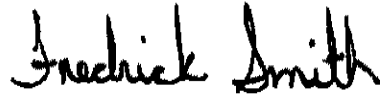


For Registration  
Fredrick Smith  
Register of Deeds  
Mecklenburg County, NC  
Electronically Recorded  
2021 Dec 29 04:56 PM RE Excise Tax: \$ 0.00  
Book: 36922 Page: 831 - 883 Fee: \$ 178.00  
Instrument Number: 2021244290



**DRAWN BY AND FILE TO:**  
**Law Offices of Robert M. Critz, P.A.**  
**P.O. Box 745**  
**Concord, NC 28026-0745**  
**File No.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA AND STATE OF NORTH CAROLINA AS PROVIDED BY N.C.G.S. SECTION 47F-3-121(1)**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS AS PROVIDED BY N.C.G.S. SECTION 47F-3-121(2)**

**[Note: Article V, Section 5 of the Declaration requires a non-refundable initial contribution to be paid upon every purchase of a Lot by an Owner, other than Declarant or Builder.]**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
ARDLEY SUBDIVISION**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for ARDLEY SUBDIVISION is made effective this 21<sup>st</sup> day of December, 2021, by NIBLOCK-ARDLEY DEVELOPMENT, LLC, a North Carolina limited liability company, referred to in this instrument as "Declarant".**

**STATEMENT OF PURPOSE**

Declarant is the owner of that certain parcel of land which is known as **Ardley Subdivision** located in Mecklenburg County, North Carolina, which is more particularly described as follows (the "**Submitted Property**"):

**Lying and being in the Town of Mint Hill, Mecklenburg County, North Carolina, and being all that property shown on the map of ARDLEY MAP 1, a map of said property being on file in the Office of the Register of Deeds for Mecklenburg County, North Carolina, in Map Book 69, Pages 753 and 754, specific reference thereto being hereby made for a more complete description thereof by metes and bounds.**

Declarant desires to create thereon the Submitted Property an exclusive residential community of single-family residences to be named **Ardley Subdivision**. Declarant will convey the Submitted Property subject to certain protective covenants, conditions, restrictions, reservations and charges as hereinafter set forth.

Declarant contemplates those separate easements, covenants, conditions, and restrictions may be imposed in regard to specific and additional sections or phases of **Ardley Subdivision**, and Declarant reserves the right to impose certain additional and/or supplementary easements, covenants, conditions, and restrictions.

Declarant desires to provide for the preservation and enhancement of the property values, amenities, and opportunities in said community and for the maintenance of the properties and improvements thereon, and to that end desires to subject the Submitted Property, together with any and all such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, and as may be hereafter supplemented, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created, in order to sufficiently preserve, protect and enhance the values and amenities in the Development, to ensure the residents' enjoyment of the specific rights, privileges and easements in the Common Area, and to provide for the maintenance and upkeep of the Common Areas and amenities. To that end, the Declarant has caused to be incorporated under North Carolina law, **Ardley Homeowners' Association, Inc.**, as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions.

In consideration of the premises and for the purposes stated, Declarant hereby declares that all of the Submitted Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions (all of which are collectively referred to in this instrument as "**restrictions**"), which restrictions shall be construed as covenants running with the land and shall be binding upon all parties having any right, title or interest in the described real property or any part thereof, and to their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. It is the intent of Declarant that the provisions of this Declaration in all respects conform and comply to the requirements set forth in the North Carolina Planned Community Act. To the extent any provision contained herein does not conform or comply with the North Carolina Planned Community Act, the provisions of the North Carolina Planned Community Act shall control.

## ARTICLE I: DEFINITIONS

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

**Section 1.** “**Additional Property**” shall mean additional real estate other than the Submitted Property which may be subject to the terms of this Declaration in accordance with the provisions of Article II, Section 2 of this Declaration.

**Section 2.** “**Affiliated Entity of Declarant**” shall mean and refer to (i) any person(s) which is/are a majority shareholder of Declarant; or (ii) any legal entity in which more than half of its outstanding voting stock is owned by Declarant; or (iii) the majority shareholder(s) of Declarant, including, but not limited to Niblock Homes, LLC; or (iv) Niblock Development Corp.

**Section 3.** “**Annual Assessments**” shall mean the assessments established pursuant to Article V, Section 2 and Article V, Section 6 of the Declaration.

**Section 4.** “**Appropriate Local Governmental Authority**” shall mean and refer to the Town of Mint Hill, Mecklenburg County or other appropriate local governmental authority having jurisdiction over the Property.

**Section 5.** “**Architectural Design Guidelines**” shall mean and refer to the Architectural Design Guidelines promulgated from time to time by the Board of Directors of the Association or the Architectural Review Committee.

**Section 6.** “**Architectural Review Committee**” shall mean and refer to the committee of the Association appointed to oversee the development and enforcement of architectural design and landscaping control standards and restrictions with respect to the Property and to perform certain other functions described in the Declaration.

**Section 7.** “**Articles of Incorporation**” shall mean the Articles of Incorporation of the Association, as the same may be amended, modified, supplemented or restated from time to time.

**Section 8.** “**Assessment**” or “**Assessments**” shall mean and refer to the Capital Contribution (“**Capital Contribution**”), Annual Assessments (“**Annual Assessments**”), Special Assessments (“**Special Assessments**”), Supplemental Annual Assessment (“**Supplemental Annual Assessment**”), and Special Individual Assessments (“**Special Individual Assessments**”) established by Article V of this Declaration.

**Section 9.** “**Association**” shall mean **Ardley Homeowners’ Association, Inc.**, a nonprofit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.

**Section 10.** “**BMP**” shall mean and refer to Best Management Practice, which is a practice, or combination of practices, determined to be an effective and practicable method of preventing or reducing the amount of contamination generated by polluted runoff that flows

across the ground surface to a level compatible with water quality goals.

**Section 11.** “**Board of Directors**” shall mean and refer to the Board of Directors of the Association, which shall be elected and serve pursuant to the Bylaws.

**Section 12.** “**Builder(s)**” shall mean and refer to any licensed contractor (either person or firm) in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale in the Development, including, but not limited to Niblock Homes, LLC.

**Section 13.** “**Bylaws**” shall mean the Bylaws for the Association.

**Section 14.** “**Capital Contribution**” shall mean the charge established by Article V, Section 5 of this Declaration.

**Section 15.** “**Code**” shall mean and refer to the Town of Mint Unified Development Ordinance.

**Section 16.** “**Common Area**” or “**Common Elements**” shall mean all real property owned by the Association (whether owned in fee or by way of license or easement) or leased by the Association, other than a Lot, in **Ardley Subdivision** for the common use and enjoyment of members of the Association lying within the boundaries of the Property. Common Areas, with respect to the Property subject to this Declaration, shall be shown on the maps of **Ardley Subdivision** recorded in the Mecklenburg County Registry and designated thereon as “**Buffer**”, “**Common Area**”, “**Common Open Space**”, “**Common Area/Open Space**”, “**Open Space**”, “**Stormwater Control Measures**” or similar designations. Common areas shall include entranceway area(s), berms, signage, and buffer areas. The assessments, charges and liens created under Article V herein shall not apply to the Common Area. The Common Area shall include any stormwater device that serves more than one (1) Lot.

**Section 17.** “**Declarant**” shall mean and refer to **Niblock-Ardley Development, LLC**, its successors and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the Declarant hereunder by the grantor of such conveyance, which grantor shall be the Declarant hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the Declarant hereunder at any time.

**Section 18.** “**Declaration**” shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of **Ardley Subdivision**, as the same may be amended from time to time as herein provided.

**Section 19.** "Development" shall mean and refer to Ardley Subdivision, a single-family residential subdivision proposed to be developed on the Property by Declarant.

**Section 20.** "Development Period" (or "Period of Declarant Control"), the terms "Development Period" and "Period of Declarant Control" have the same meaning and are used interchangeably herein) shall mean and refer to the period of time commencing on the date this Declaration is recorded in Mecklenburg County Register of Deeds through and including 5:00 p.m. on the **last** of the following dates to occur:

(1) the day following the last date on which Declarant owns any of the Properties; or

(2) the date that is five (5) years after the date of recording of the most recent Supplemental Declaration executed by the Declarant subjecting real property to this Declaration; or

(3) the date of release of the last bond (or letter of credit or other, similar financial guarantee) posted by Declarant with any Governmental Authority for the Properties or any portion thereof; or

(4) the date on which a certificate of occupancy is issued for the Dwelling Unit constructed on the last Lot in the Properties for which a certificate of occupancy has not been issued previously (for example, if there are fifty (50) Lots in the Properties and certificates of occupancy have been issued for Dwellings on forty-nine (49) of the fifty (50) Lots, the date that the certificate of occupancy is issued for the Dwelling on the fiftieth (50<sup>th</sup>) Lot); or

(5) December 31, 2046 (referred to for convenience purposes herein as the "Outside Date"). Provided, the original or any subsequent Outside Date may be extended by Declarant at any time and from time to time by recording, on or before the then current Outside Date, a document extending that Outside Date.

