

Drawn by and Mail to: Law Office of Chris Karrenstein, P.C.
3719 Latrobe Drive, Suite 840
Charlotte, NC 28211

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

**AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THORNHILL COMMUNITY ASSOCIATION, INC.**

TABLE OF CONTENTS

<u>Section</u>	<u>Item</u>	<u>Page No.</u>
Table of Contents		2
Declaration		6
Article 1: Definitions		7
Section 1	“Additional Land”	7
Section 2	“Area of Common Responsibility”	7
Section 3	“Assessment”	7
Section 4	“Association”	7
Section 5	“Bylaws”	7
Section 6	“Common Area”	7
Section 7	“Common Expenses”	7
Section 8	“Community”	7
Section 9	“Declarant”	7
Section 10	“Eligible Votes”	8
Section 11	“Lot”	8
Section 12	“Majority”	8
Section 13	“Member” or “Members”	8
Section 14	“Mortgage”	8
Section 15	“Mortgagee”	8
Section 16	“Mortgagor”	8
Section 17	“Owner” or “Owners”	8
Section 18	“Person”	8
Section 19	“Property” or “Properties”	8
Section 20	“Special Assessment”	8
Section 21	“Subsequent Amendment”	8
Section 22	“Thornhill”	8
Section 23	“Thornhill Community Association, Inc.”	9
Section 24	“Voting Member”	9
Article 2: Property Rights		9
Section 1	Owner’s Easements of Enjoyment	9
Article 3: Architectural, Maintenance and Use Restrictions		10
Section 1	Architectural Control Committee	10
Section 2	Approval of Plans and Architectural Control Committee, “ACC”	10
Section 3	Use	10
Section 4	Aerials, Antennas and Satellite Dishes	10
Section 5	Owners’ Right to Ingress, Egress and Support	11
Section 6	Use of Lots	11
Section 7	Use of Common Area	11
Section 8	Signs	11
Section 9	Rules and Regulations	11

Section 10	Use of Outbuildings and Similar Structures	12
Section 11	Animals and Pets	12
Section 12	Occupants Bound	12
Section 13	Nuisance	12
Section 14	Unsanitary or Unkempt Conditions	12
Section 15	Clothes Lines, Garbage Cans, Etc.	13
Section 16	Lakes, Ponds and Streams	13
Section 17	Play Facilities	13
Section 18	Maintenance	13
Article 4: Membership and Voting Rights		14
Section 1	Membership	14
Section 2	Voting	14
Article 5: Insurance		14
Section 1	Insurance	14
Section 2	Disbursement of Proceeds	16
Section 3	Damage and Destruction	16
Section 4	Repair and Reconstruction	17
Article 6: No Partition		17
Article 7: Condemnation		17
Article 8: Annexation		18
Article 9: Rights and Obligations of the Association		18
Section 1	Common Area	18
Section 2	Services	18
Section 3	Personal Property and Real Property for Common Use	18
Section 4	Implied Rights	19
Section 5	Self-help	19
Section 6	Hearing Procedure	19
Article 10: Assessments		20
Section 1	Purpose of Assessment	20
Section 2	Creation of Assessments	20
Section 3	Computation of Assessment	20
Section 4	Special Assessments	21
Section 5	Lien for Assessments	21
Section 6	Effect of Nonpayment of Assessments; Remedies of the Association	22
Section 7	Capital Budget and Contributions	22
Section 8	Subordination of the Lien to First Mortgages	22
Section 9	Capitalization of Association	23
Section 10	Date of Commencement of Annual Assessments	23
Section 11	Specific Assessments	23

Section 12	Exempt Property	23
Section 13	Failure to Assess	24
Article 11: Easements		24
Section 1	Easements for Utilities	24
Section 2	Easements of Encroachment	24
Section 3	Right of Entry	24
Section 4	Easement of Access Over Private Streets	24
Article 12: General Provisions		25
Section 1	Duration	25
Section 2	Amendment	25
Section 3	Indemnification	25
Section 4	Construction and Sale	25
Section 5	Severability	26
Section 6	Gender and Grammar	26
Signature Pages		26
Consent and Joinder		63
Exhibit A		64
Exhibit B		65
Exhibit C (Bylaws)		66
Article 1: Name, Membership, Applicability and Definitions		66
Section 1	Name and Location	66
Section 2	Membership	66
Section 3	Definitions	66
Article 2: Association: Meetings, Quorum, Voting, and Proxies		66
Section 1	Place of Meetings	66
Section 2	Annual Meetings	66
Section 3	Special Meetings	66
Section 4	Notice of Meetings	66
Section 5	Waiver of Notice	67
Section 6	Adjournment of Meetings	67
Section 7	Voting	67
Section 8	Proxies and Written Ballots	67
Section 9	Majority of Owners	68
Section 10	Quorum	68
Section 11	Conduct of Meetings	68
Section 12	Action Without a Meeting	68

