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LAURA M RIDDICK
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INDEXING NOTE TO CLERK'S OFFICE:

Please index in Grantor index under "Epcon Heritage Grove, LLC, a North Carolina limited liability company"

Please index in Grantee index under "Courtyards at Heritage Grove" and under "The Courtyards at Heritage Grove Homeowners Association, Inc."

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE COURTYARDS AT HERITAGE GROVE

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA. THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS. NO SIGNS, EXCEPT SUCH SIGNS AS MAY BE INSTALLED BY DECLARANT OR THE ASSOCIATION AND SUCH SIGNS AS MUST BE POSTED BY LAW, SHALL BE PERMITTED WITHIN THE COURTYARDS AT HERITAGE GROVE.

[NOTE FOR TITLE EXAMINER: Article VIII, Section 8.8 of this Declaration requires a non-refundable initial contribution to be paid upon the initial purchase of a Lot by an Owner, other than a purchase by the Declarant.]

After recording mail to:
Epcon Heritage Grove, LLC
500 Stonehenge Parkway
Dublin, Ohio 43017

TABLE OF CONTENTS

Page

PART ONE: INTRODUCTION TO THE COMMUNITY 1

Article I **Creation of the Community** 1

1.1. Purpose and Intent. 1
1.2. Binding Effect. 1
1.3. Governing Documents. 1

Article II **Concepts and Definitions** 3

2.1. Defined Terms. 3
2.2. Interpretation of Certain References. 6

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS 6

Article III **Use and Conduct** 7

3.1. Framework for Regulation. 7
3.2. Rule Making Authority. 7
3.3. Owners' Acknowledgment and Notice to Purchasers. 7
3.4. Protection of Owners and Others. 8

Article IV **Architecture and Landscaping** 9

4.1. General. 9
4.2. Architectural Review. 9

Article V **Maintenance and Repair of Lots** 10

5.1. Maintenance by Owners. 10
5.2. Responsibility for Repair and Replacement; No Obstructions; Insurance by Owners. 10
5.3 Irrigation of Landscaping. 11

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION 11

Article VI **The Association and its Members** 12

6.1. Function of Association. 12
6.2. Membership. 12
6.3. Voting. 12

Article VII **Association Powers and Responsibilities** 13

7.1. Acceptance and Control of Association Property. 13
7.2. Maintenance of Area of Common Responsibility. 13
7.3. Insurance. 15
7.4. Compliance and Enforcement. 17
7.5. Implied Rights; Board Authority. 19
7.6. Provision of Additional Services to Lots. 19
7.7. Relationships with Other Properties. 19
7.8. Use of Technology. 20
7.9. Safety and Security. 20

Article VIII **Association Finances** 20

8.1. Authority to Levy Assessments for Association Expenses. 20
8.2. Budgeting and Allocating Association Expenses. 21
8.3. Special Assessments. 22
8.4. Specific Assessments. 22
8.5. Payment of Assessments. 23
8.6. Lien for Assessments. 23

8.7. Exempt Property. 24
8.8. Initial Contributions. 24

PART FOUR: COMMUNITY DEVELOPMENT 25

Article IX Expansion of the Community 25

9.1. Expansion by Declarant. 25
9.2. Expansion by the Association. 25
9.3. Additional Covenants and Easements. 25
9.4. Effect of Filing Supplemental Declaration. 25

Article X Additional Rights Reserved to Declarant 26

10.1. Withdrawal of Property. 26
10.2. Right to Veto Changes in Standards. 26
10.3. Development and Sales Activities. 26
10.4. Special Declarant Rights. 26
10.5. Additional Covenants. 26
10.6. Right to Transfer or Assign Declarant Rights. 26
10.7. Exclusive Rights To Use Name of Development. 27
10.8. Right to Notice of Design or Construction Claims. 27
10.9. Right to Convert Lot to Common Area or Roadway. 27
10.10. Central Telecommunication, Receiving, and Distribution System. 27
10.11. Notices and Disclaimers as to Community Systems. 27

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY 28

Article XI Easements 28

11.1. Easements in Common Area. 28
11.2. Easements of Encroachment. 28
11.3. Easements for Utilities. Etc. 29
11.4. Easements Affect on Common Areas. 29
11.5. Easements for Maintenance, Emergency, and Enforcement. 29
11.6. Easement to Inspect and Right to Correct. 30
11.7. Landscaping and Signage Easements. 30
11.8. Easements for Storm Water Collection, Retention, and Irrigation Systems. 30
11.9. Side Yard Easements. 30

Article XII Party Walls and Other Shared Structures 33

12.1. General Rules of Law to Apply. 33
12.2. Maintenance; Damage; and Destruction. 34

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY 34

Article XIII Dispute Resolution and Limitation on Litigation 34

13.1. Agreement to Encourage Resolution of Disputes Without Litigation. 34
13.2. Dispute Resolution Procedures. 35
13.3. Initiation of Litigation by Association. 36

Article XIV Mortgagee Provisions 36

14.1. Notices of Delinquency. 36
14.2. Right to Examine Books and Records. 37
14.3. No Priority. 37
14.4. Notice to Association. 37
14.5 Consent of Mortgagee. 37

PART SEVEN: CHANGES IN THE COMMUNITY 37

Article XV Changes in Ownership of Lots 37

15.1. Notice of Transfer. 37
15.2. Administrative Fee. 38

Article XVI Changes in Common Area 38

16.1. Condemnation. 38
16.2. Partition. 38
16.3. Mortgaging, Conveyance, or Dedication of Common Area. 38

Article XVII Amendment of Declaration 39

17.1. By Declarant. 39
17.2. By Members. 39
17.3. Validity and Effective Date. 39
17.4. Exhibits 39

Article XVIII Termination of Declaration 40

Article XIX Dissolution or Insolvency of the Association 40

Article XX Stormwater Operation and Maintenance Plan 40

TABLE OF EXHIBITS

Exhibit	Subject Matter
"A"	Land Subject to this Declaration
"B"	Additional Property
"C"	Restrictions and Rules
"D"	By-Laws of The Courtyards at Heritage Grove Homeowners Association, Inc.
"E"	Illustration of Typical Side Yard Easement Area

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE COURTYARDS AT HERITAGE GROVE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("**Declaration**") is made as of the 16th day of March, 2017 by **EPCON HERITAGE GROVE, LLC**, a North Carolina limited liability company, on behalf of itself, its successors, and assigns (**"Declarant"**).

PART ONE: INTRODUCTION TO THE COMMUNITY

As the developer of the Courtyards at Heritage Grove, Epcon Heritage Grove, LLC has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of the Courtyards at Heritage Grove as a planned community.

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant intends by this Declaration to establish a general plan of development for the planned community known as the Courtyards at Heritage Grove. An integral part of the development plan is the creation of the Courtyards at Heritage Grove Homeowners Association, Inc., an association comprised of all owners of real property in the Courtyards at Heritage Grove, to own, operate, and maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration. No lot shall be conveyed before the establishment of The Courtyards at Heritage Grove Homeowners Association, Inc. with the North Carolina Secretary of State's Office.

This document establishes a planned community under the North Carolina Planned Community Act, N.C.G.S. § 47F-l-1Ol, *et seq.* (as it may be amended, the "**Act**").

1.2. Binding Effect.

All property described in Exhibit "A" and any Additional Property which is submitted to this Declaration in the future by amendment of this Declaration or by recording one or more Supplemental Declarations in accordance with Article IX hereof (collectively, the "**Community**" or "**Courtyards at Heritage Grove**"), shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Courtyards at Heritage Grove, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended, is intended to have perpetual duration, subject to the right of the Owners to terminate this Declaration and the planned community established by this Declaration in accordance with the procedures set forth in Article XVIII.

1.3. Governing Documents.

The Governing Documents for the Courtyards at Heritage Grove consist of:

• this Declaration and such Supplemental Declarations as may be recorded from time-to-time;

• the Association's Articles of Incorporation and By-Laws;

• the Restrictions and Rules described in Article III; and

• such resolutions, policies, and guidelines as the Association's Board of Directors may adopt;

all as they may be amended ("**Governing Documents**"). In the event of a conflict between or among any of the Governing Documents, the documents shall be given priority in the order listed above.

The Governing Documents apply to all Owners and occupants of property within the Courtyards at Heritage Grove, as well as to their respective tenants, guests, and invitees. If a Lot is leased, the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents and the lease shall so provide.

The Association, the Declarant, and every Owner shall have the right to take legal action to enforce the Governing Documents. The Association shall have the specific enforcement powers and remedies described in Section 7.4 and elsewhere in the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Throughout the Governing Documents there are diagrams to illustrate the concepts discussed and aid in the reader's comprehension. Such diagrams are for illustrative purposes only. In the event of a conflict between any diagram and the text of the Governing Documents, the text shall control.

Diagram 1.1 identifies the various Governing Documents and their functions.

GOVERNING DOCUMENTS		
Articles of Incorporation (filed with the Secretary of State)	→	establishes the Association as a nonprofit corporation under North Carolina law
By-Laws (Board of Directors adopts; By-laws attached as Exhibit "D")	→	governs the Association's internal affairs, such as voting, elections, meetings, etc.
Declaration (recorded)	→	creates obligations which are binding upon the Association and all present and future owners of property in the Courtyards at Heritage Grove
Supplemental Declaration (recorded)	→	Expands the Courtyards at Heritage Grove and/or creates additional obligations, restrictions and easements on a portion of the Courtyards at Heritage Grove
Restrictions and Rules (Board or members may adopt; initial set attached as Exhibit "C")	→	govern use of property, activities, and conduct within the The Courtyards at Heritage Grove
Board Resolutions, Policies, and Guidelines (Board adopts)	→	establish rules, policies, guidelines, and procedures for internal governance, interpret Governing Documents, and regulate operation and use of Common Area and Lots, among other things

Diagram 1.1. Governing Documents

Article II Concepts and Definitions

2.1. Defined Terms.

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Act": The North Carolina Planned Community Act, N.C.G.S. § 47F-2-101, *et. seq.,* as it may be amended.

"Area of Common Responsibility": The Common Area, the Maintained Areas, and such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles": the Articles of Incorporation of The Courtyards at Heritage Grove Homeowners Association, Inc. filed with the Office of the Secretary of State, State of North Carolina, as they may be amended or restated.

"Association": The Courtyards at Heritage Grove Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.

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

"By-Laws": The By-Laws of The Courtyards at Heritage Grove Homeowners Association, Inc. as they may be amended or restated. A copy of the By-laws is attached to this Declaration as Exhibit "D."

"Class "B" Control Period": The period of time during which the Declarant, as the Class "B" Member, is entitled to appoint the members of the Board, as provided in Article III of the By-Laws. The Class "B" Control Period shall terminate not later than 90 days after the first to occur of the following:

(a) the date that 98% of the total number of Lots permitted by the Zoning Plan for the property described in Exhibits "A" and "B" if any, have certificates of occupancy issued thereon and have been conveyed to Class "A" Members;

(b) 20 years from the date of recording of this Declaration; or

(c) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" Control Period.

"Class B Member": The Class B Member shall be the Declarant (initially, Epcon Heritage Grove, LLC, a North Carolina limited liability company), its successor or assigns.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use, benefit, or enjoyment of the Owners, including private streets within the Community until such time as they are dedicated to the Town of Wake Forest, permanent detention or retention ponds, and any improvements within the Common Area including the entrance monuments, clubhouse, pool, gazebo, walking trails, and fountains, if any, Declarant elects to construct for the common use and enjoyment of the Owners. Any such improvements may be initially owned by the Declarant but ultimately conveyed to the Association for the use and enjoyment of the Owners except for certain improvements shown on plats as public rights of way to be dedicated to NCDOT or the Town of Wake Forest, which may be conveyed to the Association until dedicated to the NCDOT or the Town of Wake Forest. Common Areas shall include all areas on recorded plats for the Community identified as "Open Space", "Tract A", or "Tract B".

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners in performing its responsibilities and exercising its rights and powers under the Governing Documents, including any reasonable reserve, as the Board may find necessary or appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless approved by Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, except payments due under leases of capital improvements such as street lights and costs of purchasing or installing capital improvements such as street lights or an irrigation well, if the Board determines such purchase to be in the best interests of the Association, shall not be considered an initial development expense or original construction cost subject to this limitation.

"Community" or "Courtyards at Heritage Grove": The real property described on Exhibit "A," together with the real property described on Exhibit "B" if and when submitted to this Declaration pursuant to Article IX, less any portion thereof which is withdrawn from the coverage of this Declaration by amendment pursuant to Section 10.1.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing in the Courtyards at Heritage Grove, or the minimum standards established pursuant to the Restrictions and Rules, and Board resolutions, policies, and guidelines, whichever is the highest standard. Declarant initially shall establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Courtyards at Heritage Grove change.

COMMUNITY-WIDE STANDARD		
	The higher of:	
MINIMUM STANDARDS	**OR**	**PREVAILING STANDARD**
Restrictions and Rules *Resolutions, Policies, and Guidelines of Board* *Example set by Declarant, Board*		

Diagram 1.2. Community-Wide Standard

"Courtyard Patio Area": That portion of the "Courtyard Side" of a Lot and any adjacent Easement Area for the benefit of such Lot, as described in Section 11.9, which is improved with one or more of a patio, deck, covered porch, or screened porch, together with any landscaping and other improvements within that portion of the Courtyard Side of such Lot and the adjacent Easement Area which lies between the planes formed by the front and rear facades of the Unit constructed on such Lot as extended across the common boundary to the furthest edge of the Easement Area, except that the Courtyard Patio Area shall not include any fence and gate which encloses all or a portion of such area and any portion of such area which is not enclosed by such fence. If a Unit's patio extends beyond the side of a Unit to the rear of said Unit, the Courtyard Patio Area shall also include that portion of said patio located at the rear of the Unit, together with any landscaping and other improvements, to the extent the patio, landscaping, and other improvements located at the rear of the Unit are enclosed by the fence and gate constructed by Declarant that encloses the Courtyard Patio Area.

"Declarant": Epcon Heritage Grove, LLC, a North Carolina limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development, construction of improvements, and/or sale of all or substantially all of the Lots and/or the remaining undeveloped or unsold portions of the property described in Exhibits "A" and "B" and who the immediately preceding Declarant designates as Declarant in a recorded instrument and any Person acquiring all of Declarant's

special rights and obligations pursuant to Section 10.5 below. During the Development and Sale Period, Declarant may delegate certain Declarant rights and obligations set forth in this Declaration to other Persons.

"Declarant Affiliate": Any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, member, partner, or shareholder of the Declarant.

"Development and Sale Period": The period of time between the recording of this Declaration and the date as of which neither Declarant nor any Declarant Affiliate owns property subject to this Declaration and the Declarant no longer has the right to unilaterally expand the Community pursuant to Section 9.1.

"General Assessment": Assessments levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.2.

"Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, By-Laws, Articles, Restrictions and Rules, Policies and Guidelines, and Board resolutions, all as they may be amended.

"Lot": A portion of the Courtyards at Heritage Grove, whether improved or unimproved, which may be separately owned and conveyed and which is either (i) depicted as a numbered lot on a recorded plat for the Courtyards at Heritage Grove, or (ii) a parcel of land intended for further subdivision and development. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon.