Provided, however, Declarant may terminate the Development Period at any time by recording a termination instrument in the Registry. In the event of any assignment of any rights of Declarant under this Declaration or the Act, with respect to the rights assigned the Development Period shall remain in full force and effect through the applicable periods of time unless otherwise provided in the assignment document or the Act or earlier terminated by the assignee. Declarant has the sole authority to resolve any issues or disputes regarding the date on which the Development Period ends. Further provided, if the Development Period ends and thereafter Declarant annexes any Additional Property to this Declaration, the Development Period and rights of the Declarant that may be exercised during the Development Period shall automatically and immediately be reinstated to and including the last of the foregoing dates described in this subsection.

**Section 21.** "FHA and VA" shall mean and refer to the Federal Housing Administration and the Veteran's Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve,

references hereto to FHA or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

**Section 22.** "Lot" shall mean and refer to any separately numbered or lettered tract of land, with delineated boundary lines, to be used for residential purposes shown upon any recorded subdivision map of the Property subject to this Declaration. No tract shall become a "Lot" as that word is used herein until a Map of the area on which the same is located is recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina. "Lots" shall refer to all lots collectively. Declarant and Builder hereby reserve the right to reconfigure, from time to time and without consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or Builder and to thereby create additional Lots, eliminate existing Lots or create additional Common Elements; provided, however, in no event shall the Property contain a greater number of Lots than the number from time to time permitted by the Appropriate Local Governmental Authority, nor shall any Lot within the Property contain fewer square feet than the minimum square feet from time to time required by the Appropriate Local Governmental Authority. If Declarant or Builder elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant (or Builder), Declarant or Builder shall, in the manner required by the Appropriate Local Governmental Authority, record a revised map of the affected Lot or Lots. Upon the recording by Declarant or Builder of such a revised map, each lot shown on the previously recorded map or maps, the boundaries of which are revised by the revised map, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised map shall be a "Lot" as defined in this Declaration.

**Section 23.** "Map" shall mean and refer to the map or maps of the Submitted Property which are recorded or are to be recorded in the Mecklenburg County Public Registry, and the map(s) of any additions to the Submitted Property which may be recorded hereafter by the Declarant in the Mecklenburg County Public Registry.

**Section 24.** "Member" shall mean and refer to every person or entity that holds membership with voting rights in the Association.

**Section 25.** "Occupant" is defined as any natural Person who Occupies a Dwelling Unit or is in possession of a Lot or Dwelling Unit, whether as an Owner, tenant, sub-tenant or otherwise, other than on a merely transient basis.

**Section 26.** "Occupy", "Occupies", "Occupancy", or "Occupied", unless otherwise specified in the Governing Documents, is defined as a natural Person who stays in a particular Dwelling Unit for more than eight (8) hours (whether consecutive or non-consecutive) on ninety (90) days or more during any consecutive twelve (12) month period. For purposes of this Section, a "day" shall mean the 24-hour period from 12:00:00AM Eastern Standard Time to 11:59:59 PM Eastern Standard Time on a calendar day.

**Section 27.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including Declarant, which is a part of **Ardley Subdivision**, but excluding those having such interest merely as security for the performance of an obligation.

**Section 28.** "Person" shall mean a natural person, as well as a corporation, joint venture, partnership (general or limited), limited liability company, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

**Section 29.** "Planned Community Act" shall mean and refer to the provisions of Chapter 47F of the General Statutes of North Carolina, as the same may be amended, modified, supplemented or restated from time to time.

**Section 30.** "Property" or "Properties" shall mean the Submitted Property described in herein the Statement of Purpose together with such additions thereto as may from time to time be designated by Declarant in accordance with Article II hereof, whether or not such additions are contiguous with or adjoining the boundary line of the Submitted Property. "Property" or "Properties" may sometimes be referred to herein as "Ardley" or "Ardley Subdivision".

**Section 31.** "Residence" shall mean and refer to a private dwelling constructed on any Lot for occupancy of a single family.

**Section 32.** "Rules and Regulations" shall mean and refer to the initial rules and regulations for use and occupancy of the Lots and the Common Areas as they may be supplemented, modified, restated or superseded.

**Section 33.** "Shared Drainage" shall mean all storm drainage pipes installed by Declarant or the Association which are located (i) entirely on Common Area, (ii) on two or more Lots, (iii) on Common Area and one or more Lots, or (iv) entirely on one Lot, and the drainage pipe is 12 inches (12") or greater in diameter.

**Section 34.** "Special Assessments" shall mean the assessments established pursuant to Article V, Section 7 of the Declaration.

**Section 35.** "Special Individual Assessments" shall mean the assessments established pursuant to Article V, Section 8 of the Declaration.

**Section 36.** "Subdivision" shall mean that certain parcel of real property described herein or referred to herein as the "Submitted Property", the "Property" or "Properties", "Ardley" or "Ardley Subdivision".

**Section 37.** "Subdivision Plan" shall mean the conceptual land use plan for the development of the Subdivision, as it may be amended from time to time, which plan shall include the Properties and may also include other real estate. DECLARANT EXPRESSLY RESERVES THE RIGHT TO MODIFY, AMEND AND REVISE THE SUBDIVISION PLAN AT ANY TIME DURING THE DEVELOPMENT PERIOD IN ANY AND ALL RESPECTS AS IT, IN ITS SOLE DISCRETION, DEEMS APPROPRIATE. Inclusion of real estate on the Subdivision Plan shall not, under any circumstances, obligate Declarant to subject such real estate to this Declaration as part of the Properties, nor shall the exclusion of real estate from the Subdivision Plan bar its later inclusion therein.

**Section 38.** “Submitted Property” shall mean that certain parcel of real property described herein the Statement of Purpose.

**Section 39.** “Supplemental Annual Assessment” shall mean and refer to that assessment established pursuant to Article V, Section 6 of the Declaration.

**Section 40.** “Supplemental Declaration” shall mean and refer to any Supplemental Declaration of Covenants, Conditions, and Restrictions, which is filed of record to bring Additional Property within the coverage of this Declaration and/or which is specific to certain sections, phases, or Maps of **Ardley Subdivision** as defined herein.

## ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

**Section 1.** The Submitted Property shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Only the Submitted Property is hereby made subject to this Declaration; provided, however, Declarant shall have the right to subject additional real property to these restrictions as provided herein Article II, Section 2.

**Section 2.** Without further assent or permit, Declarant shall have the right from time to time to subject additional real property to the terms and scheme of this Declaration said property to be developed as part of **Ardley Subdivision** and thereby bringing such additional properties within the coverage of this Declaration by filing a Supplemental Declaration in the office of the Register of Deeds for Mecklenburg County, North Carolina, containing a description of the additional property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the additional property.

**Section 3.** Any addition of real property (or easements or rights-of-way to such real property) shall be made by filing of record one or more Supplemental Declarations in respect to the property in the Mecklenburg County, North Carolina, Public Registry to be then made subject to this Declaration, shall thereby then extend to such property.

**Section 4.** Any Supplemental Declaration may contain complementary additions and modifications to the covenants, conditions, and restrictions contained herein as may be necessary in the judgment of Declarant to reflect the different character of the Additional Property. Nothing contained in this Article II however, shall be construed to obligate Declarant to bring any Additional Property within the coverage of this Declaration.

**Section 5.** No property of Declarant shall be subject to these restrictions except that property made subject thereto as herein provided. No property of Declarant shall be subject to any restrictions by implication arising from Declarant imposing these restrictions on the property herein described.

## ARTICLE III: PROPERTY RIGHTS

**Section 1.** **Ownership of Common Areas.** Declarant shall convey the Common Areas to the Association after completion by Declarant of improvements thereon, if any, and upon such time as Declarant determines that the Association is able to maintain same. **During the**

Development Period, the Board of Directors of the Association, without the assent of the Owners, may reconvey to Declarant all or any part thereof of the Common Area in order to facilitate the development of the Property. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

**Section 2. Owner's Easements of Enjoyment.** Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration. No planting or gardening by individual Owners shall be done upon any Common Area. Except for the right of easement of enjoyment in and to the Common Areas herein given to each Owner, Owners are hereby prohibited and restricted from using any of the Common Area except as may be allowed and prescribed by the Association's Board of Directors or as expressly provided for herein. It is Declarant's intent that this paragraph inures to the mutual benefit of all owners within the Property. Each Owner's nonexclusive right and easement of enjoyment in and to the Common Area is subordinate to the right of the Association to dedicate and convey Common Area pursuant to subsections (e), (f), (g), and (h) of this paragraph. Each Owner's easement of enjoyment is subject to the following:

- (a) The right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to ensure the availability of the right to use the Common Areas to the Owners and to ensure the safety and rights of all Owners on the Common Areas;
- (b) The right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (c) The right of the Association to limit the use of the Common Area to Owners, their families and guests;
- (d) The right of the Association to suspend the voting rights of an Owner(s) and/or the right(s) of such Owner(s) for any period during which any assessment against his lot remains unpaid, or for any infraction of the Association's published Rules and Regulations, if any;
- (e) The right of the Declarant, during the Development Period, and right of the Association thereafter to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association members. No such dedication or transfer shall be effective after the Development Period unless the members entitled to at least two-thirds (2/3) of the vote appurtenant to Class A Lots and Class B Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document, 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, cable television, internet

service, natural gas, water and sewerage utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership;

