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**MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
LOCHSIDE**

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**Drawn by and upon recording, please return to:**  
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**MASTER DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
FOR  
LOCHSIDE**

This Declaration is made as of the 17<sup>th</sup> day of December, 2004, by **WESTFIELD HOMES OF THE CAROLINAS, LLC**, a Delaware limited liability company corporation ("Declarant") with reference to the following facts:

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property commonly known as **LOCHSIDE** subdivision, which real property, together with such portions of the Additional Land (as hereinafter defined), if any, as Declarant may elect to add to such property by filing of a Map thereof and supplemental filing pursuant to Article 15 hereof, shall be hereinafter referred to as **LOCHSIDE** located in Durham County, North Carolina and more particularly described in Article 2 below. Declarant intends to improve Lochside as a planned residential development by dividing such property into Lots appropriate for single-family dwellings, both detached and attached, and Common Area for the common use and enjoyment of the Owners of the detached and attached Lots; and

WHEREAS, Declarant owns or may hereafter own real property in Durham County, North Carolina located adjacent to the property hereinabove described (which, if applicable to this Declaration, is more particularly described on Exhibit A attached hereto and made a part hereof and referred to herein as the "Additional Land"). Declarant may, in its sole discretion and without obligation, by one or more supplemental filings pursuant to Article 15 hereof, make all or any portion of the Additional Land, if any, subject to this Declaration and a part of Lochside; and

WHEREAS, Declarant intends to develop Lochside under a common scheme and general plan for its improvement and maintenance; and

WHEREAS, for this purpose Declarant intends to (and with respect to the Additional Land, if any, reserves the right to), subject the initial Maps of Lochside as described in Article 2 below, and so much of the Additional Land, if any, as shall, from time to time, be annexed in accordance with the provisions of this Declaration, to the covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of Lochside and the future owners of Lots therein; and

WHEREAS, Declarant deems it desirable for the management and administration of the planned development and for the preservation of the values and amenities of the planned development to incorporate Lochside Master Homeowners' Association, Inc. as a nonprofit corporation under the laws of the State of North Carolina for the purposes of administering the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such

other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws;

WHEREAS, Declarant intends to subject the portion of the Property commonly known as Lochside Townhomes to be improved as an attached Lot residential townhome development to certain covenants, conditions, and restrictions contained in the Townhome Declaration (as hereinafter defined) in addition to the covenants, conditions, and restrictions contained in this Declaration and to incorporate Lochside Townhome Association, Inc. as a nonprofit corporation under the laws of the State of North Carolina for the purposes of providing for the maintenance and upkeep of the exterior of all attached residential units and the Townhome Common Area (as hereinafter defined) located on the Townhome Property (as hereinafter defined), administering the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the Townhome Declaration, collecting and disbursing the assessments and charges imposed in accordance with the Townhome Declaration, and exercising such other powers as may be authorized by the Townhome Declaration, by law, or by the articles of incorporation and bylaws of Lochside Townhome Association, Inc; and

WHEREAS, this Declaration creates a planned community under the North Carolina Planned Community Act (N.C. Gen. Stat. Chap. 47F).

NOW, THEREFORE, Declarant hereby declares that the Property and every Lot and Common Area (as hereinafter defined) which is a part of the Property shall be held, occupied, improved, used, mortgaged, transferred, sold, leased, rented, and conveyed subject to the following easements, liens, charges, assessments, equitable servitudes, restrictions, covenants and conditions, which are for the purpose of protecting the value, use, enjoyment and desirability of the Property, and which shall run with such real property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the use, benefit and enjoyment of each Owner (as hereinafter defined).

## ARTICLE 1 DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

Act. "Act" means and refers to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes, as same may be amended from time to time.

Additional Land. "Additional Land" means the real property described on Exhibit A, if any shall be attached hereto, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof and which, when so subjected, shall become a part of the Property.

Annual Assessment. "Annual Assessments" or "annual assessments" shall refer to assessments levied on all Lots subject to assessment under Article 9 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Article 9.

Architectural Control Committee. "Architectural Control Committee" or "ACC" shall mean the committee of the Association created pursuant to Article 13 with authorization over new construction, modifications and alterations in the Property.

Articles. "Articles" means the Articles of Incorporation of the Association, including any amendments thereto.

Association. "Association" means Lochside Master Homeowners' Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Board. "Board" means the Board of Directors of the Association.

