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REGISTER OF DEEDS
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2007065744

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR
WATERLEAF,
A PLANNED COMMUNITY**

Prepared By and Return to:
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STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
WATERLEAF**

This Declaration is made this 30th day of March, 2007 by WATERLEAF OF MINT HILL, LLC, a North Carolina Limited Liability Company, (“Declarant”). Declarant states and declares as follows:

A. Declarant is the owner of that tract of land located in Mecklenburg County, North Carolina, which is described in Exhibit A attached hereto and incorporated herein (“the Property”), and Declarant is the owner or may become the owner of adjacent property described in Exhibit B attached hereto (“Additional Land”);

B. The Declarant subdivided or intends to subdivide the Property into residential lots, common areas and public rights-of-way, and to create from the Property and such Additional Land as may be subjected to this Declaration pursuant to Article X below a planned community to be known as Waterleaf (“the Community”); and

C. The Declarant desires to impose certain restrictive and protective covenants upon the Property to protect and to promote the beneficial ownership, use and enjoyment of all residential lots and units located within the Community.

THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes (“the Planned Community Act”), the Declarant hereby executes this Declaration to create Waterleaf, a North Carolina Planned Community, and declares that henceforth all portions of the Property shall be held and owned subject to the following terms, provisions, covenants, conditions and restrictions, which shall run with the Property and which shall be binding upon all owners of any portion of the Property and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns.

Article I Application of the North Carolina Planned Community Act.

The terms and provisions of Chapter 47F of the North Carolina General Statutes, as the same shall be amended from time to time, shall apply to the Community and the Property.

Article II. Definitions.

The definitions set forth in N.C.G.S. § 47F-1-103 shall apply to this Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

“Annexation Declaration” shall mean an instrument recorded in the Mecklenburg County Registry that subjects Additional Land to this Declaration.

“Articles of Incorporation” shall mean the Articles of the Association.

“Association” shall mean Waterleaf of Mint Hill Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

“Assessments” shall mean, unless the context otherwise requires, Base Assessments, Specific Assessments and Special Assessments as described hereunder.

“Base Assessment” shall mean the assessment levied on all Lots subject to assessment under Article IX below to fund common expenses, as determined in accordance with Article IX below.

“Board of Directors” or “Board” shall mean the executive board of the Association, as defined by the Planned Community Act and as created by the Bylaws.

“Builder” shall mean any homebuilders, developers or other contractors approved by, and in the business of purchasing Lots or land from, the Declarant for the purpose of building thereon and selling residential dwelling units to the public.

“Bylaws” shall mean the bylaws of the Association as they now or hereafter exist and as they may be amended from time to time. A copy of the initial Bylaws is attached as Exhibit D.

“Common Area” shall mean all property, and any improvements thereon, wherever located, exclusive of any streets, easements or public rights of way dedicated or assumed by a public utility or authority, owned or leased by the Association or subjected to an easement or license in favor of the Association for the common use and enjoyment of Members. Common Area shall include all water and sewer lines serving more than one Lot and located outside any public rights-of-way or utility easements. Common Area shall include any drainage easements, storm water pipes, detention and retention facilities serving more than one Lot and not accepted by any governmental authority for maintenance.

“Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community or the minimum standards established pursuant to this Declaration, Rules and Regulations, and Board resolutions, whichever is the higher standard. Declarant shall initially establish such standard, which may involve both objective and subjective elements. The Community-Wide Standard shall evolve as the Community evolves.

“Declarant” shall mean WATERLEAF OF MINT HILL, LLC, a North Carolina Limited Liability Company, or any successor or assign designated as Declarant in a Recorded Document executed by the immediately preceding Declarant, the authority for such designation or assignment shall rest solely with the assigning Declarant and the Person agreeing to such assignment or designation.

“Declarant Control Period” shall mean the period of time during which Declarant holds a fee interest or contractual right in any portion, however small, of the land described in Exhibit A attached hereto or during which Declarant holds a fee interest or contractual right in any portion, however small, of real property adjacent to the Property which Declarant intends to annex into The Community in accordance with the provisions of this Declaration.

“Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions for Waterleaf, and any supplements or amendments hereto or restatements hereof.

“Governing Documents” shall mean, collectively, this Declaration, any applicable Supplemental Declaration, the Articles of Incorporation, the Bylaws, and the Rules and Regulations, as the same may be amended from time to time.

“Lot” shall mean any separate parcel of land within the Community designated for separate ownership or occupancy and residential use. Any Lot that has a driveway connection to the common streets and roads of the Community shall be by definition a Lot, and subject to the terms and conditions herein for all such Lots.

“Master Plan” shall mean the master land-use plan for the development of the Community approved by Mecklenburg County.

“Member” shall mean and refer to every person or entity entitled to membership in the Association as provided in Article II below.

“Membership” shall mean all Members, as a group.

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

“Owner” shall mean and refer to an owner of record of a fee simple interest in any Lot, including contract sellers, but excluding those having an interest only as security for the performance of an obligation. There may be more than one Owner of any single Lot.

“Person” is defined as any natural person, corporation, partnership, limited liability company, association, trust or other legal entity.

“Recorded Document” shall mean any document, including any map or plat of survey, recorded at the Office of the Register of Deeds of Mecklenburg County, North Carolina.

“Rules & Regulations” shall mean the initial rules and regulations for use and occupancy of the Lots and the Common Area set forth in Exhibit C. as they may be supplemented, modified, restated or superseded pursuant to Article IV below.

“Special Assessments” shall mean assessments levied in accordance with Section 9.3 and any other related sections below.

“Specific Assessments” shall mean assessments levied in accordance with Section 9.4 and any other related sections below.

Article III. Waterleaf of Mint Hill Homeowners Association, Inc.

Every person or entity who is an owner of a fee or undivided fee simple interest in any of the Lots shall be a Member of the Association. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated

from such ownership. The Association shall be organized and governed as follows:

3.1. Purposes. The purposes of the Association shall be:

- a. To maintain and preserve all Common Areas, decorative and protective structures (including but not limited to entry monuments and buffer walls), ponds, lakes, utilities, landscaped areas and other improvements located thereon, if any;
- b. To enforce the provisions of the Governing Documents;
- c. To perform all duties and functions allotted to owner's associations pursuant to Article 3 of the Planned Community Act;
- d. To promote and to protect the enjoyment and beneficial use and ownership of the Lots; and
- e. To promulgate and enforce the Rules and Regulations and administrative rules and regulations for use of the Common Area.

3.2. Powers and Responsibilities. The Association shall have all powers and responsibilities and shall perform all duties and functions allotted to owner's associations by Article 3 of the Planned Community Act, the terms and provisions of which are incorporated herein. The Association shall also have all rights and powers and shall perform all duties and functions that may be assigned to it by Declarant pursuant to this Declaration.

3.3. Voting Rights and Meetings. On matters of Association business submitted to vote of the Membership, there shall be two classes of membership:

Class A. Every Person who is an Owner, with the exception of the Declarant, shall be a Class A Member. Class A Members shall be entitled to one (1) vote per Lot. No more than one vote per Lot may be cast by Class A Members, regardless of the number of Owners of a given Lot. However, regardless of the foregoing, Builders shall be non-voting Class A Members.

Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters or issues before or considered by the Association. The Class B Member shall be entitled to four (4) votes for each Lot it owns. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur:

- (i) the date that all the Lots in the Community have been conveyed by the Declarant to other Owners;
- (ii) the surrender by the Declarant of the right to appoint or remove any officer of the Association or member of the Board by a Recorded Document executed by the Declarant; or
- (iii) the expiration of Declarant's rights to appoint or remove any officer of the Association or member of the Board pursuant to Article XI below.

Unless otherwise provided herein or in the Planned Community Act or the Bylaws, all voting matters shall be decided by a simple majority vote. Requirements for a quorum shall be as provided by the Bylaws. The Members shall meet as provided by the Bylaws.

3.4 Bylaws. The initial Board shall enact and adopt all and any Bylaws that they deem necessary for the operation of the Association, which Bylaws shall be binding upon all Members, their Mortgagees, lessees, agents and invitees.

Article IV. Use and Occupancy of Lots and Common Areas.

4.1 Fundamental Restriction on Use. The Lots and Common Area shall be used for residential, recreational and related purposes only, subject to and consistent with the Governing Documents; provided that Declarant may maintain a business or management office within the Community, and provided that Declarant and/or any brokers or builders approved by Declarant for operation within the Community and approved for the maintenance of an office within the Community may maintain temporary information centers, model homes and/or sales offices within the Community. Notwithstanding the above, home business use ancillary to the primary residential use of a Lot is permitted, subject to the Rules and Regulations and all applicable laws and ordinances of governmental authorities.

4.2 Fundamental Restriction on Occupancy. All occupants of a single Lot shall be members of a single housekeeping Lot. For purposes of this Declaration, a single housekeeping Lot is defined as a single family and not more than two (2) unrelated persons. The number of occupants on each Lot shall also be reasonably limited by the Lot's size and facilities and by a policy against disproportionate use of the Common Areas,

4.3 Additional Restrictions on Use and Occupancy of Lots. Use and occupancy of all Lots shall be restricted as follows:

4.3.1 *General Restriction; Residential Use; Square Footage; Integration of Additional Land; Completion of Construction.*

A. Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, shall not be conducted or allowed to be conducted except in strict compliance with the provisions of Article V of the Declaration. This shall include, without limitation, the following: landscaped or grassed areas extending 15' beyond the perimeter of each home; signs; basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; docks, piers, and similar structures; fountains, lawn ornaments and statuettes; and hedges, walls, dog houses, animal pens, or fences of any kind. Under no circumstances shall the ARC approve the replacement of all or a majority of the grassed area of a Lot with mulch or stone.

B. Aside from those structures temporarily used by Declarant or Builders for sales and marketing as set forth herein, all Lots shall be used for single-family residential purposes only. No structure erected, altered, placed or permitted to remain on any Lot shall exceed three stories in height.

C. Dwellings shall contain not less than a minimum of 3,000 square feet of heated floor area for one story dwellings and 3,500 square feet of heated floor area for one and one-half (1 ½) story or more, exclusive of garage, carport, unheated storage areas and non-living space for dwellings. Additionally, Dwellings of one and one-half (1½) story or more shall contain not less than minimum of 2,000 square feet of heated floor area on the first floor of such Dwelling.

D. The foregoing notwithstanding, the Declarant shall have the absolute right, in the event Additional Land is added to the Declaration pursuant to Article X, to use any lot(s) for purposes of roadway and/ or other vehicle or pedestrian access, ingress, and egress, for purposes of integrating the Additional Land to the existing subdivision. Nothing herein shall be interpreted to limit the Declarant's rights to use any lot(s) for roadway purposes, in the event Additional Land is added to this Declaration.

E. Once construction of any structure located within the Community is begun, such construction must be prosecuted diligently and must be completed within twelve months of its commencement, unless otherwise approved in writing by Declarant.