In the case of a parcel of vacant land intended for further subdivision, the parcel shall be deemed to contain the number of Lots designated for residential use for such parcel on the Zoning Plan or Declarant's site plan, whichever is more recent, until such time as a subdivision plat is recorded subdividing all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and the number of Lots in any remaining portion shall continue to be calculated in accordance with this paragraph.

Lots may be combined or further subdivided, and boundary lines of Lots may be changed, only by recording of a plat or other legal instrument further subdividing or resubdividing the parcel of property (which subdivision shall be subject to such other restrictions as may be set forth in this Declaration, any Supplemental Declaration or the Restrictions and Rules). In the absence of recording such a legal instrument, ownership of adjacent Lots by the same Owner shall not permit such Lots to be treated as a single Lot for purposes of voting and assessment, notwithstanding that such Lots may be improved with a single dwelling.

"Maintained Areas": The Unit Exteriors, landscaping and lawn areas outside of a Courtyard Patio Area, sidewalks, walking trails, driveways, exterior light fixtures, mailboxes, and retaining walls, if any, and any other portions of a Lot which are to be maintained by the Association for the benefit of the Members and Occupants as more particularly set forth in this Declaration, but specifically excluding those portions of a Lot which are the Owner's responsibility under Section 5.1.

"Member": A Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": A mortgage, a security deed, a deed of trust, or any other form of security instrument affecting title to any Lot. The term "**Mortgagee**" shall refer to a beneficiary or holder of a Mortgage.

"Occupant": A Person who occupies a Unit.

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

"Person": A natural person, corporation, partnership, limited liability company, trust, or any other legal entity.

"Restrictions and Rules": The restrictions and rules set forth in Exhibit "C," as they may be supplemented, modified, and repealed pursuant to Article III.

"Special Assessment": Assessments levied in accordance with Section 8.3.

"Specific Assessment": Assessments levied in accordance with Section 8.4.

"Supplemental Declaration": An instrument recorded pursuant to Article IX which creates or imposes additional easements, restrictions, and obligations on the land described in such instrument.

"Unit": A structure or structures comprising a single family detached dwelling, including any garage.

"Unit Exteriors": The Unit Exteriors refer to the roof and roof decking, foundations, footings, steps, outer surfaces of exterior walls, front porches, gutters, drains, and downspouts of Units, and any gate and fences between Units or enclosing a Courtyard Patio Area installed as a part of the original construction of a Unit on the Lot, and any replacement thereof, but specifically excluding doors, windows, the Courtyard Patio Area (and any improvements located therein) decks, and other property specifically referenced in Section 5.1 of this Declaration as the responsibility of the Owner to maintain.

"Zoning Plan": The land plan for the development of the Courtyards at Heritage Grove approved by the applicable municipality, as it may be supplemented or amended, which includes all of the property described in Exhibit "A" and may include all or a portion of the Additional Property. Inclusion of property on the Zoning Plan shall not, under any circumstances, obligate Declarant to submit such property to this Declaration, nor shall the omission of property described in Exhibit "B" from the Zoning Plan bar its later submission to this Declaration as provided in Article IX.

2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the Office of the Register of Deeds for Wake County, North Carolina, or such other place as may be designated as the official location for filing documents affecting title to real estate in Wake County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance, architecture, landscaping, and other aesthetic matters at the Courtyards at Heritage Grove are what give the community its identity and make it special. Each Owner and resident participates in upholding such standards and can take pride in the results of that common effort. This

Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for the community standards to evolve over time.

Article III Use and Conduct

3.1. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for the Courtyards at Heritage Grove, a framework of affirmative and negative covenants, easements, and restrictions that govern the Courtyards at Heritage Grove. The initial Restrictions and Rules attached as Exhibit "C" are a part of that framework. However, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, and trends. Therefore, this Article establishes rulemaking authority and procedures for modifying and expanding the Restrictions and Rules set forth in Exhibit "C." This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to Section 7.1(c), nor to administrative policies which the Board may adopt by resolution to interpret, define, or implement the Restrictions and Rules.

3.2. Rule Making Authority.

(a) So long as the Declarant has the right unilaterally to amend this Declaration pursuant to Section 17.1, the Declarant may unilaterally execute and record amendments to Exhibit "C" to add new Restrictions and Rules or modify or rescind existing Restrictions and Rules.

(b) Subject to the terms of this Article and the Board's duty to exercise its powers in a reasonable, fair, and nondiscriminatory manner, the Board may adopt new Restrictions and Rules or modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules.

(c) In addition, Members may, at an Association meeting duly called for such purpose, modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Any such action shall require approval of persons entitled to cast at least 50% of the total Class "A" votes in the Association. In addition, during the Development and Sale Period, any such action shall require the written consent of Declarant.

(d) The Board shall send notice to all Owners or publish notice in a community newsletter or on a community intranet or website concerning any Restrictions and Rules change proposed under subsections (b) or (c) above at least five business days prior to the meeting of the Board or Members at which such action is to be considered. At any such meeting, Members shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(e) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(f) No action taken under this Article shall have the effect of modifying, repealing, or expanding any provision of this Declaration other than the Restrictions and Rules set forth in Exhibit "C."

3.3. Owners' Acknowledgment and Notice to Purchasers.

ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR LOTS AND THE COMMON AREA IS LIMITED BY THE RESTRICTIONS AND RULES AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME-TO-TIME. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by changes to the Restrictions and Rules adopted pursuant to Section 3.2. Except for amendments adopted pursuant to Section 3.2(a), there is no requirement

that modifications to the Restrictions and Rules be recorded; therefore, all purchasers of Units are advised to request a current copy of the Restrictions and Rules from the Association.

3.4. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the restrictions and Rules set forth in Exhibit "C," all Restrictions and Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly.

(b) Religious and Holiday 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 dwellings located in single-family residential neighborhoods shall not be abridged, except that the Board may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

(c) Flags. No rule shall regulate or prohibit the display on a Lot of the flag of the United States or the flag of North Carolina, of a size no greater than four feet by six feet, by the Owner or occupant of such Lot, provided the flag is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. Sections 5-10, as amended, governing the display and use of the flag of the United States. No Owner shall construct, install, erect, or maintain upon any Lot or Common Area, any flagpoles.

(d) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all Occupants be members of a single housekeeping unit and to limit the total number of Occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, create a danger to the health or safety of occupants of other Lots, generate excessive noise or traffic, create unsightly conditions visible outside the dwelling, or create an unreasonable source of annoyance to persons outside the Lot.

(f) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(g) Alienation. No rule shall prohibit the transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot; however, rules may restrict leasing of multiple Lots by the same Owner or by related or affiliated Persons and may require a minimum lease term of up to 12 months. The Association may also require that Owners use lease forms approved by the Board and adhere to those leasing restrictions listed in section 4 of the Restrictions and Rules, attached to this Declaration as Exhibit "C".

(h) 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 if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.

(i) Reasonable Rights to Develop and Sell. No rule or action by the Association or Board shall impede Declarant's right to develop the Courtyards at Heritage Grove, nor restrict Declarant or such builders as Declarant may so authorize from maintaining upon Common Areas and Lots which they own any facilities necessary or

incidental to construction or sale of Lots. By way of example and not limitation, no rule shall prohibit Declarant or such builders as Declarant may so authorize from maintaining temporary structures for use during construction of a Lot or from using any home as a sales office.

The limitations in this Section 3.4 shall only limit rulemaking authority exercised under Section 3.2. They shall not apply to amendments to this Declaration adopted in accordance with Article XVII provided such amendments are not inconsistent with the Act.

Article IV Architecture and Landscaping

4.1. General.

No structure or thing shall be placed, erected, or installed upon any Lot, right-of-way or Common Area within the Courtyards at Heritage Grove, and no improvements or other work (including installing fences, staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Courtyards at Heritage Grove, except in compliance with this Article. No signs, except such signs as may be installed by Declarant or the Association and such signs as must be posted by law, shall be permitted within the Courtyards at Heritage Grove. This Article shall not be construed to regulate or prohibit those flags permitted under Section 3.4(c), or those antennae and other permitted devices described in Exhibit "C", provided they are installed in compliance with those sections and such rules as are specifically authorized in those sections.

Any Owner may remodel, paint, or redecorate the interior of his or her residential dwelling on a Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a dwelling visible from outside the structure shall be subject to approval.

The Declarant's activities shall be exempt from architectural review under this Section so long as the Declarant has rights under this Article, as described in Section 4.2.

4.2. Architectural Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges that Declarant has a substantial interest in ensuring that the improvements within the Courtyards at Heritage Grove enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property in, or in the vicinity of, the Courtyards at Heritage Grove. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Courtyards at Heritage Grove or any real property that may be made a part of the Courtyards at Heritage Grove pursuant to Section 9.1 and until a certificate of occupancy has been issued for a dwelling on every Lot, unless earlier terminated in a written instrument that Declarant executes and records.

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

Declarant may, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) an architectural review committee appointed by the Board of Directors (the "**ARC**"), or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii)

Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them.

(b) Architectural Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over architectural matters. The ARC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount if any, as the Board may establish.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications 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. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

Article V Maintenance and Repair of Lots

5.1. Maintenance by Owners.

Except to the extent that such maintenance responsibility is otherwise specifically assigned to the Association pursuant to Section 7.2 or any Supplemental Declaration applicable to the Lot, each Owner shall maintain his or her Lot and all landscaping and improvements comprising the Lot in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, except that there shall be no right to remove trees, shrubs, or similar vegetation without prior approval pursuant to Article IV. Without limiting the generality of the preceding sentence, and notwithstanding anything to the contrary set forth in this Declaration, Owners shall be responsible for maintenance, repair, and replacement of the following within their respective Lots: windows, screens, doors (including storm and garage doors), all glass surfaces, frames, sashes, and jambs, and the hardware therefore; the Courtyard Patio Area on their Lot and on any Easement Area benefiting their Lot established pursuant to Section 11.9, and all landscaping and improvements thereon; any deck, screened porch, covered porch, its structural components, and all improvements thereon (except for front porches which shall be maintained by the Association); utility pipes, lines, fittings, and pumps serving only the Lot; and the interior of the Unit and all interior Unit improvements, including bathroom and kitchen fixtures, light fixtures or other electrical or plumbing equipment, and all structural components of the Unit except for the foundation and footers. Further, each Owner shall be responsible for maintenance, repair, and replacement of the heating and air conditioning systems servicing the Unit whether located on the Lot or not. Each Owner shall be responsible for interior pest control.

5.2. Responsibility for Repair and Replacement; No Obstructions; Insurance by Owners.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner and its invitees or occupants shall not obstruct the Area of Common Responsibility in any way, including, but not limited to, interfering with any utilities, roads, or lawns.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, and comprehensive public liability insurance for his or her Lot, including the Association as an additional insured under the policies of insurance, and providing the Association

with certificates evidencing such coverages as of the date of conveyance of the Unit to the Owner, unless the Association is obligated to carry such insurance pursuant to any Supplemental Declaration or other covenants applicable to the Lot, or unless the Association otherwise notifies the Owner in writing that it is carrying such insurance on the Lot (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Lot and the Owner.

In the event of damage to or destruction of structures on or comprising a Lot, the Owner shall, within 180 days thereafter, complete the repair or reconstruction of the damaged structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Lot and maintain it in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

Additional covenants applicable to any Lot may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lot and for clearing and maintaining the Lot in the event the structures are not rebuilt or reconstructed.

Neither the Association nor Declarant shall bear any responsibility for the maintenance or safekeeping of personal property of any Owner or occupant of a Lot, their family, guests, or invitees, nor shall the Association or Declarant be held liable for the condition of, or any loss or damage to, any such personal property except to the extent directly attributable to the reckless acts or willful misconduct of the Association, Declarant, or their respective agents or employees.

5.3 Irrigation of Landscaping.

The Association shall have the authority to create rules, restrictions, and procedures governing the operation of an irrigation system that services the Common Area, Lots, or both including controlling how frequently the irrigation system is utilized, if at all.

Pursuant to Section 47-3-122 of the Act, no requirement to irrigate landscape set forth in this Declaration shall be construed to require the irrigation of landscaping during any period in which the U.S. Drought Monitor, as defined in G.S. 143-350, or the Secretary of Environment and Natural Resources has designated an area in which the Community is located as an area of severe, extreme, or exceptional drought and the Governor of North Carolina, a state agency or unit of local government has imposed water conservation measures applicable to the area. Any requirement to irrigate landscaping set forth in this Declaration shall be suspended to the extent the requirement would otherwise be prohibited during any period in which the Governor of North Carolina, a state agency or unit of local government has imposed water conservation measures applicable to the area. The Association may not fine or otherwise penalize an Owner for, and the Association shall not be in violation of, an irrigation requirement during a drought designated by this Section. For purposes of this Section the term "landscaping" includes, lawns, trees, shrubbery, and other ornamental or decorative plants.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

This Declaration establishes the Association as a mechanism by which each Owner is able to participate in the governance and administration of the Courtyards at Heritage Grove. While many powers and responsibilities are vested in the Association's board of directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association membership -- the owners of property in the Courtyards at Heritage Grove.

Article VI The Association and its Members

6.1. Function of Association.

The Association has been established to administer the Courtyards at Heritage Grove in accordance with the Governing Documents. Its responsibilities include, but are not limited to:

(a) management, maintenance, operation, and control of the Area of Common Responsibility;

(b) interpretation and enforcement of the Governing Documents;

(c) establishing and upholding the Community-Wide Standard; and

(d) upon delegation or termination of Declarant's authority under Article IV, administering the architectural review process for the Courtyards at Heritage Grove, as provided in that Article.

6.2. Membership.

(a) Classes of Membership. The Association initially shall have two classes of membership, Class "A" and Class "B". Class "A" Members shall be all Owners, including the Declarant as to any Lot which it owns. The sole Class "B" Member shall be the Declarant. The Class "B" membership shall be temporarily suspended during any period that the Declarant does not own a Unit, subject to automatic reinstatement upon Declarant's acquisition of any Unit or annexation of additional property pursuant to Article IX; however, such temporary suspension shall not suspend, terminate, or otherwise affect the Class "B" Control Period. The Class "B" membership shall terminate upon the earlier of:

(i) the date that 98% of the total number of Lots permitted by the Zoning Plan for the property described in Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Class "A" Members;

(ii) 20 years from the date of the recording of this Declaration; or

(iii) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" membership.

Declarant shall hold a Class "A" membership for each Lot that it owns notwithstanding the termination of the Class "B" Membership.

(b) Automatic Membership; Exercise of Privileges. Every Owner automatically becomes a Member of the Association upon taking title to a Lot and remains a Member as long as the Owner holds title to such Lot. Acceptance of a deed to a Lot shall be deemed consent to membership in the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

The voting rights of each class of membership shall be as follows:

(a) Class "A". Each Lot owned by a Class "A" Member is assigned one vote equal to that of every other Lot owned by a Class "A" Member. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it. Voting rights shall be subject to suspension for nonpayment of assessments or other charges owed the Association as provided in Section 7.4(b)(ii).

No vote shall be exercised for any property that is exempt from assessment under Section 8.7.