Bylaws. "Bylaws" means the Bylaws of the Association, including any amendments thereto.

City. "City" means the City of Durham in Durham County in the State of North Carolina.

City Code. "City Code" means the Code of Ordinances of the City of Durham.

Common Area. "Common Area" or "Common Areas" means all real property owned by or held in trust for the benefit of the Association for the common use and enjoyment of its Members, or owned by Declarant and designated for the common use and enjoyment of the Association and its Members, and all improvements and facilities constructed thereon for such purposes, including, but not limited, to (without any obligation or implication of Declarant to construct or install same) any signage, irrigation and/or drainage or detention facilities, pond, dam, dock, pump station and related facilities, fountain, water feature, wells, pumps and related facilities, landscaping, retaining walls, bridges, lighting, swimming pool, wading pool, green or natural area, walking paths or trails, picnic area, putting green, club house, roadway, driveway, parking area, sports complex, ballfield, playground, tot lot, gazebo, private streets and curb and guttering related to same, streetlights, or other amenity, if any, constructed on portions of the Property designated "Common Open Space", "Common Area", "Amenity Area" or other similar designation on Map(s) of the Property recorded in the public registry of the County and any City Code required shared facility or open space not conveyed to the City. "Common Area" or "Common Areas" shall also include (i) all private streets and private utilities, if any, including any utility line serving more than one lot located outside of public street rights-of-way and public utility easements; (ii) all retaining walls constructed by Declarant; (iii) any public road, right-of-way or cul-de-sac in the Property which has been dedicated to the public on Map(s) of the Property recorded in the County but not accepted for public maintenance by the appropriate governmental entity; (iv) storm pipes and any median or planting area and related signage, irrigation facilities and lighting constructed by Declarant within rights-of-way within the Property; (v) any real or personal property which the Association now or hereafter owns, leases or holds possessory or use rights in for the benefit of

the Owners and their permittees; and (vi) such easement rights for right-of-way and appurtenant easements or licenses as Declarant may declare, acquire or reserve or as are granted to the Association for the benefit of the Owners and their permittees or for the use, care or maintenance of any portion of the Property, including, but not limited to, rights-of-way and appurtenant easements or licenses for landscaping, trees, plantings, irrigation, signage, monuments, lighting, water, sanitary sewer, storm sewer, stormwater drainage and/or retention, communications and/or other utility services. Declarant hereby grants to the Association an easement over any road, right-of-way or cul-de-sac within the Property which shall automatically terminate upon dedication to and acceptance for public maintenance by the appropriate governmental entity.

"Common Expenses" shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association, but shall not include any expenses for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs for improvements constructed by Declarant unless approved by a majority of the Voting Power of the Association; provided, however, the repair, maintenance and replacement of such infrastructure or other original capital improvements shall be a Common Expense and lease payments on all leased Street Lights within the Property shall be a Common Expense. Common Expenses shall include (i) all sums lawfully assessed by the Association against its members; (ii) the actual and estimated expenses incurred or anticipated to be incurred by the Association for administration, maintenance, repair, or replacement of the Common Area; (iii) the actual and estimated expenses incurred or anticipated to be incurred by the Association declared to be Common Expenses by the provisions of this Declaration, the Bylaws, or the Articles of Incorporation of the Association; (iv) premiums for hazard, liability, casualty and such other insurance as the Declaration or the Bylaws may require or authorize the Association to purchase or which the Association is required by law to purchase; (v) ad valorem taxes and assessment charges lawfully levied against the Common Area owned in fee simple by the Association; (vi) the actual and estimated expenses incurred or anticipated to be incurred by the Association as agreed by the members to be Common Expenses of the Association; (vii) fees for utilities used in connection with the Common Area; (viii) fees for services of accountants, attorneys, engineers, managers and other professionals engaged by the Association; (ix) payment to the City under the Stormwater Facility Agreements; (x) all expenses classified as Common Expenses pursuant to the Act; (xi) unpaid assessments following a foreclosure.

