected or annexed to this Declaration. An Annexation Declaration need not be in any specific form and need not be titled Annexation Declaration (for example, the required subjecting language may be contained in a deed from the Declarant conveying the Annexed Property), but it shall indicate clearly the intention to subject or annex such Annexed Property. Any Annexation Declaration may contain such use restrictions and such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such Annexed Property, not in conflict with this Declaration, as the Person subjecting such Annexed Property to this Declaration may determine, but this Declaration shall control over any provision of any Annexation Declaration that conflicts or is inconsistent with this Declaration. During the Declarant Control Period, no Annexation Declaration shall have be valid unless signed by the Declarant prior to recordation.

(e) Votes Allocated to Annexed Property. The votes of the Members in the Annexed Property shall be allocated in the same manner that votes are allocated in portions of the Properties already subject to this Declaration. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Common Area in Annexed Property. Any Common Area located within any Annexed Property, or the applicable phase or portion thereof, shall be conveyed to the Association pursuant to the requirements of Section 3 of Article IV of this Declaration.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be three (3) classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person owns an interest (other than a security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Lots owned by Class A Members are “Class A Lots”.

(b) Class B Member. The Class B Member shall be the Declarant. A Lot owned by the Declarant shall be a “Class B” Lot. During the Declarant Control Period, Declarant shall be entitled to twenty-four (24) votes for each Lot that it owns. After expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Declarant’s Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, Declarant shall have and will exercise the right to appoint and remove all of the Directors and officers of the Association, until the earlier of the expiration of the Declarant Control Period or Declarant surrenders such right by written instrument filed with the Secretary of the Association. See §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. It is the desire of the Declarant that the Dwellings within the Subdivision be occupied by the Owners thereof. Notwithstanding the foregoing, in no event shall the votes of Owners of Dwellings which are vacant or are otherwise not occupied by the Owner of the Lot be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association, and the votes of such the Lots of such Owners shall automatically be fractionally reduced for such purpose. This Section applies only to Lots and Dwellings owned by a Class A Members and specifically excludes Lots and Dwellings owned by the Declarant.

**ARTICLE IV**

## PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV, other provisions of this Declaration, any Annexation Declaration or any Legal Requirements, and by rules and regulations adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however, that the right of access and support, the right to drain storm water and the right to use Storm Water Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the Association, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration provided that:

(i) written notice of the exchange is given to each Member of the Association;

(ii) after the notice is given, the Association approves the exchange in accordance with the minimum percentage of votes required by the Act;

(iii) the exchanged properties and other considerations are of like value and utility;

(iv) the acreage and configuration of the remaining Common Area (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and

(v) the exchange is approved by the Planning Director of the City, if required by the Code.

(f) the right of the Association to sell, lease, convey or dispose of any personal property owned by the Association.

Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Durham County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence in Durham County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Common Area to the Association. Declarant covenants, for itself, its successors and assigns, that it will convey to the Association title to those portions of the Common Area to be owned in fee by the Association, and the Association agrees to accept each such conveyance. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself and its successors and assigns, an easement over, under, across and through the Common Area so long as it owns any Lot within the Properties, for the purpose of constructing any improvements on the Common Area and/or the Lots as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by the Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Subdivision, utility, drainage, greenway, conservation, and other easements of record or shown on the recorded maps or plats of the Subdivision, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the City or other Governmental Entity, or a public or private utility company. Title to the Common Area in each phase or section of the Properties shall be conveyed to the Association not later than the time required by applicable Legal Requirements.

Section 4. Regulation and Maintenance of Common Area. It is the intent of Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, the Declarant, by recording any plat or plat of any phase or section of the Properties, grants to the Association an easement over and across any portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Association to take any action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other Person shall, without the prior written consent of the Association: (i) remove any trees or

vegetation from any Common Area; (ii) erect gates, fences, buildings or other structures on any Common Area; (iii) place any garbage receptacles on any Common Area; (iv) fill or excavate any Common Area or portion thereof; or (v) plant vegetation on or otherwise restrict or interfere with the use, maintenance and preservation of the Common Area.

It is the intent of the Declarant that a Common Area Easement be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner for the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be deemed an individual special assessment against such Owner's Lot and shall be collected in and shall incur the late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in the Code and other Legal Requirements, this Declaration, and the rules and regulations adopted by the Association as provided herein, and the Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damages suffered by any Person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against the Common Area owned in fee by the Association.

(c) Association's Right of Entry. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent reasonably necessary to gain access to and maintain the Common Area Easement and any improvements therein, including maintenance to be done by the Owner as provided in subsection (a) above, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

**ARTICLE V  
COVENANT FOR ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the annual assessments, special assessments, individual special assessments, working capital contributions, Stormwater Assessments (defined in Article VI), and other fees and charges to be established and collected by the Association as provided herein. All assessments which are unpaid when due, together with interest and late charges set forth in Section 9 of this Article V and all costs of collection, including, without limitation, reasonable attorneys' fees, shall be a charge on the Lot of such Owner, and, as provided in §47F-3-116 of the Act, shall be a continuing lien against the Lot

against which such assessment is made. As provided in §47F-3-116 of the Act, such lien shall attach to the Lot only if an assessment against the Lot remains unpaid for at least thirty (30) days and a claim of lien is filed by the Association as provided in the Act. Each such assessment or charge, together with interest and costs of collection, shall also be the personal or corporate obligation of the Person owning such Lot at the time when the assessment fell due, but such personal or corporate obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them; however, such assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health and welfare of the residents and occupants of the Subdivision and, in particular, for (i) acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against Common Property owned in fee by the Association; (iv) procurement of insurance; (v) employment of attorneys, accountants, engineers, management agents and other Persons for Association business; (vi) payment of principal and interest on funds borrowed by the Association; (vii) reserve funds; and (viii) such other needs as may arise.