- (f) The right of the Declarant, during the Development Period, and right of the Association thereafter to grant utility, drainage and other easements across the Common Areas, including the easements of the type and for the purposes set forth in Article VIII across the Common Areas, which right shall include the right of Declarant to designate all or certain parts of the Common Area as areas which are to remain in perpetuity as open areas, in order for the Properties to comply with Impervious Area Requirements of the Town of Mint Hill and/or Mecklenburg County, if applicable;
- (g) The Board of Directors of the Association, without the assent of the Owners, shall have the right to dedicate or transfer all or any part of the Common Area to the Declarant during the Development Period, in order to facilitate the development of the Property;
- (h) The Board of Directors of the Association shall have the right to dedicate or transfer all or any part of the Common Area to third parties provided the Association acquires in return other property which will be held thereafter as Common Area of equal or greater value;
- (i) The right of the Declarant to construct fencing and activities by Declarant and/or Builder(s) in construction or marketing activities in the Property;
- (j) The Declarant, during the Development Period, and the Board of Directors of the Association thereafter, without the approval or consent of the Owners, shall have the power and right to change the use and/or configuration of portions of the Common Area; and
- (k) The Declarant reserves the right to designate all or certain parts of the Common Area as areas which are to remain in perpetuity as open areas, in order for the Property to comply with Subdivision Requirements and/or Impervious Area Requirements and/or Erosion Control Requirements of the Town of Mint Hill and/or Mecklenburg County, if applicable.

**Section 3. Delegation and Use.** The right and easement of enjoyment granted to every Owner in Article III, Section 2 may be exercised by members of Owner's family and guests thereof. An Owner may delegate to his tenants his rights of enjoyment in and to the Common Area and such facilities thereon as may be provided, in accordance with the Association's bylaws and Rules and Regulations, if any.

**Section 4. Changes to Declaration or Supplementary Declaration.** Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, during the Development Period and unless the Declarant surrenders the rights set forth in this paragraph by an express amendment to the Declaration executed and recorded by Declarant, the prior written consent of Declarant shall be required for any parties to modify, change or amend, in whole or in

part, the terms and provisions of this Declaration or any Supplementary Declaration or to impose new easements, covenants, conditions, restrictions, charges or liens on any part of the Property.

**Section 5. Rules and Regulations of the Association.** The Board of Directors of the Association shall have the power and authority to promulgate rules and regulations to enable the Association to carry out the letter and intent of this Declaration (the "**Rules and Regulations**"). All Owners shall abide by all Rules and Regulations so adopted by the Board of Directors from time to time. Notwithstanding any other provision of this Declaration, the Board of Directors of the Association:

- (a) shall have the power to enforce compliance with said Rules and Regulations by all appropriate legal and equitable remedies, and an Owner violating such Rules and Regulations shall be liable to the Association for all damages and costs, including, without limitation, reasonable attorney's fees, resulting from such violations; and
- (b) shall not have the powers to impose restrictions, rules or regulations or limitations on Declarant.

**Section 6. Stormwater Management Improvements.** The Association will be responsible for maintenance of any private stormwater management inlets, pipes, swales, channels, check dams, sand filters, detention ponds or retention ponds, or the like, within the Common Area, Private Drainage Easements ("PDE"), Dry Extended Detention Basins, or BMP & Access Easements. Such maintenance shall include periodic removal of sediments, periodic inspections, restabilization of swales and channels as needed, cleaning and flushing culverts, and maintenance of vegetative cover as necessary. The use of fences in the swales shall be governed by the provisions of Article VI, Section 10(i)(ix) hereof. The Association's responsibility for stormwater management facilities, or any component thereof, and any costs thereof shall be treated as an expense of the Association, paid through annual and/or special assessments.

**Section 7. Street Maintenance and Acceptance.** The Declarant has built the streets in Ardley Subdivision in accordance with the standards and specifications of the Town of Mint Hill and the State of North Carolina. The streets have been dedicated for public use as shown on the maps of Ardley Subdivision, which are recorded or are to be recorded in the Mecklenburg County Public Registry. The initial construction has been inspected and certified by the Town of Mint Hill for publicly maintained streets and the Declarant has provided the Town of Mint Hill with an acceptable financial security to guarantee the completion of the sidewalks and the final asphalt surface course. The Association will be responsible for maintenance of the roads and streets within the Submitted Property until the streets are accepted for maintenance by the Town of Mint Hill and/or such other governmental authority. However, the Builder(s) shall be responsible for any necessary repairs to the streets, curb & gutter, sidewalks, and other improvements within the road right-of-way(s), the need for which was created by damage or error to such streets by the Builder(s) (or its agents). Following the acceptance of the streets for maintenance as public right of ways by the Town of Mint Hill, the Association shall be obligated to maintain the streets only to the extent such activities are not performed by the Town of Mint Hill.

**Section 8. Retaining Walls.** Declarant may construct retaining walls within the

Development due to topographical conditions and/or to prevent erosion. Masonry retaining wall(s) may be constructed by Declarant on or along certain boundary lines of the Development (the "Perimeter Retaining Walls"). Perimeter Retaining Walls shall be shown on the recorded map(s) as a part of the development process.

The Association shall maintain, repair and replace the Perimeter Retaining Walls and retaining walls constructed on the Common Area, and the Association's cost of same shall constitute Common Expenses. Owner shall be responsible for the maintenance and repair of any retaining wall (except Perimeter Retaining Walls) constructed on Owner's Lot and shall be responsible for all damages to other Lots resulting from the alteration or lack of maintenance or repair of such retaining walls.

**Section 9. Shared Drainage.** The Association shall maintain, repair and replace all Shared Drainage and the Association's cost of same shall constitute Common Expenses. Any storm drainage pipe installed by Owner on such Owner's Lot shall not be deemed to be Shared Drainage regardless of the dimensions of such pipe. Owner shall maintain, repair and replace such storm drainage pipes on the Owner's Lot.

#### ARTICLE IV: MEMBERSHIP & VOTING RIGHTS

**Section 1. Membership.** Every Owner of a Lot which is subject to assessment and the Declarant shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The Declarant shall be a member of the Association so long as Declarant owns one (1) lot in the Property.

**Section 2. Voting and Voting Rights.** The Association shall have two classes of voting membership:

(a) **Class A.** Class A members shall be all Owners with the exception of Declarant (or any affiliated entity of Declarant) and Builder, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest (other than a leasehold or security interest) in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) **Class B.** The Class B members shall be Declarant (or any Affiliated Entity of Declarant) and Builder. The Declarant (or any Affiliated Entity of Declarant) and Builder shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- i. the date on which Declarant (or any Affiliated Entity of Declarant) and Builder no longer owns any part of the Property; or
- ii. the date Declarant shall elect, in its sole discretion, that the Class B membership shall cease and be converted to Class A membership (which election may be made, if at all, by giving written notice at its choice, to the

Board); or

iii. Ten (10) years from the date of this Declaration.

(c) Notwithstanding Sections 2(a) and (b) hereof, during the Development Period and unless the Declarant surrenders the rights set forth in this paragraph (c) by an express amendment to the Declaration executed and recorded by Declarant, (i) the Bylaws of the Association may not be amended without the Declarant's prior written consent, and (ii) the Declarant shall have the right to appoint or remove any Member(s) of the Board of Directors of the Association or any officer(s) of the Association; or

(d) Other provisions applicable to the rights and obligations of the Members of the Association are set forth in the Declaration and in the Bylaws.

**Section 3. Board of Directors and Declarant's Right To Representation.** The Association shall be governed by a Board of Directors (the "Board") in accordance with the Bylaws. Declarant shall have the right to designate and select all of the Members of the Board of Directors of the Association during any Period of Declarant Control, unless the Declarant surrenders the rights set forth in this paragraph by an express amendment to the Declaration executed and recorded by Declarant. Whenever Declarant shall be entitled to designate and select any person or persons to serve on the Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws, and Declarant shall have the right to remove any person or persons selected by it to act and serve on the Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Board of Directors so removed for the remainder of the unexpired term of any member or members of the Board of Directors so removed. Any Board of Directors member designated and selected by Declarant need not be a resident of the Property. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board of Directors which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

**Section 4. Suspension of Rights.** During any period in which a member shall be in default in the payment of any Capital Contribution, Annual Assessment, Special Assessment, Supplemental Annual Assessment, Special Individual Assessment, or other periodic assessment levied by the Association, the voting rights of such member may be suspended by the Board of Directors until such assessment is paid. In the event of violation by a member of any Rules and Regulations established by the Board of Directors, such member's voting rights may be suspended by the Board after a hearing. Such hearing shall be held by the Board or a committee thereof after giving a member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of the violation shall be made by a majority vote of the Board or the committee thereof. During any period in which a member shall be in default in the payment of any Capital Contribution, Annual Assessment, Special Assessment, Supplemental Annual Assessment, Special Individual Assessment, or other periodic assessment levied by the Association or in violation of any rules or regulations established by the Board of Directors, such member shall be subject to a fine imposed by the Board of Directors which shall be the personal obligation of the person who is the Owner of such Lot at the time when the fine was levied.