F. A violation of any provisions or restrictions of this Declaration, the Rules and Regulations and/or a failure to obtain prior approval of the ARC may result in (1) removal of any such improvements or correction of such violations by Declarant, the Board (or ARC acting for the Board) and the cost thereof assessed against the Owner of that Lot as a Specific Assessment; and/or (2) legal or equitable action filed against the violating Owner by Declarant or the Board in order to compel enforcement of the terms of this Declaration or the Governing Documents with both the pre-filing costs and the costs of the action itself assessable against the violating Order as a Specific Assessment; and/or (3) fines assessed by Declarant or the Board as Specific Assessments against a violating Owner in order to compel compliance. Any reference below to the removal of violations, assessment of the charges of removal against the violating Owner or the like shall in no way limit the Declarant or Board's authority under this section or any other section of this Declaration or the other Governing Documents to address violations of the provisions or restrictions hereof; such statements are included below to reiterate this power of the Declarant or Board (or ARC acting for the Board).

4.3.2 *Subdivision of Lots.* No dwelling shall be erected on less than one Lot and no Lot shall be subdivided except that Declarant shall be permitted to subdivide or re-plat Lots it owns; however, Owners of adjoining Lots may adjust a common boundary line, provided that the adjustment conforms in all respects with all applicable governmental regulations and

ordinances and with this Declaration, and provided that such adjustment is consented to by Declarant during the Declarant Control Period and thereafter by the Association.

4.3.3 *Signs.* No commercial signs of any kind shall be displayed to public view on any Lot. This provision shall not apply to marketing or informational signs of reasonable design and size placed on any Lot by Declarant or a Builder. This provision shall not apply to signs used to advertise a Lot for sale or rent, provided that no such sign shall be larger than 18" x 24" and such sign shall only be placed on an Owner's Lot; there shall be no directional signs or other signs placed at intersections, along roadways or streets within the neighborhood, within Common Areas, or otherwise outside the affected Owner's Lot. Placement and display of political signs on any Lot shall be subject to the Rules and Regulations.

4.3.4 *Refuse Storage.* All trash, garbage and refuse stored outside of a dwelling shall be stored in a solidly screened, enclosed, covered receptacle out of view from any street or any other Lot except as reasonably necessary for garbage pick ups. Incinerators for garbage, trash or other refuse shall not be permitted on any Lot.

4.3.5 *Storage of Building Materials and Fuels.*

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

B. On-site storage of gasoline, heating, or other fuels is prohibited, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

4.3.6 *Temporary Structures.* There shall be no structure of a temporary nature on any Lot; all structures erected shall have a permanent foundation and shall be approved by Declarant or the ARC prior to construction, placement or erection on. No trailer, shed, tent, garage or any other similar structure shall be used as a residence. Provided, however, this paragraph shall not be construed to prevent Declarant or a Builder from using sheds or other temporary structures during construction, or as on site management and sales offices. However, no outbuilding structure on any Lot may be used as a temporary or permanent residence

4.3.7 *Parking and Vehicle Storage.* Only licensed, tagged and operative vehicles, classified as passenger cars, SUVs, station wagons, passenger pick-up trucks or passenger vans may be regularly parked in driveways; however, no passenger vehicle with commercial lettering, logos or any other commercial information and/or advertising shall be parked on a Lot other than in an enclosed garage with the door down except for entrance and exiting purposes. No vehicle of any type will be permitted to park regularly on any roadway within the Community; however, construction, service, and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area. Recreational vehicles shall not be placed or allowed to be placed on any Lot or within any part of the Community. No vehicle located on a Lot may be used as a dwelling, even temporarily.

4.3.8 *Offensive or Dangerous Activities Prohibited.* No noxious or offensive activity shall be conducted upon any Lot or Common Area or any other portion of the Community, nor shall anything be conducted thereon tending to cause malodorous emissions, embarrassment, discomfort, annoyance or nuisance to the neighborhood or tending to disturb the peace or endanger the safety of Owners or occupants of any Lot. Examples of the foregoing may include, without limitation:

- A. Pursuit of hobbies or other activities, which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Lot, including but not limited to the maintenance and repair of vehicles;
- B. Barking dogs or other animal noises;
- C. Outside burning of trash, leaves, debris, or other materials;
- D. Use or discharge of any radio, car stereo, loudspeaker, horn, whistle, bell, or other sound device whether once or on a consistent basis so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes;
- E. Hanging of sheets, towels, clothes or laundry in windows or anywhere on a Lot so as to be visible from any roadway or any other Lot (subject to Section 4.3.17 below);
- F. Dumping grass clippings, leaves, or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Community, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff, and Declarant and builders may dump and bury rocks and trees removed from a building site on such building site.
- G. Accumulation of weeds, vegetation, rubbish, debris, garbage, or other waste materials which would render a Lot unsanitary, unsightly, or offensive.

4.3.9 *Underground Utilities.* All utility lines serving structures located on Lots shall be placed underground.

4.3.10 *Mobile Homes and Manufactured Housing; New Construction Only.*

- A. No mobile home, trailer or manufactured housing shall be located on any Lot with the exception of any construction trailer or temporary sales office of the Declarant or approved Builder as set forth herein.
- B. Construction of new buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot and remodeling or converting it into a dwelling unit in the Community.

4.3.11 *Screening.* Boats, boat trailers, campers, satellite dishes, antennae, patios, arbors, and the like shall not be located on a Lot so as to be visible from any roadway. The design and location of all such items, shall be submitted to the ARC in advance of any construction of same. Failure to obtain prior approval of the ARC may result in removal of any such improvements, and the cost thereof assessed against the Owner of that Lot as a Specific Assessment.

4.3.12 *Animals.* Raising, breeding or keeping animals, livestock or poultry of any kind shall be prohibited except that a reasonable number of dogs and cats may be permitted on a Lot as set forth in the Rules and Regulations. Any animal which makes objectionable noise or, in the Board's judgment, constitutes a nuisance or inconvenience to the occupants of other

Lots, shall be removed by the owner upon the Board's request after a notice and opportunity to be heard. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Owners shall clean up behind any pet while walking such Pet on any Common Property and shall additionally clean up behind such pet if such pet leaves droppings on another Owner's Lot. Pets shall be registered, licensed, and inoculated as required by law. All pets must be maintained inside the Dwelling located on the Lot. No pet enclosures or pen's shall be allowed outside the Dwelling.

4.3.13 *Firearms and Hunting.* Discharge of firearms except in the event of emergency is prohibited; provided, the Board shall have no obligation to take action to prevent or stop such discharge. Discharge of explosives, and fireworks of any type is prohibited. Capturing, trapping, or killing of wildlife or other animals within the Community is prohibited, except in circumstances posing an imminent threat to the safety to a particular Owner or to persons within or using the Community.

4.3.14 *Pools and Trampolines.*

A. In-ground pools only shall be permitted upon Lots provided the member has received the approval from the Architectural Review Committee of the submitted plans for the pool design, location and landscaping. Generally, pool plans should reflect that the pool is located behind the residence of each Lot, and shall be screened from view in a manner consistent with the overall architecture and landscaping plans of the home currently in existence. No pool (or any related fence or screen) may be erected without first obtaining approval from Declarant or the ARC, as with all other improvements.

B. No Trampolines shall be allowed on any Lot.

4.3.15 *Use of Waterways.* Swimming, boating, use of personal flotation devices, or other active use of lakes, ponds, streams, or other bodies of water within the Community is prohibited, except that fishing from the shore by Owners, their lessees or guests shall be permitted with appropriate state or local licenses. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams, or other bodies of water within or adjacent to the Community and any Owner or other Person incurring any loss, damage, or injury by virtue of such use shall hold Declarant, the Association and the individual Owners harmless therefor.

4.3.16 *Water Flow.* Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains is prohibited, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

4.3.17 *Clotheslines, Window Treatments, Lawn Maintenance, General Upkeep of Lots, Etc.* No clothesline may be erected or maintained on any Lot. All stored materials, lawn mowers, tools and similar equipment shall be kept in an enclosed garage, the dwelling or other approved, enclosed structure. Temporary window treatments (such as towels, bed sheets, etc.) shall not be permitted except for the first 30 days after an Owner takes possession of

his/her property. Each Owner shall keep his grass, hedges, shrubs, vines and mass planting of any kind trimmed or cut so as to appear neat and attractive, and shall promptly remove any dead trees, vines, shrubs or plants on his property. Failure to adhere to this Section 4.3.17 may result in removal of such items and the cost associated therewith assessed to the Owner and against the Owner's property as a Specific Assessment until paid, including any fines or penalties that may apply for such violations (which are also assessable as Specific Assessments).

4.3.18 *Antennas and Satellite Dishes.* No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on a Lot, unless first applied for and approved by the Declarant or ARC, subject to any restrictions placed upon such antennas, etc. by Declarant or the ARC not in contravention of the applicable federal law. Subject to changing technology and applicable federal law, Declarant or ARC is generally not amenable to the approval of satellite dishes or disks exceeding two (2) feet in diameter and/or visible from the street in front of the residence.

4.3.19 *Walls, Fences and Hedges.* No fence or wall shall be erected on any Lot closer to any street right-of-way than the rear corners of the main structure of the finished home, and no backyard perimeter fence may be higher than four (4) feet tall. Chain link or metal fencing other than wrought iron or similar decorative metal fencing even if approved by the Declarant or ARC is not permitted. Perimeter fencing shall not have more than 70% of any of its surface closed- viewed from a point on a line of sight perpendicular to the line formed by the line of the fence except solid fences or fences having greater than 70% of their surface closed may be erected and maintained along property lines forming the outside boundaries of the Community. A wall constructed of brick or stone masonry and used in lieu of a fence is exempt from the openness test. Fencing of a more solid or privacy nature may be used around patios, wood decks, or pools as privacy screens, provided such plans have been approved in advance by the ARC. Said privacy fencing may be located at a distance no greater than ten (10) feet from the edge or circumference of the patio, deck or pool area being screened, may be no more than six (6) feet tall, and may not be visible to an observer standing directly in front of the house as viewed from the sidewalk opposite the Lot in question. ALL SUCH IMPROVMENTS MUST BE APPROVED IN ADVANCE BY THE ARC.

4.3.20 *Setbacks.* No building shall be located nearer to the front property line or any side street line than the building setback line as shown on the recorded maps of Lots. No building shall be located nearer any side Lot line than the applicable zoning ordinance shall allow. Any building or structure added after the initial dwelling has been constructed on a Lot, must be approved in advance by the ARC.

4.3.21 *Basketball Goals and Mailboxes.*

A. Basketball goals may be permitted on a Lot if placed no closer to any street right-of-way than the front corners of the main structure of the finished home and backboards may not face the street right-of-way . All goals and surrounding areas are to be permanently affixed using concrete foundations and maintained in a neat and orderly condition so as not to create a nuisance. **No moveable basketball goals are permitted on any portion of the Community.**

B. Only mailboxes approved by Declarant or the Association, as applicable,

shall be permitted, and all mailboxes within the Community shall be identical, or if no identical mailbox is available, shall be substantially similar.

4.3.22 *Patios and Decks.* Patios, railings, and supports shall be substantial in appearance, and reflect the style and architectural detail of the dwelling. Patios shall be constructed of materials that are generally acceptable as complementary to the dwelling. Patios shall be designed and installed as an integral part of the dwelling or patio area. Any such patios or balconies must be located so as not to obstruct or diminish the view of or create an unreasonable level of noise for adjacent property owners. Construction shall not occur over easements unless specifically approved by the utility company having jurisdiction and must comply with applicable law. Any balconies constructed on the home, and is visible from the street must be approved in advance by the ARC. Although wooden portions may be used solely to accent a patio improvement, no wooden decks or patios of any type or form shall be permitted.