Article 3: Board of Directors: Number, Powers, Meetings **68**

(Composition and Selection)

Section 1	Governing Body; Composition	68
Section 2	Number of Directors	68
Section 3	Nomination of Directors	68
Section 4	Election and Term of Office	68
Section 5	Removal of Directors	69
Section 6	Vacancies	69
Section 7	Voting Procedure for Directors	69
(Meetings of Directors)		
Section 8	Organization Meetings	69
Section 9	Regular Meetings	69
Section 10	Special Meetings	69
Section 11	Waiver of Notice	70
Section 12	Quorum of Board of Directors	70
Section 13	Compensation	70
Section 14	Conduct of Meetings	70
Section 15	Open Meetings	70
Section 16	Executive Session	70
Section 17	Action Without a Formal Meeting	70
(Powers and Duties)		
Section 18	Powers	70
Section 19	Management Agent	72
Section 20	Accounts and Reports	72
Section 21	Borrowing	73
Section 22	Rights of the Association	73

Article 4: Officers **74**

Section 1	Officers	74
Section 2	Election, Term of Office, and Vacancies	74
Section 3	Removal	74
Section 4	Powers and Duties	74
Section 5	Resignation	74
Section 6	Agreements, Contracts, Deeds, Leases and Checks	74

Article 5: Committees **74**

Article 6: Miscellaneous **75**

Section 1	Fiscal Year	75
Section 2	Parliamentary Rules	75
Section 3	Conflicts	75
Section 4	Books and Records	75
Section 5	Notices	75
Section 6	Amendment	76
Section 7	Audit	76

AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THORNHILL COMMUNITY ASSOCIATION, INC.

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THORNHILL COMMUNITY ASSOCIATION, INC. is made this ____ day of _____, 2005, by the Thornhill Community Association, Inc., a North Carolina non-profit corporation, and the undersigned Owners of Lots within the Properties of the subdivision known as Thornhill, pursuant to the authority granted in the Declaration of Covenants, Conditions and Restrictions for Thornhill referenced below, along with any amendments and supplements thereto;

WITNESSETH:

WHEREAS, Realty Dealers, Ltd., as Declarant and its successors in interest have heretofore imposed covenants, conditions and restrictions upon the Properties of Thornhill, maps of which appear of record in the Mecklenburg County Public Registry in Map Book 22, Pages 933 and 934; Map Book 23, Page 878; Map Book 23, Page 881; Map Book 23, Page 898; Map Book 24, Page 265; Map Book 24, Page 535; Map Book 24, Page 536; Map Book 24, Page 662; Map Book 24, Page 663; Map Book 24, Page 898; Map Book 24, Page 998; Map Book 25, Page 25; Map Book 25, Page 55; Map Book 25, Page 345; Map Book 25, Page 596; Map Book 25, Page 626; Map Book 25, Page 938; Map Book 26, Page 313; Map Book 26, Page 675; Map Book 27, Page 829; Map Book 28, Page 905; and which property is more particularly described in that Declaration of Covenants, Conditions, and Restrictions recorded in Book 6119 at Page 654 in the Mecklenburg County Public Registry, as amended and supplemented, collectively, (“Existing Declaration”);

WHEREAS, the undersigned Owners desire to insure the attractiveness of the subdivision and to prevent any future impairment thereof and to preserve, protect and enhance the values and amenities of all Properties within the subdivision.

WHEREAS, the Owners, as witnessed by their signatures below, deem it desirable to amend and restate the Existing Declaration, as referenced above, with a new Amended and Restated Declaration of Covenants, Conditions and Restrictions (hereinafter the “Restated Declaration”) so as to fulfill the objectives stated herein;

WHEREAS, the aforesaid Existing Declaration expressly provides that it may be amended by an instrument signed by a Majority of the current Owners of said Lots within the subdivision, as defined in Article 13, Section 2 of the said Existing Declaration; and

WHEREAS, the undersigned persons are the Majority of the current Owners of said Lots.

NOW, THEREFORE, the undersigned Owners, in compliance with the provisions of Article 13, Section 2 of the Existing Declaration, do hereby amend and restate, as specifically set forth below, the Declaration of Covenants, Conditions and Restrictions for Thornhill originally recorded in Book 6119 at Page 654 in the Mecklenburg County Public Registry, as amended and supplemented, and previously termed Existing Declaration. This Amended and Restated Declaration of Covenants, Conditions and Restrictions contemplates that it replaces the Existing

Declaration and that it shall have the same force and effect as the Existing Declaration. In the case of any conflict between the Existing Declaration and this Amended and Restated Declaration, this Amended and Restated Declaration shall control.

ARTICLE 1 **DEFINITIONS**

The following words when used in this Restated Declaration or any Subsequent Amendment (unless the context shall prohibit) shall have the following meanings:

Section 1. “Additional Land” shall mean and refer to additional real property subject to the Association’s unilateral right of annexation as provided elsewhere in this Restated Declaration, which property is more particularly described in Exhibit B attached hereto and incorporated throughout this Restated Declaration by reference.

Section 2. “Area of Common Responsibility” shall mean and refer to the Common Area, together with those areas, if any, within or upon a Lot, the maintenance, repair or replacement of which is the responsibility of the Association.

Section 3. “Assessment” means the assessment levied to fund expenses applicable to all Members of the Association.

Section 4. “Association” shall mean and refer to Thornhill Community Association, Inc. a North Carolina non-profit corporation, its successors and assigns. The Board of Directors shall be the elected body having its normal meaning under North Carolina non-profit corporation law.

Section 5. “Bylaws” shall refer to the Bylaws of Thornhill Community Association, Inc. attached to this Restated Declaration as Exhibit C and incorporated herein by reference.

Section 6. “Common Area” shall mean all real and personal property now or hereafter owned by the Association in Thornhill, for the common use and enjoyment of the Owners.

Section 7. “Common Expenses” shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve.

Section 8. “Community” means the real property and interest in the real property described in Exhibit A attached to and incorporated in this Restated Declaration by reference, and

(a) such additions to Exhibit A as may be made by Declarant heretofore or hereafter by amendment or Supplementary Declaration of all or any portion of the real property described in Exhibit B, attached to this Restated Declaration; and

(b) such additions to Exhibit A as may be made by the Association by amendment or Supplementary Declaration of other real property.

Section 9. “Declarant” means and refers to Realty Dealers, Ltd., an Illinois limited partnership, or its successors, successors-in-title or assigns (including the Association) to whom the rights of the Declarant are transferred.

Section 10. “Eligible Votes” means those votes available to be cast by Voting Members on the issue at hand. A vote which is for any reason suspended is not eligible to be cast.

Section 11. “Lot” means a portion of the Properties other than the Common Area intended for any type of independent ownership and residential use as may be set out in this Restated Declaration and as shall be shown on the plats of survey filed with this Restated Declaration or any amendments or supplements thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 12. “Majority” means any number of Members whose votes equate to the greater amount of half of any total.

Section 13. “Member” or “Members” shall mean and refer to an Owner or Owners and each and every person or entity holding membership (as defined in Article 4 Membership and Voting Rights in this Restated Declaration) in the Association.

Section 14. “Mortgage” means any mortgage, deed of trust and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 15. “Mortgagee” means a beneficiary or holder of a mortgage.

Section 16. “Mortgagor” means the grantor of a mortgage.

Section 17. “Owner” or “Owners” means the record Owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding contract purchasers and any party holding the fee simple title merely as security for the performance of an obligation.

Section 18. “Person” means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 19. “Property” or “Properties” shall mean and refer to the real property described in this Restated Declaration and such additional real property as may be added in accordance with Article 8.

Section 20. “Special Assessment” means the assessments levied in accordance with Article 10, Section 4 of this Restated Declaration.

Section 21. “Subsequent Amendment” means an amendment to this Restated Declaration which adds additional property to that covered by this Restated Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that amendment to the provisions of this Restated Declaration.

Section 22. “Thornhill” means the subdivision as shown on the Maps listed in this Restated Declaration in addition to any additional land annexed by the Association and recorded with the Mecklenburg County Public Registry.

Section 23. “Thornhill Community Association, Inc.” means that North Carolina non-profit corporation provided for in this Restated Declaration of Covenants, Conditions and Restrictions, as amended, for Thornhill duly recorded in the Mecklenburg County, North Carolina Public Registry.

Section 24. “Voting Member” means the Member or Member representative by proxy, who shall be responsible for casting the votes attributable to the Lot which he or she represents for election of Directors and other matters provided for in this Restated Declaration or the Bylaws.

ARTICLE 2

PROPERTY RIGHTS

Section 1. Owner’s Easements of Enjoyment. Every Owner shall have a non-exclusive right of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any facility now or hereafter situated or constructed upon the Common Area and impose reasonable limits on the number of guests who may use the facilities;

(b) The right of the Association to suspend any Owner’s voting rights and the right to use any of the facilities for any period during which any assessment of the Association against that Owner’s Lot remains unpaid, and for any infraction by an Owner of the Association’s Rules and Regulations for the duration of the infraction and for an additional period thereafter not to exceed thirty (30) days;

(c) The right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, for acquiring additional Common Area, or for constructing, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a mortgage conveying all or any portion of the Common Area, provided two-thirds (2/3rds) of Members present at a meeting called for such purpose shall approve; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements and privileges reserved or established in this Restated Declaration for the benefit of any Owner or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within Thornhill; and

(d) The right of the Association to dedicate or transfer all or any portion of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least two-thirds (2/3rds) of the votes of Members of the Association which are present or are represented by proxy at a meeting duly called for such purpose and provided that this paragraph shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage utilities and drainage facilities, upon, over, under and across the Common Area without the assent of the Members if such easements are requisite for the convenient use and enjoyment of the Properties.

ARTICLE 3
ARCHITECTURAL, MAINTENANCE AND USE RESTRICTIONS

Section 1. Architectural Control Committee. An Architectural Control Committee, hereinafter referred to as the “ACC”, shall consist of not less than three (3) Members to serve as representatives of the Association’s Board of Directors and enforce the restrictions hereafter set forth. The “ACC” shall be appointed by the Board of Directors.

The following architectural, maintenance and use restrictions shall apply to each and every Lot now or hereafter subject to this Restated Declaration.

Section 2. Approval of Plans and Architectural Control Committee, “ACC”. After the initial construction of a residence on any Lot has been completed, no construction, reconstruction, remodeling, alteration, roofing or addition to any structure, building, fence, wall, drive or walkway or exterior color change shall be commenced or maintained upon any Lot nor shall any exterior addition to or change or alteration therein be made after completion of construction of said Lot, unless and until the plans and specifications showing the nature, kind, shape, height, color, material and location of the same shall have been submitted to and approved in writing as to harmony of the external design and location in relation to surrounding structures and topography by the “ACC”. If the “ACC” fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications shall have been submitted to it, further approval will not be required and this Article will be deemed to have been fully complied with. Upon giving approval to such plans and specifications, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans as have been previously approved by the “ACC”. The “ACC” or the Board of Directors of the Association shall be entitled to stop any construction in violation of these restrictions.

Section 3. Use. The Property shall be used only for residential, recreational and related purposes as may more particularly be set forth in this Restated Declaration or amendments thereto. The Association, acting through the Board of Directors, shall have standing power to enforce use restrictions contained in this Restated Declaration as if such provisions were a regulation of the Association.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of Lots and Common Area, including common property, in addition to those contained herein, and to impose reasonable user fees for facilities, including, but not limited to, vehicle storage areas, pathway systems, swimming pools, tennis courts, community centers and parking facilities, if any. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, cancelled or modified in a regular or special meeting of the Association by Voting Members representing a Majority of the total votes in the Association. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards and restrictions which are not required to be stated specifically in the Restated Declaration and which may contain stricter standards of use regulations than contained in the Restated Declaration.

Section 4. Aerials, Antennas and Satellite Dishes. No exterior television, radio or other aerial, antenna, satellite dish, tower or other transmitting or receiving structure or support thereof, shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board of Directors or its designee. The Board of Directors will be required to follow any Federal Communications Commission (FCC) laws in

making approval and giving consent. The Association may erect an aerial for a master antenna system or satellite dish, should any such master system or systems be utilized by the Association.

Section 5. Owners' Right to Ingress, Egress and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot, and such right shall be appurtenant to and pass with the title to each Lot.

Section 6. Use of Lots. Except as mandated by the Federal Disability Act or other Federal or State legal requirements, and except as may be otherwise expressly provided in this Restated Declaration, each Lot shall be used for residential purposes only as a residence for a single family. A single family is defined as no more than three (3) individuals unrelated by blood, marriage, or legal action. No trade or business of any kind may be conducted that is in conflict with the terms of this Restated Declaration, Bylaws, Articles of Incorporation or Rules and Regulations of the Association. Lease or rental of a Lot or any building thereon for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with the provisions of this Restated Declaration, Bylaws, Articles of Incorporation and Rules and Regulations as the Board of Directors may promulgate. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Restated Declaration, Bylaws, Articles of Incorporation and the Rules and Regulations adopted hereunder.

Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept on any Lot or on the Common area or any part thereof to increase the rate of insurance on the Properties or any part thereof over what the Association, but for such activity, would pay. Noxious, destructive, illegal or offensive activity or any activity constituting an unreasonable source of annoyance, shall not be conducted on any Lot or on the Common Area or any part thereof and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort or annoyance to other Owners and the Board of Directors shall have the power to make and to enforce reasonable Rules and Regulations in furtherance of this provision.

Section 7. Use of Common Area. No planting or gardening shall be done and no fences, hedges or walls shall be erected or maintained upon the Common Area or upon any Lot, except in accordance with the initial construction of the improvements located thereon or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the Owners of Lots may use the property outside their respective Lot only in accordance with reasonable Rules and Regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

Section 8. Signs. No advertising signs of any type or kind shall be erected, placed or permitted to remain upon any Lot or Common Area with the exception of a single sign "For Rent" or "For Sale", which sign shall not exceed two (2') feet by three (3') feet in dimension and shall refer only to the premises on which it is displayed, there being only one permitted sign to a Lot.

Section 9. Rules and Regulations. In addition to any standards and restrictions set forth in Section 3 of this Article, the Board of Directors may establish reasonable Rules and

Regulations concerning the use of the Common Area, facilities located thereon and individual Lots. Copies of such Rules and Regulations and amendments thereto, shall be furnished by the Association to all Owners prior to the effective date thereof. Such Rules and Regulations shall be binding upon the Owners, their families, tenants, guests, invitees and agents until and unless such regulation, rule or requirement shall be specifically overruled, cancelled or modified by the Board of Directors or the Association in a regular or special meeting by the vote of Voting Members holding a Majority of the total of votes in the Association. The Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions and monetary fines may be collected by lien and foreclosure, as provided in Article 10 of this Restated Declaration.

Section 10. Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shed, tent, garage, carport or any other structure of a similar nature shall be used as a residence either temporarily or permanently.

Section 11. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Properties, except that dogs, cats or other normal household pets may be kept in residences subject to Rules and Regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred or maintained for any commercial purpose.

Section 12. Occupants Bound. All provisions of the Restated Declaration and of any Rules and Regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all non-owner occupants of any Lot including guests, and invitees of Owners and non-owner occupants.

Section 13. Nuisance. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any property adjacent to the Lot. There shall not be maintained any plant(s) or animal(s) or device or thing 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 Properties.

Section 14. Unsightly or Unkempt Conditions. No trash, rubbish, stored materials, wrecked, unlicensed or inoperable vehicles, boats and/or trailers, recreational vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish or other such debris for pickup by governmental or other similar garbage and trash removal service units. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds or underbrush in a manner satisfactory to a Majority of the Board of Directors of the Association, the Association may, through its agent or representative, enter and remove all such unsightly objects, debris or other vegetation at the Owner's expense in accordance with Article 9, Sections 5 and 6 of the Restated Declaration, and the Owner, by acquiring any Lot subject to this Restated

Declaration, agrees to pay such costs incurred by the Association in the enforcement of this paragraph promptly upon demand. No such entry as provided herein shall be deemed a trespass.

Section 15. Clothes Lines, Garbage Cans, Etc. All clothes lines, garbage cans, above-ground tanks, woodpiles and other similar items shall be located or screened so as to be concealed from view of neighboring Lots, streets and property located adjacent to the Lot. All rubbish, trash and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

Section 16. Lakes, Ponds and Streams. All lakes, ponds and streams within the Properties, if any, shall be aesthetic amenities only, and no other use thereof, including, without limitation, swimming, motorized boating, playing or use of personal flotation devices shall be permitted; provided, however, fishing from the shore or banks thereof shall be permitted. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams located within the Properties.

Section 17. Play Facilities. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage or injury occurring thereon or related to use thereof.

Section 18. Maintenance.

(a) Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures and improvements situated upon the Area of Common Responsibility.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of Common Areas shall be a Common Expense to be allocated among all Lots as part of the Assessment.

(b) Owner's Responsibility. In accordance with any additional Declaration and Subsequent Amendments to this Restated Declaration which may be filed on portions of the Properties, and in accordance with this Restated Declaration as amended and supplemented, all maintenance of the Lots and all structures, parking areas and other improvements within or upon the Lot shall be the sole responsibility of the Owner thereof who shall perform such maintenance in a manner consistent with the community-wide standards of Thornhill and the applicable covenants. If the Board of Directors determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair or replacement of items of which he or she is responsible hereunder, or (ii) that the need for maintenance, repair or replacement which is in the Area of Common Responsibility is caused through the willful or negligent act of any Owner, his or her family, guests, lessees or invitees and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense. Such costs shall be added to and become a part of the Assessment to which such Owner is subject and shall become a lien against the Lot, as provided in Article 10 of this Restated Declaration. Except in an emergency situation, the Association shall give the Owner written notice of the Association's

intent to provide necessary maintenance, repair or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board of Directors. In the case of (i) above where the Owner has not discharged his or her responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board of Directors determines that an emergency exists, that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is in the Area of Common Responsibility as in (ii) above, then the Association may, but is not obligated to, provide any such maintenance, repair or replacement in the manner described above. The Association or its agents or employees shall have a right of entry upon or into the Lot as necessary to perform such work and shall not be liable for trespass for such entry or work.

ARTICLE 4 **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every person or entity who is the record Owner of a fee or undivided fee interest in any Lot that is subject to this Restated Declaration shall be deemed to have a Membership in the Association. Membership shall be appurtenant to and may not be separated from such Ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's Membership. No Owner, whether one or more persons, shall have more than one (1) Membership per Lot owned. In the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of Membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote for each Membership applicable to a particular Lot be cast for each Lot.

Section 2. Voting. Subject to the provisions of Article 10 of this Restated Declaration, Members shall be entitled, on all voting issues applicable to Lots, to one (1) vote for each Lot in which they hold the interest required for Membership by Section 1 of this Article. There shall be only one (1) vote per Lot; provided, however, no vote shall be cast or counted for any Lot not subject to assessment. Unless otherwise specified in this Restated Declaration or the Bylaws, the Eligible Vote of each Lot shall be exercised by the Voting Member representing such Member's Lot as defined in Article 1, Section 10 of this Restated Declaration.

ARTICLE 5 **INSURANCE**

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk insurance is not reasonably available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board of Directors shall also obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the

Association or any of its Members or agents. The public liability policy shall have at least a one million (\$1,000,000) dollar single-person limit as respects bodily injury and property damage; a three million (\$3,000,000) dollar limit per occurrence, if reasonably available; and a five hundred thousand (\$500,000) dollar minimum property damage limit. Premiums for all insurance on the Common Area shall be Common Expenses of the Association. The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals at least one hundred (100%) percent of the replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance or, in the event of multiple parties, shall be allocated in relation to the amount each party's loss bears to the total.

Cost of insurance coverage obtained by the Association for the Common Area or for structures on Lots shall be included in the Assessment, as defined in Article 1, Section 3 of this Restated Declaration. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefited parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in North Carolina and holding a rating of XI or better in the financial category as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the Lot Owners and their mortgagees as their interests may appear.

(c) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants or their mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Mecklenburg County, North Carolina area.

(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;

(2) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(3) that no policy may be cancelled, invalidated or suspended on account of any one or more individual Owners;

(4) that no policy may be cancelled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee;

(5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(6) that no policy may be cancelled or substantially modified without at least ten (10) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board of Directors shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent necessary, a fidelity bond or bonds on Directors, officers, employees and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Board of Directors' best business judgment, but may not be less than three (3) months assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 3 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 3(a) of this Article 5.

Section 3. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as

used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the Common Area damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Properties shall be restored to their natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost of repair or reconstruction, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a special assessment against all Owners as permitted in Article 10, Section 4 of this Restated Declaration. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE 6 **NO PARTITION**

Except as is permitted in this Restated Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 3 of Article 5 in the case of damage or destruction, or unless the Properties have been removed from the provisions of this Restated Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Restated Declaration.

ARTICLE 7 **CONDEMNATION**

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board of Directors acting on the written direction of all Owners) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Voting Members representing at least seventy-five (75%) percent of the Members of the Association shall otherwise agree, the Association shall restore or replace the improvements so taken on the remaining land included in the Common Area to the extent funds are available for the restoration or replacement of improvements, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article 5 hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE 8 **ANNEXATION**

Subject to the consent of the Owner of the property to be annexed and upon the written consent or affirmative vote of a Majority of the Members of the Association present or represented by proxy at a meeting duly called for such purpose, the Association may annex real property other than that described in Exhibit B and subject such real property to the provisions of this Restated Declaration and the jurisdiction of the Association by filing a Subsequent Amendment with respect to the property being annexed in the Mecklenburg County Public Registry.

ARTICLE 9 **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Restated Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto, if any), and shall keep it in a good, clean, attractive and sanitary condition, order and repair pursuant to the terms and conditions of this Restated Declaration, the Articles of Incorporation and the Bylaws.

Section 2. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Properties and Association, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Restated Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service and other common services to each Lot.

Section 3. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board of Directors, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests located within the Properties described in Exhibits A or B conveyed to it by the Declarant.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Restated Declaration as amended and supplemented or the Bylaws, and every other right or privilege reasonably implied by the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Self-help. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Restated Declaration, the Articles of Incorporation, Bylaws, the Rules and Regulations or the use restrictions. Unless an emergency situation exists, the Board of Directors shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees and costs actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of Assessments as allowed in Article 10 of this Restated Declaration.

Section 6. Hearing Procedure. The Board of Directors shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Restated Declaration as amended and supplemented, Articles of Incorporation, these Bylaws or any Rules and Regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot as stated in Section 5 of this Article. In the event that any occupant of a Lot violates this Restated Declaration, Articles of Incorporation, Bylaws or a Rule or Regulation and a fine is imposed, the fine shall be assessed against the Lot Owner and the Owner shall pay the fine upon notice from the Association. The failure of the Board of Directors to enforce any provision of this Restated Declaration, Articles of Incorporation, Bylaws or any Rule or Regulation shall not be deemed a waiver of the right of the Board of Directors or Association to do so thereafter.

(a) Notice. Prior to imposition of any fine hereunder, the Board of Directors or its delegate shall serve the alleged violator with written notice via first class mail to the Owner's address of record with the Association, describing (i) the nature of the alleged violation and stating the Article or Rule the Owner is in violation of and its cure, (ii) the proposed fine to be imposed, (iii) a period of time in which the alleged violator has to cure the violation.

(b) Hearing. If a homeowner has received notice as stated in Article 9, Section 6(a) of this Restated Declaration and has not responded with the appropriate cure to the violation, a hearing date and time will be set by the Board of Directors. Notice of such hearing will be issued and sent via first class mail with a minimum of ten (10) days notice to be held in either executive session of the Board of Directors, or in front of an adjudicatory panel appointed by the Board of Directors. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting, and Article 3, Section 9 of this Restated Declaration relating to Rules and Regulations shall be complied with. 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 minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The decision of the Board of Directors or the adjudicatory panel after the hearing shall be final. Written notice of the decision must be sent to the Owner via first class mail.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary contained in this Restated Declaration, Articles of Incorporation, Bylaws or the Rules and Regulations, if it is decided that a fine should be imposed, a fine not to exceed one hundred fifty (\$150.00) dollars may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens in accordance with the North Carolina Planned Community Act and shall be enforced in the same manner as liens for past due assessments as provided in Article 10 of this Restated Declaration. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE 10 **ASSESSMENTS**

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Restated Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Restated Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Lot against which assessment is made.

Each assessment, together with interest, costs and reasonable attorney's fees shall be the personal obligation of the person who was the Owner of such Lot at the time of the assessment, and his or her grantee shall be jointly and severally liable for the portion of the assessment due and payable at the time of conveyance to the extent expressly assumed; provided, however, no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to the acquisition of title. Assessments shall be paid in the manner and on dates fixed by the Board of Directors, and may include, without limitation, acceleration of the annual assessment for delinquents; unless the Board of Directors otherwise provided, the assessments shall be paid in monthly installments.

The Association shall upon demand at any time furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer or agent of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of such assessment to the Association therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed twenty-five (\$25.00) dollars for the issuance of such certificate.

Section 3. Computation of Assessment. It shall be the duty of the Board of Directors to prepare a budget covering the estimated costs of operating the Association during the coming

year. The budget shall include a capital contribution establishing a reserve fund in accordance with a capital budget separately prepared. The Board of Directors shall cause a copy of the budget and the amount of the assessments to be levied against each Lot for the following year to be delivered to the Voting Members at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by Voting Members or their alternates representing at least a Majority of the Owners. Notwithstanding the foregoing, however, in the event the budget is disapproved or the Board of Directors fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided in this Section, the budget in effect for the then current year shall continue for the succeeding year.

Notwithstanding the foregoing, until January 1st of the year immediately following the conveyance of the first Lot in Thornhill to an Owner, the maximum Annual Assessment shall be two hundred forty (\$240.00) dollars on each Lot.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased each year not more than six (6%) percent above the maximum assessment for the previous year without a vote of the Membership.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment may be increased above six (6%) percent by a vote of two-thirds (2/3rds) of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the Annual Assessment at an amount not in excess of the maximum herein provided.

Section 4. Special Assessments. In addition to the other assessments authorized in this Article, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed five hundred (\$500.00) dollars in any one fiscal year, the Board of Directors may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a vote of Voting Members with votes or their alternates representing a Majority of the Members. Special assessments shall be paid as determined by the Board of Directors, and the Board of Directors may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. Lien for Assessments. All sums assessed against any Lot pursuant to this Restated Declaration, together with late charges, interest, costs and reasonable attorney's fees as provided for herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens of ad valorem taxes; or (b) liens for all sums unpaid on any Mortgage placed prior to the Association lien and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument; or (c) on any Mortgage to Declarant, all such liens being duly recorded in the Mecklenburg County Public Registry.

All other persons acquiring liens or encumbrances on any Lot after this Restated Declaration shall have been recorded in such records shall be deemed to consent that such liens

or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Section 6. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due are delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount the Board of Directors may from time to time determine. The Association shall give a notice of delinquency to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days of the due date, a lien, as provided in this Article, shall attach and shall include the late charge, interest on the principal amount due at twelve (12%) percent per annum (not to exceed the maximum legal rate) and all late charges from the date first due, all costs of collection, reasonable attorney's fees and any other amounts provided or permitted by law. If the assessment remains unpaid after sixty (60) days from the due date, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due and to foreclose the lien. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as other liens for the improvement of real property may be foreclosed. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments provided for herein, including, by way of illustrations, but not limitation, by non-use of Common Areas or abandonment of the Lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board of Directors to take some action or perform some function required to be taken or performed by the Association or Board of Directors under this Restated Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of the suit, in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit, in the order of their coming due.

Section 7. Capital Budget and Contributions. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board of Directors shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board of Directors and included within the budget and assessment, as provided in Section 3 of this Article. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Section 8. Subordination of the Lien to First Mortgages. The lien of the assessments, including interest, late charges, and costs (including attorney's fees) provided for herein shall be

subordinate to the lien of any First Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

Section 9. Capitalization of Association. Upon acquisition of record title to a Lot from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6th) of the amount of the assessment for that Lot as determined by the Board of Directors.

Section 10. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Lots then existing and subject to assessment under this Restated Declaration on the first day of the month following the conveyance of the first Lot by the Declarant to a Member and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot becomes subject to assessment hereunder shall be the date on which the later of the following occurs:

(a) the Lot becomes subject to this Restated Declaration; or

(b) the appropriate official of Mecklenburg County, North Carolina or other appropriate governing municipality issues a certificate of occupancy or its equivalent stating that the Lot is substantially complete and available for occupancy.

Section 11. Specific Assessments. The Board of Directors shall have the power specifically to assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Directors' right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section. The Board of Directors may specifically assess Lots for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed among all of the Lots which are benefited according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all, may be specifically assessed equitably among all Lots according to the benefit received.

Section 12. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Assessments, and Special Assessments:

(a) all Common Areas;

(b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets and public parks.

Section 13. Failure to Assess. The omission or failure of the Board of Directors to fix the assessment amounts or rates or to deliver or mail to 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 annual assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE 11 **EASEMENTS**

Section 1. Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity as well as storm drainage and any other service such as, but not limited to, a master television antenna system, satellite dish, cable television system or security system which the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace and maintain or to authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board of Directors shall have the right to grant such easement.

Section 2. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Lot and such portion or portions of the Common Area adjacent thereto or as 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 one (1') foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area or as between said adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant or the Association.

Section 3. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Lot for emergencies, security and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers and all police officers, firefighters, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner as stated in Article 3 of this Restated Declaration. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board of Directors.

Section 4. Easement for Access Over Private Streets. There is hereby reserved to the general public an easement for ingress, egress and regress over all private streets within the Properties, subject to such Rules and Regulations as may be promulgated by the Board of Directors.

ARTICLE 12

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Restated Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties subject to this Restated Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Restated Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a Majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. Amendment. This Restated Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a Majority of the Members. Amendments to this Restated Declaration shall become effective upon recordation in the Mecklenburg County Public Registry unless a later effective date is specified therein.

Section 3. Indemnification. The Association shall indemnify every officer and Director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or Director 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 or Director. The officers or Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director, or former officer or Director, 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.

Section 4. Construction and Sale. Notwithstanding any provisions contained in this Restated Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Declarant and the clubhouse complex, if any, which may be owned by the Association, as models and sales offices. This Section may not be amended without the express written consent