The provisions as set forth in the preceding paragraph of this Article IV, Section 4 are further subject to the provisions of N.C.G.S. Section 47F-3-107 and 47F-3-107.1.

**Section 5. Management Contracts.** The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board of Directors and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon thirty (30) days prior written notice to the manager without payment of a termination fee.

**Section 6. Insurance.** The Association shall, to the extent required by the Act, obtain and maintain insurance covering the following, the cost of which will be a Common Expense:

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

- i. Property insurance for any insurable improvements on the Common Area insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of such insurance after application of any deductibles shall be not less than 100% of the replacement cost of the insured improvements under current building ordinances and codes at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies;
- ii. Commercial general liability insurance covering loss or damage to Persons or property arising out of or in connection with the use, ownership or maintenance of the Common Areas, ensuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. The coverage amount for such insurance shall be required by the Board, but with a minimum combined single limit liability of not less than \$2,000,000 for each accident or occurrence with respect to bodily injury, personal injury and property damage; and
- iii. Workers compensation insurance and employers' liability insurance, if and to the extent required by law; and
- iv. Directors' and officers' liability coverage; and

- v. Commercial crime insurance, including fidelity insurance coverage against dishonest acts by the Association's officers, employees and others who are responsible for handling funds of the Association. If the Association contracts with another Person to receive and disburse the monies of the Association, then such Person shall have adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of this paragraph. Fidelity Insurance coverage shall name the Association as an obligee, shall be written in such amount as the Board of Directors shall deem appropriate, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar term.
- vi. Such additional insurance as the Board in the exercise of its business judgment, determines advisable.

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

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

Issuance of an insurance policy to the Association does not prevent an Owner from obtaining insurance for the Owner's own benefit.

- (b) **Policy Requirements.** All insurance coverage obtained by the Board shall:
  - i. be written with a company authorized to do business in North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
  - ii. be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
  - iii. be primary and not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
  - iv. provide that each Owner is an insured person under the policy to the extent of the Owner's insurable interest with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area

other than that of a Member);

- v. provide a waiver of the insurer's right to subrogation under the policy against any Owner or member of the Owner's household;
- vi. include an endorsement precluding denial of coverage under the policy on account of any act or omission of any one or more individual Owners or members of their households, unless such Owner is acting within the scope of its authority on behalf of the Association;
- vii. provide for a certificate of insurance to be furnished to the Association and upon request, to each Owner and Mortgagee; and
- viii. provide an endorsement requiring at least thirty (30) days prior written notice to the Association and each Owner and each mortgagee whom certificates have been issued, of any cancellation, substantial modification, or non-renewal.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Section 6. In the event of an insured loss, the deductible shall be treated as a Common Expense except that, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Special Assessment.

During the Development Period (i) Declarant shall be named as an additional insured party under any one or more policies of insurance maintained by the Association, and (ii) any one or more Builders, as requested by Declarant, shall be named as additional insured parties under any one or more policies of insurance maintained by the Association; provided, however, any Builder named as an additional insured under any policy of insurance maintained by the Association shall pay to the Association any additional premium charged by the insurer for including the Builder as an additional insured, and the Association shall not be required to have any such Builder who does not timely pay such additional premium named as an additional insured.

(c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Insurance proceeds shall be paid to the Association to be held in trust for the benefit of Owners and Mortgagees as their interests may appear.

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

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

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

- i. the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the Community;
- ii. the insurance proceeds attributable to damaged improvements on the Lots that are not rebuilt, including but not limited to gates and fencing, shall be distributed to the Owners of the respective Lots, or to lienholders, as their interests may appear;
- iii. the remainder of the proceeds shall be distributed to all the Owners or lienholders, as their interests may appear in proportion to the common expense liabilities of all Lots; and
- iv. Notwithstanding the provisions of this subsection, §2-118 of the Act governs the distribution of insurance proceeds if the Community is terminated.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under this Article IV, Section 6.

The provisions as set forth in the preceding paragraph of this Article IV, Section 6 are further subject to the provisions of N.C.G.S. Section 47F-3-113.

**Section 7. Quorum and Notice Requirements.** Except as otherwise may be specifically set forth in this Declaration, the Articles of Incorporation or the Bylaws, the vote of a majority of all votes entitled to be cast by all classes of the Association Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Association. The number of votes present at a meeting of the Association Members that is properly called and that will be taken by the Association Members will be set forth in the Bylaws. Notice requirements for all actions to be taken by the Association Members shall be as set forth in the Bylaws. Notwithstanding the above, the affirmative vote of no less than two-thirds of all votes entitled to be cast by the Association Members shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the development of the Property or any part thereof; or (2) assert a claim against or sue Declarant.

#### ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** The Declarant for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Capital Contribution ("**Capital Contribution**"), Annual Assessments or charges ("**Annual Assessments**"), Special Assessments for capital improvements ("**Special Assessments**"), Supplemental Annual Assessments ("**Supplemental Annual Assessments**"), and Special Individual Assessments ("**Special Individual Assessments**") established and collected as hereinafter provided. In order to secure payment of the Capital Contribution, Annual Assessment, Special Assessment, Supplemental Annual Assessment, and Special Individual Assessments, any such assessment or charge remaining unpaid for a period of thirty (30) days or longer, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each such assessment or charge is made when a claim of lien is filed of record in the manner as described in N.C.G.S. Section 47F-3-116(a) and N.C.G.S. Section 47F-3-116 is otherwise incorporated fully herein by reference with regard to liens for assessments and as to the type of charges enforceable as assessments. Pursuant to N.C.G.S. Section 47F-3-116(h), the Association shall have the specific authority to levy, charge, or attempt to charge, or collect a service, collection, or administration fee from any lot owner. Each such assessment or charge, together with interest, fines, late charges, costs of collection and reasonable attorneys' fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them. Such assumption shall not relieve an Owner of his obligations.

#### **Section 2. Purpose of Annual Assessments.**

(a) The Annual Assessments levied by the Association may shall be used to promote the health, safety, and welfare of the residents of the Property and in particular for the acquisition, improvement and maintenance of Property, services and facilities devoted to this purpose and related to the uses of the Common Areas or the Lots, including but not limited to, the following:

- i. To maintain the streets only to the extent such activities are not performed by the Town of Mint Hill;
- ii. To pay the cost of operating, maintaining and repairing all lighting of Common Area and streets, with the exception of lighting provided by a governmental agency or body, if any, including any street lights erected by the Association or the Declarant in the rights-of-way of streets (whether public or private) or in any other easement provided therefore within the Property;
- iii. To maintain any and/or all pathways in the Common Areas in an easily passable condition, free from fallen trees, undergrowth, and other obstructions; and to keep all dead, diseased or decaying trees, shrubs and bushes removed from landscaped areas;
- iv. To keep any parks and/or picnic areas in the Common Areas clean and free from debris and to maintain all picnic tables and other amenities in a clean and orderly condition, and to maintain the landscaping therein, including any necessary removal and replacement of landscaping;
- v. To maintain all parking areas (for automobiles or otherwise), if any, located in the Common Areas free from debris and in good repair;
- vi. To maintain the Common Areas, Public Storm Drainage Easements, and/or Sight Triangle areas, if any, which were reserved, by those maps recorded in Map Book 69, Pages 753 and 754, Mecklenburg County Registry, reserved or which will be reserved, on the Maps, in a clean and orderly condition and to maintain the signs, walls (including retaining walls), fences, and landscaping thereon (including irrigation systems, lighting, signage, berms, groundcover, shrubs and flowers, if any) to the standards established at completion of landscaping of said Common Areas, Public Storm Drainage Easements, Stormwater Control Measures, and/or Sight Triangle areas, if any, and upon the conditions provided for in the hereinabove recorded instruments;
- vii. To comply with all agreements with (whether of the Declarant or the Association), or statutes, ordinances, rules or regulations of, Town of Mint Hill (or any agency thereof), Mecklenburg County (or any agency thereof), or the State of North Carolina (or any agency thereof), respecting the use of any Common Areas;
- viii. To provide such security as may be deemed reasonably necessary for the protection of Common Areas from theft, vandalism, fire and damage from animals;
- ix. To maintain bodies of water and related facilities, if any, located on or in the Common Areas;
- x. To maintain the entrance area to the Development in a clean and orderly condition and to maintain the subdivision entrance monuments and signs, walls (including retaining walls), fences located on the Common Areas [it is noted that all fences in rear and side yards are the responsibility of the applicable Owner(s)], and the

landscaping thereon (including irrigation systems, lighting, signage, groundcover, shrubs and flowers) to the standard established at completion of the entrance area;

xi. To maintain all other landscaping in the Common Areas to the standard established at completion of such landscaping;

xii. To pay all ad valorem taxes levied against the Common Areas and any property owned by the Association;

xiii. To pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the Bylaws;

xiv. To pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws;

xv. The provision of any service which is not readily available from any governmental authority related to the use, occupancy and enjoyment of the properties and which the Association shall decide to provide. The purposes for which assessments may be levied shall include payment for utilities necessary to accomplish the foregoing purposes;

xvi. To maintain open spaces and streets within the Common Areas which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-ways within the Property), drives and parking areas within the Common Areas, if applicable;

xvii. To maintain a contingency reserve for the replacement of capital improvements and to fund unanticipated expenses of the Association;

xviii. To provide for the maintenance, repair and/or replacement of the mailbox cluster units within the Development;

xix. To maintain and repair retaining walls constructed on the Common Areas and the Perimeter Retaining Walls; and

xx. To provide for such other needs as may arise.