4.3.23 *Activities Affecting Insurance.* No Owner shall do or permit anything to be done or kept within the Community or fail to fulfill an obligation which will or does result in the cancellation of or increase in the cost of any insurance carried by the Association, or which would be in violation of any law or the Governing Documents. Should an Owner engage in such activity or omission, such Owner shall be responsible for and may be assessed as a Specific Assessment any increase in the Association's insurance premiums caused by that Owner's activities or omissions; should more than one Owner engage in such activities or omissions, each Owner shall be jointly and severally liable for any increase in insurance premiums. In addition, any cancellation of insurance caused by any Owner's activities or omissions shall result in a Specific Assessment of any actual loss to the Association by virtue of such cancellation, and when such loss is incurred by the action or omission of more than one Owner, such Owners shall be jointly and severally liable for same. No waste shall be committed on the Common Area, except as may be necessary to enable the Declarant, the Association or other Person to exercise any rights reserved to them hereunder, or except as may be necessary to enable the Association to perform its functions and provide services under this Declaration, or except as may be reasonably necessary in connection with the exercise by the County or City, as applicable, or any Person of an easement over, under or through the Common Area.

4.3.24 *Local Law.* Owners shall comply with all local laws applicable to any part or all of the Community, including applicable zoning ordinances and building codes.

4.3.25 *Emergency.* There is hereby reserved a general easement to all firemen, ambulance personnel, police and security guards and all similar persons to enter upon the Property or any portion thereof, in the performance of their respective duties.

4.3.26 *Stream Buffer Disturbance.* No stream buffer area within the Community shall in any manner be disturbed by any Owner (or his lessee, guest, contractor, etc.) and should any such disturbance occur, the disturbing Owner shall cause the disturbed area to be promptly restored to its prior condition to the fullest extent practicable and such Owner shall bear the sole cost thereof. Should the Association cause such work to be performed or cause any portion of such work to be performed, the costs thereof shall be assessable against such Owner as a Specific Assessment and there shall be joint and several liability for such costs in

the event of more than one violating Owner.

4.3.27 *Outdoor Furniture.* No household furniture intended for interior use may be kept, stored or used outside of a dwelling or recreational facility.

4.3.28 *Motorized Vehicles.* No Owner or Owners of any Lot shall operate or permit to be operated by those under their control, or by those who ought to be under their control motorcycles, three wheelers, four wheelers, ATV's, off-road vehicles or similar vehicles within the boundaries of the Community, except for legitimate purposes of transportation to and from work into and out of the Community. It is the intention of this restriction to prohibit sport riding or joy riding upon motorcycles and similar vehicles within the boundaries of the Community.

4.3.29 *Inflatable Displays.* No inflatable displays of any type shall be inflated or kept upon any Lot.

4.3.30 *Declarant Exception.* Notwithstanding any other provision of this Declaration or any other Governing Documents, during the Declarant Control Period the restrictions contained in this Article and the Rules or Regulations of the Association with respect to matters addressed in this Article; (i) shall not prohibit or restrict the Declarant from developing any infrastructure (for example, water lines, sanitary sewer lines, streets, street lights and sidewalks) in the Community; and (ii) shall not prohibit or restrict the Declarant (or any Builder with the Declarant's consent) from marketing or selling any part or all of the Community.

4.4. Rules and Regulations. In addition to the restrictions stated above, which may be modified or rescinded only by an amendment to this Declaration, use and occupancy of the Lots and Common Area shall be subject to the Rules and Regulations, which are intended to govern day-to-day use and occupancy of the Lots and Common Areas. The initial Rules and Regulations are set forth in Exhibit C attached hereto and incorporated herein in order to adapt and respond to changing or unforeseen circumstances affecting the Community, the Declarant, the Association and the Owners must have the ability to change the Rules and Regulations in an expedited and inexpensive manner. Accordingly, the Rules and Regulations may be amended, supplemented and/or rescinded and restated as set forth in this Section 4.4.

4.4.1. *Declarant's Authority.* During the Declarant Control Period, the Declarant shall have the unilateral right to amend, supplement and/or rescind and restate the Rules and Regulations, without prior notice to the Association or to other Owners.

4.4.2. *Board Authority.* The Board may amend, supplement and/or rescind and restate the Rules and Regulations. The Board shall send notice by mail to all Members concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. The Board's decision on such action shall be final, subject only to subsection 4.4.1 above.

4.4.3. *Members' Authority.* Members representing more than Seventy-Five (75%)⁷ percent of

the total votes in the Association, at an Association meeting duly called for such purpose, may amend, supplement and/or rescind and restate the Rules and Regulations.

4.4.4. *Conflicts.* Nothing in this Article shall authorize the Board to modify, repeal or expand any provision of this Declaration. In the event of a conflict between this Declaration and the Rules and Regulations, this Declaration shall control. In the event of a conflict between the Bylaws and this Declaration or any Annexation Declaration, the Declaration or Annexation Declaration shall control.

4.5 Limitations. The right and ability of the Declarant and the Board to amend, supplement or restate the Rules and Regulations shall be limited as follows:

4.5.1. *Displays.* The rights of Owners to display religious and holiday signs, symbols and decorations inside structures on their Lots of the kinds normally displayed in single-family residential neighborhoods shall not be abridged, but no such display may violate the Community-Wide Standard, the Rules and Regulations or this Declaration. Regardless of the foregoing sentence, no inflatable displays or signs shall be permitted on any Lot (see Section 4.3.29 above).

4.5.2. *Activities in Dwellings.* No rule established pursuant to this Article shall interfere with the activities carried on within the confines of dwellings, except that the Association may restrict or prohibit any activities that create costs for the Association or other Owners, that create a danger to the health or safety of others, that generate excessive noise, traffic or use of parking facilities, that create unsightly conditions visible outside the dwelling or that otherwise violate the provisions of this Declaration or any applicable governmental law, ordinance or regulation.

4.5.3 *Alienation.* No rule promulgated pursuant to this Section shall prohibit leasing or transfer of any Lot or require consent of the Association or Board for leasing or transfer of any Lot; however, the Association may require a minimum lease term of six (6) months and otherwise regulate the leasing of Lots.

4.5.4 *Abridging existing rights.* No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule and which was in compliance with all provisions of this Declaration and all Rules previously in force. This limitation shall apply only for the duration of such Owner's ownership of the Lot personally, and this right shall not run with title to any Lot. The limitations stated in this subsection shall not apply to amendments to this Declaration.

4.6 Common Area Use. The Board may promulgate and enforce administrative rules and regulations governing use of the Common Areas without notice to the Members or any hearing. Examples of such administrative rules and regulations shall include, but not be limited to, setting hours of operation of a recreational facility or allocating or reserving use of a facility by particular individuals at particular times.

4.7 Lot Purchasers. All prospective purchasers and mortgagees are given notice that use of the Lots and the Common Area is restricted and governed by the Governing Documents, as they may be amended, expanded, and otherwise modified as set forth in each Governing Document.

Each Purchaser, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot shall be affected by the Governing Documents which may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded Document. **Take notice that the Declarant or the Association may have changed the initial Rules and Regulations since the recording of the Declaration.** The Association shall provide a copy of the current Rules and Regulations to any prospective purchaser Member or Mortgagee upon written request and payment of the reasonable cost of such copy.

Article V. Architecture and Landscaping.

5.1. General. No structure or improvement of any sort, including but not limited to homes, walls, fences, additions to homes and/or other items set forth in Section 4.3.1, shall be placed, erected, or installed upon any Lot and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on such Lot except pursuant to approval by the ARC and in compliance with this Declaration.

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

Any improvements constructed on a Lot shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by the Association or its designee in its sole discretion.

This Article shall not apply to Declarant's activities during the Declarant Control Period or to the Association's activities during the term of this Declaration.

5.2. Architectural Review.

5.2.1. *By Declarant.* Each Owner, by accepting a deed or other instrument conveying any legal or equitable interest in a Lot, acknowledges that, as the developer and owner of real estate in the vicinity of and within the Community, Declarant has a substantial interest in the quality and appearance of improvements within the Community, and in determining that they enhance Declarant's reputation as a developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, no Owner shall commence any activity within the scope of this Article on his or her Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted, granted with conditions, withheld, or delayed pending receipt of more information in Declarant's or its designee's sole discretion.

Declarant's rights reserved under this Article shall continue during the Declarant Control Period and for so long as Declarant has the right to expand the Community pursuant to Section 10.1., unless earlier terminated by Declarant by a Recorded Document.

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

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

Moreover, the Declarant shall have the authority to delegate its reserved rights hereunder to the ARC described below and shall have the authority during the Declarant Control Period, unless otherwise relinquished in a Recorded Document, to appoint all or some members of the ARC in its sole and absolute discretion.

5.2.2. *Architectural Review Committee.* Each Owner, by accepting a deed or other instrument conveying any legal or equitable interest in a Lot, acknowledges that, as the entity charged with protecting the interests of the Community and as an owner of real estate in the Community, the Association has a substantial interest in the quality and appearance of improvements within the Community. Upon delegation by Declarant or upon expiration of the Declarant Control Period, the Association, acting through an architectural review committee ("ARC") appointed by the Declarant during the Declarant Control Period and thereafter by the Board, shall assume jurisdiction over architectural matters. The ARC shall consist of at least three, but not more than seven, natural Persons who shall serve and may be removed and replaced in the Board's discretion. During the Declarant Control Period, the members of the ARC need not be Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time. Upon and after the end of the Declarant Control Period, the ARC shall be composed solely of Members.

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

5.3 *Reviewer.* For purposes of this Article, the committee or entity having jurisdiction over architectural matters in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals.

5.4 Guidelines and Procedures.

5.4.1 *Architectural Guidelines.* Declarant may, at its sole discretion, prepare Architectural Guidelines applicable to Lots and/or other portions of the Property which may contain general provisions applicable to all Lots as well as specific provisions which vary among the Lots according to location, Lot size, use, or other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications hereunder. The Architectural Guidelines are not the

exclusive basis for the Reviewer's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application. Further, the Architectural Guidelines may be more restrictive than guidelines followed by Mecklenburg County or as set forth in the International Builder's Code.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of the real property described in Exhibit A or has a right to expand the Community pursuant to Article X, notwithstanding a delegation of reviewing authority, unless Declarant also delegates the power to amend the Architectural Guidelines.

Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Architectural Guidelines with the Board's consent. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Owners for inspection and copying upon reasonable notice during the Association's business hours; Reviewer may also make the Architectural Guidelines available to prospective purchasers of Lots. In Declarant or the Association's discretion (as applicable), such Architectural Guidelines may be recorded at the Mecklenburg County Registry, in which event the recorded version, as it may be amended, shall control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

5.4.2 *Procedures.* No activity described in Section 5.1 shall commence on any Lot until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Reviewer may require the submission of such additional information as deemed necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Also, decisions may be based solely on aesthetic considerations. Note that the Reviewer may also deny an application based solely on the chosen Builder and that Builder's history of non-compliance with the Governing Documents and/or history of non-compliance with the similar documentation and approvals of other communities. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements. Subject to Declarant's veto power described below, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to review so long as they are made in good faith, in accordance with the procedures described in this Article, and in accordance with the provisions of North Carolina law.

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

If the Reviewer requests further or additional information pursuant to the foregoing paragraph, the running of the Response Period shall be suspended until all of such requested information is received; if there were more than ten days remaining in the Response Period on the date such information was requested, then upon the receipt of all requested information the Response Period shall continue with the same number of days remaining as on the day the information was requested; if there are less than 10 days remaining in the Response Period when the information is requested, then the Response Period shall end 10 days from that date upon which all information is received.

If Declarant is not the Reviewer, then until expiration of Declarant's rights under this Article, the Reviewer shall notify Declarant in writing within three business days after the ARC has approved an application. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have Ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant and no such application, regardless of the Reviewer's recommendation or approval, shall be deemed to be approved until the Declarant approves the application in writing, waives its right to do so in writing or fails to exercise its veto power within the 10-day time frame. In the event that the Declarant fails to respond in a timely manner or waives its approval right, approval shall be deemed to have been given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless the Reviewer has granted a variance pursuant to Section 5.5 and Declarant has consented to the variance during the existence of Declarant's rights hereunder.

Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service or the date upon which an e-mail or confirmed receipt fax of such response is forwarded to the applicant at the internet address or location provided to the Reviewer by the applicant. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

Unless the a variance is granted in writing, if construction does not commence on a project for which plans have been approved within two (2) months after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed improvements. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be

considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

Declarant or the Board may, whether upon recommendation of the ARC or not, by resolution exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

5.5 Waiver of Future Approval. Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other matter or waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.6 Variances. The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

5.7 Limitation of Liability. The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Community, but they do not create any duty to any Owner or other Person. Review and approval of any application pursuant to this Article may be based on any consideration the Reviewer deems appropriate, including aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications; (b) compliance with building codes and other governmental requirements; (c) that Lots are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners; (d) that views from any other Lots or the Common Area are protected, or (e) that no defects exist in approved construction.

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

5.8 View Impairment. Neither Declarant nor the Association guarantee or represent that any view over and across any portion of the Community or any adjacent property will be preserved without impairment. Any additions or changes, whether occurring in the course of developing or maintaining the Community, may diminish or obstruct any view from Lots and any express or

implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Article VI. Maintenance and Repair.

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

- 6.2 Association Responsibility. The Association shall maintain the following:
- a. All landscaped rights-of-way and all entry features;
 - b. All streets and roadways within any easement or licenses owned or held by the Association, unless such streets or roadways are maintained by some governing authority;
 - c. All Common Areas, and all landscaping, paving, streets, structures and improvements of any nature located thereon; and
 - d. All ponds, streams and culverts located on the Property which serve as part of any drainage and storm-water retention system.

All costs of the Association in meeting its responsibilities pursuant to this Section shall be Common Expenses.

6.3 Owner's Responsibility. Each Owner shall maintain his Lot and all unimproved Common Area along the boundaries of his Lot (e.g., area between lot line and curb). Each Owner shall maintain all landscaping, paving, structures and improvements of any nature whatsoever located on his Lot. Each Owner's maintenance of his Lot shall include but not be limited to:

- a. Keeping all areas free and clear of all litter, trash, miscellaneous personal property refuse and wastes;
- b. Mowing lawns on a regular basis;
- c. Pruning trees and shrubs;
- d. Watering lawns;
- e. Keeping exterior lighting and mechanical facilities in working order;
- f. Keeping lawn and garden areas alive;
- g. Removing and replacing any dead plant material;
- h. Keeping vacant land well maintained and reasonably free of weeds;
- i. Keeping driveways in good repair;
- j. Complying with all governmental health and police requirements;
- k. Repainting of all structures; and
- l. Repair of exterior damage to all structures.

6.4 Right to Perform Owner's Responsibility. If any Owner or occupant of a Lot fails to perform any of the duties or responsibilities set forth in this subsection, then the Association or Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in any official depository of the United States mail addressed to the party to whom it is intended to be delivered at that party's current address as shown by the records of the Association, or shall be

deemed to be delivered on the date personally delivered, or shall be deemed to be delivered on the date such notice is forwarded to the Person's e-mail address on file with the Association), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such Person fail to fulfill this duty and responsibility within such period, then the Declarant or the Association, acting through its authorized agent or agents, shall have the right and power to enter onto the Lot in question and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise at any person. Owner(s) of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by the Association or the Declarant in performing such work computed at the rate of twelve percent (12.00%) per annum from the date(s) such amounts are expended until repaid to the Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder, and shall reimburse the Association or the Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). In addition, the Declarant or Association may choose to not enter upon the affected Lot and first choose to retain the services of legal counsel in connection with seeking the compliance of such Owner(s) with his duties and responsibilities hereunder, and such Owner(s) shall reimburse the Association for all costs and expenses of same, plus interest at the foregoing rate, (in addition to any subsequent costs and expenses, plus interest at the foregoing rate, of entering the Lot and having the care and maintenance performed). If such Owner(s) shall fail to reimburse the Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by the Association or Declarant, the Association has performed the work on the Lot of the delinquent Owner(s), the Association may charge a Specific Assessment for such amounts against the Lot of such Owner(s), and proceed to collect such Specific Assessment as provided in Article IX below.

Article VII. Insurance.

7.1. **General.** The Association shall obtain and continue in effect the following types of insurance, if reasonable available, or if not reasonable available, the most nearly equivalent coverage as are reasonably available:

- a. Blanket property insurance for all insurable improvements on the Common Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies the Association obtains shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes. The Association shall be deemed trustee of all Members' interests in all insurance proceeds paid to the Association under any such policies and shall have full power to receive and to deal with such proceeds. The insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, except as otherwise provided in this Section;
- b. Commercial general liability insurance on the Common Area. Coverage shall include, without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Common Area. The Board shall use its business judgment in deciding upon per occurrence limits for such coverage and shall consider any applicable secondary mortgage guidelines relating to such coverage. The liability insurance shall name, as separately protected insured, Declarant, any property manager, the Association, the Board, the officers of the Association, the ARC, and their respective representatives, members, agents, and employees with respect to any liability arising out of

the maintenance or use of the Common Area;

- c. Workers' compensation insurance and employers' liability insurance, if and to the extent required by law;
- d. Directors' and officers' liability coverage;
- e. Commercial crime insurance, including fidelity insurance covering all persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and
- f. Such additional insurance as the Board, in its business judgment determines advisable.

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

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

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

7.5 All insurance coverage obtained by the Board shall:

- a. be written with a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate and carries a Best rating of AA or better;
- b. be written in the name of the Association as trustee for the benefited parties. (policies on the Common Areas shall be for the benefit of the Association and its Members);
- c. not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- d. contain an inflation guard endorsement;
- e. include an agreed amount endorsement, if the policy contains a coinsurance clause;
- f. provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association or interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving any Owner any interest in the Common Area other than that of a

Member);

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

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

7.6 In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insured for claims arising in connection with the ownership, existence, use or management of the Common Area and provide:

a. a waiver of subrogation as to any claims against the Association's Board of Directors, officers, employees and its manager, or the Owners and their tenants, servants, agents and guests;

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

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

Article VIII. Repair and Reconstruction of Association Property.

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

Except as otherwise provided in this Section, the Board shall diligently pursue to completion the repair or reconstruction of that part of the Insured Property damaged or destroyed. The Association may take all necessary or appropriate action to affect such repair or reconstruction. Such repair or reconstruction shall be in accordance with the original plans and specifications unless other plans are approved by the Board. While such construction is in progress the Association, for liability purposes, shall ensure in its reasonable discretion that the area is sufficiently cordoned off in a manner that prevents or restricts access or makes access to the affected area difficult by those not engaged in such clearance and restoration.

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

If a decision is made not to restore the damaged improvements and no alternative

improvements are authorized, the Association shall clear the affected property of all debris and ruins and thereafter shall maintain such improvements in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The cost of removal and landscaping shall be paid for with insurance proceeds. The Association shall retain the remaining proceeds in its general or other funds or shall allocate or distribute such funds as the Board determines appropriate, provided any such distribution of insurance proceeds shall be proportionate to the Members' interests. While such clearance and restoration is in progress the Association, for liability purposes, shall ensure in its reasonable discretion that the area is sufficiently cordoned off in a manner that prevents or restricts access or makes access to the affected area difficult by those not engaged in such clearance and restoration.

Article IX Association Finances.

9.1 Purpose of Assessments.

(a) The Assessments levied by the Association shall be used to promote the recreation health, safety and welfare of the residents of the Property and in particular for the maintenance and improvement of the Common Area.

(b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of the Governing Documents and/or the Planned Community Act ("Common Expenses"). As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot, by whatever means, and the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Property.

9.2 Allocating Common Expenses. Until the Association first levies assessments, Declarant shall be responsible for all Common Expenses. Thereafter, assessments for Common Expenses shall be levied at least annually in accordance with this Article. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare and approve a budget of the estimated Common Expenses for the coming year. The budget shall include any contributions to be made to a reserve fund for repair and replacement of capital assets, based on a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset and each asset's expected repair or replacement cost. The initial homeowners' annual assessment is \$650. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected

from sources other than assessments levied against the Lots and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots, as authorized in Article IX. After the Declarant Control Period terminates, the annual Base Assessments shall not be increased by an amount greater than twenty (20%) percent of the annual Base Assessment of the immediately preceding calendar year and in no event shall such increase be unreasonable.

The Association shall levy Base Assessments equally against all Lots subject to assessment to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by paying any deficit between the Common Expenses and Association funds collected pursuant to the current year's budget, or any portion of any such deficit (in addition to any amounts paid by Declarant under Section 9.7), which may be a contribution, an advance against future assessments due from Declarant or a loan, in Declarant's discretion. Any such deficit payment shall be disclosed as a line item in the income portion of the budget. Payment of such deficit, or portion thereof, in any year shall not obligate Declarant to continue payment of such deficit in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The initial Base Assessment for Builders shall be an annual amount of Three Hundred Twenty-Five Hundred Dollars (\$325.00).

9.3 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire Membership. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the Board and the consent of Declarant during the Declarant Control Period. Special Assessments shall be payable in such manner and at such times as determined by the Board.

9.4 Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Lot as follows:

- a. to compel compliance with the Governing Documents by a particular Owner by imposing a uniform per-day fine, which shall be in the nature of and treated for all purposes as a Special Assessment, after notice to such Owner and an opportunity to be heard;
- b. to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Association may offer (which might include the services listed in Section 6.3); and
- c. to cover costs incurred in seeking to have a Lot brought into compliance with the Governing Documents, including any related administrative and collection costs in addition to reasonable attorney fees, and/or to cover the costs of physically bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and, if required by this Declaration or the Bylaws, an opportunity for a hearing before levying any Specific Assessment under this subsection 9.3(c).

9.5 Authority to Assess Owners: Time of Payment. Declarant hereby establishes and the Association is hereby authorized to levy all Assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on

the first day following the later of: (a) the closing on the sale of a Lot to a person or entity other than Declarant or (b) the issuance of a certificate of occupancy for a residential dwelling on such Lot. The first annual Base Assessment levied on each Lot shall be prorated according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

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

9.6 Liability for Assessments. Each assessment levied by the Association, together with interest, late charges, administrative fees and the costs of collection thereof, including reasonable attorney fees and filing fees or other court costs (all of the foregoing costs and fees, excepting assessments, being "Additional Costs"), shall be the joint and several personal obligation of each Owner of a Lot. The Association shall have the power to take whatever action is necessary, at law or in equity, to enforce this Declaration and to collect the assessment and Additional Costs. If the assessment remains unpaid for a period of thirty (30) days after the date of mailing of the notice that it is due, the Association may impose reasonable charges for late payment of assessments, not to exceed the greater of Twenty Dollars (\$25.00) per month from the date of mailing of the notice or ten percent (10%) of any assessment installment unpaid, and the assessment, together with Additional Costs shall constitute a lien on the delinquent Lot when a Claim of Lien is filed by the Association against the Lot in the Office of the Clerk of Superior Court of Mecklenburg County. The lien may be foreclosed by the Association as provided in the Planned Community Act and other provisions of North Carolina law.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Lot or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action of the Board.

The sale or transfer of any Lot shall not affect the assessment lien, or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of a First Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure, except as otherwise provided in this Section; provided, that the personal obligation of the Owner for the payment of assessments and Additional Costs being foreclosed upon shall continue despite such foreclosure. The subsequent Owner of the foreclosed Lot shall not be personally liable for assessments on such Lot due prior to that Owner's acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 9.6, including the subsequent Owner of the foreclosed Lot.

9.7 Deficits During Declarant Control Period. During the Declarant Control Period, Declarant may (but shall not be required to):

- a. Advance funds to the Association sufficient to satisfy the deficit, if any, between the Association's actual operating expenses and the sum of the Base, Special, Neighborhood and Specific Assessments collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be evidenced by promissory notes from the Association in favor of Declarant. Declarant's failure to obtain a promissory note shall not invalidate the debt; and/or
- b. Cause the Association to borrow any amount from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with such loan.

9.8 Statement of Account. Upon written request of any Member, Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting person personally or by regular mail to the Member's address on file with the Association or at the address provided by such requesting Mortgagee or prospective Mortgagee. The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall bind the Association in favor of persons who rely upon it in good faith as of the date noted on the statement.

9.9 Exempt Property. The following property shall be exempt from payment of Base Assessments, Specific Assessments, and Special Assessments:

- a. all Common Area;
- b. any property dedicated to and accepted by any governmental authority or public utility; and
- c. any and all property owned by the Declarant.

9.10 Capitalization of Association. Upon acquisition of record title to a single family residential Lot by the first Owner thereof other than Declarant or a builder, a one time contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to Two Hundred Fifty Dollars (\$250.00) (in addition to the annual assessment) per single family residential Lot. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the operating account of the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the Bylaws, including expenses incurred by Declarant in providing infrastructure or other Common Area. These amounts may be increased or decreased in the sole and exclusive discretion of the Board; provided, however, that in no event shall this initial contribution equal more than the annual Base Assessment for the year in which the acquisition of title by the first Owner, other than Declarant, occurs.

Article X. Expansion of the Community.

10.1 Expansion by Declarant. Until the ending of the earlier of (1) the Declarant Control Period or (2) twenty (20) years after the Recording of this Declaration, Declarant reserves the right, but not the obligation, to subject unilaterally to the provisions of this Declaration all or any portion of any real property which is adjacent to the Property that Declarant currently owns or to which Declarant may obtain title in the future. Declarant may transfer or assign this right to subject property to this Declaration, provided that the transferee or assignee is the developer such adjacent real property, and provided that the transfer or assignment is evidenced by a Recorded Document.

Declarant shall subject Additional Land to this Declaration by recording an Annexation Declaration describing the property being subjected. Such annexation and/or the recording of an Annexation Declaration shall not require any Member's consent or the consent of the Association but shall require the consent of the owner of such annexed property, if other than Declarant. Any such annexation shall be effective upon the recording of such Annexation Declaration unless otherwise provided therein. Such expansion by Declarant and the recording of an Annexation Declaration shall not be deemed an amendment to this Declaration requiring a Membership vote in any manner whatsoever.

10.2. Expansion by the Association. Upon termination of the Declarant Control Period, the Association may subject any real property to the provisions of this Declaration with the consent of the owner of such property, if authorized by the affirmative vote of Members representing Sixty-seven (67%) percent of the total existing votes in the Association.

The Association shall subject such property by recording an Annexation Declaration describing the property being subjected. Any such Annexation Declaration shall be executed by the Association and the owner of the subject property, and shall be certified by the Secretary of the Association to have been authorized by the requisite vote of the Members of the Association.

10.3 Lots added by Others. Any property adjacent to the Property that is currently subdivided as individual lots or subsequently is subdivided into lots, developed, or improved whereby such improvements require a driveway connection to the streets or roadways included in the Property shall become subject to the terms of this Declaration.

Article XI Declarant Rights.

11.1. Reasonable Rights To Develop. Declarant and/or its contractors or transferees may construct improvements to or within the Community including to the Lots. The completion of such construction and the said or other disposal of the Lots is essential to the establishment and welfare of the Community. Therefore, during the Declarant Control Period, nothing in this Declaration or the other Governing Documents shall be construed to:

- a. prevent Declarant, approved Builders, or their contractors or subcontractors from doing whatever is reasonably necessary or advisable in connection with the commencement or completion of the above-described work throughout the Community;
- b. prevent Declarant or its representatives from erecting, constructing, and maintaining anywhere in the Community such structures as reasonably may be necessary for the conduct of its business of completing the work, establishing Waterleaf as a residential Community and disposing of the Lots by sale, lease, or otherwise;
- c. prevent Declarant from maintaining such signs and conducting such activities in any part of the Community owned by Declarant or the Association as Declarant may deem to be reasonably necessary for the sale, lease, or disposition of Lots; or
- d. prevent Declarant from placing and utilizing on Lots or other property which it

owns one or more mobile trailers or temporary structures as sales offices or for construction activities.

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

11.2. Marketing and Sales Activities. During the Declarant Control Period and as previously described herein, Declarant and Builders authorized by Declarant may construct, relocate, maintain and carry on upon any Lot Declarant owns or upon portions of the Common Area, such facilities and activities as may be reasonably required, convenient or incidental to the construction, marketing or sale of Lots, as determined in Declarant's sole opinion and subject to Declarant's prior approval. Such facilities and activities may include, without limitation, business offices, signs, model homes, and sales offices. There shall be no limit on the number or size of such facilities except as determined by Declarant. Declarant and authorized Builders shall have easements for access to and use of such facilities. Declarant reserves the right to remove any personal property used in connection with its activities on the Common Area upon termination of its rights under this Section.

11.3 Construction of Improvements. During the Declarant Control Period, Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

11.4. Approve Additional Recorded Documents. During the Declarant Control Period, no person or entity shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Community without Declarant's prior written approval. Any instrument recorded without such consent shall be void and of no force and effect unless Declarant subsequently consents in a Recorded Document.

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

11.6 Exclusive Rights to Use Name of Development. During the Declarant Control Period, no person or entity shall use the name "Waterleaf" or "Waterleaf of Mint Hill," or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Waterleaf" or "Waterleaf of Mint Hill" in printed or promotional matter where such term is used solely to specify that particular property is located within the community and the Association shall be entitled to use the words "Waterleaf" or "Waterleaf of Mint Hill" in its name.

11.7 Right to Approve Changes in Community Standards. During the Declarant Control Period, no amendment to or modification of any Rules and Regulations or Architectural Guidelines

shall be effective without Declarant's prior written approval.

11.8 Easement to Inspect and Right to Correct.

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

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

11.8.3. *Damage.* During the Declarant Control Period, Declarant shall promptly repair any damage to a Lot or the Common Area resulting from the exercise of the easement or right of entry described in subsections 11.8.1 and 11.8.2 of this Section at its own expense. The exercise of these easements shall not unreasonably interfere with the use of any Lot, and entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

11.9 Appointment or Removal of Members of the Board and Officers. Regardless of any other provision of this Declaration, during the Declarant Control Period, Declarant shall have the sole authority to appoint or elect as well as to remove and replace all members of the Board, all officers of the Association and all members of any Association committees (including the ARC) unless Declarant assigns such right to the Membership or Association prior to the termination of the Declarant Control Period.

11.10 Amendment to Declaration. Regardless of any other provision of this Declaration, during the Declarant Control Period, Declarant shall have the sole right to amend or rescind and restate this Declaration by a Recorded Document, without approval or joinder of the Association, any Member or any other Person.

11.11 Review of Design and Construction. Regardless of any other provision of this Declaration, during the Declarant Control Period, Declarant shall have the right to control the design, quality, installation and construction of improvements within the Community as provided in Article V above.

Article XII. Easements and Stream Buffer Requirements.

12.1. General Provisions.

12.1.1 *Owners' Easements of Enjoyment.* Except as limited by this Declaration, the Planned Community Act or by action of the Board in enacting a suspension, every Owner shall have a right of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with, the title to every Lot. Except as limited by this Declaration and the Planned

Community Act, any Owner may delegate his rights of use and enjoyment of the Common Area to the members of his family, his tenants, contract purchasers who reside on the Property, or his guests. Such delegation right may be eliminated when the delegating Owner's rights to use and enjoyment of the Common Area have been suspended.

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

12.1.3 *Encroachments and Declarant's Easement to Correct Drainage.* All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on any Lots or Common Area to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. During the Declarant Control Period and for the benefit of the Association thereafter, the Declarant reserves a blanket easement and right-of-way on, over, and under the ground within the Community to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil or take any other similar action reasonably necessary. After such action has been completed, the Declarant or Association, as applicable, shall restore the affected Property to its original condition to the extent practicable. Declarant or Association, as applicable, shall give reasonable notice of intent to take such action to all affected owners. These rights and reservations are assignable by the Declarant or Association, as applicable.

12.1.4 *Easement for Entry Features.* There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot and all Common Area. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features, the right to grade the land under and around such entry features and the right to take action necessary to maintain any entrance sign or monument.

12.1.5 *Construction and Sale Period Easement.* Notwithstanding any provisions contained in the Governing Documents, until Declarant's right to unilaterally subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any Builder or developer approved by Declarant to maintain and carry on development, construction, and sales activities related to property within or near the Community, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient or incidental to the

development, construction and sales activities related to property within or near the Community. This easement shall include, without limitation: (i) the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in any portion of the Community as well as any Lot in the Community; (ii) the right to tie into any portion of the Community with driveways, parking areas and walkways; (iii) the right to tie into or otherwise connect and use (without a tap-on or any other fee for doing so), replace, relocate, maintain and repair any device which provides utility or similar services; (iv) the right (but not the obligation) to construct recreational facilities on the Common Area; (v) the right to carry on sales and promotional activities in the Community; (vi) the right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area; and (vii) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development and sales activities. Further, the Declarant and any Builder or developer authorized by Declarant, may use residences, offices or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. However, neither Declarant nor any Builder may maintain a permanent sales office or other business office within the community – that is, such offices shall be for the purpose of marketing and selling new homes for construction in the Community so that all Lots shall be sold to Class A Owners other than Declarant and Builder whose intent is to use the Lot for residential purposes, and that once such Declarant or Builder exhausts its inventory (if not earlier) the sales offices should be sold to prospective Owners who intend to use the property for residential purposes. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the person causing the damage at its sole expense. During the Declarant Control Period, this section shall not be amended without the Declarant's express written consent.

12.1.6 *Irrigation.* There is hereby reserved to the Declarant and the Association a blanket easement to pump water from ponds, lakes and other bodies of water located within the Community for irrigation purposes.

12.1.7 *Fence Easement.* Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans; governmental regulation, rule, ordinance, or plan approval requirement; or which is deemed to be in the best interests of the Community by the Association.

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

12.1.9 *Easement and Right of Entry for Repair Maintenance and Reconstruction.* If any dwelling is

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

12.1.10 *Pedestrian Easements.* To the extent that they are not maintained by the Owners of those portions of the Community on which they are located, the Association shall maintain all Pedestrian Access Easements required to be located on any portion of the Community pursuant to approved subdivision plan approvals and/or pursuant to plats of the Community recorded in the register of deeds of the county in which the Property is located, and/or pursuant to written maintenance agreements with the municipal or county authorities.

12.2 *Surface Water and Management Stream Buffer Requirements.* The Community is subject to the Surface Water Improvement and Management ("S.W.I.M.") stream buffer requirements of the Town of Mint Hill, North Carolina. The S.W.I.M. stream buffer requirements are found in Article 9 of Appendix A (Zoning) in the Code of Ordinance of the Town of Mint Hill, North Carolina, as the same may be amended from time to time.

12.3 *Restrictions on Improvements or Interference with Easements.* No improvement shall be built in such a way upon any Lot, and no other action shall be taken by any Owner, which in any way restricts or limits the easement rights granted and reserved herein. No Owner shall have any right to remove, destroy, damage or impede any improvement placed in any valid easement.

Article XIII. Mortgage Provisions.

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

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

- a. any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;
- b. any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage or such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days of receiving notice of such violation;
- c. any lapse, cancellation or material modification of any insurance policy the Association maintains; or

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

13.2. *No Priority.* No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

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

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

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

Article XIV. Changes to Common Area.

14.1. Condemnation. If a Lot or portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Area shall be appropriately allocated among all other Owners if any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least Sixty-seven (67%) percent of the total votes in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

a. if the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining Common Area to the extent available, unless within sixty (60) days after such taking Declarant, during the Declarant Control Period, and Members representing at least eighty (80%) percent of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Article VIII regarding funds for restoring improvements shall apply;

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

14.2. Transfer, Partition or Encumbrance of Common Area.

a. Except as this Declaration otherwise specifically provides, the Common Area shall not be judicially partitioned or subdivided into Lots, nor shall the ownership of the

Common Area be otherwise divided or encumbered in any manner after conveyance to the Association, except upon the approval of Members representing at least Eighty (80%) percent of the total votes in the Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant if during the Declarant Control Period.

b. The Association shall have the authority, subject to approval of Members representing a majority of the total votes in the Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant, if during the Declarant Control Period, to transfer portions of the Common Area and improvements thereon to appropriate governmental entities or tax-exempt organizations for the maintenance, operation, and preservation thereof; provided, any such transfer shall not relieve such Common Area from the rights and benefits of the Association and the Members as provided in this Declaration and shall otherwise be subject to the provisions of this Declaration.

Article XV. Fines and Suspension of Privileges or Services.

The Board may impose fines on an Owner as a Specific Assessment and/or suspend an Owner's right and privilege to use certain Common Area for failure of that Owner, his lessees, agents or invitees, to abide by this Declaration, the Rules and Regulations or the administrative rules and regulations governing Common Area. The Board shall not impose any such fine or suspension unless and until the Owner charged has been given notice of the charge, opportunity to be heard by and present evidence to the Board and notice of the Board's decision. Suspensions may be imposed for a reasonable period of time and/or until a violation or delinquency is cured. The provisions of this Article shall not be applicable to Declarant.

Article XVI. Dispute Resolution and Limitation on Litigation.

16.1 Consensus for Association Litigation. Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval of Board members representing at least sixty-seven (67%) percent of the total votes of the Board. This Section shall not apply, however, to (a) actions by the Association to enforce the Governing Documents (including, without limitation, the imposition of fines, the suspension of privileges or services or the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Prior to the Association or any Member commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect in the Community or any improvement constructed thereon, Declarant shall have the right to meet in good faith and discuss the subject of the proceeding with the Members or the particular Member, and to access, inspect, correct the condition of or redesign any portion of the Community, including any improvement as to which a defect is alleged. In addition, the Association or the Member shall notify the Builder who constructed such improvements prior to retaining any other expert witness or for other litigation purposes.

16.2. Alternative Method for Dissolving Disputes. Declarant, the Association, its officers, directors and committee members, all Persons subject to this Declaration, any Builder within the Community, and any Person not otherwise subject to the Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances, or disputes described in Section 16.3 ("Claims") using the procedures set forth in Section 16.4 hereof.

16.3. Claims. Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements in the Community (other than matters of aesthetic judgment under Article V, which shall not be subject to review) shall be subject to the provisions of Section 16.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 16.4:

- a. any suit by the Declarant and/or Association against any Bound Party to enforce the provisions of this Declaration;
- b. any suit by the Declarant, Association or any Owner to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the party's ability to enforce the provisions of this Declaration;
- c. any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- d. any suit in which any indispensable party is not a Bound Party; and
- e. any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 16.4.1 unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 16.4.

16.4. Mandatory Procedures.

16.4.1. Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- a. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- b. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- c. Claimant's proposed remedy; and
- d. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

16.4.2. Negotiation and Mediation.

a. The Parties shall make reasonable efforts to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

b. If the Parties do not resolve the Claim within Thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have Thirty (30) additional days to submit the Claim to mediation under an independent agency providing dispute resolution services in Mecklenburg County or surrounding areas.

c. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; however, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

d. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within Thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

e. Within five (5) days a the Termination of Mediation, the Claimant shall make a final written demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants' original Notice shall constitute the Settlement Demand, if the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

16.4.3 Failure to Settle. Should the Parties be unable to reach a mutually acceptable settlement after adhering to the procedures set forth above, each Party may pursue its available legal, equitable and administrative remedies pursuant to the Governing Documents or applicable law.

16.4.4 Allocation of Costs of Resolving Claims. Each Party shall bear its own costs of the Mandatory Procedures set forth in this section, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

16.5 Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 16.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 16.4. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

Article XVII. Miscellaneous.

17.1 *Parties Bound.* All persons and entities acquiring any interest in any of the Lots, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the Lots, shall likewise be bound.

17.2 *Duration.* The provisions of this Declaration shall run with and bind the Property perpetually, unless and until the Community is terminated pursuant to N.C.G.S. Section 47F-2-118.

17.3 *Amendment.* Except as provided in Section 11.10 above, this Declaration may be amended only by a written instrument executed by the Association and authorized by the affirmative vote of at least sixty-seven percent (67%) of all Lots, cast in person or by proxy at a meeting held in accordance with the Bylaws of the Association. Any amendment must be recorded to be effective.

17.4 *Enforcement.* Subject to the provisions of Article XVI above and in addition to the powers granted to the Board or Declarant under Section 4.3.1(F) above, the Declarant, any Owner and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants and obligations imposed by this Declaration. Subject to the provisions of Article XVI above, the Declarant, the Association or any Lot owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration. The Declarant, the Association and/or any Owner shall be entitled to recover reasonable attorney's fees and costs incurred in bringing and prosecuting such action from the breaching or violating Owner(s), in addition to recovering any pre-action fees and costs pursuant to this Declaration. All of the foregoing attorney fees, costs and other fees and costs associated with enforcing this Declaration or the other Governing Documents shall be assessable as a Specific Assessment hereunder.

17.5 *Failure to Enforce No a Waiver.* The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

17.6 *Assignment by Declarant.* Any or all of the rights, powers, easements, functions and obligations reserved or given to the Declarant in this Declaration may be assigned to the Association, and the Association shall accept and assume responsibility for any or all such rights, powers, easements, functions and obligations when requested by the Declarant. Any such assignments or transfer shall be memorialized by a Recorded Document executed by the Declarant, a copy of which shall be promptly provided to the Association, and the Association shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Declarant. The Declarant, but not the Association, shall thereupon be released from such obligations and duties.

17.7 *Sale or Lease.* In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Association may reasonably require. Upon acquisition of a Lot, each new Owner or Lessee shall give the Association, in writing,

the name and mailing address of the Owner or Lessee and such other information as the board may reasonably request.

17.8 *Variations.* Notwithstanding anything to the contrary contained herein, the Declarant and/or the Association or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if the Declarant or the Association determine that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community and would not be inconsistent with the Declarant or Association's duties to the Community and the Association.

17.9 *Severability.* Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

17.10 *Captions.* The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

17.11 *Law Controlling.* This Declaration shall be construed and governed pursuant to the laws of North Carolina.

17.12 *References to Statutes.* All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to or replacements of such provision.

17.13 *Joinder of Declarant's Lenders.* Wachovia Bank, National Association, Agent, and TRSTE, Inc., Trustee, join in the execution of this Declaration for the purpose of acknowledging and agreeing that the lien of the deed of trust from Declarant to TRSTE, Inc., IV, Trustee and Wachovia Bank, National Association, Agent recorded in the Registry in Book 18834, Page 884 (for purposes of this section and the Lender Consent below, "Deed of Trust") and all liens against the Property evidenced by Uniform Commercial Code Financing Statements in favor of Wachovia Bank, National Association, Agent, filed in the Registry and in the Office of the North Carolina Secretary of State as of the date of recordation of this Declaration in the Registry, is and shall be subject and subordinate to the terms of this Declaration with respect to all portions of the Property subject to such liens, such that, upon any foreclosure or deed or other proceeding in lieu of foreclosure of the said deed of trust, or upon any other action taken to enforce any liens under the Assignment or any of the Uniform Commercial Code Financing Statements, this Declaration shall remain in force and effect with respect to all such portions of The Properties, and this Declaration shall not be void as a result of any such foreclosure, deed or other proceeding in lieu of foreclosure or other action. Until such time as it is revoked by an instrument recorded in the Registry, this acknowledgment and agreement shall remain in effect and apply to all Additional Land subject to any of the above-described liens that is annexed to this Declaration following the date of recordation of this Declaration in the Registry, whether or not Wachovia Bank, National Association, Agent and TRSTE, Inc., Trustee, join in the execution of the Annexation Declarations annexing such Additional Land.

17.14 *Joinder of Builders.* Grace Residential, LLC and Lopez Homes, Inc. have executed the attached consents agreeing to subject the properties within Waterleaf owned by such companies to

the terms of this Declaration and the Governing Documents.

IN WITNESS WHEREOF, Waterleaf of Mint Hill, LLC, as the Declarant hereunder, has caused this instrument to be executed by its duly authorized Manager, all by order and authority duly granted by its corporate board of directors, as of the day and year first above written.

[SIGNATURE PAGE TO FOLLOW – THE REST OF THIS PAGE
INTENTIONALLY LEFT BLANK]

CONSENT OF LOPEZ HOMES, INC.:

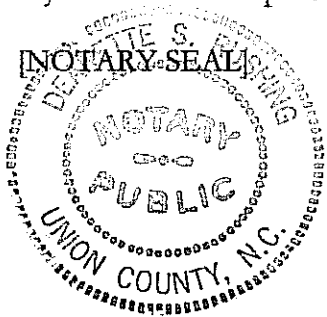
IN WITNESS WHEREOF, Lopez Homes, Inc., by the undersigned authorized corporate officer has caused this Consent to be executed this 30th day of March, 2007, evidencing its consent to the terms hereof as referenced in Section 17.14 above.

STATE OF North Carolina)
)
COUNTY OF Mecklenburg)

I, Deanette S. Rushing, a Notary Public of Union County, State of North Carolina, do hereby certify that Lopez Homes, Inc., by [Signature], its PRESIDENT, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this 30th day of March, 2007.

Deanette S. Rushing
Notary Public for Union County
My Commission Expires: 01-23-2012



CONSENT OF TRSTE, INC.:

IN WITNESS WHEREOF, TRSTE, INC., by the undersigned Trustee has caused this Consent to be executed this 27th day of March, 2007, evidencing its consent to the terms hereof as referenced in Section 17.13 above.

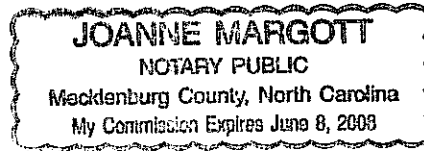
STATE OF NC)
COUNTY OF Mecklenburg)

By: (Carol Field)
NAME CAROL FIELD
TITLE The Vice President

I, Joanne Margott, a Notary Public of Mecklenburg County, State of NC, do hereby certify that TRSTE, INC., Trustee, by Carol Field, its Vice President personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal this 27th day of March, 2007.

(Signature)
Notary Public for Mecklenburg CO
My Commission Expires: 6/8/08



[NOTARY SEAL]

CONSENT OF WACHOVIA BANK, N.A.

IN WITNESS WHEREOF, Wachovia Bank, N.A., by its authorized officer has caused this Consent to be executed this 27th day of MARCH, 2007, evidencing its consent to the terms hereof as referenced in Section 17.13 above.

WACHOVIA BANK, N.A.

By: Carol Field
Name: Carol Field
Title: Vice President

STATE OF NC)
COUNTY OF Mecklenburg)

I, Joanne Margott, a Notary Public of Mecklenburg County, State of NC, certify that Carol Field, personally came before me this day and, being duly sworn, acknowledged that he/she is Vice Pres. of Wachovia Bank, N.A., a National Association and that the seal affixed to the foregoing instrument in writing is the corporate seal of said National Association, and that said writing was signed and sealed by him/her in behalf of said corporation by its authority duly given. And the Vice Pres. acknowledged the said writing to be the act and deed of said National Association.

Witness my hand and official stamp or seal this 27th day of March, 2007.

[Signature]
Notary Public for Mecklenburg Co
My Commission Expires: 6/8/08

[NOTARY SEAL]

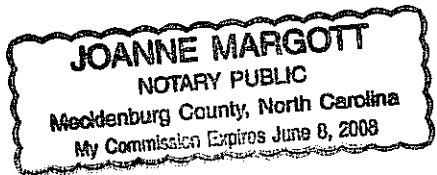


Exhibit A

Legal Description

Lying and being in Mecklenburg County, North Carolina and being more particularly described as follows:

Beginning at a found 1 ½" pipe lying on the common corner of Lot 6 of Arlington Oaks Subdivision, as more particularly described on the plat recorded in Map Book 36, Page 612 of the Mecklenburg County Registry, and the adjacent property owned now or formerly by Carolina Water Service of NC, Inc., as more particularly described in the deed recorded in Book 4371, Page 281 of the Mecklenburg County Registry, and the adjacent property owned now or formerly by Floyd C. Blackwelder, as more particularly described in the deed recorded in Book 4492, Page 60 of the Mecklenburg County Registry, such pipe marking THE POINT AND PLACE OF BEGINNING; thence with the southwesterly boundary of said Carolina Water Service property and the southwesterly boundary of the adjacent property owned now or formerly by Cap Care Group, Inc., as more particularly described in the deed recorded in Book 10426, Page 13 of the Mecklenburg County Registry, S 32-35-17 E 1,910.27 feet to a found 2" pipe; thence continuing with the southwesterly boundary of said Cap Care Group property and with the southwesterly boundary of the adjacent property owned now or formerly by Timothy D. Davis and Dianna T. Davis, as more particularly described in the deed recorded in Book 5266, Page 896 of the Mecklenburg County Registry, S 24-16-55 E 960.30 feet (passing a found # 5 rebar at 920.43 feet) to an iron pin lying on a northeasterly corner of that property owned now or formerly by Larry Glenn Howell and Shirley W. Howell, as more particularly described in the deed recorded in Book 2997, Page 95 of the Mecklenburg County Registry; thence with the northerly boundary of said Howell property, the following three courses and distances: 1) S 38-24-15 W 74.28 feet to a found # 6 rebar; 2) N 82-06-34 W 396.04 feet to a found # 5 rebar; and 3) S 63-17-49 W 49.56 feet to a found # 4 rebar in a stone pile located on an easterly corner of that property owned now or formerly by B. David Houston and Margie Y. Houston, as more particularly described on the deed recorded in Book 4241, Page 996 of the Mecklenburg County Registry, said found # 4 rebar lying N 87-39-03 E 2,218.88 feet ground distance, 2,218.84 feet grid distance from Mecklenburg County Monument Station "M 069" NAD 83, N: 530969.50, E: 1519097.56, combined factor: 0.9999825; thence with the northeasterly boundary of said Houston property and with the easterly boundary of the adjacent property owned now or formerly by Henry T. Houston and Margie B. Houston, as more particularly described in the deed recorded in Book 3589, Page 384, the following courses and distances: 1) N 38-06-27 W 2,513.91 feet to a found 1" pipe; 2) N 36-00-25 W 115.39 feet to a found 32" Oak; 3) N 46-28-58 E 66.39 feet to a found 1" pipe; and 4) N 12-07-28 W 1,507.72 feet (passing a found # 5 rebar at 1,418.73 feet) to an iron pin lying within the right of way of the existing 50' public right-of-way known as Hough Road (S.R. # 3111); thence continuing within the right-of-way of Hough Road, N 82-49-47 E 181.76 feet to an iron pin; thence leaving the right-of-way of Hough Road and continuing with the westerly boundary of that property owned now or formerly by Joseph Lee Howard and Salem Elizabeth Macknee, as more particularly described in the deed recorded in Book 13658, Page 325 of the Mecklenburg County Registry, the following courses and distances: 1) S08-43-34 E 9.51 feet to an iron pin; and 2) S 09-32-31 E 637.04 feet to a found # 4 rebar lying on the southwesterly corner of said Howard property; thence with the southerly boundary of said Howard property, N 78-35-00

E 143.75 feet to a found # 4 rebar lying on the southeasterly corner of said Howard property; thence with the easterly boundary of said Howard property, the following courses and distances: 1) N 11-24-40 W 277.79 feet to a found # 8 rebar; 2) N 78-24-03 E 8.46 feet to a found # 4 rebar; and 3) N 09-33-55 W 318.91 feet to an iron pin lying within the right-of-way of the aforementioned Hough Road; thence continuing within the right-of-way of Hough Road, S 85-40-04 E 200.18 feet to an iron pin; thence leaving the right-of-way of Hough Road and continuing with the westerly boundary of Lot 1 and the adjacent Lot 3 of Arlington Oaks Subdivision, as more particularly described on the plat recorded in Map Book 36, Page 612 of the Mecklenburg County Registry, N 11-08-55 W 322.71 feet to a found $\frac{3}{4}$ " pipe lying on the northerly boundary of that property owned now or formerly by Marlene Cody Hough as more particularly described in the deed recorded in Book 9328, Page 581 of the Mecklenburg County Registry; thence with the northerly boundary of said Marlene Hough property, S 78-22-20 W 149.94 feet to a found # 4 rebar lying on the northwesterly corner of said property; thence with the southwesterly boundary of said Marlene Hough property, S 11-24-38 E 299.97 feet to a found # 5 rebar lying on the common westerly corner of said Marlene Hough property and the adjacent property owned now or formerly by John Randolph Rappe and Nora Mae Rappe, as more particularly described in the deed recorded in Book 16447, Page 580 of the Mecklenburg County Registry; thence with the southwesterly boundary of said Rappe property, S 22-44-16 E 395.40 feet to a found # 5 rebar lying on the common southwesterly corner of said Rappe property and the aforementioned adjacent property of Floyd C. Blackwelder; thence with the boundary of said Blackwelder property the following courses and distances: 1) S 33-12-18 E 209.94 feet to a found # 5 rebar; and 2) N 56-46-38 E 209.96 feet to a found 1 $\frac{1}{2}$ " pipe lying on the common corner of said Blackwelder property, the aforementioned Lot 6 of Arlington Oaks Subdivision and the aforementioned Carolina Water Service property, such pipe marking THE POINT AND PLACE OF BEIGNNING.

EXHIBIT B

Additional Land

Any real property adjacent to the Property and owned or acquired by Declarant or its successors or assignees during the Declarant Control Period.

EXHIBIT C
Initial Rules and Regulations

The following restrictions shall apply to all of the Community until such time as they are amended, modified, repealed, or limited pursuant to Article IV of the Declaration:

1. Restricted Activities. The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as the Board may impose:

(a) the maintenance of a combined number of dogs and cats per Lot exceeding two;

(b) the display of more than one political sign on a Lot, which sign shall be no larger than 18" x 24" per Lot for an upcoming election, and which in addition may not be installed or displayed more than thirty (30) days prior to the date of election and which must be removed within five (5) days of same;

(c) Any activity that violates local, state, or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation;

(d) Use of any Lot for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program;

(e) Any business, trade, or similar activity, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (ii) the business activity conforms to all zoning requirements for the Community; (iii) the business activity does not involve door-to-door solicitation of residents of the Community; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked within the Community which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents within the Community, as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

Leasing of a Lot shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a builder approved by Declarant with respect to its development and sale of the Community or its use of any Lots which it owns within the Community;

(f) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Lot without prior approval pursuant to Article V;

(g) Operation of motorized vehicles on pathways or trails maintained by the

Association; and

(h) Use of exterior decorative lights, including holiday displays, with a light bulb color other than white; furthermore, if a holiday display creates a significantly increased traffic flow within the Community, the Lot's Owner or occupant responsible for such display shall remove it upon request of the Board and if the Owner or occupant does not remove such display within a reasonable time, the Board may remove the display.

2. Prohibited Conditions. The following shall be prohibited within the Community:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community;

(b) Structures, equipment, or other items on the exterior portions of a Lot which have become rusty, dilapidated, or otherwise fallen into disrepair;

(c) Installation of any sprinkler or irrigation systems or wells of any type, other than those initially installed by Declarant or a Declarant approved builder, which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Community, except that Declarant and the Association shall have the right to draw water from such sources.

3. Leasing of Lots. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Lot by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term; however, in no case shall such term be shorter than six (6) months. No Owner shall lease any Lot without first contracting a professional, licensed property management company to manage the Lot and the lease, and without first providing the Association with a copy of that contract. No owner shall lease any Lot without first providing all lessees with copies of the Governing Documents. Each lease shall require all lessees to acknowledge receipt of copies of all of the Governing Documents and to comply with and adhere to all of the Governing Documents. A true copy of each executed lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days of execution of the lease.