(b) Class "B". The Class "B" Member shall have Class "A" voting rights with respect to any Units that it owns and, in addition, the consent of the Class "B" Member shall be required for various actions of the Board, the membership and committees, as specifically provided elsewhere in the Governing Documents. In addition, the Class "B" Member may appoint the members of the Board of Directors during the Class "B" Control Period, as specified in Article III of the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. In addition, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property, subject to the provisions of Article XVI. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of owners, occupants, and residents of the Courtyards at Heritage Grove.

(b) During the Development and Sale Period or any time thereafter, Declarant, any Declarant Affiliate, and their respective designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, which has been made subject to this Declaration. Declarant may convey Common Area to the Association in one or more transactions. Each conveyance of Common Area shall be free and clear of all liens and encumbrances of a monetary nature. Upon Declarant's written request, the Association shall convey or reconvey to Declarant (or quitclaim any interest in) any portions of the Common Area which do not contain structures or facilities for common use, if conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines, subject to such membership approval as may be required by the Act.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility shall include, but need not be limited to:

(a) all portions of and structures situated on the Common Area;

(b) all streets until such time as they are dedicated to the Town of Wake Forest, and alleys, if any, within the Courtyards at Heritage Grove unless and until such time as they are accepted by a public body for perpetual maintenance; provided, the Association shall have no responsibility for removal of snow or ice on streets or alleys;

(c) any landscaping, signage, street lights, fences, retaining walls, entrance monuments, walking trails, and sidewalks within public rights-of-way or sidewalk easements lying within or abutting the property subject to this Declaration, except to the extent such responsibility is otherwise assigned to Owners pursuant to Section 5.1 or assumed by a governmental body or utility provider;

(d) any pipes, lines, pumps, or other apparatus comprising any irrigation system serving either or both the Common Area and Lots to the extent located within Common Area, rights-of-way, or easements granted to the Association;

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

(f) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association;

(g) the Maintained Areas, specifically including such landscape maintenance services as the Board determines in its sole discretion, which may include, mowing, weeding, shrub trimming, sweeping walks and drives, fertilizing, topseeding, and repairing and replacing irrigation systems

(h) the stormwater facilities contemplated in Article XX of this Declaration. Upon conveyance of title from Declarant to the Association of the Common Area containing detention ponds and any other quality or quantity control stormwater facility structures the Association shall (i) perpetually operate, maintain, inspect or allow to be inspected, fund, replace, and modify the water quality and water quantity control structures, (ii) indemnify the Town of Wake Forest, if so required by a Stormwater Plan entered into by Declarant, (iii) execute documents regarding maintenance and funding, and (iv) perform all other requisite obligations pursuant to the terms of a Stormwater Plan entered into by Declarant if Declarant should enter into such a plan.

In order to carry out the Association's duties set forth herein, it is hereby reserved to the Association the right to unobstructed access on and upon each Lot, at all reasonable times to perform maintenance as provided in this Article. In the event that a pet, including a dog, is present on the area to be maintained by the Association, then lawn maintenance and exterior maintenance and repair services will not be provided by the Association, and there shall be no abatement or reduction in General Assessments as a result of the Association not providing such services. Further, the Owner may, at its election, plant annual flowers in front, side and rear beds established by Declarant in developing the Unit or approved in accordance with Article IV; provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the remaining yard spaces and provided, further, that no such planting by an Owner shall reduce the assessment payable to the Association. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

Each Owner, by acceptance of a deed to a Lot, acknowledges and agrees that, due to differing amounts of exposure to the elements and other factors, some lawns may require more maintenance than others and that it is in the best interest of all Owners that the Association provide or provide for such lawn maintenance to the Lots and make a uniform charge to each Owner of a Lot without regard to the actual cost of maintenance of a particular lawn.

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

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Notwithstanding the above, some portions of the Area of Common Responsibility may consist of open space or conservancy areas intentionally left in a natural or relatively undisturbed state. The level of maintenance that the Association provides to the Area of Common Responsibility may vary from a high level of landscaping and regular, weekly maintenance to intermittent or no maintenance, depending on the nature and intended use of the particular open space area. Open space or other natural areas may serve as habitats for a variety of native plant, animal, and insect species, and may contain creeks, fallen trees, and other naturally occurring conditions, some of which may pose hazards to persons or pets coming in contact with them. Neither the Association, nor the Declarant, shall have any responsibility for providing maintenance in such areas or taking action to abate such conditions.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members entitled to cast at least 90% of the total Class "A" votes in the Association and, during the Development and Sale Period, the Declarant, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced without Declarant's prior written approval as long as Declarant owns any property described in Exhibits "A" and "B" of this Declaration.

Except as otherwise specifically provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

7.3. Insurance.

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

(i) Property insurance for any insurable improvements on the Common Area, and for gates and fencing installed by Declarant whether installed within the Common Area or on a Lot, insuring against all risks of direct physical loss commonly insured against. The total amount of such insurance after application of any deductibles shall be not less than 100% of the replacement cost of the insured improvements under current building ordinances and codes at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(ii) Commercial general liability insurance on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least $2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

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

(iv) Directors and officers liability coverage;

(v) 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 General 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

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

Premiums for all insurance on the Common Area shall be a Common Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

If the insurance described in clauses (i) or (ii) of this subsection (a) is not reasonable available, the Association shall promptly cause notice of that fact to be hand-delivered or sent via U.S. Mail, postage prepaid, to all Owners.

(b) Policy Requirements. 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 insurable replacement costs in the Wake Forest, North Carolina area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfies the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense except that, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) 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;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

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

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

(v) provide a waiver of the insurer's right to subrogation under the policy against any Owner or member of the Owner's household; and

(vi) include an endorsement precluding denial of coverage under the policy on account of any act or omission of any one or more individual Owners or members of their households, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide an endorsement requiring at least 30 days' prior written notice to the Association and each Owner and each mortgagee whom certificates have been issued, of any cancellation, substantial modification, or non-renewal.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all

insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Insurance proceeds shall be paid to the Association to be held in trust for the benefit of Owners and Mortgagees as their interests may appear.

The Association shall cause damaged improvements on the Common Area to be repaired or reconstructed unless:

(i) the Community is terminated;

(ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or

(iii) a decision not to repair or reconstruct is approved within 60 days after the loss by Owners representing at least eighty percent (80%) of the votes in the Association and, during the Development and Sale Period, by the Declarant. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If any portion of the Community insured by the Association is not repaired or replaced:

(i) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Community;

(ii) the insurance proceeds attributable to damaged improvements on the Lots that are not rebuilt, including but not limited to gates and fencing, shall be distributed to the Owners of the respective Lots, or to lienholders, as their interests may appear; and

(iii) the remainder of the proceeds shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all Lots.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

7.4. Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents. The Association, the Declarant during the Development and Sale Period, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents, subject to the provisions of Article XIII. In addition, the Board may impose sanctions for violation of the Governing Documents as set forth in this Section 7.4 and elsewhere in the Governing Documents.

(b) The Board may impose the following sanctions only after notice and a hearing in accordance with the procedures set forth in Article VIII of the By-Laws:

(i) imposing reasonable monetary fines (subject to the limitations set forth in Section 47F-3- 107 of the Act), which shall constitute a lien upon the violator's Lot (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending the vote attributable to a violating Owner's Lot, and suspending any services which the Association provides to an Owner or the Owner's Lot, during any period that the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association or for a reasonable period for other violations of the Governing Documents;

(iii) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV from continuing or performing any further activities in the Courtyards at Heritage Grove; and

(iv) levying Specific Assessments pursuant to Section 8.4 to cover costs, which the Association incurs to bring a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of an Owner or occupant of a Lot, their guests or invitees.

(c) In addition, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without the necessity of compliance with the procedures set forth in Article VIII of the By-Laws:

(i) requiring an Owner, at the Owner's expense, to perform maintenance on such Owner's Lot, or to remove any structure, item, or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition;

(ii) entering the property and exercising self-help to remove or cure a violating condition upon failure of an Owner to take action as required pursuant to subsection (i) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass;

(iii) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XIII, if applicable.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(e) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

(f) The Association, by contract or other agreement, may enforce applicable city and county ordinances within the Community.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except to the extent that the Governing Documents or North Carolina law specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding, or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of, or in the name of, the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Article VI of the By-Laws.

7.6. Provision of Additional Services to Lots.

The Association may provide, or provide for, additional services and facilities for the Owners and their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Association may enter into bulk service agreements by which a particular service is provided (a) to all Lots, in which case it may include the costs of such services or facilities in the Association's budget as a Common Expense and assess it as part of the General Assessment; or (b) only to Lots which have been improved with Units or at the option of each Owner, in which case the cost may be levied against the Lots receiving service as a Specific Assessment. By way of example, such services and facilities might include the following: trash collection; pest control service; cable, digital, satellite, or similar television service; telecommunication and internet connection services; security monitoring; utilities; and other services and facilities.

Any Association contract for services may provide an opportunity for individual Owners or occupants to contract directly with the service provider in order to gain access to or obtain certain additional, optional services. Termination of any such additional, optional services provided to the Unit shall not relieve the Owner of the obligation to pay General Assessments or Specific Assessments levied pursuant to this Section for basic services provided to all Units or to all Improved Units pursuant to the Association's contract for services.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.7. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and a higher level of Common Area maintenance.

7.8. Use of Technology.

The Association may, as a Common Expense, provide for or offer services that make use of technological opportunities to facilitate the goals and fulfill the responsibilities of the Association. For example, to the extent North Carolina law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may do the following: send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means; collect assessments by electronic means; sponsor a community cable television channel; create and maintain a community intranet or Internet homepage; and maintain an "online" newsletter or bulletin board.

7.9. Safety and Security.

The Association may, but shall not be obligated to, maintain or support certain activities within the Courtyards at Heritage Grove designed to enhance the level of safety or security that each person provides for himself and his property. However, in so doing, the Association assumes no responsibility for personal safety or security of any Persons or their property. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Courtyards at Heritage Grove or any portion thereof, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system or measure is designed or intended. The Association, Declarant, builders, and the members, partners, affiliates, officers, directors, agents, or employees of any of the foregoing, shall not be responsible for or considered insurers or guarantors of personal safety or safety or security within the Courtyards at Heritage Grove, and shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner and occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Courtyards at Heritage Grove and each of them assumes all risks of personal injury and loss or damage to their property, including Lots and their contents, resulting from acts of third parties.

Article VIII Association Finances

8.1. Authority to Levy Assessments for Association Expenses.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles and the Bylaws, specifically including but not limited to the following: expenses of maintaining, repairing, replacing, improving, and operating the Area of Common Responsibility; insurance as provided for in Section 7.3, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision, and utilities; taxes, if any, imposed on the Association or the Common Area; the cost of insurance and fidelity bond coverage obtained pursuant to Section 7.3; the cost of water or other utilities provided to the Area of Common Responsibility, and to Lots if metered through a master meter and billed to the Association; charges for services provided to Lots pursuant to this Declaration; expenses of monitoring and enforcing compliance with the provisions of the Governing Documents; expenses arising out of the Association's indemnification obligations; expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Lots and the Community; expenses incurred in exercising architectural control under Article IV; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; administrative expenses such as postage, copying expense, office supplies, and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Community in good, clean, and attractive condition and to maintain and enhance property values and marketability of Lots within the Community.

There shall be three types of assessments: (a) General Assessments; (b) Special Assessments as described in Section 8.3; and (c) Specific Assessments as described in Section 8.4. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Courtyards at Heritage Grove, is deemed to covenant

and agree to pay these assessments. Such assessments shall commence at the time and in the manner set forth in Section 8.5.

(b) Personal Obligation and Lien. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Courtyards at Heritage Grove, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution, not to exceed 18% per annum), late charges as determined by Board resolution (subject to the limitations of North Carolina law), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner, and a charge and continuing lien upon each Lot as provided in Section 8.6, until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance, except that a Mortgagee or other purchaser who obtains title to a Lot upon the foreclosure of a first priority Mortgage of record shall not be liable for the assessments against the Lot which became due prior to such Mortgagee's or purchaser's acquisition of title to the Lot. For purposes of the foregoing sentence, "acquisition of title" shall be deemed to occur upon the earlier of: (i) the recording of a deed conveying title; or (ii) the time at which the rights of the parties are fixed following the foreclosure of such Mortgage.

Failure of the Board 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 General 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 shortfall.

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 it takes.

Within 10 business days after receipt of a written request therefor, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer or duly authorized agent of the Association setting forth the amount of any unpaid assessments or other charges levied on the Lot. Such certificate shall be binding on the Association and every Owner. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

8.2. Budgeting and Allocating Association Expenses.

(a) Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. The estimated expenses in the budget may, in the Board's sole discretion, include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected need by an annual contribution over the useful life of the asset.

(b) Calculation of General Assessments. Upon determining the total amount of income required to be generated through the levy of General Assessments, the Board shall establish the General Assessment at an equal rate per Lot, subject to discount for unoccupied Lots as provided in Section 8.5.

Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy. Any such subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. In addition, Declarant may loan funds to the Association to cover one-time Common Expenses, such as the cost of construction of an irrigation well to

provide low-cost irrigation water to the Common Area or for the purchase of streetlights, and any such loans and the debt service shall be disclosed in the budget as applicable. If characterized as a loan, the Declarant may charge and collect interest on the outstanding principal balance of the loan at a rate based on the 30-day London Interbank Offered Rate plus 200 basis points. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

(c) Notice of Budget and Assessment; Ratification. Within 30 days following the Board's adoption of any new or revised budget under Section 8.2(a), the Board shall send a summary of the budget, together with notice of the amount of the General Assessment to be levied pursuant to such budget, to each Owner to be assessed thereunder. The budget shall be accompanied by notice of the date, time, and location of a meeting to consider ratification, which meeting shall be set by the Board to occur no less than 10 nor more than 60 days after mailing of the budget summary and notice. The notice shall include a statement that the meeting may be held and the budget may be ratified without a quorum being present.

If the proposed General Assessment does not exceed the applicable Maximum General Assessment described below, the budget shall be deemed ratified unless rejected at the meeting by Owners of at least 90% of the total number of Lots then subject to the Declaration. If the proposed General Assessment exceeds the Maximum General Assessment described herein, such budget and General Assessment shall be effective only upon approval of Owners entitled to cast at least 67% of the votes represented at the meeting. The Maximum General Assessment for each Lot shall be no more than $3,000.00 per year for the 2017 fiscal year and shall increase for each subsequent fiscal year after 2017 by up to 10% or the percentage increase in the Consumer Price Index during the previous fiscal year, whichever is greater (the "Maximum General Assessment"). The "Consumer Price Index" or "CPI" shall refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (South Region; Base: 1982-84 = 100). In the event the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department, bureau, or agency or shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculations envisioned herein, or in the event no such alternative index exists or a dispute arises concerning the selection of such alternative index, the Board shall have the final right and power to select and/or formulate such an alternate index.

If any proposed budget is rejected or not approved, as applicable, or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

(d) Budget Revisions. The Board may revise the budget and adjust the General Assessment during the year, subject to the notice and ratification requirements set forth above.

8.3. 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 under Section 8.2. Any Special Assessment shall require the majority vote of the Board of Directors of the Association, and during the Development and Sale Period, the written consent of Declarant. Except as otherwise provided in Section 8.5, Special Assessments shall be levied equally on all Lots subject to such assessment.

8.4. Specific Assessments.

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

(a) to cover the costs, including overhead and administrative costs, of providing services to a Lot pursuant to Section 7.6, either under a bulk service contract entered into by the Association to provide services to less than all Lots (for example, only to Lots improved with Units) or upon request of the Owner pursuant to any menu of special

services which the Association may offer (which may include items identified in Section 7.6). Specific Assessments for special services may be levied in advance of the provision of the requested service;

(b) for monetary fines imposed pursuant to Section 7.4 and to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b); and

(c) pursuant to Section 8.8.

8.5. Payment of Assessments.

Each Lot shall become subject to assessment hereunder on the date that the Lot is made subject to this Declaration; however, the General Assessment and any Special Assessment levied against a Lot shall be limited to $25.00 per calendar year for any calendar year (or partial calendar year) prior to the earlier of (i) the first day of the month following issuance of a certificate of occupancy for the Unit constructed on such Lot and (ii) the day a Lot is conveyed from Declarant to an Owner. The first annual General Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Assessments shall be paid in such manner and on such dates as the 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. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General 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 or it may, in its discretion, permit payment of the outstanding balance in installments. Neither the Association nor the Owner is obligated to accept any proposed installment payment schedule. The Board may add reasonable administrative fees and costs for accepting and processing installments to the outstanding balance and include them in the installment payment schedule; provided, such costs may include reasonable attorneys' fees only if the Owner has first been given notice of the Board's intention to recover attorneys' fees and court costs, as required in 47F-3-116 of the Act, and given 15 days from the mailing of the notice by first-class mail to the physical address of the Lot and the Owner's address of record with the Association, and, if different, to the address of the Owner shown on the county tax records and the county real property records for the Lot, to pay the outstanding balance without attorneys' fees and court costs. The notice shall also provide the name and telephone number for a representative of the Association with whom the Owner may speak to discuss a payment schedule.

8.6. Lien for Assessments.

(a) Subject to North Carolina law, as it may be amended, if any assessment or installment thereof attributable to a Lot remains unpaid 30 days or more after the due date, the Association shall, upon filing a claim of lien in the Office of the Clerk of the Superior Court of Wake County, North Carolina conforming to the requirements of Section 47F-3-116 of the Act, have a lien against each Lot in favor of the Association to secure payment of assessments and other fees and charges due to the Association as authorized by the Act or the Governing Documents or as the result of any arbitrator's, mediator's or judicial decision, as well as interest, late charges, and costs (including attorneys' fees and court costs, if and to the extent authorized under Section *8.5* and the Act) other fees, charges, fines, and costs of collection. Prior to filing a claim of lien, the Association shall make reasonable and diligent efforts to ensure that its records contain the Owner's current mailing address. No fewer than 15 days prior to filing the lien, the Association shall mail a statement of the assessment amount due and provide in such statement the required content set forth in Section 47F-3-116 of the Act by first-class mail to the physical address of the Lot and the Owner's address of record with the Association, and, if different, to the address of the Owner shown on the county tax records and the county real property records for the Lot. If the Owner is a corporation, the statement shall

also be sent by first-class mail to the mailing address of the registered agent for the corporation. The claim of lien shall comply with the requirements set forth by the Act, including the required certificate of service and appointment of trustee to conduct a non-judicial foreclosure proceeding and sale. Subject to the limitations of North Carolina law, such lien shall be superior to all other liens, except (i) liens and encumbrances recorded before the filing of the claim of lien in the Office of the Clerk of the Superior Court of Wake County, North Carolina, specifically including, but not necessarily limited to, a mortgage or deed of trust on the Lot which is so recorded; (ii) liens for real estate taxes and other governmental assessments and charges against the Lot; and (iii) the lien of mechanics or materialmen, to the extent given priority under North Carolina laws.

(b) If the assessments remain unpaid for 90 days or more, and the Board votes to commence the proceeding against the specific Lot, he Association may foreclose its lien through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with North Carolina law, as it may be amended, except that any lien securing only fines and/or service or collection fees may be foreclosed only by judicial foreclosure.

(c) The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(d) 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 the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Lot shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section *8.5,* including such acquirer, its successors and assigns.

8.7. Exempt Property.

The following property shall be exempt from payment of General Assessments, Special Assessments, and Specific Assessments:

(a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility; and

(b) Any property dedicated to and accepted by any governmental authority or public utility.

In addition, Declarant and the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c) of the Internal Revenue Code.

8.8. Initial Contributions.

Upon the initial acquisition of record title to a Lot by an Owner thereof other than Declarant, an initial contribution shall be made by or on behalf of the purchaser to the Association equal to an amount determined from time-to-time by the Board, in its sole discretion. On the date of execution of this Declaration, the capital contribution shall be Five Hundred Dollars ($500.00). This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessments, or a reserve for the benefit of Owners, but rather shall be considered a Specific Assessment secured by the Association's lien for assessments under Section 8.6. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the

Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws as determined by the Board, in its sole discretion.

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of the Courtyards at Heritage Grove and to accommodate changes in the Zoning Plan that inevitably occur as a community such as the Courtyards at Heritage Grove is developed.

Article IX Expansion of the Community

9.1. Expansion by Declarant.

Declarant may expand the Courtyards at Heritage Grove to include all or any portion of the property described on Exhibit "B" (the "**Additional Property**") by recording a Supplemental Declaration describing the additional property and stating the intent to submit it to the provisions of this Declaration. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant. Once a Supplemental Declaration is on file, the additional property described therein shall be included in Exhibit "A" and shall from and after the date of filing be incorporated into all references in this Declaration when referencing Exhibit "A."

Declarant's right to expand the Courtyards at Heritage Grove pursuant to this Section shall expire when all the Additional Property described on Exhibit "B" has been subjected to this Declaration or 20 years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer, assign, or otherwise permit this right to be exercised by any Person or Persons who are the developers of at least a portion of the real property described in Exhibit "A" or the Additional Property. Any such transfer, assignment, or permission shall be memorialized in a written, recorded instrument executed by Declarant and the Person to whom it is assigned.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in the Additional Property in any manner whatsoever.

9.2. Expansion by the Association.

The Association shall not expand the Community.

9.3. Additional Covenants and Easements.

Declarant may subject any portion of the Courtyards at Heritage Grove to additional covenants and easements. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, and such property was not previously subjected to this Declaration, then the consent of the Owner(s) shall not be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any Additional Property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article X Additional Rights Reserved to Declarant

10.1. Withdrawal of Property.

During the Development and Sale Period, Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the real property which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots then subject to the Declaration by more than 10%. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Right to Veto Changes in Standards.

During the Development and Sale Period, the Declarant shall have the right to veto any amendment to or modification of the Restrictions and Rules.

10.3. Development and Sales Activities.

During the Development and Sale Period:

(a) Declarant and builders whom the Declarant so authorizes in writing may, to the extent permitted by applicable zoning and subdivision approvals and other recorded covenants and restrictions, construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model Lots, and sales offices. Declarant and authorized builders shall have easements for access to and use of such facilities at no charge. Such right shall specifically include the right of Declarant and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge.

(b) 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.

10.4. Special Declarant Rights.

Declarant may exercise any or all of the "Special Declarant Rights" described in N.C.G.S. Section 47F-1-103(28).

10.5. Additional Covenants.

No Person shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Courtyards at Heritage Grove without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.

10.6. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and the transferee and recorded. 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, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.7. Exclusive Rights To Use Name of Development.

No Person other than Declarant, its authorized agents, and builders, shall use the name "Courtyards at Heritage Grove," any derivative of such names, or associated logos or depictions, in any electronic, printed, or promotional media or material without Declarant's prior written consent. However, Owners may use the name "Courtyards at Heritage Grove" in printed or promotional matter where such term is used solely to specify that particular property is located within the Courtyards at Heritage Grove. The Association shall also be entitled to use the words "Courtyards at Heritage Grove" in its name.

10.8. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Courtyards at Heritage Grove in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection pursuant to the rights reserved in Section 11.6.

10.9. Right to Convert Lot to Common Area or Roadway.

Declarant reserves the right to convert any Lot which it owns to Common Area, public right-of-way, or to a combination of Common Area and right-of-way. Such right shall include, without limitation, a right to convert a Lot to right-of-way for the purpose of providing permanent access to property adjacent to the Community, whether or not such property is made subject to this Declaration. Upon conveyance of any Lot by Declarant to the Association as Common Area, the Lot shall cease to be a Lot and shall thereafter be Common Area. Upon recordation by Declarant of a plat or other instrument establishing a public right-of-way over a Lot that Declarant owns, the Lot shall cease to be a Lot and shall thereafter be treated in the same manner as any other property in the Community that has been dedicated to the public.

10.10. Central Telecommunication, Receiving, and Distribution System.

To the extent permitted by applicable law, Declarant reserves for itself, its Affiliates, successors, and assignees, the exclusive and perpetual right and easement to operate within the Courtyards at Heritage Grove, a central telecommunication (including cable television and security monitoring) receiving and distribution system, including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (the **"Community System"**) as Declarant, in its discretion, deems appropriate. Such exclusive and perpetual right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications and cable television service in the Wake County, North Carolina area, and to charge or authorize such provider to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as defined by the laws, rules, and regulations of any relevant government authority, if applicable.

Declarant may enter into and assign to the Association, or cause the Association to enter into, a bulk rate service agreement providing for access to any Community Systems for all Lots as a Common Expense. If particular services or benefits are provided to particular Owners or Lots at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a General Assessment or Benefited Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

10.11. Notices and Disclaimers as to Community Systems.

In recognition of the fact that interruptions in service provided by any Community System may occur, the Association, Declarant, and any Declarant Affiliate shall not be held liable for any interruption in Community Systems services.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, Association, and others within or adjacent to the community.

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) the Governing Documents and any other applicable covenants;

(b) any easements, restrictions, or limitations contained in the land title records, recorded plats, and any deed conveying such property to the Association, whether currently existing or proposed; and

(c) the Board's right to:

(i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(ii) suspend the right of an Owner and the Occupants of the Owner's Unit to use any facilities within the Common Area pursuant to Section 7.4;

(iii) dedicate or transfer all or any part of the Common Area, subject to Section 16.3;

(iv) grant easements, leases, licenses, and concessions through or over the Common Areas;

(v) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 16.3; and

(vi) grant such rights provided for under the Act.

(d) the Declarant's right to use Common Area, whether or not said Common Area is owned by the Association, during the development and construction of the Community for the following purposes: ingress and egress; constructing Units; performing improvements to the Common Area; storage of dirt, materials, machinery, and all other construction materials; and for any other purpose reasonably associated with Declarant's development and construction of the Community.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of the lease.

11.2. Easements of Encroachment.

(a) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or right-of-way and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no

event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(b) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or right-of-way and between adjacent Lots as reasonably necessary to install, maintain, repair, and replace any fence constructed on or within three feet of the boundary line of any Lot.

11.3. Easements for Utilities. Etc.

(a) Installation and Maintenance. Declarant reserves for itself, during the Development and Sale Period, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Courtyards at Heritage Grove (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Courtyards at Heritage Grove, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways, and trails, drainage systems, streetlights, and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded plats or in other recorded documents;

(ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B". The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements Affect on Common Areas.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purpose of enjoyment, use, access, and development of the Additional Property whether or not such property is made subject to the Declaration or has been conveyed to the Association. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for the storage of dirt, machinery, and supplies, the construction of roads, Units, and improvements on the Common Area, and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property.

11.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Courtyards at Heritage Grove as necessary to enable the Association to fulfill its maintenance responsibilities under this Declaration, including Sections 7.2 and 7.6, and

otherwise exercise its authority and fulfill its duties under the Governing Documents. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and designees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry onto an occupied Lot for any purpose other than performing exterior maintenance pursuant to Section 7.2 or any Supplemental Declaration, shall only be during daylight hours and after notice to the Owner.

11.6. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Courtyards at Heritage Grove, including Lots, and a perpetual nonexclusive easement of access throughout the Courtyards at Heritage Grove to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

11.7. Landscaping and Signage Easements.

Declarant and its designees and the Association shall have perpetual, nonexclusive easements exercisable by their respective employees, agents, and contractors over areas within the rights-of-way of streets depicted on any plat of the Community, and those portions of Lots designated, or similarly designated, as "Landscaping and Signage Easements" on the recorded subdivision plats relating to the Courtyards at Heritage Grove for the purpose of installation, maintenance, repair, and replacement of lot bollards, neighborhood entrance monuments, signs, fences, lighting, irrigation systems, and landscaping within the easement area. Nothing herein shall obligate Declarant or the Association to exercise such easements or to construct or install any of the foregoing within any right-of way or Landscaping and Signage Easement. No fences, structures, driveways, plantings, swings, wood piles, dog runs, or any other objects, temporary or permanent, shall be permitted in any Landscape and Signage Easement without the Association's prior written approval, other than those installed by Declarant or its designees.

No person shall interfere with the exercise of this easement by Declarant, its designees, or the Association, by removing, defacing, or otherwise vandalizing any signs (temporary or permanent) or other improvements placed within such easement area by Declarant, its designees, or the Association, or otherwise. The Declarant, its designees and the Association, respectively, may remove signs or other improvements which they have placed on the easement area.

11.8. Easements for Storm Water Collection, Retention, and Irrigation Systems.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement to enter upon any portion of the property within the Community, including Lots, to (a) install, operate, maintain, and replace pumps and lines to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining stormwater; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly return any property damaged as a result of such exercise to substantially the same condition as the property existed prior to the exercise of the easement.

11.9. Side Yard Easements.

(a) The Declarant anticipates that most if not all Lots will be improved with a Unit which has one or more of a patio, deck, covered porch, or screened porch between the main structure of the Unit and the side lot line on one side (the "Courtyard Side") which is directly accessible from one or more doors on the Courtyard Side of the Unit (each such Lot being a "Benefited Lot"). For some Units the patio may extend beyond the side of the main structure of the Unit to the rear of said Unit. For purposes of this Section 11.9:

(i) the side of each Unit which is opposite its Courtyard Side is referred to as its "Passive Side;"

(ii) the side lot line of each Lot on its Courtyard Side is referred to as its "Courtyard Side Lot Line;" and

(iii) the Lot which abuts the Courtyard Side Lot Line of a Benefited Lot is referred to as the "Burdened Lot".

(b) In order to make available to each Benefited Lot a larger and more private Courtyard Patio Area than can be accommodated on the Benefited Lot alone, the Declarant hereby establishes a permanent, nonexclusive easement appurtenant to each Benefited Lot over:

(i) that portion of the adjacent Burdened Lot or adjacent Common Area lying within 5 feet of the Courtyard Side Lot Line which forms the common boundary between the Benefited Lot and such Burdened Lot or Common Area, and extending the entire length of such common boundary, except that if at any point such common boundary lies within 5 feet of the Unit on the Burdened Lot, or within 5 feet of any sidewalk, path, or similar improvement constructed by Declarant on the adjacent Common Area, then this easement shall extend only to the Unit on the Burdened Lot or the nearest edge of such sidewalk, path, or improvement at such point, as applicable;

(ii) if the Courtyard Side of the Benefited Lot is adjacent to a Burdened Lot (rather than Common Area), then any additional area between the common boundary and the Passive Side of the Unit constructed on the Burdened Lot, not to exceed 15 feet from such common boundary, which lies between the planes formed by the front and rear façade of the Unit on the Benefited Lot as extended to the plane formed by the Passive Side of the Unit on the Burdened Lot, except that if the fence and gate enclosing a Benefited Lot's Courtyard Patio Area, as originally installed by Declarant, encroaches onto the Burdened Lot but does not extend entirely to the Passive Side of the Unit on the Burdened Lot, then this easement shall extend only from the shared common boundary lot line onto the Burdened Lot, the entire length of such common boundary, limited to that distance in which the aforementioned fence and gate encroaches at its farthest point beyond the common boundary onto the Burdened Lot; and

(iii) if the Courtyard Side of the Benefited Lot is adjacent to a Burdened Lot (rather than Common Area), any portion of a Benefited Lot's Courtyard Patio Area located on the Burdened Lot not otherwise included in clause (i) and (ii) above.

The areas described in clause (i) and, if applicable, clauses (ii) and (iii) above are collectively referred to as the "Easement Area". A diagram illustrating the typical Easement Area is attached as Exhibit "E." Exhibit "E" does not illustrate all potential Easement Area configurations. If the language of this section 11.9 conflicts with Exhibit "E", the language of section 11.9 shall govern.

Certain Lots within the Community may not receive either, or both, the benefit or burden of an Easement Area. If the fence and gate constructed by Declarant which encloses a Unit's Courtyard Patio Area is entirely located within this Unit's Lot (a "Non-Benefited Easement Lot"), no Easement Area shall be created to benefit the Non-Benefited Easement Lot and thus no Easement Area shall be created to burden the Passive Side of the adjacent Lot which shares a Courtyard Side Lot Line with the Non-Benefited Easement Lot's Courtyard Side. However, the Non-Benefited Easement Lot may still be burdened by an Easement Area on its Passive Side. The Courtyard Side of the adjacent Lot which shares a Courtyard Side Lot Line with the Non-Benefited Easement Lot's Passive Side may be benefited by an Easement Area over the Non-Benefited Easement Lot's Passive Side.

The Easement Area may be exercised by the Owner and occupants of the Benefited Unit for the purposes of:

(i) installation, maintenance, repair and replacement (to the extent not maintained by the Association) of one or more fences and gates, in such location as may be installed by the Declarant or otherwise approved pursuant to Article IV hereof, for purposes of enclosing all or a portion of the Courtyard Side of the Unit

on the Benefited Lot and the Easement Area adjacent thereto, to serve as a Courtyard Patio Area for the Benefited Lot; provided, any such fence and gate shall be setback at least 1 foot from the front corner of each Unit nearest such Courtyard Side Lot Line and shall include a gate allowing pedestrian access through such fence for purposes of exercising the easements set forth below in this Section 11.9 and elsewhere in the Declaration; and

(ii) pedestrian access to, and use and enjoyment of, the Courtyard Patio Area serving the Benefited Lot by the Owners and occupants of the Benefited Lot and their guests and invitees; provided, persons exercising this easement shall not engage in any activities which could result in objects hitting or damaging the improvements on the Burdened Lot or which interfere with the right of the Owner and occupants of the Burdened Lot to quiet enjoyment of their Unit, and shall comply with all Restrictions and Rules which the Association may establish from time to time regulating use of such Easement Areas; and

(iii) installation and maintenance by the Owner and occupants of the Benefited Lot of landscaping and improvements within that portion of the Easement Area which lies within the Courtyard Patio Area for the Benefited Lot, subject to prior approval pursuant to Article IV; provided, there shall be no right to alter, deface, attach anything to, or lean anything against the Unit on the Burdened Lot, or permit vines or other landscaping to attach itself to, climb, or lean against, the Unit on the Burdened Lot, nor any right to construct, install, place or store anything in the Easement Area in a manner which hinders access to the Unit on the Burdened Lot for purposes of performing maintenance and repairs to such Unit.

The Owner of the Benefited Lot shall be solely responsible for maintenance, repair, and replacement of all landscaping and improvements within that portion of the Easement Area contained within the Courtyard Patio Area serving the Benefited Lot, and for the maintenance and security of all items of personal property placed in such Courtyard Patio Area.

The Owner of the Benefited Lot shall indemnify, defend, and hold harmless the Owner and occupants of the Burdened Lot from any and all claims, losses, damages, and causes of action which may arise from the use or alteration of the Easement Area by the Owner and occupants of the Benefited Lots, their contractors, agents, guests, and invitees. The Owner of the Benefited Lot shall be responsible for any damage to the Burdened Lot or improvements thereon resulting from the exercise of the easement rights provided for in this Section 11.9 and, in the event of any such damage, shall promptly repair the damage and restore the Burdened Lot to its condition prior to such damage, using materials of equal or better quality than the original and matching original colors; provided, the Owner of the Benefited Lot shall give the Owner of the Burdened Lot reasonable notice prior to making any repairs to structures on the Burdened Lot. If any such damage has not been repaired and the property restored to its prior condition within fourteen (14) days after written notice to the Owner of the Benefited Lot, or in the case of damage requiring immediate repair to avoid further damage, immediately commenced and diligently pursued to completion, the Owner of the Burdened Lot may undertake such repairs himself, in which event the Owner of the Benefited Lot shall reimburse the Owner of the Burdened Lot for the full cost of such repairs within ten (10) days after completion of such repairs and delivery of an invoice for the same to the Owner of the Benefited Lot.

The Owner and occupants of a Benefited Lot, their contractors, agents, guests, and invitees, by entering upon the Easement Area or otherwise exercising the easement rights granted in this subsection (b), shall be deemed to knowingly assume any and all risks associated with their entry upon and use of the Easement Area and waive and release any and all claims, rights, and causes of action against the Owner and occupants of the Burdened Lot arising out of or which may arise out of such entry and use, except to the extent proximately caused by the gross negligence or willful misconduct of the Owner or occupants of the Burdened Lot, their guests or invitees.

The existence of the easement granted herein shall not entitle any such persons to any proceeds from insurance maintained by the Burdened Lot Owner with respect to the Burdened Lot. The Owner of the Benefited Lot shall be solely responsible for maintaining such liability and property insurance as such Owner deems advisable for the benefit of the Owner and Occupants of the Benefited Lot, their respective guests and invitees, and their personal property. In addition, the Owner of the Benefited Lot shall maintain contractual liability insurance to fund its obligation to indemnify and defend under this subsection (b). Failure of the Owner of the Benefited Lot to fulfill its obligations under this subsection (b) shall entitle the Owner of the Burdened Lot to pursue any and all remedies available at law or in equity, subject to the provisions of Article XIII hereof.

No construction, installation, or modification of improvements on a Burdened Lot after initial construction shall interfere with or modify the terms of the easement rights granted in this subsection (b).

(c) The Owner of the Burdened Lot shall have a perpetual, nonexclusive easement over the Benefited Lot and through any gate and fence on the Benefited Lot as necessary for the Owner and occupants of the Burdened Lot, their contractors, and designees, to obtain access to that portion of the Easement Area within the Courtyard Patio Area serving the Benefited Lot, for purposes of (i) construction, installation, inspection, maintenance, repair, replacement, and reconstruction of the Unit and related improvements on the Burdened Lot (to the extent not performed by the Association), and (ii) installation, maintenance, and repair of utilities and utility meters to serve the Burdened Lot, and for reading of any such utility meters. Except as contemplated by this subsection (c), the Owner and occupants of the Burdened Lot shall have no right to enter into any portion of the Courtyard Patio Area serving the Benefited Lot, but shall retain the right to use that portion of the Easement Area within any such Courtyard Patio Area for support of the Unit on the Burdened Lot and for flow of stormwater from the roof of the Unit on the Burdened Lot and the flow of surface drainage over, across and through the Easement Area in accordance with the stormwater and drainage plans established by Declarant as a part of the original construction of improvements on the Lots. Except in an emergency situation, any entry into a Courtyard Patio Area under clauses (i) or (ii) of this subsection (c) shall be only during daylight hours and only after reasonable notice to the Owner or Occupant of the Benefited Lot. Except as expressly set forth herein, the Owner and occupants of the Burdened Lot shall have no possessory or use rights in and to that portion of the Easement Area on the Burdened Lot lying within the Courtyard Patio Area serving the adjacent Benefited Lot and no right to grant easements over such area to any other person without the consent of the Owner of the Benefited Lot.

(d) Declarant hereby reserves a perpetual, nonexclusive easement of access over and through any fence and gate constructed on a Benefited Lot or a Burdened Lot, for purposes of access to construct or install improvements and landscaping on the Burdened Lot, and to inspect, maintain, repair, and replace the same, which easement may be exercised by the Declarant, its employees, contractors, agents, and authorized designees; provided, reasonable efforts shall be made to notify the Lot Owner prior to any entry into a fenced area and such entry shall be only between the hours of 9:00 a.m. and 5:00 p.m. unless additional hours are otherwise authorized in writing by such Owner.

(e) Declarant hereby grants to the Association, a perpetual, nonexclusive easement of access over and through any fence and gate constructed on a Lot for purposes of access to inspect, maintain, repair, and replace any improvements or landscaping on such Lot or on any adjacent Lot which are the Association's responsibility hereunder and for such other purposes as may be authorized in this Declaration or applicable law, which easement may be exercised by the Association and its employees, contractors, agents, and authorized designees; provided, reasonable efforts shall be made to notify the Lot Owner prior to any entry into a fenced area and such entry shall be only between the hours of 9:00 a.m. and 5:00 p.m. unless additional hours otherwise authorized in writing by such Owner.

(f) Failure of any Owner to enforce any of the provisions of this Section 11.9 shall not be deemed a waiver of the right to do so thereafter for the same or subsequent violations or a waiver of the right to enforce any other provisions hereof.

Article XII Party Walls and Other Shared Structures

12.1. General Rules of Law to Apply.

Each, if any, wall, gate, fence, or similar structure built as a part of the original construction on the Lots that serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIII.

12.2. Maintenance; Damage; and Destruction.

Except to the extent that responsibility for maintenance or repair of a party structure is otherwise assigned to or assumed by the Association pursuant to this Declaration, any applicable Supplemental Declaration, or written agreement if maintenance or repairs to a party structure are necessitated by the conduct of the Owners, occupants, or guests of only one of the Lots that share such party structure, then the Owner of such Lot shall be responsible for the necessary maintenance or repairs. In the event that either Owner fails to provide necessary maintenance or repairs to a party structure within 10 days after the date of written notice from the Association advising of the need for such maintenance or repairs, the Association shall have the right to provide the necessary maintenance or repairs and assess the costs incurred against the responsible Owner(s) and his (or their) Lot(s).

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The success of the Courtyards at Heritage Grove as a community in which people enjoy living and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

Article XIII Dispute Resolution and Limitation on Litigation

13.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Courtyards at Heritage Grove without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 13.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to the following:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Courtyards at Heritage Grove, other than matters of aesthetic judgment under Article IV, which shall not be subject to review.

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards), and any suit by the Association to enforce the Governing Documents if the Association has already complied with the notice and hearing procedures set forth in the By-Laws;

(iii) any suit 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;

(iv) any suit in which any indispensable party is not a Bound Party;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.2(a), 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; and

(vi) any suit by the Association or the Declarant to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's and Declarant's ability to enforce the provisions of Article XV of this Declaration related to changes in ownership of Lots.

13.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") shall give written notice ("**Notice**") to each Respondent and to the Board stating plainly and concisely the following:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort 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 negotiating a resolution of the Claim.

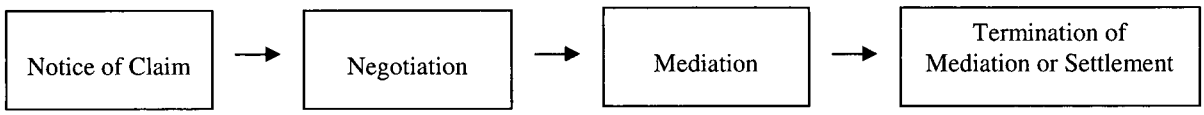
(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 13.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Wake Forest or Raleigh, North Carolina metropolitan area. The mediator shall notify the parties in writing of the date, time and location of the mediation, which shall be within 25 days after the mediator receives the written request from the Claimant. The provisions of N.C.G.S. 7A-38.3F(d), (h), and (i) shall apply to any mediation hereunder.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

Alternative Dispute Resolution Process



(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, 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 this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

13.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of persons entitled to cast *75%* of the total Class 'A" votes in the Association, except that no such approval shall be required for actions or proceedings:

(a) initiated during the Class "B" Control Period;

(b) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens;

(c) initiated to challenge ad valorem taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article XIV Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots in the Courtyards at Heritage Grove. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

14.1. Notices of Delinquency.

Upon written request of an institutional holder, insurer, or guarantor of a first Mortgage ("**Mortgagee**") stating the name and address of such Mortgagee and the street address of the Lot to which its Mortgage relates, the Association shall provide a statement of any delinquency in the payment of assessments or charges owed for such

Unit or any other violation of the Governing Documents relating to such Unit or the Owner or occupant thereof which has not been cured.

14.2. Right to Examine Books and Records.

Subject to the provisions of the Act, upon written request of any Mortgagee stating the name and address of such Mortgagee and the street address of the Lot to which its Mortgage relates, the Association shall provide the Mortgagee with a copy of the Association's most recent financial statement and shall permit such Mortgagee or its agent to inspect the books and records of the Association during normal business hours, subject to the terms of the By-laws.

14.3. No Priority.

No provision of this Declaration or the By-Laws 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.

14.4. Notice to Association.

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.

14.5 Consent of Mortgagee.

All or a portion of the Community is currently encumbered by those certain Deeds of Trust, Assignments of Rents and Security Interests recorded on December 8, 2015 and February 17, 2017 in Book 16233, Page 953 and Book 16697, Page 982, respectively, in the Wake County Public Registry, executed and delivered by Declarant, as borrower to Bank of the Ozarks ("Deeds of Trust"). A Consent and Subordination Agreement, executed by beneficiary Bank of the Ozarks under the Deeds of Trust and consenting to the execution and recordation of this Declaration and the subordination of the lien of the Deeds of Trust to the provisions of this Declaration is being recorded in the Wake County Public Registry contemporaneously with the recording of this Declaration.

PART SEVEN: CHANGES IN THE COMMUNITY

Communities such as the Courtyards at Heritage Grove are dynamic and need the ability to monitor and adjust as circumstances, technology, needs and desires, and applicable laws change over time.

Article XV Changes in Ownership of Lots

15.1. Notice of Transfer.

Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. If the purchaser or transferee of an entity, such information shall include identification of all other entities and individuals who directly or indirectly hold a ten percent (10%) or greater ownership or beneficial interest in such purchaser or transferee. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

15.2. Administrative Fee.

The Association may charge a reasonable administrative fee for preparation of a statement of unpaid assessments pursuant to N.C.G.S. Section 47F-3-102(13) and may require that such fee be paid in advance.

Article XVI Changes in Common Area

16.1. Condemnation.

If any part of the Common Area shall be taken 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. Any condemnation award shall be payable to the Association and shall be disbursed as follows:

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 land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, during the Development and Sale Period, and Members entitled to cast at least 75% of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as if proceeds from the sale of Common Area pursuant to Section 16.3.

16.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to such approval as may be required under Section 16.3.

16.3. Mortgaging, Conveyance, or Dedication of Common Area.

The Association may dedicate portions of the Common Area to the Town of Wake Forest or Wake County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, or may subject Common Area to a security interest, or may transfer or convey Common Area upon the written direction of Members entitled to cast at least 80% of the total Class "A" votes in the Association and, during the Development and Sale Period, upon request by the Declarant, the Association shall convey to Declarant all or portions of the Common Area for any purpose including adjusting the property line shared by Common Area and a Lot, except that no conveyance of Common Area shall reduce the total area comprising the Common Area below that required by applicable governmental authorities as a condition of development or subdivision approvals, and no sale or encumbrance of Common Area may deprive any Lot of rights of access or support. Nothing herein shall require membership approval for the Board to grant easements over the Common Area for public utilities or for other purposes which are not inconsistent with the use and enjoyment of the Common Area by the Owners for its intended purpose.

The proceeds from the sale or financing of Common Area shall be an asset of the Association to be used as the Board determines. No sale or encumbrance of Common Area may deprive any Lot of rights of access or support.

Article XVII Amendment of Declaration

17.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period and termination of the Development and Sale Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration for the purpose of (a) bringing any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) enabling any reputable title insurance company to issue title insurance coverage on the Lots; (c) enabling any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Lots; (d) complying with the requirements of any state or federal law or any local, state or federal governmental agency; or (e) correct factual errors or omissions. However, any unilateral amendment by Declarant pursuant to this Section shall not materially adversely affect the allocation of voting rights or assessment burdens among the Lots or title to any Lot unless the Owner shall consent in writing.

17.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Persons entitled to cast at least 67% of the total Class "A" votes in the Association, and during the Development and Sale Period, the Declarant's consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

17.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its recordation or such amendment shall be presumed to have been validly adopted.

In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Amendments shall be indexed in the Grantee index under the names "Courtyards at Heritage Grove" and "The Courtyards at Heritage Grove Homeowners Association, Inc." and in the Grantor index under the name "Epcon Heritage Grove, LLC."

17.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration that refer to such exhibits.

Article XVIII Termination of Declaration

This Declaration may be terminated only upon recording a termination agreement signed by the then Owners of at least 90% of the Lots. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

Article XIX Dissolution or Insolvency of the Association

The Association shall be dissolved upon the termination of this Declaration, or upon the written assent given in writing and signed by not less than 90% of the Members of each class of members, or upon such more restrictive or additional conditions, and in such manner as otherwise provided, by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Area not owned and being maintained by the Association, shall be offered to the Town of Wake Forest, North Carolina, or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which Common Area and such assets were required to be devoted by the Association. If the Town of Wake Forest or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be conveyed by the Association to the Town of Wake Forest or such other appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and Unit and the public or private street(s) on which such Lot and Unit is located, and subject to all other applicable rights-of-way, easements, and ad valorem property taxes subsequent to the date of such conveyance.

In the event that the Town of Wake Forest or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust, or other entity which is, or shall be, devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Area was required to be devoted by this Declaration, such conveyance to be made subject to the rights of Owners and other matters set forth in the immediately preceding paragraph.

Article XX Stormwater Operations and Maintenance Plan

Subsequent to the recording of this Declaration, During the Development and Sale Period Declarant shall have authority to enter into a Stormwater Operations and Maintenance Plan ("Stormwater Plan") related to the engineering, construction, maintenance, and liability of certain stormwater facilities located within, and serving, the Community. If Declarant enters into said Stormwater Plan, the Association and Unit Owners, and their successors and assigns, may be required to fund and perform certain maintenance responsibilities, and assume certain liabilities, associated with the Community's stormwater facilities. The Stormwater Plan may include maintenance schedules the purpose of which is to ensure the Community's stormwater facilities continue to function as originally intended.

[SIGNATURE AND NOTARY PAGES TO FOLLOW]

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date first above written.

DECLARANT

EPCON HERITAGE GROVE, LLC,
a North Carolina limited liability company

By: **Epcon Communities Carolinas, LLC**, a North Carolina limited liability company, its sole member

By: _____
Name: Joel D. Rhoades
Title Vice President

STATE OF OHIO

COUNTY OF FRANKLIN

I, Christopher A. Buerkle, a Notary Public for Franklin County, State of Ohio, do hereby certify that **Joel D. Rhoades** ("Signatory"), personally appeared before me this day and acknowledged that he is Joel D. Rhoades, Vice President of Epcon Communities Carolinas, LLC, a North Carolina limited liability company, the sole member of Epcon Heritage Grove, LLC., a North Carolina limited liability company, and that he, as Vice President in such capacity and being authorized to do so, executed the foregoing instrument on behalf of the corporation as member of the company.

I certify that the Signatory personally appeared before me this day, and

(check one of the following and mark through all blank lines or spaces)

✓ (I have personal knowledge of the identity of the Signatory); or

____ (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following and mark through all blank lines or spaces)

____ a driver's license or

____ in the form of _____); or

____ (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 16th day of MARCH, 2017.

Christopher A. Buerkle
Notary Public

Print Name: Christopher A. Buerkle

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: NO Expiration Date

☞ [NOTARY SEAL] **(MUST BE FULLY LEGIBLE)**

NOTARIAL SEAL STATE OF OHIO

Christopher A. Buerkle, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

CONSENT AND SUBORDINATION OF MORTGAGEE

ATTACHED TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE COURTYARDS AT HERITAGE GROVE

DATED: March 1, **2017**

Bank of the Ozarks, ("Lender"), being the Beneficiary under those certain Deeds of Trust, Assignments of Rents and Security Interests from **Epcon Heritage Grove, LLC**, a North Carolina limited liability company ("Declarant") to **Chicago Title Insurance Company**, Trustee, recorded on December 8, 2015 and February 17, 2017 in Book 16233, Page 953 and Book 16697, Page 982, respectively, in the Wake County, North Carolina Register of Deeds Office ("Deeds of Trust") consents to the recordation of the foregoing Declaration of Covenants, Conditions, and Restrictions for the Courtyards at Heritage Grove dated on or about the date hereof ("Declaration") and the imposition of the provisions thereof and the provisions of the North Carolina Planned Community Act to the real property described in Exhibit "A" of the Declaration. Lender does hereby consent to the subordination of the liens of the Deeds of Trust to the provisions of the Declaration. The execution of this Consent and Subordination of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties, or obligations of Declarant under the Declaration. Beneficiary executed this Consent and Subordination of Mortgagee solely for the purposes set forth above.

BENEFICIARY:

Bank of the Ozarks,
an Arkansas state bank

By:
Name: James Loyd
Title: Senior Vice President

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Tracy A. Lundell, a Notary Public for Mecklenburg County, State of N.C., do hereby certify that James Loyd ("Signatory"), personally appeared before me this day and acknowledged that he/she is Senior Vice President of **Bank of the Ozarks**, an Arkansas state bank, and that he/she, as Senior Vice President such capacity and being authorized to do so, executed the foregoing instrument on behalf of the company as Senior Vice President of the company.

I certify that the Signatory personally appeared before me this day, and

(check one of the following and mark through all blank lines or spaces)

✓ (I have personal knowledge of the identity of the Signatory); or

_____(I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following and mark through all blank lines or spaces)

___ a driver's license or

___ in the form of _____); or

_____(a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 1st day of March, 2017.

Tracy A. Lundell
Notary Public

Print Name: Tracy A. Lundell

*[**Note:** Notary Public must sign exactly as on notary seal]*

My Commission Expires: 8/29/21

☞ [NOTARY SEAL] **(MUST BE FULLY LEGIBLE)**

TRACY A. LUNDELL
NOTARY
PUBLIC
MECKLENBURG COUNTY, NORTH CAROLINA

EXHIBIT A

LEGAL DESCRIPTION
OF
LAND SUBJECT TO DECLARATION

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Wake County, North Carolina identified in this Exhibit A as follows:

That certain real property and all interests therein consisting of all real property and any improvements thereon depicted on the plat recorded in Plat Book BM217 at Pages 131-132 in the Wake County Public Registry, as more specifically described as the following: Lots 1-14, 43-62, and 63-71; Tract A (0.702 acres); and Tract B (1.938 acres).

EXHIBIT B

LEGAL DESCRIPTON
OF
ADDITIONAL PROPERTY

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Wake County, North Carolina identified in this Exhibit B as follows:

That certain tract of land conveyed to Epcon Heritage Grove, LLC on July 8, 2015 via that certain North Carolina General Warranty Deed recorded in the Wake County Register of Deeds Office in Book 016079 on Page 01916 conveyed on ("Tract"), and any real property situated within one (1) mile of the perimeter boundary of the Tract, less and except the real property described in Exhibit A.

Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described on this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplemental Declaration in accordance with Article IX.

EXHIBIT C

RESTRICTIONS AND RULES

The following restrictions shall apply to all of the Courtyards at Heritage Grove until such time as they are amended, modified, repealed, or limited pursuant to Article III of the Declaration.

1. General. The properties submitted to this Declaration shall be used only for residential, recreational, and related purposes consistent with this Declaration and any Supplemental Declaration. Such purposes may include, without limitation, an information center and a sales office for any real estate broker retained by Declarant to assist in the sale of property described in Exhibits "A" and "B" offices for any property manager retained by the Association, business offices for Declarant and the Association, and public facilities.

2. Restricted Activities. The following activities are prohibited within the Courtyards at Heritage Grove unless the Board of Directors expressly authorizes the activity in writing, subject to any conditions it may impose:

(a) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats, and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages except temporarily during loading and unloading; provided, construction, service, and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Area. For purposes of this provision, "commercial vehicles" shall be defined as trucks or vans with commercial writing on their exteriors or vehicles primarily used or designed for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, or vehicles with tools, ladders, and other materials used for a commercial purpose visible from the street, but shall not include official vehicles owned by governmental or quasi-governmental bodies;

(b) Raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Lot; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots shall be removed upon request of the Board. 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. Pets shall be registered, licensed, and inoculated as required by law;

(c) Any activity which emits foul or obnoxious odors outside the Lot or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the occupants of other Lots (this paragraph shall not preclude normal and customary use of power tools, lawn mowers, and other yard maintenance equipment);

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

(e) 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;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Lots;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Lot;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Lots, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) 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 Courtyards at Heritage Grove, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick-ups, and then only in approved containers which must either be stored in an enclosed garage or in the rear yard of the Lot, screened from view of adjacent property in a manner approved pursuant to Article IV except on the day garbage is collected;

(1) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant, its designees, and the Association shall have such right, and Builders may alter drainage flow so long as the alteration does not adversely affect other Lots; 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;

(m) Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and recorded, except that Declarant and Builders, with Declarant's written consent, shall be permitted to subdivide or replat Lots which they own;

(n) Conversion of any 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 IV, or use of any garage for storage or other purposes which preclude its use for parking of that number of vehicles for which it was originally designed;

(o) 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 with respect to Lots which it owns;

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating, or other fuels, 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. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV;

(r) Any yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis;

(s) 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 Courtyards at Heritage Grove; (iii) the business activity does not involve door-to-door solicitation of residents of the Courtyards at Heritage Grove; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Courtyards at Heritage Grove 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 Courtyards at Heritage Grove and does not constitute a nuisance, or a hazardous, or offensive use, or threaten the security or

safety of other residents of the Courtyards at Heritage Grove as may be determined in the sole discretion of the Board;

(i) 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, provided that no Owner or group of related or affiliated Owners (as the Board may determine) shall collectively lease or hold for lease more than one Lot at any time. 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 Courtyards at Heritage Grove or its use of any Lots which it owns within the Courtyards at Heritage Grove including the operation of a timeshare or similar program.

(t) Any activity which would be in violation of the Zoning Plan; and

(u) Any construction, erection, placement, or modification of anything, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved, except in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs and flags (except as otherwise provided in Section 3.4(c) and (d) and in Section 4.1), basketball hoops, swing sets and similar sports and play equipment, clotheslines, garbage cans, woodpiles, swimming pools, decks other than those constructed by Declarant, docks, piers and similar structures, hedges, walls, dog runs, animal pens, fences of any kind, satellite dishes, and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter;

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals.

(collectively, "**Permitted Antennas**") shall be permitted on Lots, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Courtyards at Heritage Grove, should any master system or systems be utilized by the Association and require such exterior apparatus.

3. Prohibited Conditions. The following shall be prohibited in the Courtyards at Heritage Grove:

(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 Courtyards at Heritage Grove;

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

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from ground or surface waters within the Courtyards at Heritage Grove, except that Declarant, its designees, and the Association shall have the right to draw water from such sources.

4. 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. No Unit or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be for less than an entire Unit. No Unit may be rented for any period of less than thirty (30) days and the lease shall not have an initial term of less than six month. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Restrictions and Rules.

EXHIBIT D

BY-LAWS OF

THE COURTYARDS AT HERITAGE GROVE HOMEOWNERS ASSOCIATION, INC.

TABLE OF CONTENTS

		PAGE
Article I	**Name, Principal Office, and Definitions**	**1**
1.1.	Name	1
1.2.	Principal Office	1
1.3.	Definitions	1
Article II	**Membership: Meetings, Quorum, Voting, Proxies**	**1**
2.1.	Membership	1
2.2.	Place of Meetings	1
2.3.	Annual and Regular Meetings	1
2.4.	Special Meetings	2
2.5.	Notice of Meetings	2
2.6.	Waiver of Notice	2
2.7.	Adjournment of Meetings	3
2.8.	Voting	3
2.9.	Proxies	3
2.10.	Quorum	4
2.11.	Conduct of Meetings	4
2.12.	Action Without a Meeting; Voting by Written or Electronic Ballot	4
Article III	**Board of Directors: Selection, Meetings, Powers**	5
A.	**Composition and Selection**	5
3.1.	Governing Body; Qualifications	5
3.2.	Number of Directors	5
3.3.	Selection of Directors; Term of Office	5
3.4.	Nomination and Election Procedures after Class B Control Period	6
3.5.	Removal of Directors and Vacancies	6
B.	**Meetings**	7
3.6.	Organizational Meetings	7
3.7.	Regular Meetings	7
3.8.	Special Meetings	7
3.9.	Notice; Waiver of Notice	7
3.10.	Telephonic Participation in Meetings	8
3.11.	Quorum of Board; Voting	8
3.12.	Conduct of Meetings	8
3.13.	Open Meetings; Executive Session	8
3.14.	Action Without a Formal Meeting	9
C.	**Powers and Duties**	9
3.15.	Powers	9
3.16.	Duties	9
Article IV	**Officers**	**10**
4.1.	Officers	10
4.2.	Election and Term of Office	10
4.3.	Resignation, Removal and Filling of Vacancies	10
4.4.	Powers and Duties	10
Article V	**Committees**	**11**
5.1.	General	11
5.2.	Covenants Committee	11
Article VI	**Standards of Conduct; Liability and Indemnification**	**11**
6.1.	Standards for Directors and Officers	11

6.2.	Liability	11
6.3.	Indemnification	11
6.4.	Advancement of Expenses	12
6.5.	Board and Officer Training	12
6.6.	Conflicts of Interest	12
Article VII	**Management and Accounting**	**13**
7.1.	Compensation of Directors and Officers	13
7.2.	Right of Declarant to Disapprove Actions	13
7.3.	Managing Agent	14
7.4.	Accounts and Reports	14
7.5.	Borrowing	15
7.6.	Right to Contract	15
7.7.	Agreements, Contracts, Deeds, Leases, Checks, Etc	15
Article VIII	**Enforcement Procedures**	**15**
8.1.	Notice and Response	15
8.2.	Hearing	16
8.3.	Appeal	16
Article IX	**Miscellaneous**	**16**
9.1.	Fiscal Year	16
9.2.	Parliamentary Rules	16
9.3.	Conflicts	16
9.4.	Books and Records	16
9.5.	Notices	17
9.6.	Amendment	18

BY-LAWS

OF

THE COURTYARDS AT HERITAGE GROVE HOMEOWNERS ASSOCIATION, INC.

Article I Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is The Courtyards at Heritage Grove Homeowners Association, Inc. ("**Association**").

1.2. Principal Office.

The principal office of the Association shall be located in Wake County, North Carolina. The Association may have such other offices, either within or outside North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions.

Unless otherwise specified, the words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Declaration of Covenants, Conditions, and Restrictions for The Courtyards at Heritage Grove, executed and recorded by Epcon Heritage Grove, LLC (with its successors and assigns, the "**Declarant**") in the Office of the Register of Deeds of Wake County, North Carolina (as it may be amended and supplemented from time to time, the "**Declaration**"). The term "**majority**," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Article II Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

The Association initially shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the rights of which shall vary by class to the extent provided in the Articles of Incorporation, the Declaration, and/or these By-Laws. The Declarant, by recording of the Declaration, and each Owner of a Lot, by accepting record title to the Lot or recordation of a contract of sale, is deemed to consent to membership in the Association. Membership shall be resigned or transferred only upon transfer of title to the Lot as provided in the Declaration. The provisions of the Declaration pertaining to membership and the designations, qualifications, rights, privileges, and obligations of each class of membership are incorporated by this reference.

2.2. Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3. Annual and Regular Meetings.

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. The Board shall schedule subsequent regular annual meetings to occur during the fourth quarter of the Association's fiscal year, on such date and at such time and place as the Board

shall determine. In the Board's discretion, additional regular meetings of the membership may be held in accordance with a schedule for regular meetings published by the Board.

2.4. Special Meetings.

The President or any two members of the Board may call special meetings of the membership. In addition, the President or Secretary shall call a special meeting if so directed by resolution of the majority of the Board and within 30 days after receipt of a written request signed and dated by Members representing at least 10% of all votes entitled to be cast on any issue proposed to be considered, requesting that a special meeting be called and stating the purpose thereof. If the President or Secretary fails to comply with this requirement, then any Owner who signed the petition may call such meeting by giving notice to the Owner of each Unit in accordance with Section 2.5 and Section 9.5.

2.5. Notice of Meetings.

(a) At least 10 days (or at least 30 days if notice is mailed by other than first class, registered, or certified mail) but not more than 60 days before any membership meeting, the President, the Secretary, or other persons calling the meeting shall deliver or cause to be delivered to each Member entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting and the items on the agenda for such meeting, including a description of the general nature of any proposed amendment to the Declaration or these By-Laws, any proposed budget changes, any proposal to remove a director, and any other matter to be put to a vote of the members. If proxies are permitted, the notice shall also state the procedures for appointing proxies. If the meeting is to be held solely by electronic communications or if participation in the meeting is permitted by electronic communications, as described in Section 2.11 below, the notice shall state the form of communications system to be used for the meeting and the means of accessing the communications system. No business shall be transacted at a special meeting except as stated in the notice. Such notice shall be delivered by such means as permitted under Section 9.5.

(b) The Board may set a record date for determining who is entitled to receive notice of a meeting, which shall be no earlier than 70 days before the meeting date. If no record date is fixed by the Board, Members as of the close of business on the business day preceding the day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting and any person who is a Member on the date of such meeting and eligible to vote shall be entitled to vote on any matter coming before the Members for a vote.

If a record date is set, the Association shall prepare an alphabetical list of the names of all Members entitled to notice of the meeting, showing the address and number of votes each member is entitled to cast, and shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. Beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, the list of members shall be available at the Association's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held, for inspection by any Member for the purpose of communication with other Members concerning the meeting. The Association shall make the list of Members available at the meeting. Any Member, personally or by or with his representatives, is entitled to inspect the list at any time during the meeting or any adjournment thereof.

2.6. Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting and such waiver shall be filed with the minutes of the meeting in the Association's records. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless the Member or the Member's proxy specifically objects to lack of proper notice at the time the meeting is called to order.

Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If any meeting of the Members cannot be held because a quorum is not present, a majority of the Members who are present or represented by proxy at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called to a different date, time, or place, and notice need not be given of the new date, time, or place, if announced at the meeting before adjournment. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the meeting when originally called, or if for any reason a new date is fixed for reconvening the meeting or a new record date is set after adjournment, the Board shall provide notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings in Section 2.5(a).

Members or their proxies present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of a sufficient number of Members to leave less than a quorum; however, at least a majority of the votes required to constitute a quorum, or such larger percentage as may be required under the Declaration, these By-Laws, or applicable law for specific actions, must approve any action taken. Provisions of the Declaration regarding voting by co-Owners are incorporated herein by this reference.

2.8. Voting.

Members shall have such voting rights as are set forth in the Declaration, which provisions are specifically incorporated by this reference. To the extent permitted by North Carolina law, a membership vote on any matter may be conducted at a meeting or by ballot cast by mail, facsimile transmission, or electronic message as provided in Section 2.12, or by any combination of those methods, as the Board determines appropriate. The Board shall establish voting procedures to provide reasonable assurance that the person casting the vote is the Member or the Member's proxy appointed pursuant to Section 2.9.

2.9. Proxies.

Members may vote in person or by proxy, subject to the limitations of North Carolina law and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing, shall identify the Lot for which it is given, and shall be signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. The Board may, in its discretion, accept proxies filed in person, by mail, by facsimile transmission, or electronically, provided they are signed and the Board has no reason to question the validity of the proxy. The Association shall have no obligation to recognize any proxy that is not actually received prior to the deadline established by the Board for delivery of proxies (which deadline may be earlier for proxies sent via mail, facsimile or electronic transmission). Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable unless otherwise specifically stated in the proxy and coupled with an interest which has not been extinguished. A proxy shall automatically terminate upon: (a) transfer of title to any Lot for which it was given; (b) receipt by the Secretary of written notice of revocation of a revocable proxy or of the death or judicially declared incompetence of the Member who signed the proxy; (c) attendance and voting by the Member at the meeting; or (d) 11 months from the date of the proxy, unless a shorter period is specified in the proxy, in which case the period specified in the proxy shall control, subject to termination due to other events specified in this paragraph.

2.10. Quorum.

Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of persons entitled to cast 10% of the total Class "A" votes in the Association shall constitute a quorum at all duly called meetings of the Association, and the casting of ballots representing at least 10% of the total Class "A" votes in the Association shall constitute a quorum for any membership vote conducted by other means pursuant to Section 2.12. During the Class "B" Control Period and thereafter as long as there is a Class "B" Membership, the presence (or casting of a ballot pursuant to Section 2.12) by a representative of the Declarant shall also be necessary to establish a quorum; provided, if a quorum is not represented at any meeting when originally called, then the quorum for any subsequent attempt to convene such meeting shall be reduced to 50% of the quorum required for the previous meeting.

2.11. Conduct of Meetings.

The President shall preside over all meetings of the Association. The Secretary shall ensure that minutes of the meetings are prepared which reflect the adopted resolutions and all other transactions which occurred at such meetings. The minutes shall be kept with the Association's books and records.

The Association may hold membership meetings and/or allow Members or their proxies to participate in any membership meeting by conference telephone or similar communications equipment or another suitable electronic communications system, including videoconferencing technology or the Internet, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. If voting is to take place at the meeting, the Association must implement measures to verify that every Member and proxy voting at the meeting by means of remote communication is sufficiently identified.

2.12. Action Without a Meeting; Voting by Written or Electronic Ballot.

(a) Any action that the North Carolina Nonprofit Corporation Act requires or permits to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if all Members entitled to vote on such matter sign and submit a written consent or consents specifically authorizing the proposed action. Such consents shall be signed by the Member (or, if the Member is not an individual, by an authorized signatory of the Member), dated, and delivered to the Association within 60 days after receipt of the earliest dated consent. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Written notice of any action taken pursuant to this section shall be sent to all Members and such action shall be effective 10 days after such notice is sent.

(b) Alternatively, any action that may be taken at a membership meeting may be taken without a meeting if: (i) the Association delivers a written or electronic ballot to every Member entitled to vote on the action, setting forth the proposed action and providing an opportunity to approve or disapprove the proposed action; (ii) the number of votes cast by written or electronic ballot equals or exceeds the quorum required for a meeting to consider such action; and (iii) the number of votes cast in favor of the proposed action equals or exceeds the number of votes that would be required to approve the action at a meeting if the total number of votes cast at such meeting were the same as the number of votes cast by written or electronic ballot.

(c) Voting instructions or solicitation materials in connection with any vote for which ballots are permitted to be cast outside of a meeting must provide instructions for casting the ballot or returning the consent in order to be counted, indicate the number of responses needed to satisfy the quorum requirement, the percentage of votes necessary to approve any action other than election of directors, and a date and time thereafter by which the ballot must be cast or consent returned in order to be counted, which deadline shall be not more than 60 days. A written or electronic ballot or signed consent, once cast or received by the Association, may not be revoked. The Board shall notify the Members of the results of any vote conducted pursuant to this Section 12.2 within 10 days after the expiration of the voting period. A written ballot or written consent may be submitted to the Association by electronic mail transmission, provided that such ballot is accompanied by information indicating that the Member, Member's

agent or Member's attorney-in-fact authorized its electronic transmission. Such consents and ballots (or in the case of electronic balloting, a written record of the results of the balloting) shall be filed with the minutes of the membership and shall have the same force and effect as a vote of the Members at a meeting.

(d) Whenever the governing documents permit action to be taken by affirmative vote or written consent, a written consent or a written or electronic ballot received pursuant to either subsection (a) or subsection (b) above shall constitute written consent for purposes of such provision.

(e) Nothing in this Section shall authorize action without the approval of such persons or entities whose approval is specifically required for such action under the Governing Documents.

Article III Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body; Qualifications.

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. Except with respect to directors appointed by the Declarant, directors shall be Owners or residents of Lots. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Lot within the Courtyards at Heritage Grove. No more than one eligible person from any Lot may serve on the Board at any time. If an Owner is a legal entity, any officer, director, or partner, or any other representative designated in writing by the Owner, shall be eligible to serve as a director unless the Owner otherwise specifies by written notice to the Association; provided, no Owner may have more than one such representative serving on the Board at a time, except in the case of directors appointed by the Declarant.

3.2. Number of Directors.

The Board shall consist of three to five directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office.

(a) Initial Board. The initial Board shall consist of the three directors identified in the Articles of Incorporation, who shall serve until their successors are appointed or elected as provided in this Section 3.3.

(b) Directors During Class "B" Control Period. The Class "B" Member shall be entitled to set the number of directors and appoint, remove, and replace the members of the Board in its sole discretion until termination of the Class "B" Control Period.

(c) Directors After the Class "B" Control Period.

(i) Not later than 90 days after termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Members shall be entitled to elect all five directors. Three directors shall serve a term expiring at the second annual meeting following the six-month anniversary of their election and two directors shall serve a term expiring at the first annual meeting following the six-month anniversary of their election, as such directors determine among themselves.

(ii) Upon expiration of the term of office of each director elected by the Class "A" Members, Class "A" Members shall be entitled to elect a successor to serve a term of two years. Directors elected by the Class "A" Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

Diagram 3.1 illustrates the concept of transition of control of the Board of Directors during and after the Class "B" Control Period.

TRANSITION OF CONTROL OF BOARD OF DIRECTORS	
Initial Board	**90 Days After Termination of Class "B" Control Period**
Class B	Class A
Class B	Class A
Class B	Class A
	Class A
	Class A

Diagram 3.1 Transition of Control of Board

3.4. Nomination and Election Procedures after Class B Control Period.

(a) Nomination of Candidates. The Board may appoint a Nominating Committee to nominate candidates for election to any position on the Board to be filled by the votes of Class "A" Members. Any Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more Class "A" Members or representatives of Class "A" Members who are legal entities. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Alternatively, or in addition, the Board may solicit nominations in writing from the Members. Nominations shall also be permitted from the floor at any meeting at which an election is held, or by write-in on any ballot, in case of an election pursuant to Section 2.12.

At least 30 days prior to each election, the Board shall notify the Members of the date of the upcoming election, the number of candidates to be elected by the Class "A" Members at such election, and the term for which they are to be elected. If the Board has appointed a Nominating Committee, the notice shall identify the members of the Nominating Committee by name, provide their address and other contact information, invite Members to make recommendations to the Nominating Committee of potential candidates for such election, and provide a deadline for submitting such recommendations. If the Board has not appointed a Nominating Committee, the notice shall solicit nominations from among the Members and specify the form for making nominations, the person and address to which they should be directed, and the deadline for submission. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes prior to the election.

(b) Election Procedures. For each election, voting shall be by written or electronic ballot. Each Class "A" Member may cast all vote(s) assigned to its Lot(s) for each position to be filled by Class "A" votes. Cumulative voting shall be permitted, provided that either the meeting notice states that cumulative voting will take place or the procedures set forth in N.C.G.S. §55A-7-25 are followed. That number of candidates equal to the number of positions to be filled by Class "A" votes receiving the greatest number of votes shall be elected. The Association shall publish the names and addresses of all directors and officers within 30 days after any election of directors.

3.5. Removal of Directors and Vacancies.

Any director elected by Class "A" votes may be removed, with or without cause, by the vote of Members holding a majority of the Class "A" votes. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Class "A" Members, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by Class "A" votes who has three consecutive unexcused absences from Board meetings may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by Class "A" votes, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next election of directors by the Class "A" Members, at which time the Class "A" Members may elect a successor for the remainder of the term.

Declarant, in its capacity as such, shall have no right unilaterally to remove or replace directors elected by the Class "A" Members (but may cast any Class "A" votes it holds for or against the removal of directors), and neither the Class "A" Members nor the Board shall have any right to remove or replace directors appointed by the Class "B" Member or the Declarant. The Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Declarant.

B. Meetings.

3.6. Organizational Meetings.

The first meeting of the Board shall be held immediately following each annual meeting of the membership.

3.7. Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.8. Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two of the directors then in office.

3.9. Notice: Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, or other electronic mail, messaging, or communication device, with printed confirmation of successful transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or mailing or physical address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be delivered or transmitted at least 48 hours before the time set for the meeting.

(b) To the extent practical, the Board shall communicate the date, time, and place of regularly scheduled Board meetings by publication in a community newsletter, on a community website, or by electronic mail or other means reasonably designed to make such information available to the Members.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.10. Telephonic Participation in Meetings.

(a) Members of the Board or any committee that the Board appoints may participate in a meeting of the Board or committee by conference telephone, video conference, or similar communications equipment, provided all persons participating in the meeting can hear each other simultaneously.

(b) A meeting of the Board, or of any committee designated by the Board, may be held by means of a "virtual" or remote electronic communications system, including videoconferencing technology or the Internet, but only if (i) each person entitled to participate in the meeting consents to the meeting being held by means of that system; and (ii) the system permits each person participating in the meeting to communicate concurrently with each other participant.

(c) Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

3.11. Quorum of Board; Voting.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration or by North Carolina law.

A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of some directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

Board members may not vote by proxy. Voting may be conducted at a meeting or by written consents without a meeting in accordance with Section 3.14.

3.12. Conduct of Meetings.

The President shall preside over all meetings of the Board and the Secretary shall ensure that minutes are recorded in a minute book and that a record is made of all Board resolutions, and all transactions and proceedings occurring at such meetings.

3.13. Open Meetings; Executive Session.

(a) Board meetings shall be open to all Members. The Board shall provide Members an opportunity during a portion of each Board meeting to speak to the Board about their issues and concerns. The Board may place reasonable restrictions on the number of persons who may speak on each side of an issue and reasonable time restrictions on the persons who speak.

(b) In any Board meeting, upon motion and affirmative vote of the Board, the Board may adjourn and reconvene in executive session, restricting attendance to directors and such attorneys, contractors, or other persons as the Board may specifically invite to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters and such other matters as the North Carolina Nonprofit Corporation Act may specifically authorize.

3.14. Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if all of the directors sign a written consent or consents, setting forth the action so taken. Such consent(s) shall have the same force and effect as though taken at a meeting of the directors. Consents may be filed electronically in accordance with Section 2.12.

C. Powers and Duties.

3.15. Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or North Carolina law require to be done and exercised exclusively by the membership. Board determinations as to the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable.

3.16. Duties.

Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;

(b) levying and collecting such assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;

(d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment, in depositories other than banks;

(f) making and amending Restrictions and Rules in accordance with the Declaration;

(g) opening bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;

(i) determining when action to enforce the Governing Documents is appropriate and the nature of any sanctions to be imposed and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(1) keeping books with detailed accounts of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 9.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Courtyards at Heritage Grove;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles and these By-Laws; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

Article IV Officers

4.1. Officers.

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board members. Other officers may, but need not be, Board members. The Board may appoint such other officers as it shall deem desirable including one or more Assistant Secretaries and one or more Assistant Treasurers. Such officers will have the authority and will perform the duties as the Board prescribes. One person may hold two or more offices, except that the offices of President and Secretary shall be held by different persons.

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected. The Association shall give or publish notice to the Members of the names and addresses of all officers within 30 days after any election of directors or any change in officers of the Association.

4.3. Resignation, Removal, and Filling of Vacancies.

(a) Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

(b) The Board may remove any officer whenever in its judgment the best interests of the Association will be served.

(c) The Board may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the chief executive officer of the Association. The Secretary shall be responsible for preparation of minutes of the

directors' and members' meetings and for authenticating records of the Association. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board, shall sign all checks and promissory notes of the Association, shall keep proper books of account. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Article V Committees

5.1. General.

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. Covenants Committee.

In addition to any other committees that the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three Members who are neither officers nor directors of the Association, nor the spouse, parent, sibling, or child of any officer, director or employee. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article VIII of these By-Laws. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

Article VI Standards of Conduct; Liability; and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under state law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in good faith, in a manner that the director or officer believes to be in the best interest of the corporation, and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under the North Carolina Nonprofit Corporation Act.

6.2. Liability.

The officers, directors, and committee members of the Association shall not be liable for any mistake of judgment, negligent or otherwise, or for any action taken or omitted in such capacities, except for their own individual willful or wanton misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

6.3. Indemnification.

Subject to the limitations of North Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred

in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under the North Carolina Nonprofit Corporation Act; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association;

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in the North Carolina Nonprofit Corporation Act, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Board and Officer Training.

The Board may, as a Common Expense, conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. The Board may apply for and maintain, as a Common Expense, membership for the Association, its officers and directors, in the Community Associations Institute or any similar nonprofit organization that provides educational opportunities for community association directors, officers and managers in operation and management of community associations.

6.6. Conflicts of Interest.

Unless otherwise approved by a majority of the other directors, no director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose to the Board any relationship that the director may have, financial or otherwise, with any contractor doing business or proposing to do business with the Association and any actual or potential conflict of interest affecting the director relative to his or her performance as a director.

Except as provided in Section 7.1, no monetary payments or payments in the form of goods or services shall be made to any officer or director, or to any business, business associate, or relative of an officer or director, except pursuant to a contract for goods or services or a resolution authorizing reimbursement of expenses incurred

on behalf of the Association, in either case approved by a majority of the total number of directors, excluding any director to whom such payment is proposed to be made or whose business, business associate, or relative is proposed to receive such payment.

Nothing herein shall preclude directors appointed by the Declarant from being employed by or otherwise transacting business with the Declarant or its affiliates, or preclude the Declarant from transacting business with the Association or its contractors, notwithstanding the fact that the Board may include directors appointed by the Declarant.

Article VII Management and Accounting

7.1. Compensation of Directors and Officers.

Directors and officers shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association and, during the Development and Sale Period, the written consent of the Declarant. Any director or officer may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies furnished to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association, provided that such directors or officer's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding any interested director.

7.2. Right of Declarant to Disapprove Actions.

So long as the Class "B" membership exists, the Declarant shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member or the Declarant, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, or interfere with development or construction of any portion of the Courtyards at Heritage Grove, or diminish the level of services being provided by the Association. The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein unless and until the requirements of this Section have been met.

(a) Notice. The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with Section 3.9, and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) Opportunity to be Heard. The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

The Declarant or its representatives or agents shall make their concerns, thoughts, and suggestions known to the Board and the members of the subject committee. The Declarant, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board, or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure or other action required to comply with applicable laws and regulations.

7.3. Managing Agent.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. Declarant or its affiliate may be employed as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise. Any value received by the managing agent shall benefit the Association. Any financial or other interest that the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

7.4. Accounts and Reports.

(a) The following accounting standards shall be followed unless the Board by resolution specifically determines otherwise:

(i) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(ii) accounting and controls should conform to generally accepted accounting principles; and

(iii) cash accounts of the Association shall not be commingled with any other accounts.

(b) Commencing at the end of the quarter in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).

(c) An annual report consisting of at least the following shall be made available to all Members within 75 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon a vote of the majority of the Board, or upon the affirmative vote of a majority of the Owners present and voting in person or by proxy at

any annual meeting or any special meeting duly called for that purpose, the Association shall provide an audited financial statement.

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year. During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without such approval as may be required under Article XVI of the Declaration.

7.6. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within and outside the Courtyards at Heritage Grove. Any common management agreement shall require the consent of a majority of the total number of directors on the Board.

7.7. Agreements. Contracts, Deeds, Leases. Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two unrelated officers or by such other person or persons as the Board may designate by resolution and subject to any limitations set forth in such resolution.

Article VIII Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice, by certified mail, return receipt requested, (a) describing the alleged violation or property damage which is the basis of the proposed sanction or amount due to the Association, as applicable; (b) describing the proposed sanction to be imposed; (c) informing the alleged violator that he or she has 10 days after receipt of the notice to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; and (d) if the alleged violator fails to respond to the notice within the 10-day period, the Board may impose the proposed sanction. If the hearing is to be held before a Covenants Committee, the notice shall also state that the alleged violator has the right to appeal the decision of the Covenants Committee to the Board.

If the alleged violator cures the alleged violation and notifies the Board in writing within such 10-day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this Article VIII, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session within 30 days after receipt of the alleged violator's request. Either the Board or the alleged violator may request a postponement of up to 10 days and such postponement shall be granted. Additional postponements may be granted upon agreement of both the Association and the alleged violator. The Board shall notify the alleged violator at least 10 days prior to the hearing of the time, date, and place of the hearing. At the hearing, the alleged violator shall be afforded a reasonable opportunity to be heard and shall be entitled to make an audio recording of the hearing. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the decision of the Board or Committee) and the sanction, if any, to be imposed. Written notice of the decision shall be mailed to the violator within three days after the hearing.

8.3. Appeal.

If a hearing is held before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 15 days after the date of the Covenants Committee's decision.

Article IX Miscellaneous

9.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution or otherwise stated herein, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law or the Governing Documents.

9.3. Conflicts.

If there are conflicts among the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

9.4. Books and Records.

(a) Maintenance of Books and Records. The Association shall maintain the following books and records, either in written form or in a form capable of conversion into written form within a reasonable time: appropriate accounting records; minutes of all meetings of the Members and the Board; a record of all actions taken by the Members and the Board without a meeting; a record of all actions taken by any committees appointed by the Board; a membership roster reflecting the name and mailing address of all members, in alphabetical order by class, along with the address of each Unit owned by the Member' and the number of votes allocated to each Member's Unit(s).

The Association shall maintain at its principal office copies of the following documents:

(i) its Articles and By-laws, and all amendments currently in effect;

(ii) Board resolutions relating to the rights, limitations, and obligations of Members;

(iii) the minutes of all Membership meetings records of all actions approved by the Members for the three most recent years;

(iv) all written communications directed to the Members generally during the preceding three years;

(v) copies of the financial statements for the three most recent years;

(vi) a list of the names and business or home addresses of its current directors and officers; and

(vii) its most recent annual report filed with the Secretary of State.

(b) Turnover of Books and Records. Within 60 days after termination of the Class "B" Control Period, the Declarant shall deliver to the Association all property, books, and records of the Association in the Declarant's possession.

(c) Inspection by Members and Mortgagees. Within five days after receipt of a written request to inspect the Association's books and records the Board shall make available for inspection and copying by any Member, any holder, insurer or guarantor of a first Mortgage on a Lot, or the duly appointed representative of any of the foregoing at such reasonable time and location as the Board may specify, any of the books and records listed in subsection (a) of this Section and specified in such written request, provided that a Member shall only be entitled to inspect the books and records enumerated in the above clauses (i) through (vii) if the following are true: (i) the Member's demand is made in good faith and for a proper purpose; (ii) the Member describes with reasonable particularity the purpose and the records the Member desires to inspect; and (iii) the records are directly connected with said purpose.

(d) Rules for Inspection. The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing documents requested.

(e) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

9.5. Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Declaration or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by telephone facsimile or electronic mail with written confirmation of transmission.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, telephone facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Declarant, at the principal address of the Declarant as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

(a) By Board. Until termination of the Class "B" Control Period, the Board of Directors may amend these By-Laws for any reason upon majority vote of the Board and the written consent of the Declarant. Thereafter, the Board may unilaterally amend (i) to correct clerical, typographical or technical errors; (ii) to bring any provision into compliance comply with any applicable governmental statute, rule, regulation, or judicial determination; (iii) to comply with the requirements, standards, or guidelines of any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans; or (iv) to satisfy the requirements of any local, state, or federal governmental agency.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members or their proxies representing 67% of the total Class "A" votes in the Association and, during the Development and Sale Period, the written consent of the Declarant. Any such amendment shall be subject to the veto right set forth in subsection (c), if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am a duly elected and acting Member of the Board of Directors of The Courtyards at Heritage Grove Homeowners Association, Inc., a North Carolina corporation;

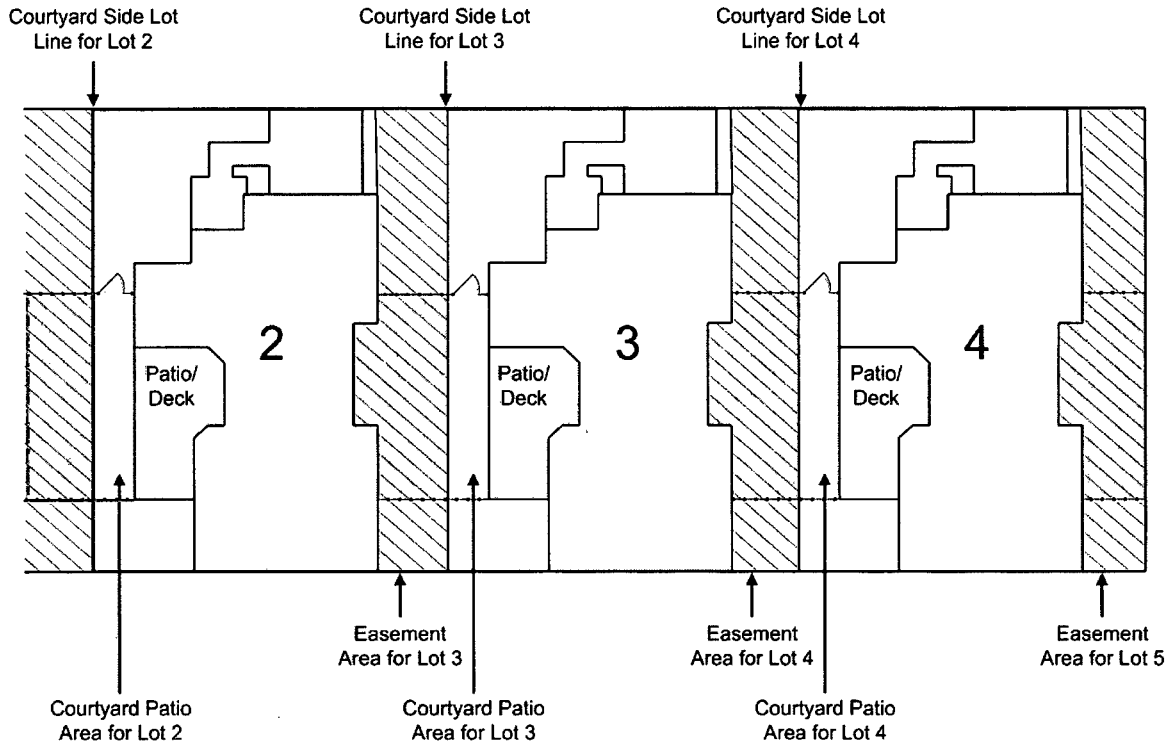
That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted by resolution of the Board of Directors thereof as of the 16th day of MARCH 2017.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 16th day of MARCH, 2017.

(seal)
Steven M. George, Member of the Board of Directors

EXHIBIT "E"

Illustration of Typical Side Yard Easement Area (per Section 11.9)



KEY:

All hatched area (with and without shading) is Easement Area.

All shaded area (with and without hatching) is Courtyard Patio Area.

Areas that are hatched and shaded depict that portion of Easement Area within the Courtyard Patio Area.

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WAKE COUNTY
NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording

Laura M. Riddick
Register of Deeds
Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp ☐ $25 Non-Standard Fee

☐ Additional Document Fee ☐ Additional Reference Fee

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76 # of Pages

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