(b) The Association shall establish and maintain an adequate reserve fund ("**Reserve Fund**") for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Property which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expenses. In order to fund unanticipated expenses of the Association, the Reserve Fund shall be equal to five percent (5%) of the sum of the amounts described in the preceding subsections of Article V, Section 2, in order to fund unanticipated expenses of the Association.

(c) All funds collected by the Association shall be held and expended solely for the

purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Owners. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws.

**Section 3. Budgeting and Allocating Common Expenses.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated expenses for the operation of the Association and the operation and maintenance of the Common Areas for the coming year. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Capital Contributions, Annual Assessments, Special Assessments, Supplemental Annual Assessments, and Special Individual Assessments against the Lots, as authorized, established and collected as provided herein this Article V.

The Association is hereby authorized to levy Annual Assessments equally against all Lots, except Lots owned by Declarant (and any Affiliated entity of Declarant) or Builder, subject to assessments to fund the Common Expenses. In determining the Annual Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

The Declarant and Builder may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy (in addition to any amount paid by Declarant under Article V), which may, in the Declarant's and/or Builder's discretion, either be a contribution, an advance against future assessments due from the Declarant and/or Builder, or a loan. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

Pursuant to N.C.G.S. Section 47F-3-103(c) within 30 days after adoption of any proposed budget, the Board shall provide to each Owner a copy of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 days nor more than 60 days after mailing of the budget and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified, unless at said meeting a majority of all Owners in the Association or any larger vote specified in the Declaration rejects the budget. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Annual Assessment from time to time, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

**Section 4. Exempt Property.** The assessments, charges and liens created under this Article shall not apply to the Common Area, nor shall they apply to any lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquired title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such property by such first mortgagee or such governmental agency the assessment shall again accrue on such lot. Any lot which Declarant may hereinafter designate for common use as part of the Common Areas shall also be exempt by a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein.

**Section 5. Capital Contribution.** Upon acquisition of title to a Lot by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of \$300.00 payable at the closing of such purchase, which Capital Contribution shall be deposited into the Association's regular operating account. **Further, such Capital Contribution shall not be due from the Declarant (or any Affiliated Entity of Declarant) or Builder, or from Builders who purchase a lot on which to construct a dwelling unit for sale.** [Builder(s) shall mean and refer to any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale in Ardley Subdivision, including, but not limited to Niblock Homes, LLC.] Capital Contributions shall be used by the Association for the purpose of initial and nonrecurring capital expenses of the Association and for providing initial working capital for the Association. Capital Contributions shall not be considered to be advance payment or prepayment of Annual Assessments or Special Assessments. Capital Contributions are payable by the initial purchaser and all subsequent purchasers of a Lot.

Any Capital Contribution that remains unpaid for a period of thirty (30) days or longer, together with interest, costs of collection and reasonable attorney fees, shall be a charge and continuing lien upon the Lot against which such assessment is made when a claim of lien is filed of record as provided in Article V, Section 1. In addition, those remedies provided in Article V, Section 11 for the nonpayment of assessments and Article V, Section 12 (Subordination of the Lien to First Mortgages) applies to the Capital Contributions.

The amount of the Capital Contribution may be changed by Declarant from time to time during the Development Period, or by the Board of Directors from time to time, following the end of the Development Period, as necessary to properly establish and ensure that all Owners fairly contribute to the working capital of the Association.

**Section 6. Maximum Annual Assessments.** For the calendar year beginning January 1, 2021, the maximum Annual Assessment shall be \$650.00 per year. **Any Lot owned by Declarant or Builder(s) shall be exempt from the Annual Assessments created herein.**

Annual Assessments may only be increased in accordance with the following:

(a) From and after January 1, 2022, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the membership (unless required under the Planned Community Act or other applicable law), may increase the Annual Assessment applicable to each

Lot by a maximum amount equal to **not more than twenty five percent (25%)** above the maximum Annual Assessment for the previous year. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the membership (unless required under the Planned Community Act or other applicable law).

(b) From and after **January 1, 2022**, the maximum Annual Assessment for Lots may be increased **above twenty five percent (25%)**, and without limitation, if such increase is approved by Members entitled to no less than two-thirds (2/3) of all of the votes of Class A and Class B members combined and written consent of Declarant (so long as Declarant owns any part of the Property). Such voting may be represented 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.

(d) If the Board of Directors shall levy less than the maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a Supplemental Annual Assessment ("**Supplemental Annual Assessment**"), subject to the procedures set forth hereinabove Article V, if applicable. In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable maximum Annual Assessment for such year other than as set forth herein.

(e) The Annual Assessments shall be paid as provided in Article V, Section 10.

**Section 7. Special Assessments.** In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment ("**Special Assessment**") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and the roadways serving the Property. Provided, however, (a) Declarant (or any Affiliated Entity of Declarant) and/or Builder shall not be obligated to pay any Special Assessment on Lots owned by Declarant (or any Affiliated Entity of Declarant) and/or Builder except with Declarant's prior written approval, and (b) any Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and approved by the assent of two-thirds (2/3) of the votes of appurtenant to the Lots which are subject to this Declaration. Such voting may be represented in person or by proxy at a meeting duly called for this purpose. All Special Assessments shall be fixed at a uniform rate for all Lots and may be collected on a quarterly basis or monthly basis, as established by the Board.

**Section 8. Special Individual Assessments.** In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Owner ("**Special Individual Assessment**") (i) for

the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, whether occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws. Provided, however, Declarant (or any Affiliated Entity of Declarant) and/or Builder shall not be obligated to pay any Special Individual Assessment. The due date of any Special Individual Assessment levied pursuant to this Section shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

**Section 9. Notice and Quorum for Any Action Authorized Under Sections 6, 7, and 8.** Written notice of any meeting called for the purpose of taking any action authorized under Article V, Sections 6, 7, or 8 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. There shall be no requirement that a quorum be present at the meeting.

**Section 10. Date of Commencement and Due Dates of Annual Assessments.**

- i. Any Lot owned by Declarant, an Affiliated Entity of Declarant, or Builder(s) shall be exempt from the Annual Assessments created herein.
- ii. The Annual Assessments shall commence as to all Lots, except Lots owned by Declarant, an Affiliated Entity of Declarant, or Builder(s), shown on a Map of any Phase of the Property, on the date of the conveyance of the first Lot on such map by Declarant, an Affiliated Entity of Declarant, or Builder(s) to an Owner (other than Declarant or an Affiliated Entity of Declarant or Builder) of such lot.
- iii. Declarant, during the Development Period, and the Board thereafter, in its sole discretion, shall have the power and right to waive payment of the Annual Assessment as to any unimproved Lot on which construction of a dwelling unit commences thereon within twelve (12) months of the date of the conveyance by Declarant, an Affiliated Entity of Declarant, or Builder(s). In the event of such waiver, the Annual Assessment shall commence the first (1<sup>st</sup>) day of the month after issuance of a certificate of occupancy for the dwelling unit.
- iv. The first Annual Assessment shall be adjusted according to the number of days remaining in the calendar year when filed. After the first year, the Annual Assessment shall be payable annually (or quarterly at the election of the Owner), on the first day of each January (or if the Owner has elected quarterly payments, on the first day of each January, April, and October)

or on such other payment dates as shall be established by the Board of Directors.

- v. The Board of Directors shall fix the amount of the Annual Assessment against each Lot as provided in Article V, Section 6.
- vi. Written notice of the Annual Assessment shall be sent to every Owner.

**Section 11. Effect of Non-Payment of Assessment; Remedies of the Association.**

Notwithstanding Article V, Section 10 hereof, the Declarant may, at its election, postpone in whole or in part the date on which the assessments shall commence provided that the Declarant and/or Builder maintains the Common Area for which no assessment is being collected during the period of such postponement. Any assessment (including the Capital Contribution) not paid within fifteen (15) days after the due date shall be assessed a late charge as determined by the Board of Directors and bear interest from the due date at an annual rate of twelve percent (12%), but in no event above the then maximum legal rate, and to the extent allowed by law. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the costs arising because of late payment. The Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorneys' fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area, abandonment of his Lot, or for any other reason.

The provisions as set forth in the preceding paragraph of this Section are further subject to the provisions of N.C.G.S. Sections 47F-3-107, 47F-3-107.1, and 47F-3-116, which are incorporated fully herein by reference.