Exhibit D

BY-LAWS

OF

WATERLEAF OF MINT HILL HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

The name of the corporation is WATERLEAF OF MINT HILL HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as the "Association". The principal office of the corporation shall be located at 7714 Matthews-Mill Road, Mecklenburg County, Charlotte, North Carolina 28277, and the meetings of Members and Directors may be held at such places within the Mecklenburg County, North Carolina as may be designated by the Board of Directors.

**ARTICLE II
DEFINITIONS**

All capitalized terms not defined herein shall have the meanings ascribed to such terms in that certain Declaration of Covenants, Conditions and Restrictions for Waterleaf of Mint Hill executed by Waterleaf of Mint Hill, LLC as Declarant therein, and recorded or to be recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina (as same may be modified, amended, or supplemented, from time to time, the "Declaration").

**ARTICLE III
MEMBERSHIP AND VOTING**

Section 1. Every Owner of a Lot subject to assessment shall be a Member of the association. Membership shall be appurtenant to and may not be separated from ownership of any Lot subject to assessment.

Section 2. The voting rights of the membership shall also be appurtenant to the ownership of the Lots. There shall be two classes of lots with respect to voting rights:

(a) Class A Lots. Every Person who is an Owner, with the exception of the Declarant, shall be a Class A Member. Class A Members shall be entitled to one (1) vote per Lot. No more than one vote per Lot may be cast by Class A Members, regardless of the number of Owners of a given Lot. However, regardless of the foregoing, Builders shall be non-voting Class A Members.

(b) Class B. The Declarant shall be the sole Class B Member. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters or issues before or considered by the Association. The Class B Member shall be entitled to four (4) votes for each Lot it owns. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occur:

- (iv) the date that all the Lots in the Community have been conveyed by the Declarant to other Owners;
- (v) the surrender by the Declarant of the right to appoint or remove any officer of the Association or member of the Board by a Recorded Document executed by the Declarant; or
- (vi) the expiration of Declarant's rights to appoint or remove any officer of the Association or member of the Board pursuant to Article XI below.

Unless otherwise provided herein or in the Planned Community Act or Declaration, all voting matters shall be decided by a simple majority vote.

**ARTICLE IV
MEETING OF MEMBERS**

Section 1. Annual Meetings. The first annual meeting of the Members shall be within two (2) months from the date that Declarant Control period terminates and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at a date, time and location in Mecklenburg County, North Carolina selected by the Board of Directors (the "Board"). If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President, or by a majority of the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of all the then-current outstanding Membership.

Section 3. Substitute Annual Meeting. If the annual meeting shall not be held on the day designated above, a substitute annual meeting may be called in accordance with Section 2 above. A meeting so called shall be designated and treated for all purposes as an annual meeting.

Section 3. Notice of Meetings. Unless otherwise specified in the Governing Documents, written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, no less than fifteen (15) nor more than fifty (50) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting including the text of any then-current proposals to be voted on at such special meeting. Waiver by a

member in writing of the notice required herein or appearance at said meeting without objection to the notice, signed by him before or after such meeting, shall be equivalent to the giving of such notice.

Section 4. Quorum. Unless otherwise specified in the Declaration, Articles of Incorporation or By-Laws, the presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-fifth (1/5) of the votes of each class of membership shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall by majority vote of those present in person or by proxy have power to adjourn the meeting from time to time, without notice other than announcement at the meeting. The quorum requirement of the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present. Thereafter, the quorum shall increase to the original amount.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, appoint a specific person to act and/or vote, and be dated and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot. If a proxy is granted or issued for the purpose of voting or acting at a particular meeting, the proxy shall be valid for that meeting only. If a proxy is not granted or issued for a particular meeting and unless a shorter period is specified, no proxy is valid for more than two months after its date.

Section 6. Procedure. The Board may elect to operate each meeting by Robert's Rules of Order or by any method it deems appropriate.

Section 7. Informal or Written Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by Members holding a minimum of a quorum number of votes that would be entitled to vote at such a meeting, and filed with the Association's records in its minutes book.

ARTICLE V BOARD OF DIRECTORS

Section 1. Number, Term and Qualification. The affairs of this Association shall be managed by a Board of three (3) Directors, who need not be Members of the Association. During and throughout the term of the Declarant Control Period, all three (3) Directors shall be appointed by Declarant. On the first annual meeting after the expiration of the Declarant Control Period, the number of Directors shall increase to five (5) and at such meeting, the Members shall elect three (3) Directors to serve for a term of one (1) year, and two Directors to serve for a term of two (2) years. At each annual meeting thereafter, the Members shall elect the number of Directors needed to fill the space or spaces left by the Director or Directors whose term is due to expire for a term of two years. Each Director shall hold office until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 2. Nomination. Beginning with the first annual meeting of members after the end of the Declarant Control Period and for each succeeding annual member meeting thereafter, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The

Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than a number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 3. Election. Except as provided with regard to vacancies hereunder, each Director shall be elected at the annual meeting of the members by secret written ballot. At such elections the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of Article III these Bylaws. The persons receiving the largest number of votes shall be elected. Fractional and cumulative voting is not permitted. In the event any Director resigns, but not including a Director selected by Declarant during the Declarant Control Period, the remaining Directors shall elect a substitute Director to fill his or her unexpired term. In the event that a Director resigns during the Declarant Control Period, Declarant shall appoint a replacement choice in its sole discretion.

Section 4. Removal. Any Director, other than a Director selected by Declarant during the Declarant Control Period and those appointed to fill a resignation in accordance with the provisions herein, may be removed from the Board, with or without cause, by a majority vote of the Members of the Association present and entitled to vote at any meeting where quorum is present. Any Director selected by Declarant during the Declarant Control Period may be removed at any time by the Declarant with or without cause.

Section 5. Vacancies. In the event of death, resignation or removal of a Director pursuant to these Bylaws, (a) if such Director was elected by the Members of the Association, his successor shall be selected by the then-remaining Directors and shall serve for the unexpired term of his predecessor, and (b) if such Director was selected by Declarant during the Declarant Control Period, his successor may be selected by the Declarant.

Section 6. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular Meetings of the Board of Directors shall be held at least quarterly without notice at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. If, however, such quorum shall not be present or represented at any meeting, the Directors entitled to vote thereat shall by majority vote of those present in person or by proxy have power to adjourn the meeting from time to time, without notice other than announcement at the meeting and a written notification of same delivered personally or by electronic mail or regular mail to each Director at the contact information on file with the Association. The quorum requirement of the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present. Thereafter, the quorum shall increase to the original amount.

Section 4. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

Section 5. Chairman. A Chairman of the Board shall be elected by the Directors and shall preside over the Board meetings until the President is elected, and thereafter the President shall assume such role. In the event of a vacancy in the office of Presidency, a Chairman may be selected by the Board to serve until a new President is selected.

Section 6. Procedure. The Board may elect to operate each meeting by Robert's Rules of Order or by any method it deems appropriate.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to exercise those powers and responsibilities and the Board shall perform all duties and functions allotted to owner's associations by Article 3 of the Planned Community Act, the terms and provisions of which are incorporated herein.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a summarized statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by the number of Members required to call such special meeting;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

- (1) fix the amount of the annual assessment against each Lot as provided in the Declaration;
- (2) send written notice of any assessment to every Lot Owner subject thereto as provided in the Declaration; and
- (3) foreclose the lien against any property for which any assessments are not paid as provided in the Declaration or to bring an action at law against the owner personally obligated to pay the same.
- (4) issue, or to cause an appropriate officer to issue, upon demand by any Lot Owner, a certificate setting forth whether or not any assessment has been paid by that Lot Owner. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (5) procure and maintain liability and hazard insurance on property owned by the Association as set forth in the Declaration;
- (6) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (7) cause the Common Area, including private streets, to be maintained;
- (8) to pay ad valorem taxes and public assessments levied against the Common Areas.

**ARTICLE VIII
OFFICERS AND THEIR DUTIES**

Section 1. Enumeration of Offices. The officers of this Association shall be a President and a Vice-President, who shall at all times be Members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create (all of the holders of such offices being collectively referred to herein as "Officers").

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer of the Association may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the office he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

(b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The Secretary shall record the votes and keep minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse the funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by an independent public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members. The Treasurer shall issue certificates indicating the payment or non-payment of assessments on specified lots.

**ARTICLE IX
COMMITTEES**

The Association shall appoint an Architectural Review Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

**ARTICLE X
BOOKS AND RECORDS**

The Declaration, Articles of Incorporation, and Bylaws shall be available at reasonable hours Monday through Friday at the principal office for inspection and copying by Members and copies of such may be purchased at reasonable cost. All other documents shall be made available as provided in the North Carolina Non-Profit Corporation Act, unless otherwise provided or prohibited by law.

**ARTICLE XI
ASSESSMENTS**

As more fully provided in Article IX of the Declaration, each Member is obligated to pay to the Association Annual, Special and Specific Assessments which are secured by a continuing lien upon the property which the assessment is made. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property in the same manner that Mortgages may be foreclosed under the Code of Laws of North Carolina, or its successors; and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

**ARTICLE XII
VIOLATION OF DECLARATION AND RULES AND REGULATIONS**

Failure to abide by any Rules or Regulations published by the Association or the terms of the Declaration shall be grounds for an action brought by the Association or any aggrieved Owner, to recover damages or obtain injunctive and equitable relief or both. In addition, a fine may be imposed as a Specific Assessment for such violations as set forth in the Declaration. In addition to these remedies, in the event of violation by an owner of any rules or regulations, such Owner's voting rights and rights to use the recreational facilities may be suspended by the Board.

As set forth in the Declaration before such Owner's voting rights and rights to use the recreational facilities may be suspended by the Board, a notice and an opportunity to be heard shall be provided as provided in the Declaration. For such notice and opportunity to be heard the general requirements of due process shall be observed. The duration of such suspension shall be set by the Board and shall not exceed sixty days for each violation (1) after such violation has been cured or (2) after such cure has been initiated and is being pursued diligently (with the beginning point of such suspension being decided in the sole discretion of the Board). Such hearing shall only be held by the Board after giving the Owner ten (10) days' prior written notice (unless such Owner waives notice) which specifies each alleged violation and sets the time, place and date of the hearing. A determination of the violation and the time of suspension or other sanction shall be made by a majority vote of the Board.

ARTICLE XIII INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify any and all persons who may serve or whom have served at any time as directors or officers of the Association against any and all expenses, including amounts paid upon judgments, counsel fees and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they, or any of them, are made parties, or a party, which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or an officer of the Association, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in any action, suit or proceeding guilty of willful and intentional negligence or misconduct in the performance of his or her duties to the Association. Provided, however, that in the event of a

settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

The provisions hereof shall be in addition to and not exclusive of any and all other rights to which any director or officer may otherwise be entitled under any law, bylaw, agreement, vote of Association Members or otherwise. In the event of death of any officer or director, the provisions hereof shall extend to such person's legal heirs, representatives, successors and assigns. The foregoing rights shall be available whether or not such person or persons were in fact directors or officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit or action is based on matters which antedate the adoption of the By-law.

ARTICLE XIV CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: WATERLEAF OF MINT HILL HOMEOWNERS ASSOCIATION, INC.

ARTICLE XV AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of members present..

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XVI MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.