Section 3. Annual Assessments. Until December 31, 2016, the annual assessment for each Class A Lot shall be One Thousand Three Hundred Twenty and No/100 Dollars (\$1,320.00). The annual assessment for Class B Lots shall be *zero*, provided, however, that *any* Lot which contains a Dwelling occupied by any person as a residence shall be assessed at the Class A rate.

Beginning on January 1, 2017, and each Fiscal Year thereafter, the annual assessments shall be based on a budget approved under the provisions set forth in Section 4 below.

The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the annual assessments incident to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Ratification of Budgets; Certificate of Payment.

(a) Commencement Date. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

(b) Ratification of Budgets. The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give the Members written notice of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than thirty (30) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters).

The budget shall be deemed ratified unless, at that meeting, Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the proposed budget provides for annual assessments not more than ten percent (10%) greater than the annual assessment for the immediately preceding calendar year, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Except as otherwise provided in this Declaration, an Annexation Declaration, or any other Legal Requirements (e.g., additional or different assessments pertaining to Limited Common Area), annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannual, quarterly or monthly basis, as determined by the Board.

(c) Certificate of Payment. The Association shall, upon demand and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or the management company employed by the Association, setting forth whether the assessments for a specific Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 5. Additional Assessments for Limited Common Property. Declarant reserves the right to subject portions of the Properties to provisions requiring the Owners of Lots therein to pay additional annual assessments and special assessments to the Association for the maintenance of Limited Common Property, including, without limitation, private streets, private rights-of-way, private alleys, and private alley easements.

All of the provisions of this Declaration relating to annual and special assessments shall apply to the additional annual and special assessments for Limited Common Property, except that the additional assessments with respect to any particular Limited Common Property shall be assessed only against the Owners of Lots benefitted by such Limited Common Property and shall be used only for expenses related to such Limited Common Property.

Section 6. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring cost, *provided that* any such assessment shall have been approved by a majority of the votes attributable to Lots owned by Persons other than the Declarant and, during the Declarant Control Period, by the Declarant, and further provided that the special assessments for Lots owned by the Declarant shall always be zero. Except as otherwise provided in this Declaration, an Annexation Declaration, or the Legal Requirements, special assessments shall be fixed at a uniform rate for all Lots within each Class and maybe collected on a yearly, semiannually, quarterly or monthly basis, as determined by the Board of Directors. Special assessments shall constitute a lien to the same extent as other assessments against the Lot.

Section 7. Individual Special Assessments. The Board of Directors may, without vote of the Members, levy an individual special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association with regard to such Lot including, without

limitation, expenses incurred under Article VII hereof. Any fine imposed against an Owner pursuant to Section 14 of this Article V and Section 3 of Article VII of the Bylaws shall also constitute an individual special assessment against such Owner's Lot. Individual special assessments shall constitute a lien to the same extent as other assessments against the Lot.

Section 8. Notice of Quorum for any Action Authorized Under Section 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 6 shall be sent to all Members not less than ten (10) nor more than sixty (60) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting maybe called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 9. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, subject to the limitations of Section 47F-3-102(11) of the Act, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than fifteen percent (15%) per annum or the maximum rate allowable by law, whichever is less, and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due, and shall have the right and power to take such action as is necessary to conduct such foreclosure and convey the Lot to the purchaser at the foreclosure sale, including, without limitation, the right to appoint a trustee or to request appointment of a commissioner to conduct the foreclosure. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The liens provided herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or first deed of trust shall extinguish the lien of any assessments which become due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

Section 11. Working Capital Contribution. At the time of closing of the initial sale of each Dwelling constructed on a Lot, the sum of Six Hundred Sixty Dollars and No Cents (\$660.00) shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital contribution is to ensure that the Association will have adequate cash available to meet its operating expenses or to acquire additional equipment or serviced deemed by the Board to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 12. Stormwater Assessments. *See* Article VI.

Section 13. Declarant's Obligation to Fund Operating Deficits; Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots owned by Declarant, in an amount equal to aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

Section 14. Reserve Accounts. The Association shall establish one or more separate reserve accounts to fund major repairs to and replacements of Common Property. Each annual budget shall show the amount to be placed in reserve for each category for which reserves are to be held.

Section 15. Fines. Subject to the provisions of this Declaration, the Bylaws of the Association, and Section 47F-3-107.1 of the Act, the Board of Directors shall have the right and authority to levy fines or suspend privileges or services provided by the Association for reasonable periods for the violation of any provision of this Declaration and other rules and regulations promulgated by the Board of Directors pursuant thereto, provided, however that the right of access and support, the right to use private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations. Any monetary fine shall be deemed an individual special assessment against the Lot of the Owner against whom such fine is assessed.