**Section 12 Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or under a power of sale or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may, in its sole discretion, determine such unpaid assessments to be and Capital Contribution, Annual Assessment, Special Assessment, Supplemental Annual Assessment, or Special Individual Assessment, as applicable, collectable pro rata from all Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the Annual Assessment to be in excess of the maximum permitted in Article V, Section 6. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

**Section 13. Certificate of Payment.** The Association shall, upon demand for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth

whether the Capital Contribution, Annual Assessment, Special Assessment, Supplemental Annual Assessment, and or Special Individual Assessment, if any, (collectively referred to as "the assessments") on a specified Lot have been paid to date. **No charge shall be assessed Declarant or an Affiliated Entity of Declarant or Builder(s) for a certificate or other proof of payment of the Assessments.** A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

## ARTICLE VI: ARCHITECTURAL AND LANDSCAPING CONTROL

**Section 1. Architectural Review Committee.** There is hereby established an Architectural Review Committee. The Architectural Review Committee (the "ARC" or "Committee") is established to perform the Architectural Review functions set forth in this Declaration and shall adopt the procedural Rules and Regulations for the performance of such duties by the ARC, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. **For purposes of this Article VI, the Declarant shall approve all initial plans and specifications for the construction of residences within the Property and function as member(s) of the Architectural Review Committee, during the Development Period.**

After the termination of the Development Period, the Board of Directors of the Association shall appoint the Members of the Committee to carry out the functions set forth in this Article. However, pursuant to Article I, Section 17, and Article IX, Section 9 hereunder, Declarant may assign any or all of the rights and responsibilities of the Architectural Review Committee to another Person (as defined in Article I, Section 28). Once Declarant no longer controls the Architectural Review Committee, the Committee shall be composed of three or more persons (who may, but need not be, Members of the Association) appointed by the Board.

**Section 2. Architectural Design Guidelines and Development Standards.** The Declarant and/or the ARC may develop, publish and promulgate architectural standards and guidelines (hereafter "**Architectural Design Guidelines**") which are incorporated herein by reference. The Architectural Design Guidelines shall be used by the ARC in reviewing any proposed plans, specifications and materials submitted to the ARC for approval. The Architectural Design Guidelines shall establish development standards setting forth the minimum standards for the design, size, location, style, structure, color, mode of architecture, mode of landscaping and relevant criteria deemed important by the ARC or Declarant for the construction of improvements of any nature in the Property. The purpose of such development standards will be to preserve and promote the character and orderly development of the Property while allowing diversity of design and architectural themes for different Sections of the Property. By acceptance of a deed to any Lot, each Owner thereof and his successors and assigns agrees to be bound by all provisions of such development standards as may be adopted by the ARC and to use diligence in keeping abreast of the provisions thereof and any amendments thereto.

**Section 3. Review by Committee.** Notwithstanding anything contained in this Declaration to the contrary, no Improvements, including, without limitation, site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot,

shall be commenced, erected or maintained on any portion of the Property until: (a) the Architectural Review Committee has approved the plans and specifications therefore and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements in the Architectural Design Guidelines; and (b) the fees set forth in or contemplated in this Article VI have been paid.

**The provisions of this Article VI shall not apply to the construction of any improvements commenced, erected or maintained by Declarant or an Affiliated Entity of Declarant or Builder(s) on any Lot or upon any of the Common Areas.**

In addition, no alteration or modification to an existing dwelling unit or any other structure previously approved by the ARC whether dwellings, buildings, gazebos, storage sheds, room additions, armadas, rooms, fences, walls, canopies, statuary, awnings, roofs, devices to be mounted on roofs, exterior lighting facilities, recreational/athletic facilities, changes in exterior paint color, or other similar improvements or attachments shall be constructed and no alteration of the established drainage on a Lot shall be made unless complete plans and specifications therefore have been first submitted to and approved in writing by the ARC.

Final plans and specifications shall be submitted to the ARC as specified in the Architectural Design Guidelines. The plans and specifications (the "Plans") shall show the nature, kind, shape, height, materials and location of all improvements and landscaping, including but limited to the following: (i) foundation plans, (ii) floor plans of all floors, (iii) elevation drawings of all exterior walls, (iv) roof plan, (v) plot plan showing location and orientation of all structures (including accessory buildings) proposed to be built on the Lot with the setback lines as shown on the recorded Map drawn in, (vi) the square footage of the proposed structures, (vii) the location of and materials for any driveway, and, where the driveway is to cross a drainage ditch adjacent to any roadway, and (viii) samples or appropriate description of materials and exterior colors. The documents shall specify any requested variance from the setback lines, garage location or any other requirement set forth in this Declaration or the Architectural Design Guidelines.

**The Committee shall have the absolute and exclusive right to refuse to approve the proposed Plans or make recommendations for modifications in the Plans.** In passing upon such Plans and samples, the Committee may take into consideration the suitability and desirability of the proposed construction and the proposed materials to the Lot involved, the quality of the proposed workmanship and materials, and the harmony of the external design with the natural features and the existing structures of the surrounding neighborhood and the appearance of such proposed improvements as viewed from neighboring Lots.

At such time as the plans meet the approval of the Committee, one complete set will be retained by the Committee and another set shall be marked approved on behalf of the Committee and returned to the Owner or his designated representative in addition to a certificate evidencing such approval. If disapproved by the Committee, one set of such plans shall be marked "**disapproved**" and shall be accompanied by a statement setting forth the reasons for disapproval. In no event shall the Committee give verbal approval or disapproval of any plans.

If the Committee fails to approve or disapprove such proposed Plans within thirty (30)

days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. An Owner submitting plans to the Committee shall have the burden of establishing the date upon which the Committee received said plans.

**Section 4. Fee.** Pursuant to N.C.G.S. Section 47F-3-116(a2), the Architectural Review Committee shall have the specific authority to charge a fee for reviewing submitted applications. The fee shall be paid at the time the request for approval is submitted. Refusal or approval of plans, specifications, builder or location may be based upon any grounds including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Architectural Review Committee shall be deemed sufficient.

**Section 5. No Waiver.** The approval or disapproval by the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARC shall not be deemed: (a) to constitute a waiver of any right to approve or withhold approval or consent as to any similar proposals, plans and specification, drawings, or matters whatever subsequently or additionally submitted for approval or consent not; (b) to prohibit the ARC from modifying and amending the Architectural Design Guidelines from time to time (with the approval of the Board) to specifically permit any improvement previously prohibited or (c) to prohibit any improvement previously permitted.

**Section 6. Variance.** The ARC may authorize a variance from compliance with the Architectural Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, as determined by the ARC, and no variance shall (a) be effective unless in writing or (b) estop the ARC from denying a variance in other circumstances.

**Section 7. Violation of Approved Plans and Right of Entry.** If it is determined by the ARC that a violation exists on a Lot, or that work completed on any Lot has not been completed in compliance with the final plans approved by the Committee, the Committee of the Association shall notify the Owner in writing of such non-compliance. The ARC shall specify in reasonable detail the particulars of non-compliance and may require the Owner to remedy the same. The Architectural Design Guidelines shall provide the policies and procedures for notification by the ARC and compliance by the Owner.

The Association shall have the right to enter upon the Lot of any Owner and to perform compliance or remedy non-compliance as ordered by the Committee and the cost of such performance or remedy shall be charged to the Owner of the Lot in question, which cost shall be due within ten (10) business days after receipt of written demand therefore. If the Owner fails to remedy such non-compliance or to commence and continue diligently toward achieving compliance, Declarant or the Association (as their interest shall appear) shall notify the Owner that it shall take action to remove the non-complying improvements and/or seek injunctive relief, recovery of costs incurred, and imposition of a fine, which fine shall not exceed ten percent (10%) of the cost of achieving compliance.

**Section 8. Non-Liability for Approval of Plans.** Architectural Review Committee (and, if applicable, Declarant) approval of plans shall not constitute a representation, warranty or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. Neither the Architectural Review Committee, the Members thereof, the Association, any Member thereof, the Board nor Declarant assumes any liability or responsibility by approving such plans and specifications, or for any defect in any improvements constructed from such plans or specifications. Neither the Committee, any Member thereof, the Association, the Board nor Declarant shall be liable to any Member, Owner, occupant, or other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings and specifications.

**Section 9. Definitions.** For purposes of this Declaration, the following terms shall have the following meanings unless the context clearly requires a different meaning:

(a) **"accessory building"** means every detached garage, tool shed, storage or utility building, well house, guest quarters, cabana or other similar building constructed on a Lot which is not a dwelling;

(b) **"buildings"** mean accessory buildings and dwellings;

(c) **"dwelling"** or **"Dwelling Unit"** means a building constructed for single-family residential use but not excluding guest quarters or other similar quarters;

(d) **"heated living area"** excludes basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the dwelling. In addition, heated living area excludes vaulted ceilings areas, attics, unheated porches (roofed or unroofed), attached or detached garages, porte-cocheres, accessory buildings, and unheated storage areas, decks, terraces, and patios. The term story shall mean a finished horizontal division of heated living area extending from the floor of such division to the ceiling above it. The term half story shall mean a story which contains fifty percent (50%) or less heated living area than the story in the house containing the most heated living area; and

(e) **"improvements"** or **"structures"** shall mean and include any and all man made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes, etc.); storage sheds or areas; decks, and patios; planters; terraces; roofed structures; parking areas; fences; pet fencing; walls; irrigation equipment, apparatus and systems; landscaping (including cutting of trees); hedges; mass plantings; poles; tubs/spas; swimming pools; tennis courts; tree houses; basketball goals; skateboard ramps; and other sports or play apparatus; signs; exterior illumination; and changes in any exterior color or shape. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by

the Architectural Review Committee, provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Architectural Review Committee.