Completion of Sales. "Completion of Sales" means the earlier of (a) the conveyance of all Lots in the Property to purchasers other than a successor Declarant hereunder, or (b) the expiration of the later of (i) ten (10) years from the closing of the first sale of a Lot by Declarant, (ii) seven (7) years from the conveyance of the first Lot in the Phase most recently made subject to this Declaration (provided, however, if Declarant is delayed in developing the Property, constructing improvements or selling Lots and dwellings due to strikes or work stoppages; shortages of materials, supplies, fuel, power, or energy; moratoria or suspensions on issuance of land use permits and approvals or affecting the availability of water, sewer, power or other utilities or necessary services; inclement weather; civil strife; major disaster or other cause beyond Declarant's reasonable control, said seven (7) and ten (10) year periods shall be

extended by the period of any such delay), or (iii) at such time as Declarant records a Notice of Termination of Sales in the public records of the County.

County. "County" means Durham County in the State of North Carolina.

CPI. "CPI" means The Consumer Price Index For All Urban Consumers ("CPI-U"), U.S. City Average (All Items) published by the United States Bureau of Labor Statistics.

Declarant. "Declarant" means Westfield Homes of the Carolinas, LLC, a Delaware limited liability company, and any successor or assign to whom Declarant assigns its interest as Declarant hereunder in whole or in part by instrument recorded in the official records of the County.

Declaration. "Declaration" means this Declaration and all amendments or supplements hereto.

Insurance Trustee. "Insurance Trustee" means a national banking association or title company licensed to do business in North Carolina as may be designated by the Association to hold and disburse funds as trustee for the Association and the Owners, as provided in this Declaration.

Lot. "Lot" means any numbered lot or plot of land, together with any improvements thereon, which is shown upon any Map covering the Property, or a part thereof, which is not dedicated right-of-way or Common Area (provided, certain Common Area easements may encroach upon a Lot).

Map. "Map" means a recorded boundary, recombination or subdivision plat of all or a portion of the Property recorded in the Durham County Public Registry.

Member. "Member" means a member of the Association.

Mortgage. "Mortgage" means a mortgage or deed of trust which constitutes a first lien upon a Lot given to a bank, savings and loan association or other institutional lender for the purpose of securing indebtedness incurred to purchase or improve a Lot.

Mortgagee. "Mortgagee" means the holder of the beneficial interest in any Mortgage.

Notice and Opportunity for Hearing. "Notice and Opportunity for Hearing" means giving at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

Owner. "Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any person or entity who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

Person. "Person" means an individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

Property. "Property" means the portion of Lochside described in Article 2 below and, when and if subjected to the terms and provisions of this Declaration by Declarant acting in its sole discretion, all or any portion of the Additional Land, if any, and any other real property subjected to this Declaration by Supplemental Declaration recorded pursuant to Article 15 hereof.

Phase. "Phase " means the real estate shown on each Map of the Property, including the portion of Lochside described in Article 2 below, as recorded in the Durham County Public Registry.

Rules and Regulations. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Declaration.

Single Family Lot. "Single Family Lot" means any Lot within the Property which is not a Townhome Lot and depicted on Map(s) of the Property recorded in the public registry of the County.

Single Family Lot Owner. "Single Family Lot Owner" means the Owner of a Single Family Lot.

Special Assessment. "Special Assessment" or "special assessment" shall mean and refer to assessments levied in accordance with Article 9, Sections 9.06 and 9.07 of this Declaration.

Special Declarant Rights. "Special Declarant Rights" means, without limitation, the rights as defined in Section 47F-1-103(28) of the Act for the benefit of a Declarant, which are hereby reserved in favor of Declarant, including, but not limited to the following: the right to complete, repair, maintain, replace and operate improvements indicated on Maps of the Property, including, without limitation, utility infrastructure, dwellings and Common Area improvements; the right to exercise any development right; the right to maintain sales offices, manage offices, models and signs advertising the Property; the right to use easements through the Common Area and through any Lot or Lots for the purpose of making improvements within the Property and repairing, maintaining, replacing and operating improvements within the Property, provided that following the exercise of such rights the Property will be restored and the right to elect, appoint or remove any officer or Board member of the Association during the period of Declarant control described in Section 8.06.

Stormwater Facility Agreements. "Stormwater Facility Agreements" mean those certain Stormwater Facility Agreement and Covenant Version 082203 agreements executed by the Declarant and the City and recorded in the Durham County Public Registry, as same may be amended from time to time, under which the Declarant shall undertake the obligation to maintain certain stormwater facilities to be located on a portion of the Common Area as

described in Article 19 until such time as the Common Area on which the stormwater facilities are located is conveyed to the Association and the Association and City have executed a permit agreement relative thereto, whereupon the Association shall undertake the obligation to maintain the stormwater facilities located on a portion of the Common Area as described in Article 19.

Supplemental Declaration. "Supplemental Declaration" means a supplemental declaration of covenants, conditions and restrictions which shall be recorded for the purposes of annexing additional property, including all or any portion of the Additional Land, if any, to the Property and causing such property to be subject to the scheme of covenants, conditions and restrictions contained in this Declaration and any additional covenants, conditions and restrictions contained in the supplemental declaration of covenants, conditions and restrictions.

Townhome Association. "Townhome Association" means Lochside Townhome Association, Inc., a North Carolina nonprofit corporation, its successors and assigns, which association shall have concurrent, but subordinate, jurisdiction over the Townhome Property.

Townhome Common Area. "Townhome Common Area" or "Townhome Common Areas" means all real property owned by or held in trust for the benefit of the Townhome Association for the common use and enjoyment of its members, or owned by Declarant and designated for the common use and enjoyment of the Townhome Association and its members, and all improvements and facilities constructed thereon for such purposes and designated as "Common Open Space", "Common Area", "Amenity Area" or other similar designation on Map(s) of the Townhome Property recorded in the public registry of the County. The Townhome Common Area shall be solely for the use and enjoyment of the Townhome Lot Owners and may not be used by other Owners.

Townhome Declaration. "Townhome Declaration" means the declaration of covenants, conditions, and restrictions for the Lochside Townhomes and all amendments or supplements thereto, which declaration will be recorded by Declarant in connection with its development of the Townhome Property and will subject the Townhome Property to covenants, restrictions and/or easements in addition to those contained in this Declaration and create additional obligations on all Townhome Lot Owners.

Townhome Lot. "Townhome Lot" means any Lot within the portion of the Property to be known as "Lochside Townhomes" or a similar appellation and designated as such on Map(s) of the Property recorded in the public registry of the County.

Townhome Lot Owner. "Townhome Lot Owner" means the Owner of a Townhome Lot.

Townhome Property. "Townhome Property" means the portion of the Property to be known as "Lochside Townhomes" or a similar appellation and designated as such on Map(s) of the Property recorded in the public registry of the County.

Voting Power. "Voting Power" means the total number of votes allocated to Members whose membership at the time the determination of Voting Power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations.

Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Property.

## ARTICLE 2 PROPERTY, SUBMISSION AND TERM

2.01. Property. The property subject to this Declaration and within the jurisdiction of the Association is located in Durham County, North Carolina, and is described as follows:

Being that certain parcel of land shown on the map recorded in Map Book 159 at pages 151-152 of the Durham County Public Registry identified as Tract 1 containing 23.183 acres; that certain parcel of land shown on the map recorded in Map Book 159 at pages 153-154 of the Durham County Public Registry containing 28.442 acres; and that certain parcel of land shown on the map recorded in Map Book 157 at page 187 of the Durham County Public Registry identified as Parcel 4 containing 16.265 acres; and, when and if subjected to the terms and provisions of this Declaration by Declarant acting in its sole discretion, all or any portion of the Additional Land, if any, and any other real property subjected to this Declaration by Supplemental Declaration recorded pursuant to Article 15 hereof.

2.02. Submission. The Property shall be held, conveyed, hypothecated, encumbered, sold, transferred, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (a) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Property and (b) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Property, shall be binding on and inure to the benefit of each and every person having or acquiring any right, title or interest in the Property, shall be binding upon and inure to the benefit of the successors in interest of such persons, and shall inure to the benefit of the Association, its successors and assigns.

2.03. Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, as amended from time to time, whether or not the deed makes reference hereto.

2.04. Term. This Declaration shall remain in force until terminated by the affirmative vote of ninety percent (90%) of the Voting Power of the Association.

**ARTICLE 3  
COMPLIANCE WITH MANAGEMENT DOCUMENTS**

3.01. Compliance with Declaration and Other Documents. Each Owner, resident, tenant or guest of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representatives, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

3.02. Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then the provisions of this Declaration shall prevail. In the event that anything shown on a Map for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail unless otherwise required by law. If a dispute arises among Owners in regard to the administration of the Property, then the provisions of this Declaration shall prevail.

**ARTICLE 4  
PROPERTY RIGHTS**

4.01. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area depicted on the Maps of the Property to the Association no later than the time of the conveyance of the first Lot within the applicable Phase of the Property (to the extent such Common Areas can be conveyed in fee simple and/or unless Declarant is prohibited by local development regulations to convey the Common Area to the Association at such time), free and clear of all encumbrances and liens, except those set forth in this Declaration and utility and storm drainage easements. In the event a conveyance of the Common Area in fee simple would result in an illegal subdivision, then such Common Area as shown on a Map shall be deemed dedicated to the Association for the benefit of the Association and for the common use and enjoyment of its Members. Following conveyance of Common Area to the Association in fee simple, Declarant shall be entitled to a proration credit for all expenses of the Association incurred by Declarant (including insurance and real estate taxes) which have not theretofore been reimbursed to Declarant. The Common Area shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant. Upon such conveyance, maintenance of the Common Area shall be the responsibility of the Association, including, but not limited to, the maintenance of any stormwater facilities that are part of the Common Area. The maintenance of these stormwater facilities, including the expansion of such facilities as required by the City or otherwise, shall be performed to the standard required by the City or other applicable governing body and in strict accordance with the Stormwater Facility Agreements. Title to the Common Areas, including, without limitation, all private streets, if any, shall be for the perpetual benefit of the Members, and private or public ownership for any purpose other than for the benefit of the Members is prohibited.

4.02. Common Area Easements. Each Owner shall have a non-exclusive perpetual right and easement of use and enjoyment in and to the Common Area and of access to and from such Owner's Lot over any streets, parking areas and walkways comprising a portion of the Common Area, which rights and easements shall be appurtenant to and shall pass with the title to such Owner's Lot and subject to the following rights and restrictions:

(a) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an Owner, to charge reasonable fees with respect to the use of Common Area facilities, if any, and to limit the use of said facilities to Owners who occupy a residence in the Property.

(b) The right of the Association to suspend the right of an Owner to use any Common Area facilities (except drainage rights and rights of access to Lots) (i) for any period during which any fine against a Member or any assessment against such Owner's Lot remains unpaid; and (ii) after Notice and Opportunity for Hearing, for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations;

(c) The right of the Association, subject to the provisions of the Act (Section 3-112), to encumber or convey all or any part of the Common Area.

(d) The right of the Association to grant easements, leases, licenses and concessions through or over the Common Areas.

(e) The right of the Association, subject to the provisions of the Act (Section 3-112), to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes.

(f) The right of the Association to adopt Rules and Regulations governing use and enjoyment of the Common Area and the Property.

(g) The rights of the Association and of Declarant to the use of easements for ingress and egress over, in, to and throughout the Common Area.

(h) Public storm drainage easements, sanitary sewer easements, and any and all other easements over the Common Areas as shown on the Maps.

(i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate.

(j) The right of Declarant, its successors and assigns to make any improvements for any reason they deem proper upon the Common Areas, even after their conveyance to the Association. Declarant hereby reserves an easement over the Common Areas for the purpose of developing the remainder of the adjacent property

owned by Declarant. Although not limiting the scope of this easement, this easement shall include the right of access at all times for its employees, agent, subcontractors, invitees, etc., over the Common Areas and shall include the right to construct, maintain and dedicate any additional drainage easements, general utility easements and any additional sanitary sewer or water line easements across any of the Common Areas. This easement shall terminate upon the completion of the development of the adjacent property owned by Declarant or ten (10) years from the date hereof, whichever first occurs.

4.03. Delegation. Any Owner may delegate his or her rights of use and enjoyment of the Common Area and any facilities thereon to the members of his or her family or household residing on his or her Lot and to his or her guests and invitees while in possession of his or her Lot, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Subject to the provisions of Section 4.02(a) and Section 4.04 of this Declaration, a tenant of an Owner, while residing on such Owner's Lot, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his or her obligations hereunder, including, without limitation, the obligation to pay Annual Assessments and Special Assessments.

Upon request, each Owner or tenant shall notify the Secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

4.04. Tenants. No Owner shall lease or rent its Lot except as may be permitted by the Rules and Regulations.

4.05. Reciprocal Easements. There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater from gutters and downspouts, the repair of fences and similar improvements, and lawn maintenance; provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Lot. If any Common Area or Lot improvement encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed by Declarant, or reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist; provided, however, that in no event shall such an easement exist for willful encroachments. If any Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, an easement for the encroachment and for its maintenance shall exist so long as it remains.

4.06. Utility Easements. Any easements for installation, maintenance, use or repair of public utilities or drainage or detention facilities which are dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way shall be kept free of buildings, and within such easements no structure, fence, planting or other

improvement shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public utilities or drainage or detention facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. Notwithstanding anything contained herein to the contrary, any such easement dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way shall be maintained by the Owner(s) of any affected Lot(s) to the extent so encumbered by said easement, including all storm drainage facilities located within any "P. S. D. E." (public storm drainage easement) or "PDE" or "Private Drainage Easement" shown on the Map, except as otherwise indicated by such Map or unless maintenance has been assumed by any public utility or governmental entity having jurisdiction thereover. All easements described in this Section 4.06 at all times shall be accessible to Declarant until the Property is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such utilities and drainage facilities.

All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to any Lot must be underground. Until the date that is one (1) year after the Completion of Sales, the Declarant reserves unto itself, its successors and assigns, a perpetual alienable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to the Property on, in, under and over the private streets or roads and over any Lot, and over such areas as are so identified on any Map of the Property or shown on any site plan or construction drawings for the Property on file with and approved by the City. In addition, the Association may cut, in the above described easements, as well as any where else as required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along streets fronting property lines, Declarant reserves the right to install, maintain and repair pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association upon the termination of Class B membership. Any easements first established on property not owned by the Declarant must be consented to by the Owner of such property and evidenced on the Map or in recorded instrument creating the easement.

The Declarant may, but shall not be required to, release any of the easements reserved herein as to any Lot for which it deems such easement is unnecessary for the efficient development and operation of the Property.

4.07. No Subdivision of Lots; No Time-Sharing. Other than that effected by Declarant in preparing and recording Maps, or in revising recorded Maps, there shall be no further subdivision or partition of any Lot nor shall any Owner other than Declarant, or any other person acquiring any interest in a Lot seek any partition or subdivision thereof unless the Association consents to such subdivision or partition as evidenced on a Map. There shall be no time-sharing or other co-ownership which allows multiple Owners sequential possessory interests in a Lot.

4.08. Sale of Common Area. Except as otherwise provided in this Declaration and except as provided in the Act, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall, or may be, effected except as provided in the Act.

4.09. Limited Common Area. Certain portions of the Common Area may be designated as "Limited Common Area" and reserved for the exclusive use or primary benefit of Owners of designated Lots and their invitees. By way of illustration and not limitation, Limited Common Area may include entry features, recreational facilities, landscaped medians and cul-de-sacs, roadways not necessary to provide other Lots with access to public streets, lakes and other portions of the Common Areas designated to benefit particular Lots. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be an expense allocated to the Owners to which the Limited Common Area is assigned, which may be recovered by one or more Special Assessments levied by the Board equally against the benefited Owners. Any Limited Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed(s) by which the Declarant conveys the Common Area to the Association and shown on a Map designating such Limited Common Area; provided, any such assignment shall not be exclusive and shall not preclude the Declarant from later assigning use of the same Limited Common Area to additional Lots. The Association may, upon approval of the Owner(s) of the Lot(s) to which certain Limited Common Area is assigned, permit Owners of other Lots and their invitees to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Special Assessments attributable to such Limited Common Area.

4.10. Declarant's Right to Change Development Plans. With the approval of the City, Declarant shall have the right, without consent or approval of the Owners, to create Lots and dwelling units, add Common Area, change unit types and reallocate units within the Property, and release or withdraw real property from the development. In addition, Declarant shall have the right to change Common Area and Lots designations, the boundary lines of Common Area and Lots and the location of easements shown on any Map by recording a new Map showing such changes, which Map shall be executed by the Declarant and the Owner of the Common Area or Lot so modified. To the fullest extent permitted by North Carolina law, each Owner covenants by acceptance of the deed or instrument by which its Lot is conveyed not to protest, challenge or otherwise object to (i) changes in uses or density of the Property or Additional Land, or (ii) changes in the site plan and other development documents filed with the City in connection with the Property or Additional Land.

4.11. Rules and Regulations. The Association shall have the right to adopt, publish and enforce Rules and Regulations governing the Property, the use and enjoyment of the Common Area, and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws. Rules and Regulations and any changes thereto shall be effective upon Board approval and shall be mailed to each Owner addressed to the Owner's address last appearing in the books of the Association, postage prepaid, within thirty (30) days of Board approval.