**ARTICLE VI**  
**OBLIGATIONS REGARDING STORMWATER FACILITIES**

The Properties include one or more Stormwater Management Facilities (whether one or more, herein sometimes referred to as "Facilities") that is/are the perpetual responsibility of the Association. Such Facilities are the subject of a Stormwater Facility Agreement and Covenants (the "Stormwater Agreement") between Declarant, the Association, and the City of Durham

("the City") that is binding on the Association. The Stormwater Agreement is recorded at **Book [redacted] Page [redacted]**, Durham County Registry. The Property subject to that Stormwater Agreement is the "Property" referred to in this Article. The Stormwater Facilities must be maintained in accordance with City Requirements, which include all ordinances, policies, standards, and maintenance protocols, and in accordance with the recorded Stormwater Agreement. In particular the City's current "Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham" (available at the time of recording this Declaration at [http://durhamnc.gov/ich/op/pwd/storm/Documents/BMP/doc11\\_maint\\_guide.pdf](http://durhamnc.gov/ich/op/pwd/storm/Documents/BMP/doc11_maint_guide.pdf), and the operation and maintenance manual prepared specifically for the Facilities contain requirements that apply to the Association's Facilities.

Nothing in the remaining provisions of this Declaration or any subsequent modification thereof may reduce the Association's or Lot Owners' obligations with regard to the Facilities. Such additional covenants may increase the obligations or provide for additional enforcement options.

The Stormwater Management Facilities and their location are as follows:

One (1) constructed wetlands with a drainage area of 20.55, acres, a design storm surface area of 49,323 square feet, and a design storm storage volume of 75,900 cubic feet, and shown and described as "**[redacted]**" on the plat recorded in Plat Book **[redacted]**, Page **[redacted]**, Durham County Registry, to which plat reference is made for a more particular description.

Section 1. Inspections/Routine Maintenance. In accordance with City Requirements, the Association shall cause the Facilities to be inspected (i) annually; and (ii) after major storm events that cause visual damage to the Facility; and (iii) upon notification from the City to inspect. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect certified by the City and who shall document those things mandated under City Requirements. The inspection shall occur annually during the month in which the Facilities' as-built certification was accepted by the City, which month may be determined through contact with the City of Durham Department of Public Works, Stormwater Division. The inspection shall be reported to the City as further described below.

Section 2. Repair and Reconstruction. The Association shall repair and/or reconstruct the Facilities as it determines is necessary, and, at a minimum, as set forth in City Requirements or as directed by the City to allow the Facilities to function for its intended purpose, and to its design capacity. The Association shall provide written reports regarding major repair or reconstruction to the City in accordance with City Requirements.

Section 3. Stormwater Budget Line Items and Funding. The annual assessments of the Association shall include amounts for upkeep and reconstruction of the Facilities, which amounts (herein referred to as "Stormwater Assessments") shall be included in dues charged to Lots or the Owners thereof from the point that Lots or Owners are charged dues for other common purposes. The Association shall maintain two (2) separate funds in its budget for the Facilities. The first, the "Inspection and Maintenance Fund," shall be for routine inspection and maintenance expenditures and shall be used for annual inspections, maintenance, and minor repairs. The funds for this purpose may be maintained as part of the Association's general

account. The second fund, the “Major Reconstruction Fund,” shall be a separate, increasing reserve fund that will build over time and provide money for major repairs to and eventual reconstruction of the Facilities. The Major Reconstruction Fund shall be maintained in an account that is separate account from the Association’s general account as described below. At a minimum, the Association shall, annually, earmark at least \$2,541.25 from its collected dues for the Inspection and Maintenance Fund and \$605.23 for the Major Reconstruction Fund. These minimum amounts shall be increased annually by 3% per year over the prior year’s amount. The Association may set a higher amount in its discretion, or if directed by Durham Director of Public Works after an examination of the Facilities. The Association shall set dues at a sufficient amount to fund each of the two line items in addition to the Association’s other obligations. The Association may compel payment of dues through all remedies provided in this Declaration or otherwise available under law.

Section 4. Assessments/Liens. In addition to payment of dues, each Lot shall be subject to assessments by the Association for the purpose of fulfilling the Association’s obligations under this Article and under the Stormwater Agreement. Such assessments shall be collected in the manner set forth in this Declaration. As allowed under Act, or any successor statute, any assessment remaining unpaid for 30 days or longer shall constitute a lien on the Lot. Such lien and costs of collection may be filed and foreclosed on by the Association. In addition, the Association’s rights may, in the discretion of the City, be exercised by the City, as a third party beneficiary of the recorded Stormwater Agreement and/or as attorney-in-fact for the Association, as provided in Section 7 of the recorded Stormwater Agreement.

Section 5. Stormwater Expenditures Receive Highest Priority. Notwithstanding any contrary provisions of this Declaration, to the extent not prohibited by law, the inspection, maintenance, repair, and replacement/reconstruction of the Facilities shall receive the highest priority (excluding taxes and assessments and other statutorily required expenditures) of all Association expenditures.

Section 6. Separate Account for Major Reconstruction Fund; Engineer’s Report. The Association shall maintain the Major Reconstruction Fund for the Facilities in an account separate from the Association’s general account. The Association shall use the Fund only for major repairs and reconstruction of the Facilities. No withdrawal shall be made from this Fund unless the withdrawal is approved by two (2) Association officials, who shall execute any documents allowing such withdrawal. Prior to withdrawing funds from this Fund, the Association shall (i) obtain a written report from an engineer approved in accordance with City Requirements regarding repairs or reconstruction needed and approximate cost of such repair or reconstruction; and (ii) submit such report to the Director of the City’s Department of Public Works, and notify the Director of the repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Major Reconstruction Fund. In the event of an emergency, withdrawal and expenditure of funds may be made after telephone notification to the Stormwater Services Division of the Department.

Section 7. Annual Reports to City. The Association shall provide to the City annual reports in form and substance as set forth in City Requirements. This annual report shall be signed by an officer of the Association, who shall attest as to the accuracy of the information in such report. If prepared by a professional management company hired to manage the

Association's affairs, the report shall so indicate. The Officer's signature and attestation shall be notarized. At a minimum each report shall include:

- (a) the annual Facilities inspections report described in Section 1 above;
- (b) a bank account statement showing the existence of the separate Major Reconstruction Fund described in Section 6 above and the balance in such fund as of the time of submission of the report;
- (c) a description of repairs exceeding normal maintenance that have been performed on the Facilities in the past year and the cost of such repairs; and

(d) the amount of Association dues being set aside for the current year for each of the two stormwater funds – the Inspection and Maintenance Fund and the Major Reconstruction Fund.

Section 8. Facilities to Remain with Association; Lot Owners' Liability. To the extent not prohibited by law, the Facilities shall remain the property of the Association and may not be conveyed by the Association. In the event the Association ceases to exist or is unable to perform its obligations under this Agreement, all Lot Owners as defined in the Stormwater Agreement referenced above, excluding the Lots owned by the Association, shall be jointly and severally liable to fulfill the Association's obligations under this Article VI. Such Lot Owners shall have the right of contribution from other Owners with each Lot's pro rata share being calculated as Lot Owner's proportional obligations are otherwise defined in this Declaration. The City may also exercise the rights described in Section 7 of the recorded Stormwater Agreement and other remedies provided by law.

Section 9. City Rights; Liens against Owners. In addition to rights granted to the City by ordinance or otherwise, the City shall have the following rights, generally summarized below, and more explicitly set forth in the Stormwater Agreement referenced above:

(a) Direct the Association in matters regarding the inspection, maintenance, repair, and /or reconstruction of the Facilities;

(b) If the Association does not perform the work required by ordinance, by this Declaration, and by the Stormwater Agreement, do such work itself, upon 30 days' written notice to the Association.

(c) Access the Facilities for inspection, maintenance and repair, crossing as necessary any Lot on which the Facilities are located and all other private and public easements that exist within the Properties.

(d) Require reimbursement by the Association of the City's costs in inspecting, maintaining, repairing, or reconstructing the Facilities, as provided in the Stormwater Agreement.

(e) Enforce against any Lot Owner any debts owed by the Association as described in the Stormwater Agreement if such debts are not fully paid by the Association. The debt may be allocated to Lot Owners as provided in the other sections of this Declaration, and may be made a lien on each owner's property, may be added to each owner's utility bills, and may result in foreclosure, as provided in Section 7 of the Stormwater Agreement referenced above.

Section 10. No Dissolution. To the extent not prohibited by law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a person who has been approved by the City and has executed a Stormwater Agreement with the City assuming the obligations of the Association. Under the Stormwater Agreement, individual Lots and Lot Owners continue to be liable for the Facilities in the event the Association is dissolved without a new Stormwater Agreement between the City and a responsible party that is assuming the Association's obligations.

Section 11. No Amendment. Without the prior written consent of the City, which may be given by the Durham City Manager, and notwithstanding any other provisions of these Restrictive Covenants, the Association may not amend or delete this Article with the exception of supplementing its provisions in a more detailed manner to better describe members' or Lot Owners' obligations regarding each other.

Section 12. Stormwater Agreement Supersedes. The Stormwater Agreement and the provisions of this Article VI supersede any limiting provisions contained elsewhere in other articles of this Declaration. However, such articles may supplement the obligations of the Association as set forth in that Agreement, and/or the obligations of and remedies against individual Lot Owners or members bound by this Declaration.

**ARTICLE VII  
MAINTENANCE OF LOTS**

Section 1. Association's Responsibility. In addition to maintenance of the Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed by the Declarant or the Association, and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping).

The Association shall also be responsible for certain exterior maintenance of the Units, including the painting, repair, replacement and care of exterior building surfaces (including exterior doors installed as part of the initial construction of the Unit), siding, exterior trim, roofs, gutters and down spouts, lead walks, and covered stoops (collectively, the "Exterior Improvements". Unless agreed in writing by the Association (which need not be in the form of an amendment to this Declaration), the Association shall not be responsible for maintenance or repair of decks, glass surfaces, window screens, or screen or storm doors. Furthermore, the Association shall not be responsible for maintenance or repair of any improvement not part of the original construction unless the architectural approval granted by the Association for such subsequent improvement specifically provides that the Association will maintain same. Furthermore: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree if, in the opinion of the Board, in its sole discretion, the need for replacement is the result of any act for failure to act of an Owner or such Owner's family, tenants, guests, or invitees (including, without limitation, Persons employed by any of them for any reason); (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements or the exterior of any Unit when such repair or replacement is necessitated by work done by or at the request of any Owner (or such Owner's family or tenants) or any utility company or Governmental Entity; and (iv) the Association shall not be responsible for repairing any damage caused by the negligent or willful act or omission of the Owner of such Unit or such Owner's tenants, subtenants, family members, or the guests or invitees of any of them.

Section 2. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Any maintenance on a Lot that is not the responsibility of the Association, whether by the terms of

this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Each Owner shall keep his Lot and Unit in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements that the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Unit erected thereon, and the cost of such maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is required to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VII.

Each Owner shall, at his expense, obtain and maintain a standard homeowner's insurance policy, insuring such Owner's Unit against all normal hazards, with coverage equal or greater than the full replacement cost of the Unit, and containing general liability insurance in an amount not less than \$100,000.00.

Section 3. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 2 of this Article VII, the cost of any such maintenance, replacement or repairs (including\* the administration fee) shall be an individual special assessment against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

## **ARTICLE VIII RIGHTS OF LENDERS**

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.
- (b) A lapse, cancellation, or material modification of any insurance policy of fidelity bond maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.
- (d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of first deeds of trust who have requested notice as provided in Section 2 above have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(d) of said Article IV hereof, shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Property for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners of the Association.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The Person(s) making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment levied under this Declaration.

Section 6. Obligations and Liabilities of Beneficiary. To the extent permitted by law, the beneficiary (“Beneficiary”) of that certain Deed of Trust, Assignment of Rents and Security Agreement (the “Deed of Trust”) recorded in the Office of the Durham County, North Carolina Register of Deeds in Book 7715, Page 78, encumbering the Existing Property and securing an obligation of 751 LLC, a North Carolina limited liability company (“Existing Declarant”), shall not be liable for any obligations or liabilities of Existing Declarant arising under this Declaration or the Act. The foregoing is intended to supplement and be in addition to any and all obligations and liabilities from which Beneficiary is expressly excluded under the Act, including, without limitation, such obligations and liabilities set forth in Section 47F-3-104(e)(2)(b) of the Act. Neither this Declaration, any action or omission on the part of the Beneficiary (including the Beneficiary’s consent to this Declaration), nor the assignment of Special Declarant Rights by Existing Declarant to Beneficiary pursuant to the Deed of Trust and Section 47F-3-104(c) of the Act shall constitute an assumption by Beneficiary of any of the obligations or liabilities of Existing Declarant under this Declaration or the Act, and Existing Declarant shall continue to be

solely and exclusively liable for all obligations and liabilities thereunder following any foreclosure of the Deed of Trust, sale by a trustee under the Deed of Trust, tax sale, judicial sale, or sale under any bankruptcy or receivership proceeding of the Existing Property.

## **ARTICLE IX EASEMENTS**

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water lines, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot by the recording of appropriate instruments in the Registry, and such instruments shall not be construed to invalidate any of this Declaration.

Declarant reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the front, rear and (if applicable) side line of each Lot for the installation and maintenance of poles, lines, conduits, meters, sewer clean-outs, pipes, and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities.

An easement is also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of Properties shown and designated as "sign easement", "landscape easement", "drainage easement", or any similar designation, and any combination of the foregoing on any recorded plat of the any portion of the Properties for the purpose of installing, operating, repairing and Maintaining, as appropriate, landscaping, irrigation system, entrance signage, fencing and Storm Water Control Measures in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing, or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article X of this Declaration and, if required, by the City.

Declarant grants to and reserves for the Declarant, the Association, the City and their respective successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Except in recorded Tree Conservation Areas and in recorded Permanently Undisturbed Opens Space Areas, such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the Person taking such action shall grade and seed the affected

property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The Person taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 3. Easement for Support. Every Lot and Unit which contributes to the lateral and/or vertical support of any adjoining Lot or Unit shall be burdened with an easement of support for the benefit of such adjoining Lot or Unit.

Section 4. Easement over Common Area. A perpetual, non-exclusive easement over, under and through the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to, from and over the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 5. Association's Easement upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of exercising its rights and fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 6. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 7. Easements for Private Contractors. The Association shall have the right to assign its rights and delegate its duties to any Person. In the event that the Association employs or engages any Person to provide security within the Properties, perform inspections of

improvements, collect garbage, or perform any other function, an easement is established over the Common Area and every Lot for the benefit of such contractors for such purposes.

Section 8. Easements for Development. For so long as Declarant owns any real property within the Properties, Declarant reserves an easement over the Properties for the purpose of allowing Declarant, its successors and assigns, to develop the Properties and construct improvements thereon.

Section 9. Utility Easements for Service to Adjacent Units. Utility service lines for certain interior Dwelling Units may be run in the crawl space under or, in some instances, in the space between the first floor and the basement ceiling of an adjacent end Unit and, in such instances, utility meters for such interior units will be located on the exterior of the end Unit or on such end Unit's Lot. Declarant hereby establishes and grants to the Owner of each such interior Dwelling Unit, and the applicable utility companies providing such service, a perpetual easement in such areas of each burdened end Unit, for the purpose of installing, having, using, operating, repairing and replacing utility lines and meters, provided, however, that:

(i) The Owner of the benefitted interior Dwelling Unit shall be solely responsible for the maintenance, upkeep and repair of the utility lines and meters servicing his Dwelling Unit, and the Owner of the burdened end Unit shall have no responsibility or liability therefor;

(ii) No Person may enter an end Unit or the crawl space under an end Unit without prior notice to the Owner of the end Unit (oral notice being sufficient for purposes of this Section);

(iii) The Person performing work under or in an end Unit shall restore any disturbed areas to as nearly the condition that existed prior to entry into or under the end Unit as is reasonably practicable, and shall notify the Owner of the end Unit when work has been completed;

(iv) The Owner of a benefitted interior Dwelling Unit shall be responsible for any damage to the end Unit or any injury to any Person resulting from the negligent acts or failures to act of the Owner of the interior Dwelling Unit with regard to the utility service lines and meters serving the interior Dwelling Unit but located in or under the burdened end Unit; and

(v) The Owner of a benefitted interior Dwelling Unit shall notify his hazard insurance company of the provisions of this Section.

**ARTICLE X  
ARCHITECTURAL CONTROL**

After occupancy of the Dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs), wall or other structure (including, without limitation, play equipment, patios, decks, tree houses, parking pads, and sidewalks) shall be commenced, constructed, erected or maintained upon a Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or re-landscaping be commenced or made (such construction, alteration, landscaping and/or re-landscaping are hereinafter referred to

as “Improvements”) until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, the plans and specifications shall be deemed disapproved. Declarant shall have the right to charge a reasonable fee, not to exceed \$200.00, for receiving and processing each application and the right (but not the obligation), at the expense of the Owner seeking approval of the Improvements, to employ an engineer or other professional to review the plans for the Improvements. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the “Architectural Guidelines”) which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its sole discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article X to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three or more persons appointed by the Board. Declarant shall delegate such authority no later than the end of the Declarant Control Period.

Declarant shall have and shall exercise the rights set forth herein as to a Lot at all times prior to issuance of a certificate of occupancy or other certificate issued by the City or appropriate governmental entity for the Dwelling constructed on a Lot. In no event shall any plans submitted to Declarant for approval of any new construction be deemed approved until Declarant has actually approved same in writing.

Any use of the term “Declarant” in this Article X shall be deemed to apply to Declarant and, when appropriate, to any person or entity to whom Declarant delegates authority for architectural approval, and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by the Declarant.

## **ARTICLE XI USE RESTRICTIONS**

Section 1. Land Use and Building Type. Except as specifically provided herein, Lots shall be used for residential purposes only. Except as permitted by the City, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, Owners, real estate brokers and their agents may show Lots and homes for sale or lease. Notwithstanding the foregoing, the Declarant shall have the right to and may, in writing, permit another Person to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and other uses consistent with the development of the Subdivision and the sale and construction of homes therein; (ii) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; and (iii) conduct any other activities on Lots to benefit development, sales and construction efforts.

Section 2. Building Setbacks. No Dwelling shall be erected or maintained on any Lot outside of the building envelope required by the Code. For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the Dwelling only to the extent that the same are deemed to be part of the Dwelling under the Code as it exists as of the date of issuance of a certificate of occupancy for such Dwelling.

Section 3. Fences. Any fence or wall installed within the Subdivision must meet all requirements of the Code and must be approved as provided in Article X of this Declaration. Chain-link fences will not be permitted. Nothing in this paragraph shall be deemed to apply to or regulate any fence installed by the Declarant or any retaining walls made necessary by the slope or grade of any Lot.

Section 4. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

Section 5. Parking; Driveways and Parking Pads; Abandoned Vehicles. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall be approved as provided in Article X hereof.

No mobile house trailer (whether on or off wheels), recreational vehicle, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as “campers”), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Subdivision. No boat, boat trailer, or any other trailer shall be parked on any street within the Subdivision. A boat, boat trailer, or other trailer may be parked or kept on a Lot if it is parked or kept in the garage or approved out-building (and the door of the garage or out-building can close completely) or otherwise in such a manner that the boat and trailer are screened from the street, the Common Area, and other Lots. Screening may include an approved fence and plantings, but, in any case, the screening must comply with the Code and be approved pursuant to Article X of this Declaration.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Subdivision or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot. Vehicles without current registration and inspection stickers are considered abandoned or inoperative.

Notwithstanding the foregoing, to the extent permitted by the Code, Jeffrey B. Gelman, the Manager of Declarant, may park his recreational vehicle on any Lot that he or any entity that he (directly or through a trust or other entity) owns.

Section 6. Animals. No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other ordinary household pets may

be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the neighborhood. The Board has the right, in its sole and absolute discretion, to determine whether or not a particular animal is a nuisance and to require removal. No Person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot, street right of way, or the Common Area.

Section 7. Illegal Activity; Nuisances. No illegal, noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

Section 8. Signs. Except as otherwise required by the City, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, not more than one (1) sign of not more than six (6) square feet advertising the property for sale or rent, and not more than two (2) signs of not more than four (4) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. No sign of any kind shall be displayed on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

Section 9. Antennas; Satellite Dishes. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon unless approved in accordance with Article X hereof, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, §1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) is integrated with the Dwelling and surrounding landscape; and (iv) is approved pursuant to Article X of the Declaration.

Section 10. Swimming Pools. No above-ground swimming pools are permitted in the Subdivision, except that small, inflatable wading pools shall be permitted in the back yard of a Dwelling.

Section 11. Mailboxes. The U. S. Postal Service will require Declarant to install centralized kiosks for the delivery of mail. No Lot shall have a separate mailbox.

Section 12. Maintenance of Lot and Improvements; Construction. Except as otherwise provided in Section 4(b) of Article IV and Section 1 of Article VII hereof, each Owner shall keep his Lot, including, but not limited to, plantings, landscaping and lawns, in a neat and attractive condition and shall keep the improvements thereon in a suitable state of repair. If an Owner fails to comply with this provision, the Declarant or the Association may remedy such non-compliance and the Owner of such Lot shall be responsible for all costs of bringing the Lot into compliance with this provision. Any such costs shall be deemed a special assessment against the Lot.

In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within nine (9) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape the area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Owner of each Lot shall at all times keep public streets free abutting his Lot from any dirt, mud, garbage, trash or other debris resulting from construction on his Lot.

Section 13. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the principal building in such a manner as not to be visible from the street upon which the principal building fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to an approved enclosure the night of the scheduled pickup. Trash containers used by the Declarant during construction are exempt from this provision.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable legal requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during

the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Subdivision.

Section 14. Waiver of Violations. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article X of this Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of 25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Code or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Registry.

Section 15. Street Lighting. Declarant reserves the right to subject the Subdivision to a contract with Duke Energy for installation and operation of street lighting, which requires a continuing monthly payment to Progress Energy by each residential customer or by the Association.

Section 16. Impervious Surface. Lots in the Subdivision may be subject to restrictions on the amount of total square footage of the Lot that may be covered by impervious surfaces, as established by the City and more specifically shown on the plats of the Subdivision recorded in the Registry. Such impervious requirement may limit an Owner from constructing new or expanding existing Dwellings, porches, patios and decks, parking pads and garages, and/or outbuildings.

Section 17. Wetlands. Portions of the Properties may have been determined to meet the requirements for designation as a regulatory wetland or riparian area. Notwithstanding anything to the contrary that may appear herein or in any amendment hereto, Annexation Declaration or Sub-Association Declaration, any subsequent fill or alteration of any portion of the Properties that has been determined to be a regulatory wetland or riparian area under applicable laws of the United States or the State of North Carolina shall conform to the requirements of applicable wetland or riparian area rules adopted by the United States of the State of North Carolina and in force at the time of the proposed alteration. The intent of this paragraph is to prevent additional wetland or riparian area fill or degradation as defined by the U.S. Army Corp of Engineers or other applicable governmental authority.

**ARTICLE XII  
PARTY WALLS**

Section 1. General Rules of Law to Apply. The general rules of law regarding party walls, lateral support, and liability for property damage due to negligence or willful acts or omissions shall apply to each wall which is built as part of the original construction of the Dwellings within the Subdivision and which is placed on the dividing line between Lots, and to all reconstruction or extensions of such walls, to the extent not inconsistent with the provisions of this Article.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who or which uses the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner and the Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Common Area to as nearly the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act or omission, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements.

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

Section 7. Certification by Adjoining Property Owner That No Contribution Is Due. If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to make a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, and without charge; provided, however that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. Any dispute arising under the provisions of this Article shall be resolved by binding arbitration. Each party to the dispute shall choose one person as an arbitrator and the arbitrators so chosen shall select an additional arbitrator, and the dispute shall be resolved by the decision of a majority of the arbitrators.

### **ARTICLE XIII GENERAL PROVISIONS**

Section 1. Enforcement. The Association and each Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by

the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 2. Term; Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of eighty percent (80%) of the Members.

This Declaration may be amended only in strict compliance with this Section and the Act, including, without limitation, §47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant. For the purpose of this section, additions to existing property as provided in Section 2 of Article II hereof shall not constitute an "amendment".

Notwithstanding the foregoing, Declarant, without the consent or joinder of the Owners or other Person, may amend this Declaration during the Declarant Control Period, provided such amendment is not expressly prohibited by the Act and that such amendment does not adversely affect the title to any Lot nor materially alter or change any Owner's right to the use and enjoyment of his Lot or the Common Property.

Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment.

Section 3. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to increase the total number of Lots in the Subdivision, except with the consent of the Declarant during the Declarant Control Period, and thereafter of the Association, and, if required, by the City.

Section 4. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Property and Lots and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or other restrictions applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed a special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Property; provided, however, that the right of access and support, the right to use private streets, private

utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association’s rules and regulations.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Property if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the right of access and support, the right to drain storm water and the right to use Storm Water Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association’s rules and regulations.

The Association shall have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the Architectural Guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys’ fees and court costs, reasonably incurred in such action.

Section 5. Condemnation/Casualty. If all or any part of the Common Property and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Property in lieu of a destroyed club house.

Section 6. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable and made with an entity not affiliated with the Declarant.

Section 7. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

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CERTIFICATE OF THE SOUTHPOINT TRAILS ASSOCIATION, INC.

This is to certify that, upon proper notice given, a [the] Special [Annual] Meeting of the Members of the Southpoint Trails Owners Association, Inc., was held on [Date/ Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of \_\_\_ votes were cast. \_\_\_ votes were cast in favor of such action, and \_\_\_ votes were cast against such action. Accordingly, the motion to approve [describe the action approved] was approved by at least \_\_\_% of the Members as required by this Declaration and Bylaws of the Association.

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[President/Secretary]

Section 8. Number and Gender. Whenever the context requires, the singular shall include the plural, and vice versa, and one gender shall include all.

Section 9. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 10. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of this Declaration and shall not be deemed to nullify or affect any other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local law, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 11. Conflicts.

(a) Some or all of the Properties may be subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration, any other Governing Documents, or the Code.

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all Annexation Declarations are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Notwithstanding the foregoing, any provision of this Declaration or any Annexation Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration or an Annexation Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(c) In the event of a conflict between this Declaration and the Articles of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control.

(d) Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. §55A), and the ordinances of the City shall in all cases control any construction inconsistent therewith.

Section 12. Rule against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of this Declaration, Bylaws, or rules and regulations adopted pursuant to thereto and §47-F-2-102(1) of the Act.

Section 13. Declarant. Nothing contained in this Declaration shall be construed to permit interference with the development of the Lots by Declarant and construction of homes by Declarant so long as said development and construction follow the general plan of development previously approved by the City. The restrictions contained herein shall not be deemed to apply to any sales office, signs, landscaping construction trailer, model home, or other temporary or permanent improvement installed by or with the approval of Declarant.

Section 14. Non-Discrimination. Neither the Association, the Board, committee of the Board, officer of the Association, nor any member of the Board or committee, in exercising its/his/her rights and obligations under this Declaration or the Articles of Incorporation or Bylaws or Articles of Incorporation, shall discriminate against any person on the basis of the race, color, religion, national origin or handicap of such person.

Section 15. Security Measures. Neither the Association nor the Board shall have any responsibility for establishing or maintaining any security measures within the Property, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the applicable police department.

Section 16. Hazardous Substances. Declarant hereby informs all Owners and other Persons who may from time to time deal with or come in contact with the Properties, that as storm water drains from the Properties or other properties into any of the Storm Water Control Measures for the Properties, it is possible that substances or materials that may be classified or regulated as “hazardous substances” or “toxic substances” or other regulated substances or materials under Legal Requirements relating to the environment, may flow through and/or accumulate in such Storm Water Control Measures. Accordingly, each Owner and other Person assumes the risk that such flowing through and/or accumulation may occur. In addition, each Owner further acknowledges that if it becomes necessary (as determined by Legal Requirements or by the Board) for such substances to be removed from the Storm Water Control Measures or otherwise handled in accordance with Legal Requirements, and for such Storm Water Control Measures to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling and/or clean-up are Common Expenses, and that an additional storm water assessment may be required to pay for such removal and/or resultant clean-up of the Storm Water Control Measures.

Section 17. Properties Are Subject to Code. The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the City, and

shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

Section 18. Dissolution or Insolvency of the Association. The Association shall be dissolved upon the termination of this Declaration, or upon the written assent given in writing and signed by Members entitled to at least eighty percent (80%) of the votes of the Association, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Area not under the jurisdiction and being maintained by the Association, shall be offered to the City or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted by the Association. If the City or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be conveyed by the Association to the City or other appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located, and subject to all other applicable rights of way and easements and subject to ad valorem property taxes subsequent to the date of such conveyance.

In the event that neither the City or other appropriate governmental entity or public agency accepts the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Area was required to be devoted by this Declaration, such conveyance to be made subject to the rights of Owners and other matters set forth in the immediately preceding paragraph.

[Signature on following page]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its name duly authorized Manager, as of the latest date set forth in the notary acknowledgment below.

**DECLARANT:**

751, LLC, a North Carolina limited liability company

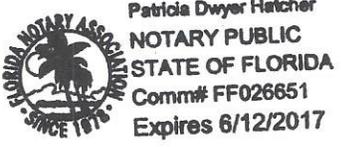
By:   
Jeffrey B. Gelman, Manager

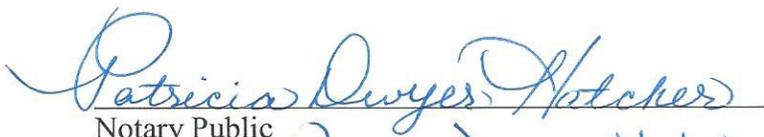
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STATE OF FLORIDA -- COUNTY OF Orange

I certify that the following person appeared before me this day and acknowledged to me that he signed the foregoing document for the purposes stated therein and in the capacity indicated: Jeffrey B. Gelman.

Date: August 6, 2015

(Notary Stamp or Seal)



  
Notary Public  
Printed Name: Patricia Dwyer Hatcher

My commission expires: 6/12/2017

**Subordination by  
Bank of the Ozarks**

Bank of the Ozarks, an Arkansas banking corporation, as: Beneficiary under that certain Deed of Trust, Assignment of Rents and Security Agreement recorded in Book 7715, Page 78, Durham County Registry; Assignee under that certain Assignment of Leases, Rents and Profits recorded 7715, Page 107, Durham County Registry; and Secured Party under that certain UCCF Financing Statement recoded in Book 7715, Page 121, Durham County Registry (collectively, the "Security Instruments"), joins in this Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Southpoint Trails (this "Declaration") for the sole purpose of expressing its consent hereto and of binding, subjecting and subordinating such Security Instruments and its interest in the Property to the terms, covenants and conditions of this Declaration.

**BENEFICIARY:**

**BANK OF THE OZARKS**, an Arkansas banking corporation

By:   
Name: James Loyd  
Title: VP

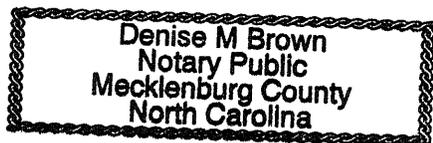
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STATE OF NORTH CAROLINA §  
COUNTY OF MECKLENBURG §

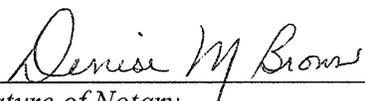
BENEFICIARY ACKNOWLEDGEMENT

I certify that that the following person personally appeared before me this day and acknowledged to me that he or she signed the foregoing document for the purposes stated therein and in the capacity indicated: Vice President.

Date: 8/14/15

(Stamp or Seal)



  
Signature of Notary

Printed Name: Denise M Brown

My commission expires: 12/14/19

**EXHIBIT A**

Lying and being in the City of Durham, Triangle Township, Durham County, North Carolina, and being more particularly described as follows:

[Recorded plat reference]