**Section 10. General Guidelines.** Listed hereinafter are guidelines which are not intended to be absolute and complete guidelines, but address certain critical areas which will be carefully considered by the Architectural Review Committee in the approval or disapproval of an Owner's plans and specifications:

(a) All structures (except accessory buildings, inground swimming pools, fences or walls, approved by the Architectural Review Committee) shall be erected above grade within those setbacks as more particularly reflected on the recorded Maps. (Note: The maps of **Ardley Subdivision** recorded or to be recorded in the Mecklenburg County Registry, provide building requirements and/or setback lines which neither create nor impose private restrictions, but instead reflect zoning and/or subdivision regulations of the Town of Mint Hill.) For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, and other similar projections shall not be considered as a part of a building provided; however, this shall not be construed to be deemed to permit the encroachment of any improvement onto another Lot. In addition, all improvements shall be constructed in order to comply with (i) Section 7.3.3 of the Town of Mint Unified Development Ordinance (the "Code"), as set forth in Article IX, Section 13; and (ii) Impervious Area Requirements of the Town of Mint Hill and/or Mecklenburg County, if applicable.

(b) Single-story dwellings constructed on a lot shall not contain less than **1,600 square feet** of Heated Living Area and two-story dwellings constructed on a lot shall not contain less than **1,800 square feet** of Heated Living Area, as required by Section 7.3.3 of the Code.

(c) The Architectural Review Committee has the right to decide in its sole and absolute discretion the precise site and location of any structure placed upon any Lot; provided, however, that the Owner shall be given the opportunity to recommend a specific site for such structure.

(d) All structures constructed or placed on any Lot shall be built on site of new materials of good grade, quality and appearance, and shall be constructed in a good, workmanlike manner, conforming to all applicable building codes. No used structures shall be relocated or placed on any such Lot.

(e) All dwellings and accessory structures shall be completely supported with solid brick, brick or stone covered block, or concrete covered foundation. As required by Section 7.3.3 of the Code, any dwelling constructed on a slab foundation shall have a brick or stone veneer skirt on the exposed exterior of the foundation.

(f) The exterior surfaces of all dwellings and accessory structures shall be covered only with brick, stone, stucco (synthetic stucco is not permitted), wood, or siding consisting of wood, wood composite, or cement fiber composite board; provided, that any horizontal siding must be completely supported to maintain a straight and even outer surface and must be fully

and properly finished. The exterior boxing system (i.e., fascia, soffit and frieze) may be covered with vinyl siding.

Section 7.3.3 of the Code requires that:

- i. Exterior materials be brick, stone, stucco, or cementitious fiber board or shakes.
- ii. At least fifty (50) percent of homes shall have brick and/or stone on all four sides of the home.
- iii. With the exception of approved accent materials on the architectural elements such as gables and dormers, mortarless brick is prohibited.
- iv. All exposed chimneys shall have a brick or stone veneer.

(g) Roofs shall be covered with asphalt or fiberglass shingles, real or man-made slate, copper sheathing or wood shingles or pre-painted metal roofing. If fiber glass shingles are used, they must be "architectural shingles". Three-tab shingles are prohibited. Roof pitch shall be a minimum of 6/12. No monopitch roof shall be less than 3/12.

(h) Permitted Accessory Uses. No accessory uses to any residential dwelling shall be permitted on the Property other than the following:

- i. Accessory buildings shall be consistent in style, design, and harmony with the primary dwelling.
- ii. There shall be only one (1) accessory building constructed on or placed on a Lot, with dimensions no greater than eight (8) feet by ten (10) feet.
- iii. No accessory buildings shall be placed or constructed on a Lot prior to submission to and approval by the Architectural Review Committee.
- iv. Detached accessory structure(s) must be located within the established rear yard, as required by Section 7.3.3 of the Code
- v. Section 7.3.3 of the Code requires all dwellings to have a standard attached two-car garage. Additionally, no more than fifty percent (50%) of the Lots shall have garages located closer to the public street than the dwelling itself.
- vi. All driveways, and turning, and parking, areas shall be concrete surfaced as provided by Section 7.3.3 of the Code; such surfacing must be completed prior to the occupancy of any dwelling on a Lot. Driveways should only be wide enough to accommodate two (2) cars parked side by side. Each Lot shall have a driveway and each driveway shall accommodate four (4) cars. Garages count for required parking. That portion of the driveway located

within the street right-of-way, or adjoining the street, shall be constructed in strict accordance with the restrictions and requirements of the Town of Mint Hill or such other governmental agency(ies) as may control such access areas.

(i) **Fencing:** The Architectural Design Guidelines shall provide the specifications for fencing. The following general guidelines shall apply to fencing:

- i. The Architectural Review Committee shall approve and establish the specifications (i.e., style, color, and materials) for a standard approved fencing product for the Development (the "**Standard Fence**"). Any fencing constructed on a Lot shall be the Standard Fence. The Standard Fence shall consist of bronze or black aluminum posts and bronze or black aluminum pickets, with aluminum gate(s). Gates shall match the style and design of the fence.
- ii. No fence, wall or other enclosure, except those approved with initial plans submitted by Builders as provided in Article VI, Section 3 and fencing and walls (including retaining walls) located on the Commons Areas as provided in Article VI, Section 10(i)(ix) hereof, shall be constructed on any Lot without first obtaining the approval of the Architectural Review Committee. Furthermore, approved fences, walls and enclosures cannot be removed, altered, replaced, and/or reconstructed without the approval of the Architectural Review Committee.
- iii. Fence height may vary. However, no portion of any fence erected on any Lot may exceed five (5) feet in height.
- iv. No chain link fences, concrete block, or exposed wire fences of any nature shall be permitted.
- v. Fences shall be located on a Lot, as follows:
  - a. Fencing installed on a sideline between two (2) adjoining Lots must be installed within three (3) inches of the side property line. The intent is to have a single fence separating adjoining Lots.
  - b. Fencing installed on a rear property line must be installed within three (3) inches of the rear property line if the rear property line is adjacent to another Lot. The intent is to have a single fence between adjacent Lots. If the rear property line is adjacent to Common Open Space, the Architectural Review Committee will consider a variance of the fence location along the rear property line.
  - c. Fences will not be allowed in the front yard of a Lot, except as provided herein Article VI, Section 10(j)(vi).

- vi. The Architectural Review Committee may permit the following:
- a. Fences extending nearer to any front street than the back building line of the residence located on that Lot;
  - b. Fences extending nearer to any side street than the side building line of the residence located on that Lot; and
  - c. Fences for screening HVAC units.
- vi. Electronic fence or electronic pet containment system, or “hidden” fence including, but not limited to an Invisible Fence®, underground fence, remote fence, wireless fence, and/or radio-controlled fence (“**Electronic Fencing**”), can be installed or located only in the rear yard (i.e., That area extending across the full width of the lot and extending from the rear main walls of the dwelling to the rear lot line.) Electronic Fencing shall not under any circumstances extend to that area located between a side lot line or side street lot line and a main side wall of a dwelling or within the front yard of any Lot (i.e., That area extending across the full width of the lot and extending from the closest front wall of the dwelling to the margin of the right-of-way of the road on which the Lot fronts. The front yard of a corner lot is the yard adjacent to the designated front lot line.)
- vii. No “dog runs”, chain link animal enclosures, or animal enclosures of any nature shall be allowed within the Development.
- viii. Once an approved fence or wall has been erected or installed along a side Lot boundary line which is a common boundary line with another Lot, such approved fence or wall shall be the only fence or wall that may be erected along this common boundary line, and the Owner who installs or erects such fence or wall shall finish both sides thereof. **Shared fencing or a shared wall along a common boundary line is not considered an encroachment.** Furthermore, an approved fence or wall erected or installed along a rear boundary line shall connect to the existing fence on an adjoining Lot, if applicable. **Whenever practical, the intent is not to have fences abutting (i.e., double fences) but shared or common fences.** However, the Architectural Review Committee may approve variances on a case-by-case basis. All fences shall be maintained in a structurally sound and attractive manner. Maintenance of a fence or wall located on a common boundary line shall be shared by the Lot Owners on each side of the common boundary line. Owner shall be responsible for removing any fence that interferes with the maintenance or access to any storm drainage easement.
- ix. **Notwithstanding the foregoing, all fencing and walls (including retaining walls) located or installed on the Common Areas are exempt from the fencing requirements provided herein.** Declarant, its successors

and assigns, and the Association shall have the right to erect chain link fences and any other type of fences and enclosures within the Common Area for any purposes without the approval of the Architectural Review Committee, such fences and other enclosures to become a part of the Common Area shall be installed by the Declarant and shall be maintained by the Association to comply with all agreements with (whether of the Declarant or the Association) or statutes, ordinances, rules or regulations of, the City of Concord (or any agency thereof), Cabarrus County (or any agency thereof), and/or the State of North Carolina (or any agency thereof).

- x. Notwithstanding the foregoing, the Declarant, its successors and assigns, or an Affiliated Entity of Declarant shall have the right to erect fences, walls (including retaining walls) or other enclosures on any Lot without the approval of the Architectural Review Committee. After the initial construction and/or installation, said fences, walls (including retaining walls) and enclosures cannot be removed, altered, replaced and/or reconstructed without the approval of the Architectural Review Committee.
- xi. Declarant reserves the right and easement to erect permanent fences and/or walls (including retaining walls) and/or enclosures on the Lots (other than areas of the Lots upon which buildings are constructed) for the purpose of providing screening, privacy, decoration, retainage, and topographical stability in connection with the overall plan and development of the Property and the various Lots located thereon.

(j) Minimum landscaping for each structure shall include seeding of all lawn areas and/or maintained natural areas and appropriate foundation plantings; and screening of HVAC units and trash containers as set forth and specified in the ARC Guidelines.

(k) Section 7.3.3 of the Code requires the Developer to provide a tree planting plan for the Subdivision, which incorporates approved trees, and has the following requirements:

- i. Yard Trees. The front yard of each Lot must contain at least two (2) trees suitable for healthy growth in the local climate, each with a minimum caliper of two and one-half (2½) inches measured at a height of six (6) inches above the ground and a minimum height of eight (8) feet at the time of planting.
- ii. Street Trees. Street trees shall be planted every fifty (50) feet. These trees must be staggered on both sides of every street, be a minimum of eight (8) feet in height and two and one-half (2½) inches in caliper measured at a height of six (6) inches above the ground at time of planting, and on the approved list of trees listed in Subsection 7.3.3(E) of the Code. In the event overhead power lines are present, trees shall be planted in accordance with

the "Overhead Power Line Tree Planting Guide Checklist" supplemental to the City of Charlotte's Tree Ordinance.

(l) Exteriors of all dwellings and accessory structures must be completed within one (1) year after the commencement of construction, and a certificate of occupancy issued within two years after commencement of construction; provided, however, the Committee may waive this requirement if construction delays have been caused by strikes, war, fire, acts of God, material shortages or other events which render the completion of construction within such time impossible.

**Section 11. Landscaping.** The Architectural Review Committee may from time to time promulgate landscaping guidelines which shall be included within the Architectural Design Guidelines (the "Landscape Guidelines"). The Landscape Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the Architectural Review Committee in reviewing plans and specifications. The Landscape Guidelines may be revised and amended at any time by the Architectural Review Committee. Notwithstanding the above, lawn seeding and foundation plantings in and around the structure shall be completed prior to the issuance of the Certificate of Occupancy by the applicable governmental authority; provided, however, this requirement may be waived if delays have been caused by strikes, war, fire, acts of God, material shortages or other events which render the completion of the landscaping within such time impossible. **Owners are responsible for maintenance of any planting strip between the back of the street curb and the front lot boundary line.**

**Section 12. Approval of Changes in Structure.** Prior to making any material changes, alterations, or exterior additions to any structure on a Lot [such changes to include without limitation any addition to the existing structure, any construction or addition of an accessory building, fence, wall, or other structure or any change (including changes in color) in the exterior wall covering, the erection of antennas, aerials, awnings, the replacement of reflective or other material in the windows of a house or other exterior attachment], the Owner shall submit in writing to the Architectural Review Committee all plans and specifications showing the nature, kind, shape, height, materials, and location covering such proposed change. The Architectural Review Committee shall have the absolute and exclusive right to refuse to approve the proposed plans and shall notify the Owner of its approval or disapproval within thirty (30) days of receipt of the plans from the Owner. The ARC shall exercise its best judgment (neither arbitrarily nor capriciously) to the end that such changes, improvements and alterations, to dwellings, landscaping and structures shall not jeopardize or impair the soundness, safety or appearance of any Lot.

**Section 13. Certain Non-Exclusive Remedies in the Event of Non-Compliance.** In the event the Owner has not submitted Plans to the Committee within the time period prescribed in the Architectural Design Guidelines or in the event the Committee (acting reasonably and in good faith) fails to issue the approval required by Section 3 of this Article, Declarant shall have the right, but shall not be obligated, to repurchase the Owner's Lot at the original price paid for the Lot by the Owner. The closing of any such repurchase by Declarant shall occur within thirty (30) days of the mailing of written notification to the Owner advising the Owner of the event hereunder giving rise to such right of repurchase. The Owner shall tender all such instruments

(including a general warranty deed) as may be necessary to close such repurchase and shall otherwise cooperate with Declarant in effecting such repurchase.

In the event the Owner has not completed construction of any structure within the time period prescribed in Section 10(l) of this Article or in the event the Owner has not completed the landscaping in and around the structure within the time period prescribed in Section 11 of this Article, Declarant shall have the right, but shall not be obligated, to cause such construction or landscaping to be completed on behalf of the Owner in accordance with the Plans and all costs and expenses of Declarant, or the agents, employees or contractors of such, in so completing the construction or landscaping shall constitute a lien on the Owner's Lot until paid or discharged with the written consent of Declarant whichever the case may be. If any such costs or expenses associated with completion of a structure on the Owner's Lot are not paid to the proper party, i.e., Declarant, by the Owner within thirty (30) days after completion of the structure, Declarant, shall have the right, but shall not be obligated, to foreclose on the lien created hereby and cause the Owner's Lot together with any improvements thereon to be sold and to receive first from the net proceeds of sale (net of all direct costs of selling the Lot) its costs and expenses in completing any structure on the Owner's Lot.

#### ARTICLE VII: USE RESTRICTIONS

**Section 1. Use of Common Areas.** No planting or gardening by individual Owners shall be done upon any Common Area. Except for the right of easement of enjoyment in and to the Common Areas herein given to each Owner, Owners are hereby prohibited and restricted from using any of the Common Area except as may be allowed and prescribed by the Association's Board of Directors or as expressly provided for herein. It is Declarant's intent that this paragraph inures to the mutual benefit of all owners within the property, and each Owner shall have a nonexclusive easement right to use and enjoy the Common Areas which shall be appurtenant to and shall pass with the title to his Lot, subject to those limitations enumerated herein Article III, Section 2.

**Section 2. Land Use.** All Lots shall be used for single-family residential, non-transient, purposes only, and common recreational purposes auxiliary thereto, and for no other purpose. No condominium, townhouse, duplex, apartment or other multi-family residential uses are permitted on the property. However, "multi-generational suites" may be included in a single-family residence provided that same meets the approval of the Architectural Review Committee and all applicable zoning requirements. Specifically prohibited uses include Institutional uses, including, but not limited to group homes, day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns, and beds and breakfasts. Each Lot shall be in compliance with the zoning laws of the Town of Mint Hill and if applicable, Mecklenburg County. Only one detached single-family residence shall be erected on any one Lot. Declarant and/or Builder(s) may maintain a sales office, models and a construction office on any Lot until all Lots have been sold.

**Section 3. Nuisance.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's property. No Lot or Common Area shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property 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 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 carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or becomes an unreasonable annoyance, inconvenience or nuisance to the residents of the Development, or unreasonably interferes with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common Area or which would be in violation of any local, state, or federal laws or regulations. There shall not be maintained on any Lot or Common Area any plants or animals or device or things of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Development. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Dwelling Unit or any unimproved Lot or Common Area unless required by law. Fires on any or on any portion of the Common Area are prohibited. Yard, garage, or "moving" sales are prohibited on any Lot, Common Area, Street, and/or parking area anywhere within the Property.

**Section 4. Animals and Pets.** No animals shall be raised, bred or kept on any Lot except that dogs, cats, or other domestic household pets (which are registered, licensed, and inoculated as required by law) may be kept or maintained provided that they are not kept or maintained for commercial purposes and further provided that they are kept and maintained in compliance with all laws and ordinance of the State of North Carolina, the Town of Mint Hill, and Mecklenburg County. **The number of household pets shall not exceed three (3) in number, except for newborn offspring of such household pets which are under nine (9) months of age.** No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to other Owners or to the Development. Any animal that constitutes an unreasonable annoyance, inconvenience or nuisance may be required to be removed from the Property. **Animals specifically prohibited include poisonous snakes, constrictor snakes (certain snakes that wrap their coils around and squeeze their prey in order to kill it by suffocation such as the anaconda, boa, milk snake, and python), livestock, potbellied pigs, poultry, and bees.**

Dogs, cats or other household pets must be kept within the confines of the Owner's Dwelling Unit, except when being held on a hand leash by the owner of the animal or confined within the rear yard of the Owner's lot within a fence approved by the Architectural Review Committee or erected by the Declarant per Article VI. No pet may be chained, "staked", or tied up in a yard. Furthermore, no pet may be housed or restrained by an electronic pet containment system (i.e., electric fence, "hidden" fence, Invisible Fence©, underground fence, remote fence, wireless fence, and/or radio-controlled fence), or otherwise left unsupervised by the pet owner in the front yard of any Lot (i.e., that area extending across the full width of the lot and extending from the closest front wall of the dwelling to the margin of the right-of-way of the road on which the Lot fronts).

If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable