

FOR REGISTRATION  
Fredrick Smith  
REGISTER OF DEEDS  
Mecklenburg County, NC  
2021 DEC 03 04:05:51 PM  
BK: 36834 PG: 813-862  
FEE: \$166.00  
INSTRUMENT # 2021229249

JONESAW



Prepared by and return to:

Troutman Pepper Hamilton Sanders LLP  
Walter D. Fisher, Esq.  
301 South College Street  
Suite 3400  
Charlotte, NC 28202

Returned to customer

**REAFFIRMATION, RE-EXECUTION AND REACKNOWLEDGEMENT  
OF PREVIOUSLY RECORDED  
DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND  
RESTRICTIONS**

The undersigned hereby reaffirm and re-acknowledge the terms and conditions of that certain Declaration of Easements, Covenants, Conditions and Restrictions recorded on November 15, 2021 in Book 36759, Page 290, Mecklenburg County, NC, Registry (the "*Original Declaration*"), by and between CC Ballantyne, LLC, a Delaware limited liability company (the "*Multi-Family Developer*"), CCP Harmon Ballantyne PropCo, LLC (the "*Townhome Developer*"), and CC Ballantyne MDE, LLC, a Delaware limited liability company (the "*Master Developer*"), which terms and conditions are incorporated herein by reference as if fully set out.

The undersigned hereby acknowledge that the purpose for recording this instrument is to correct the order of the signature pages and the exhibits of the Original Declaration, as shown on the re-recorded Original Declaration attached hereto as Exhibit A (the "*Re-Recorded Declaration*"). To the extent the Re-Recorded Declaration conflicts with the Original Declaration, the Re-Recorded Declaration shall control.

To the extent not inconsistent herewith, the undersigned hereby ratify and reaffirm the terms, conditions and conveyances contained in the Original Declaration incorporated herein by reference.

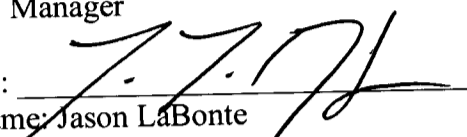
(Signatures on following pages)

**MULTI-FAMILY DEVELOPER:**

**CC Ballantyne, LLC,**  
a Delaware limited liability company

By: CC Ballantyne Member, LLC,  
a Delaware limited liability company  
Its: Managing Member

By: Crescent Communities, LLC,  
a Delaware limited liability company  
Its: Manager


By:   
Name: Jason LaBonte  
Title: Authorized Signatory

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

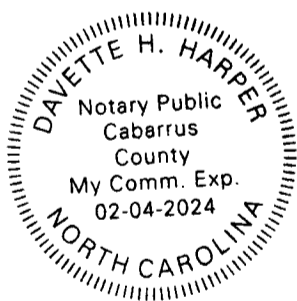
I certify that the following person personally appeared before me this day and is personally known to me or identified by me through satisfactory evidence, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jason LaBonte.

Date: December 2, 2021

  
Davette H. Harper  
(Print Name of Notary)

Notary Public  
My commission expires: \_\_\_\_\_  
**My Commission Expires 02-04-2024**

[AFFIX OFFICIAL SEAL]



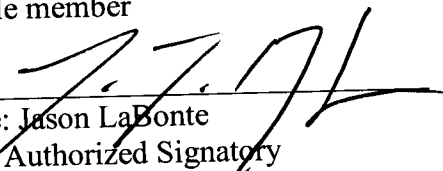
**TOWNHOME DEVELOPER:**

**CCP Harmon Ballantyne PropCo, LLC,**  
a Delaware limited liability company

By: CCP Harmon Ballantyne SubREIT, LLC,  
a Delaware limited liability company,  
its sole member

By: CC BTR PI, LLC,  
a Delaware limited liability company,  
its manager

By: Crescent Communities, LLC,  
a Delaware limited liability company,  
its sole member

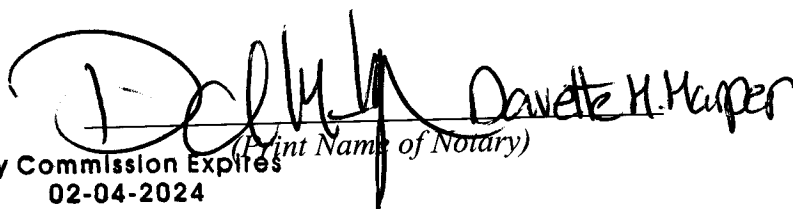
By:   
Name: Jason LaBonte  
Title: Authorized Signatory

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I certify that the following person personally appeared before me this day and is personally known to me or identified by me through satisfactory evidence, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jason LaBonte.

Date: December 2, 2021

  
*(Print Name of Notary)*  
My Commission Expires **02-04-2024**

Notary Public  
My commission expires: \_\_\_\_\_

[AFFIX OFFICIAL SEAL]



**MASTER DEVELOPER:**

**CC BALLANTYNE MDE, LLC,**  
a Delaware limited liability company

By: Crescent Communities, LLC,  
a Delaware limited liability company,  
its Manager

By: [Signature]  
Name: Jason LaBonte  
Title: Authorized Representative

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

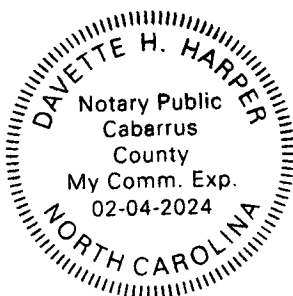
I certify that the following person personally appeared before me this day and is personally known to me or identified by me through satisfactory evidence, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jason LaBonte.

Date: December 2, 2021

[Signature]  
*(Print Name of Notary)*  
Davette H. Harper

Notary Public  
My commission expires: \_\_\_\_\_  
**My Commission Expires 02-04-2024**

[AFFIX OFFICIAL SEAL]



Attachment

RETURNED TO SENDER

**DECLARATION OF EASEMENTS,  
COVENANTS, CONDITIONS AND RESTRICTIONS**

November 12, 2021

Prepared by and return to:

Troutman Pepper Hamilton Sanders LLP  
Walter D. Fisher, Esq.  
301 South College Street  
Suite 3400  
Charlotte, NC 28202

STATE OF NORTH CAROLINA  
 COUNTY OF MECKLENBURG

**DECLARATION OF EASEMENTS,  
 COVENANTS, CONDITIONS AND  
 RESTRICTIONS**

**THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS** (this "*Declaration*") is made as of the 12<sup>th</sup> day of November, 2021, by CC Ballantyne, LLC, a Delaware limited liability company (the "*Multi-Family Developer*"), CCP Harmon Ballantyne PropCo, LLC, a Delaware limited liability company (the "*Townhome Developer*"), and CC Ballantyne MDE, LLC, a Delaware limited liability company (the "*Master Developer*").

**RECITALS**

WHEREAS, Multi-Family Developer is the Owner (as defined herein) of and intends to develop a residential multi-family development on a portion of that certain parcel consisting of approximately 11.257 acres, more or less, located in the Ballantyne area of the City of Charlotte, Mecklenburg County, North Carolina, near the intersection of Marvin Road and Johnson Road ("*Tract 1*"), as more particularly described and shown as "Tract 1" on that certain subdivision plat (the "*Subdivision Plat*") recorded in Map Book 69 at Page 662 in the Office of the Register of Deeds of Mecklenburg County, North Carolina (the "*Registry*");

WHEREAS, Townhome Developer is the Owner of that certain parcel consisting of approximately 7.672 acres, more or less, adjacent to Tract 1 and more particularly described and shown as "Tract 2" on the Subdivision Plat (the "*Townhome Parcel*," and together with Tract 1, the "*Property*"), and intends to develop a residential townhome development thereon;

WHEREAS, in the future, Multi-Family Developer intends to subdivide Tract 1 into two parcels, as shown on that certain rezoning petition for the Property that received approval from the Governmental Authorities (as defined herein) on February 15, 2021, a copy of which is attached hereto as **Exhibit A** (the "*Approved Rezoning Petition*"), and to convey that approximately 1.55-acre portion of Tract 1 designated as "Parcel C" on the Approved Rezoning Petition (the "*Affordable Senior Housing Parcel*") to an affordable senior housing developer (together with its successors and assigns, the "*Affordable Senior Housing Developer*") for the development of an affordable senior housing development thereon (the "*Affordable Senior Housing Development*");

WHEREAS, Multi-Family Developer, Townhome Developer, and Master Developer have entered into that certain Master Infrastructure Agreement dated of even date herewith (the "*Original Master Infrastructure Agreement*") pursuant to which Master Developer shall install the Infrastructure Work (as defined herein);

WHEREAS, simultaneously with the conveyance of the Affordable Senior Housing Parcel to Affordable Senior Housing Developer, the Original Master Infrastructure Agreement shall be amended by Master Developer, Multi-Family Developer, Townhome Developer, and Affordable Senior Housing Developer to, among other things, add Affordable Senior Housing Developer as a party to the Original Master Infrastructure Agreement (such amending instrument being referred to herein as the "*Amendment and Joinder to Master Infrastructure Agreement*");

WHEREAS, in furtherance of the development of the Property, Multi-Family Developer and Townhome Developer desire to subject the Property to the easements, covenants, conditions, restrictions, Assessments (as defined herein), charges, and liens set forth in this Declaration;

NOW THEREFORE, in consideration of the premises and of the mutual benefits and duties herein contained, Master Developer hereby consents to the terms of this Declaration and Multi-Family Developer and Townhome Developer hereby subject the Property (*i.e.*, Tract 1, as to Multi-Family Developer, and Townhome Parcel, as to Townhome Developer) to the terms of this Declaration, such that the Property hereafter shall be held, developed, improved, leased, sold, transferred, conveyed and occupied subject to the covenants, reservations, easements, conditions and restrictions set forth in this Declaration, all of which are imposed to protect the value and desirability of, and shall run with title to, the Property and each portion thereof, shall be binding on all parties having any right, title or interest therein, along with their heirs, successors and

assigns, and shall inure to the benefit of each Owner thereof, to the Association and to Master Developer (if and as expressly set forth herein).

**ARTICLE I**  
**Definitions**

1.1 Definitions.

(a) “*Additional Special Assessment Appeal Notice*” shall have the meaning set forth in Section 4.6.2.

(b) “*Affordable Senior Housing Developer*” shall have the meaning ascribed to such term in the Recitals.

(c) “*Affordable Senior Housing Development*” shall have the meaning ascribed to such term in the Recitals.

(d) “*Affordable Senior Housing Parcel*” shall have the meaning ascribed to such term in the Recitals.

(e) “*Amendment and Joinder to Master Infrastructure Agreement*” shall have the meaning ascribed to such term in the Recitals.

(f) “*AMI*” shall mean the area median income of Charlotte, North Carolina, reported annually for households of various sizes by the U.S. Department of Housing and Urban Development.

(g) “*Annual Assessment*” shall mean the Assessment to be levied annually on each Parcel by the Association as more particularly described in ARTICLE IV. The plural form of this term as used in this Declaration is “*Annual Assessments*.”

(h) “*Annual Budget*” shall have the meaning set forth in Section 4.5.

(i) “*Appealing Owner*” shall have the meaning set forth in Section 4.6.1.

(j) “*Approved Rezoning Petition*” shall have the meaning ascribed to such term in the Recitals.

(k) “*Assessment*” shall mean any of an Annual Assessment, a Special Assessment, or a Specific Assessment, or any more than one of the foregoing. The plural form of this term as used in this Declaration is “*Assessments*.”

(l) “*Association*” shall mean and refer to Ballantyne Residential Association, Inc., a North Carolina non-profit corporation.

(m) “*Basic Use Restrictions*” shall have the meaning set forth in Section 6.1(a).

(n) “*Board of Directors*” shall have the meaning set forth in Section 2.1.

(o) “*Building*” shall mean any primary structure, together with the improvements attached and affixed thereto, including, but not limited to, canopies, columns, and posts, constructed from time to time on the Property. The plural form of this term as used in this Declaration is “*Buildings*.”

(p) “*Common Area*” shall mean and refer to the following improvements constructed on the Property that will be used by or will otherwise benefit the Parcels and the Occupants: (i) Common Roads, including portions or components thereof, if and to the extent the Common Roads or any such portions or components have not been publicly dedicated and accepted for maintenance purposes by a Governmental Authority, (ii) an entrance monument and associated signage for the Property as a whole (but not including Parcel-specific, Owner-specific, or Occupant-specific signage placed on such entrance monument, which shall be maintained solely by and at the expense of the relevant Owner or Occupant) located on the Townhome Parcel in the general vicinity of the intersection of Marvin Road and Public Street A, and (iii) Common Utility Lines and Facilities. For clarity, in no event shall any Building, including, without limitation, the

interior or exterior features of any Building (e.g., a roof), be considered Common Area for purposes of this Declaration.

(q) “**Common Roads**” shall mean and refer to Public Street A, Public Street B and Private Street C, and any associated curbs, gutters, sidewalks, irrigation systems, landscaping, street lights, and signage located in the right of way or immediate vicinity of such roads as shown on the Approved Rezoning Petition.

(r) “**Common Utility Lines and Facilities**” shall mean the various utility lines and facilities in the Property that will serve multiple Parcels and Owners, including, without limitation, the storm drainage lines, facilities, equipment and improvements to be located on the Townhome Parcel that will serve the Townhome Parcel, the Multi-Family Parcel and the Affordable Senior Housing Parcel, including, without limitation, the Permanent Stormwater Facility.

(s) “**Declaration**” shall mean and refer to this Declaration of Easements, Covenants, Conditions and Restrictions.

(t) “**Default Interest Rate**” shall have the meaning set forth in Section 2.5.

(u) “**Delinquency Notice**” shall have the meaning set forth in Section 4.9.

(v) “**Governmental Authority**” shall mean and refer to any governmental or quasi-governmental entity or utility company, as applicable, that has jurisdiction over the Property. The plural form of this term as used in this Declaration is “**Governmental Authorities**.”

(w) “**Indemnified Party**” shall have the meaning set forth in Section 8.10. The plural form of this term as used in this Declaration is “**Indemnified Parties**.”

(x) “**Infrastructure Work**” shall have the meaning ascribed to such term in the Master Infrastructure Agreement.

(y) “**Infrastructure Work Self-Help Easement**” shall have the meaning set forth in Section 3.5.2.

(z) “**Master Developer**” shall have the meaning ascribed to such term in the introductory paragraph of this Declaration.

(aa) “**Master Infrastructure Agreement**” shall mean the Original Master Infrastructure Agreement, as it may be amended in the future, including by the Amendment and Joinder to Master Infrastructure Agreement. Until amended, including by the Amendment and Joinder to Master Infrastructure Agreement, Master Infrastructure Agreement, when used in this Declaration, shall mean the Original Master Infrastructure Agreement.

(bb) “**Mortgage**” shall mean a mortgage, deed of trust, deed to secure debt or other security instrument encumbering one or more Parcels (or any portion thereof) and which has been recorded in the Registry.

(cc) “**Mortgagee**” shall mean and refer to the mortgagee, beneficiary, trustee or other holder of a Mortgage on a Parcel or Parcels (or a portion thereof).

(dd) “**Multi-Family Developer**” shall have the meaning ascribed to such term in the introductory paragraph of this Declaration.

(ee) “**Multi-Family Parcel**” shall mean those portions of Tract 1 designated as “Parcel B1” and “Parcel B2” on the Approved Rezoning Petition.

(ff) “**Non-Appealing Owner**” shall have the meaning set forth in Section 4.6.1. The plural form of this term as used in this Declaration is “**Non-Appealing Owners**.”

(gg) “**Noxious Use Restrictions**” shall have the meaning set forth in Section 6.1(b).

(hh) “**Occupant**” shall mean any person or entity, including any Owner, from time to time entitled to the use and occupancy of any portion of a Structure in the Property by virtue of



ownership thereof or under any lease, sublease, license, concession agreement, or other similar agreement. The plural form of this term as used in this Declaration is "***Occupants.***"

(ii) "***Owner***" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Parcel which is a part of the Property, but such term shall not include a Mortgagee. For the avoidance of doubt, Master Developer shall not be an Owner under this Declaration, unless Master Developer otherwise becomes the record owner of the fee simple title to a Parcel which is part of the Property. In the event any Parcel is submitted to a condominium regime in accordance with the North Carolina Condominium Act set forth in Chapter 47C of the General Statutes of North Carolina (as amended, supplemented or replaced from time to time) or is further subdivided (subject to the limitations on subdivision set forth in Section 8.7) and is submitted to a sub-declaration instrument, the applicable owner's association for such condominium or sub-declaration shall be treated as the Owner of such Parcel for all purposes under this Declaration, including membership and voting rights and Assessments, all of which rights and obligations shall be held by, and/or be the responsibility of, the applicable owners' association for such Parcel submitted to such condominium or sub-declaration. The plural form of this term as used in this Declaration is "***Owners.***"

(jj) "***Parcel***" shall refer generically to any of the Multi-Family Parcel, the Townhome Parcel, or the Affordable Senior Housing Parcel. The plural form of this term as used in this Declaration is "***Parcels.***" A Parcel may, at any given time, consist of one or more separate tax parcels or tracts, subject to the limitations on subdivision set forth in Section 8.7. In the event any Parcel is submitted to a condominium regime in accordance with the North Carolina Condominium Act set forth in Chapter 47C of the General Statutes of North Carolina (as amended, supplemented or replaced from time to time) or is further subdivided and is submitted to a sub-declaration instrument, such Parcel submitted to the condominium or the sub-declaration shall continue to be treated as and deemed to be a single Parcel for all purposes under this Declaration, notwithstanding the fact that individual units within the condominium may be individually owned and conveyed or subdivided parcels within such Parcel submitted to a sub-declaration may be individually owned and conveyed.

(kk) "***Permanent Stormwater Facility***" shall mean the permanent stormwater facility and the related drainage lines, facilities, equipment and improvements to be built and installed by Master Developer within the Townhome Parcel in the general location designated as "Future Townhome Development/Stormwater Facility" on the Approved Rezoning Petition.

(ll) "***Plans***" shall have the meaning set forth in Section 5.5(a)(iii).

(mm) "***Private Street C***" refers to the road designated as "Private Street 'C'" on the Approved Rezoning Petition.

(nn) "***Property***" shall have the meaning ascribed to such term in the Recitals.

(oo) "***Pro-rata Share***" shall mean and refer to a percentage calculated by using a fraction, the numerator of which is the acreage of each Parcel, less the acreage of any Common Roads and/or of the Permanent Stormwater Facility located on such Parcel, and the denominator of which is the total, aggregate acreage of all the Parcels, less the total acreage of the Common Roads and of the Permanent Stormwater Facility located on the Property. As of the date of this Declaration, the Pro-rata Share of each Parcel is set forth on **Exhibit B** attached hereto and incorporated herein by reference. The plural form of this term as used in this Declaration is "***Pro-rata Shares.***"

(pp) "***Public Street A***" refers to the road designated as "Public Street 'A'" on the Approved Rezoning Petition.

(qq) "***Public Street B***" refers to the road designated as "Public Street 'B'" on the Approved Rezoning Petition.

(rr) "***Qualified Property Management Consultant***" means an individual person (*i.e.*, not an entity) who (i) has a minimum of ten years of experience with the management of property owner associations of commercial developments in North Carolina involving multiple owners and containing common area for which multiple owners share expenses, and (ii) is not affiliated with any of the Owners.

(ss) “**Registry**” shall have the meaning ascribed to such term in the Recitals.

(tt) “**Representative**” shall have the meaning set forth in Section 2.1.

(uu) “**Self-Help Remedy**” shall have the meaning ascribed to such term in the Master Infrastructure Agreement.

(vv) “**Special Assessment**” shall mean an Assessment levied by the Association uniformly against all of the Parcels in accordance with their respective Pro-rata Shares to fund expenses incurred by the Association and not included in the Annual Budget, including the cost of any construction or reconstruction, unexpected repair or replacement of the Common Area, including the necessary fixtures and personal property related thereto, or to otherwise fund a shortfall in the operating account of the Association. The plural form of this term as used in this Declaration is “**Special Assessments**.”

(ww) “**Special Assessment Appeal Notice**” shall have the meaning set forth in Section 4.6.1.

(xx) “**Specific Assessment**” shall mean an Assessment levied by the Association against a Parcel to pay for Specific Common Expenses. The plural form of this term as used in this Declaration is “**Specific Assessments**.”

(yy) “**Specific Common Expenses**” shall mean the following:

(i) Any expenses incurred by the Association under this Declaration that benefit fewer than all of the Parcels;

(ii) Any expense incurred by the Association occasioned by the conduct of the Owners, Occupants, licensees, or guests of fewer than all of the Parcels; and

(iii) Any fines and other charges assessed by the Association against fewer than all the Parcels in accordance with this Declaration.

(zz) “**Structure**” shall mean and refer to any improvement, device, equipment or other installation, the placement of which upon or within any Parcel might affect the physical appearance thereof, including, by way of illustration and not limitation, Buildings, sheds, covered areas, driveways, fountains, pools, parking areas, trees, shrubbery, paving, curbing, landscaping, fences, walls, and signs and sign boards and shall also mean any excavation or fill, the volume of which exceeds ten (10) cubic yards and any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Parcel. The plural form of this term as used in this Declaration is “**Structures**.”

(aaa) “**Subdivision Plat**” shall have the meaning ascribed to such term in the Recitals.

(bbb) “**Townhome Developer**” shall have the meaning ascribed to such term in the introductory paragraph of this Declaration.

(ccc) “**Townhome Development**” shall have the meaning ascribed to such term in the Recitals.

(ddd) “**Townhome Parcel**” shall have the meaning ascribed to such term in the Recitals.

(eee) “**Tract I**” shall have the meaning ascribed to such term in the Recitals.

(fff) “**Utility Lines and Facilities**” shall mean and refer collectively to lines, equipment and facilities for the delivery or provision of utility services to a single Parcel and the Buildings, Structures and other improvements from time to time located thereon, including, but not limited to, sanitary sewer, water (fire and domestic), gas, electrical, telephone and communications, storm drainage and detention and other similar facilities.

**ARTICLE II**  
**Association**

2.1 Formation of Association. As of the date hereof, Multi-Family Developer and Townhome Developer have formed the Association to administer this Declaration. The initial Bylaws for the Association are attached hereto as Exhibit C. Each Owner is a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Parcel. The affairs and business of the Association is managed by a board of directors (the "**Board of Directors**"). The Board of Directors is comprised of five (5) representatives (each, a "**Representative**") of the respective Owners, with three (3) Representatives being appointed by the Owner of the Multi-Family Parcel, one (1) Representative being appointed by the Owner of the Townhome Parcel, and one (1) Representative being appointed by the Owner of the Affordable Senior Housing Parcel. For the avoidance of doubt, prior to the conveyance of title to the Affordable Senior Housing Parcel from Multi-Family Developer to Affordable Senior Housing Developer, Multi-Family Developer shall be the Owner of the Multi-Family Parcel and the Affordable Senior Housing Parcel and shall have the right to appoint four (4) Representatives to the Board of Directors. Duties of the Association shall include the setting and administration of Assessments pursuant to ARTICLE IV, the review and approval or disapproval of Plans pursuant to ARTICLE V, and maintaining the Common Area in a safe, clean, neat, and sanitary condition and in a good state of repair pursuant to Section 2.5.

2.2 Organization. The Association shall exist and function solely for the benefit of the Property. Representatives comprising the Board of Directors shall be appointed in writing by each respective Owner, as described in, and subject to, Section 2.1.

2.3 Voting. Each Representative shall have one vote regarding decisions that come before the Board of Directors, except for a decision to impose Special Assessments, which shall be governed by the terms of Section 4.6. Matters to be voted on by the Association include Assessments and the review of Plans as set forth in ARTICLE IV and ARTICLE V, respectively. Each decision of the Association shall require an affirmative vote of three (3) of the five (5) Representatives, except for a decision to impose Special Assessments, which shall be governed by the terms of Section 4.6. Every purchaser, grantee, or assignee of any interest in the Property or any Parcel therein or portion thereof, by acceptance of a deed or other conveyance therefor, thereby shall be deemed to have acknowledged and agreed that the provisions of this Declaration shall run with and bind title to the Property, Parcel, or portion thereof, as provided herein. Votes may be cast by the Representatives at an in-person or virtual meeting where there is a quorum or by voting through email.

2.4 Powers of Association. The Association may, but shall not be required to, enter into a management agreement with an independent property manager of its choice, at market rates, to manage the affairs of the Association, including the Common Area located on or within the Property, in which case such property manager's fees shall be part of the Annual Assessments and Special Assessments described in ARTICLE IV. Alternatively, or in addition to the foregoing, the Association may enter into one or more service contracts with independent contractors to fulfill the rights and obligations of the Association set forth herein. Any such manager's fee and fees payable under service contracts must be based on arm's length negotiations.

2.5 Common Area; Failure to Maintain. The Association shall maintain the Common Area in a safe, clean, neat, and sanitary condition and in a good state of repair. Common Area shall remain the property of the Owner of the Parcel on which such Common Area is located, unless the fee simple interest in such Common Area is conveyed to the Association by a deed duly recorded in the Registry. As of the date hereof, no Common Area is owned by the Association. If the Association fails to maintain the Common Area in accordance with this Section 2.5, and only if the Association has failed to commence and diligently pursue maintenance or repair of the Common Area (or portion thereof) within thirty (30) days after the Association's receipt of written notice of such maintenance or repair failure from any Owner (such notice having specifically identified the nature and extent of the Association's alleged failure to maintain the Common Area), the Owner that provided said written notice shall have the right, but not the obligation, to undertake the necessary maintenance or repairs to the Common Area; and, in such case, the Association shall reimburse such Owner for all out-of-pocket, third-party costs and expenses incurred by such Owner to effect such repair or maintenance within thirty (30) days after the Association's receipt of a detailed invoice for, and documentary evidence of, such costs and expenses incurred by such Owner. All amounts which are not paid by the Association within such thirty (30) day period shall

accrue interest at the "prime rate" of interest announced from time to time by Bank of America, N.A., plus five percent (5%) per annum (such rate to change from time to time as the prime rate changes), unless a lesser rate is required under applicable law, in which event the lesser rate shall be applicable (the "**Default Interest Rate**"). Nothing in this Section 2.5 shall be deemed to limit, restrict or alter the Assessment responsibilities described in this Declaration or the Association's ability to assess and collect the same.

### **ARTICLE III** **Common Area; Easements**

3.1 Ingress and Egress Easements. Multi-Family Developer and Townhome Developer hereby establish, declare, and grant, for the benefit of and as an appurtenance to each Parcel, and to and for the benefit of the Owners and Occupants of the Parcels, perpetual, non-exclusive rights, privileges and easements for the passage of vehicles and for the passage and accommodation of pedestrians, over, across and through all portions of the Common Area comprised of roadways, driveways, curb cuts, aisles, walkways and sidewalks. The Association shall have the right, but not the obligation, to erect stop signs and to establish reasonable rules and regulations with respect to such roadways, curb cuts, aisles, walkways, and sidewalks comprising the Common Area, including, without limitation, establishing and enforcing reasonable speed limits. Master Developer and/or the Association is entitled to dedicate, convey, and grant to appropriate Governmental Authorities, for use by the public, the fee simple interest in or access and maintenance easement rights to, over, and across the Common Roads constructed from time to time within the Property. With respect to any such dedication of, conveyance of, or grant of easement to, over, or across the Common Roads by Master Developer and/or the Association to the relevant Governmental Authority, the Owner(s) of the burdened Parcel(s) shall cooperate and assist Master Developer and/or the Association, and shall join in and consent to such dedication, conveyance, or grant, if requested, at no material cost, however, to such cooperating Owner(s). Such easement rights shall be subject to other applicable provisions contained in this Declaration.

3.2 Utility Lines and Facilities Easements. Multi-Family Developer and Townhome Developer hereby establish and create for the benefit of and as an appurtenance to each Parcel perpetual non-exclusive rights, privileges and easements in, to, over, under, along and across the Property (not to include any portion of the Property underlying Buildings or other Structures or within areas designated as "Building Envelope" on the Approved Rezoning Petition) for the purpose of (a) installing, operating, using, maintaining, repairing, replacing, relocating, and removing Utility Lines and Facilities, and (b) connecting and tying into the Common Utility Lines and Facilities for such utilities which are installed from time to time within another Parcel for such purpose and using such Common Utility Lines and Facilities in connection with the delivery of such utility services to each Parcel and the Buildings, Structures and other improvements from time to time located thereon. Such easement rights shall be subject to other applicable provisions contained in this Declaration.

3.3 Joint Limitations and Responsibilities for Use of Utility Lines and Facilities Easements. No utility service serving or vehicular access to or from a Parcel shall be interrupted in connection with any other Owner installing, operating, using, maintaining, repairing, replacing, relocating, and/or removing any lateral utility connection lines or other utility facilities to connect to Utility Lines and Facilities located on a Parcel burdened by Utility Lines and Facilities easements described in this ARTICLE III. Any Owner that installs Utility Lines and Facilities in its Parcel, and Master Developer and/or the Association (with respect to any Utility Lines and Facilities installed by Master Developer in a Parcel pursuant to the Master Infrastructure Agreement), shall each be entitled to dedicate and convey to appropriate Governmental Authorities the Utility Lines and Facilities and associated easement rights installed from time to time within the Property by such Owner or Master Developer, as applicable, provided any such dedication or conveyance shall not adversely affect the use and enjoyment of such Utility Lines and Facilities by the Owners and the Occupants of the Parcels. Additionally, the easement area related to any such Utility Lines and Facilities shall be no larger than is reasonably necessary to satisfy the relevant Governmental Authority, as to an easement to be dedicated to such Governmental Authority, or five (5) feet on each side of the centerline of the Utility Lines and Facilities, as actually installed, as to a private utility line easement. With respect to any such dedication of Utility Lines and Facilities by Master Developer and/or the Association to the relevant Governmental Authority, the Owner(s) of the burdened Parcel(s) shall cooperate and assist Master Developer and/or the Association, and shall join in and consent to such dedication, if requested, at no material cost, however, to such cooperating Owner(s). Furthermore, the Utility Lines and Facilities installed

by an Owner or Master Developer under and pursuant to this Declaration or the Master Infrastructure Agreement are intended to be, and shall be, limited to below ground utility lines, facilities and improvements; provided, however, Owners and Master Developer shall be entitled to install above ground improvements as part of such Utility Lines and Facilities if and to the extent such above-ground improvements (e.g., equipment cabinets, man-holes, relief valves and pipes, etc.) are typically installed above ground in accordance with common construction industry practice, as part of underground installations of the applicable Utility Lines and Facilities. An Owner or Master Developer, as applicable, installing and/or connecting to Utility Lines and Facilities on another Parcel shall (a) pay all costs and expenses with respect to such work, (b) cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first-class materials and in a good and workmanlike manner as quickly as commercially reasonable and in a manner so as to minimize interference with the use of the affected Parcel, and (c) indemnify and save the burdened Owner harmless from and against any and all loss, cost, liability, damage and expense (including, but not limited to, reasonable attorneys' fees and costs) resulting from such work, including, without limitation, any mechanics' or materialmen's liens arising from such work, except to the extent such loss, cost, liability, damage, or expense arises from such burdened Owner's negligent acts or omissions or willful misconduct.

3.4 Storm Water Drainage Easements. Multi-Family Developer and Townhome Developer hereby establish and create for the benefit of and as an appurtenance to each Parcel (and each portion thereof) perpetual non-exclusive rights, privileges and easements to drain, as reasonably required, storm water run-off from each Parcel (and each portion thereof), as each Parcel hereafter may be improved, onto and across any other Parcel(s) and into and through the storm water drainage lines and facilities from time to time located thereon, including the right to use and impound storm water within the Permanent Stormwater Facility, so long as such drainage (a) shall not cause any damage to the Parcel(s) across which such storm water is being drained or any Buildings, Structures or other improvements thereon and (b) complies in all respects with all applicable governmental laws, regulations, and requirements. Multi-Family Developer and Townhome Developer hereby reserve the right for Master Developer and/or the Association to dedicate and convey to appropriate Governmental Authorities the storm water drainage lines and facilities located from time to time within the Property, provided any such dedication or conveyance shall not adversely affect the use and enjoyment of such storm water drainage lines and facilities by the Owners and the Occupants of the Parcels. If Master Developer and/or the Association desires to so dedicate all or any portion of any such drainage lines and facilities, the Owner(s) of the burdened Parcel(s) shall cooperate and assist Master Developer and/or the Association and shall join in and consent to such dedication, if requested, at no material cost, however, to such cooperating Owner(s).

### 3.5 Temporary Construction Easements.

3.5.1 Master Developer Easements; Dedication of Utility Lines and Facilities. Multi-Family Developer and Townhome Developer hereby grant Master Developer a temporary, non-exclusive construction easement over and across the Property to perform and complete the Infrastructure Work for a period commencing on the date of recordation of this Declaration in the Registry and terminating on the date that is the earlier to occur of (a) the date that the Master Infrastructure Agreement terminates pursuant to its terms, or (b) December 31, 2024. Master Developer shall indemnify and save harmless each Owner from and against any and all loss, cost, liability, damage and expense (including, but not limited to, reasonable attorneys' fees and costs) resulting from the Infrastructure Work, including any mechanics' or materialmen's liens arising from the Infrastructure Work, except to the extent such loss, cost, liability, damage, or expense arises from the respective Owner's negligent acts or omissions or willful misconduct.

3.5.2 Infrastructure Work Self-Help Easement. Multi-Family Developer and Townhome Developer hereby grant to, and reserve for the benefit of, the Owners a temporary, non-exclusive construction easement over and across the Property for the sole purpose of exercising the Self-Help Remedy, all in accordance with the terms, provisions and conditions of the Master Infrastructure Agreement (the "*Infrastructure Work Self-Help Easement*"). The Infrastructure Work Self-Help Easement shall become effective on the date that an Owner timely exercises the Self-Help Remedy in accordance with the Master Infrastructure Agreement and shall automatically terminate on the date that is the earlier to occur of (a) the date that the Master Infrastructure Agreement terminates pursuant to its terms, or (b) December 31, 2024. If any Owner exercises the Self-Help Remedy under the Master Infrastructure Agreement, such exercising party

and any agent thereof availing itself of the Infrastructure Work Self-Help Easement rights pursuant to the immediately-preceding sentence shall (i) pay all costs and expenses with respect to such work, (ii) cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration of any damage to the Property) to be completed using first-class materials and in a good and workmanlike manner as quickly as commercially reasonable and in a manner so as to minimize interference with the use of the other Parcels, and (iii) indemnify and save the non-performing Owners harmless from and against any and all loss, cost (except for the cost to complete such work in accordance with the terms of the Master Infrastructure Agreement), liability, damage and expense (including, but not limited to, reasonable attorneys' fees and costs) resulting from such work, including the cost of removing and extinguishing any mechanics' or materialmen's liens arising from such work, except to the extent such loss, cost, liability, damage, or expense is caused by Master Developer's or such non-performing Owner's (as applicable) negligent acts or omissions or willful misconduct; provided, however, nothing in this Section 3.5.2 shall be deemed or construed to deny or abridge any rights and remedies an Owner may have under the Master Infrastructure Agreement associated with the exercise by such Owner of the Self-Help Remedy.

3.6 General Easements Over Common Area. Every Owner and Occupant of a Parcel shall have a nonexclusive, perpetual right and easement of enjoyment in and to the Common Area, which shall be appurtenant to each Parcel; provided, however, such use shall be subject to the terms and provisions of this Declaration, shall be exercised in a manner that is consistent with the intended use of such Common Area and shall not deny any other Owner the simultaneous right to use and enjoy such Common Area.

3.7 Parking. There shall be no cross-parking rights or easement between the Parcels, unless created pursuant to an express written easement agreement entered into by the Owners, approved in writing by the Association and recorded in the Registry. Notwithstanding the foregoing, each Owner must maintain a sufficient number of parking spaces on such Owner's Parcel to comply with all governmental requirements with respect to parking on such Owner's Parcel without counting or relying on any parking spaces on other portions of the Property; provided, however, if and to the extent authorized or allowed by the applicable Governmental Authorities to satisfy such Governmental Authorities' parking requirements, each Owner may rely on on-street parking spaces that are directly adjacent to or abut such Owner's Parcel and that are located within any portion of the rights of way of the Common Roads. Prior to the public dedication of the Common Roads, the parking spaces located within the Common Roads shall not be removed or altered without the written consent of the Owners of the Parcels that are directly adjacent to or abut the parking spaces that are proposed to be removed or altered.

3.8 Rights of Third Parties. The easements created and established under this Declaration are private easements, and nothing herein shall be construed to create easements in favor of the general public with respect to any portion of the Common Area or any other portions of the Property; provided, however, (a) easements created under this Declaration may be exercised, used, and enjoyed by the Owners and the Occupants and their respective agents, employees, contractors, tenants, invitees, licensees, and business visitors and (b) nothing in this Section 3.8 shall be interpreted or applied in a manner that would prevent Master Developer and/or the Association and the Owners from dedicating for public use and maintenance any of those components and portions of the Common Area expressly contemplated above in this ARTICLE III.

3.9 Limitation on Indemnification Obligations and Liabilities. The indemnifications obligations in this ARTICLE III shall be subject to the terms and provisions in Section 8.2 relating to consequential, speculative, or punitive damages (as properly applied in the context of this ARTICLE III).

#### **ARTICLE IV** **Assessments**

4.1 Creation of Lien for Assessments. Each Owner of a Parcel subject to this Declaration shall, whether or not it shall be so expressed in any instrument of conveyance, be (a) deemed to covenant and agree to all the terms and provisions of this Declaration and (b) obligated to pay to the Association Annual Assessments and, if and as applicable, Special Assessments and Specific Assessments provided for herein, together with interest at the Default Interest Rate, late fees and costs to be established and collected to pay a share of the common area

maintenance, repair, replacement, operating and insurance costs for and relating to the Property and other expenses for which Special Assessments and Specific Assessments may be levied in accordance with the terms of this Declaration. Assessments and charges, together with such interest thereon and costs of collection therefor, as herein provided, shall be a charge and continuing lien upon the Parcel against which such Assessment is made as of the effective date of each such Assessment. The Association shall, within five (5) business days after written request therefor, furnish to any Owner a certificate in writing signed by an authorized representative of the Association stating whether the Assessments against such Owner's Parcel have been paid and, if not, the amount due and owing. Such certificates shall be conclusive as evidence for third parties as to the status of Assessments against such Parcel. Notwithstanding any term or provision herein to the contrary, interest shall begin to accrue with respect to unpaid Assessments only upon the date that such unpaid Assessments are delinquent hereunder.

4.2 Purpose of Annual Assessments. Annual Assessments shall be levied upon the Owners, and used by the Association, to pay costs incurred in the maintenance, operation, repair, and replacement of the Common Area (including Common Roads, Common Utility Lines and Facilities and the Permanent Stormwater Facility, if and to the extent such improvements are not maintained at public expense), including, but not limited to, insurance premiums; reasonable management fees of any property manager engaged pursuant to Section 2.4; ad valorem property taxes levied on portions of the Common Area owned by the Association in fee simple or, if not owned by the Association in fee simple, with respect to Common Area improvements to which the applicable tax authority allocates a specific tax amount (e.g., if the tax bill relative to the Townhome Parcel allocates a specific tax amount to the Common Area improvements that comprise the Permanent Stormwater Facility, or if the tax bill relative to the Multi-Family Parcel allocates a specific tax amount to the Common Area improvements that comprise Private Street C), utility charges related to such Common Area (including water charges for any irrigation or sprinkler systems); license, permit and inspection fees; costs of street signs and markers; costs of enforcing this Declaration against Owners (including, without limitation, attorneys' fees and court costs); and associated costs of labor, equipment, materials, management and supervision thereof. Notwithstanding the foregoing, (a) the Association may, but shall not be required to, include in Annual Assessments and the Annual Budget any expenses that are customarily classified as capital expenses and are encompassed by the definition of Special Assessments in this Declaration, and (b) any maintenance or repair to the Common Area that is required due to the negligence or intentional misconduct of any Owner or its Occupants or their respective officers, directors, shareholders, members, agents, employees, invitees, or affiliates may be assigned as a responsibility of that Owner as a Specific Assessment at the reasonable discretion of the Association.

4.3 Commencement of Annual Assessments. Annual Assessments for the Multi-Family Parcel shall commence upon the earlier to occur of (a) the commencement of Annual Assessments for the Affordable Senior Housing Parcel and (b) the commencement of Annual Assessments for the Townhome Parcel. Annual Assessments for the Affordable Senior Housing Parcel shall commence on the first day of the first full calendar month after the earlier to occur of (i) one (1) year after the date that one or more Occupants first occupies the Building on the Affordable Senior Housing Parcel or (ii) the first day of the thirtieth (30<sup>th</sup>) calendar month after the calendar month in which Multi-Family Developer conveys title to the Affordable Senior Housing Parcel to Affordable Senior Housing Developer. Annual Assessments for the Townhome Parcel shall commence on the first day of the first full calendar month after the earlier to occur of (y) the date that one or more Occupants first occupies a Building on the Townhome Parcel, or (z) the date that substantial completion of the Permanent Stormwater Facility and the Common Roads occurs.

4.4 Initial Annual Assessments of Affordable Senior Housing Parcel and Townhome Parcel. The initial Annual Assessment for the Affordable Senior Housing Parcel shall not exceed Twenty Thousand and No/100 Dollars (\$20,000), and the initial Annual Assessment for the Townhome Parcel shall not exceed Thirty Thousand and No/100 Dollars (\$30,000).

4.5 Amount of Annual Assessments. The Annual Assessment applicable to the Parcels shall be determined by the Association in its reasonable discretion, based upon actual and estimated costs and expenses for the applicable year (per the Annual Budget) and shall be apportioned based on the Pro-rata Share of each Parcel; provided, however, any increase in the Annual Assessments levied against the Affordable Senior Housing Parcel and the Townhome Parcel each year shall not exceed three percent (3%) on a cumulative, compounded basis,

computed based on the respective maximum initial Annual Assessments for the Affordable Senior Housing Parcel and the Townhome Parcel set forth in Section 4.4. So long as this Declaration remains in effect, the Association shall prepare a budget for the estimated expenses of the Association for the approaching calendar year (the “*Annual Budget*”) to fund the performance of the Association’s duties and responsibilities set forth in this Declaration that fall within the scope and definition of Annual Assessments (subject to the terms and provisions of Section 4.2) and shall submit the Annual Budget to all Owners for review and comment at least thirty (30) days prior to beginning of each calendar year. The Annual Assessments of each Owner shall be calculated in accordance with its relevant Pro-rata Share (but subject to the initial Annual Assessment ceiling and annual increase limits set forth in Section 4.4 and this Section 4.5, respectively, relative to the Affordable Senior Housing Parcel and the Townhome Parcel), in aggregate amounts reasonably projected to produce income sufficient to fund the total Annual Budget. If Annual Assessments the Association is entitled to impose on the Owners, applying the Pro-rata Share of each Parcel to the Association’s Annual Budget and applying the limitations on Annual Assessments that may be imposed on the Townhome Parcel and the Affordable Senior Housing Parcel under Section 4.4 and this Section 4.5, is insufficient to fund the Annual Budget, then the shortfall amount shall be allocated to the Multi-Family Parcel and funded by the Owner of the Multi-Family Parcel.

4.6 Special Assessments. The Association may levy Special Assessments against the Parcels for the purpose of defraying, in whole or in part, costs and expenses that are described in the definition of Special Assessments in Section 1.1(vv) in accordance with the terms of this Section 4.6. Each Owner shall have one (1) vote regarding the decision to impose Special Assessments. Accordingly, the three (3) Multi-Family Owner Representatives shall designate one (1) of its Representatives to act on behalf of the Multi-Family Owner with respect to decisions to impose Special Assessments. The decision of the Association to impose Special Assessments shall always require an affirmative vote of the Representatives of at least two (2) Owners, subject to the appeal and dispute provisions of Section 4.6.1, Section 4.6.2, and Section 4.6.3, provided that so long as Multi-Family Developer owns all of Tract 1, it shall be deemed to be only one (1) Owner for the purposes of this sentence. Special Assessments levied against the Townhome Parcel and the Affordable Senior Housing Parcel shall not be subject to the initial Annual Assessment ceiling and annual increase limits set forth in Section 4.4 and Section 4.5.

4.6.1 Appeal of Disapproval of Special Assessment. In the event the Representatives of two (2) Owners fail to vote to approve a proposed Special Assessment, and the Representative of the third Owner votes in favor of the proposed Special Assessment (the “*Appealing Owner*”), the Appealing Owner shall have the right to deliver notice to the other two Owners (each, a “*Non-Appealing Owner*,” and together, the “*Non-Appealing Owners*”) of the Appealing Owner’s intent to appeal the disapproval of the proposed Special Assessment to a Qualified Property Management Consultant, which notice shall identify a proposed Qualified Property Management Consultant to consider the appeal (the “*Special Assessment Appeal Notice*”). The Non-Appealing Owners shall have five (5) business days after receipt of the Special Assessment Appeal Notice to approve the Appealing Owner’s selection of the proposed Qualified Property Management Consultant, such approval not to be unreasonably withheld, conditioned, or delayed. The selection of the Qualified Property Management Consultant shall require an affirmative vote of the Representatives of at least two (2) Owners (one of which may be the Appealing Owner). If a Non-Appealing Owner fails to deliver written notice to the other Owners of its disapproval of the proposed Qualified Property Management Consultant within five (5) business days after receipt of the Special Assessment Appeal Notice, such Non-Appealing Owner shall be deemed to have approved the proposed Qualified Property Management Consultant. The costs and expenses charged by the Qualified Property Management Consultant to the Association for serving in such capacity shall be shared equally among the Owners.

4.6.2 Dispute over Selection of Qualified Property Management Consultant. If both Non-Appealing Owners disapprove the Appealing Owner’s proposed Qualified Property Management Consultant in accordance with Section 4.6.1, then the Appealing Owner shall have five (5) business days to deliver a new Special Assessment Appeal Notice to the Non-Appealing Owners (the “*Additional Special Assessment Appeal Notice*”), identifying a new proposed Qualified Property Management Consultant, in which event the parties shall follow the same procedure set forth in Section 4.6.1 for the approval of the Qualified Property Management Consultant. If both Non-Appealing Owners disapprove the Appealing Owner’s proposed Qualified Property Management Consultant set forth in the Additional Special Assessment Appeal Notice in accordance with Section 4.6.1, then the Appealing Owner shall have the right to submit the selection of the Qualified Property Management Consultant to arbitration by the American



Arbitration Association in Charlotte, North Carolina, and the selection of the Qualified Property Management Consultant shall be made as expeditiously as feasible by a single arbitrator operating under the Commercial Arbitration Rules of the American Arbitration Association as amended and in effect on the date notice is given by the Appealing Owner to the Non-Appealing Owners of the Appealing Owner's decision to submit the selection of the Qualified Property Management Consultant to arbitration. The selection of the Qualified Property Management Consultant by the arbitrator shall be final, binding and conclusive on the parties, and judgment may be rendered thereon by any court having jurisdiction, upon application of any party. The costs and expenses of the arbitration procedure and proceeding under this Section 4.6.2 shall be shared equally among the Owners, provided each Owner shall separately bear and pay its own individual expenses (including, without limitation, attorneys' fees) incurred with such arbitration procedure and proceeding.

4.6.3 Quality Property Management Consultant's Decision. Upon the selection of the Qualified Property Management Consultant in accordance with Section 4.6.1 or Section 4.6.2 (as applicable), the Qualified Property Management Consultant shall review the proposed Special Assessment, taking into account all relevant factors, including, without limitation, (i) the purpose of the Special Assessment, (ii) the estimated costs and expenses to be defrayed by the proposed Special Assessment, (iii) the age, condition, and quality of the Common Area subject to such proposed construction, reconstruction, repair, or replacement compared to the standard prescribed in Section 2.5 for the condition and state of repair mandated for such Common Area, and (iv) the Association's finances. The Qualified Property Management Consultant shall, within thirty (30) days after being selected in accordance with Section 4.6.1 or Section 4.6.2 (as applicable), deliver a written decision to the Association and the Owners either approving or disapproving the proposed Special Assessment in whole. The decision of the Qualified Property Management Consultant shall be final, binding and conclusive on the Association and the Owners.

4.7 Specific Assessments. The Association may, but is not obligated to, in addition to any other rights it may have under this Declaration, levy a Specific Assessment against such Parcel(s), in its discretion, that the Association reasonably determines bear(s) responsibility for Specific Common Expenses. Specific Assessments levied against the Townhome Parcel and the Affordable Senior Housing Parcel shall not be subject to the initial Annual Assessment ceiling and annual increase limits set forth in Section 4.4 and Section 4.5.

4.8 Due Date and Limitation of Assessment Frequency. Annual Assessments shall be levied by the Association annually and shall be billed no less frequently than annually. Unless otherwise provided herein, all Assessments shall be due and payable in full within thirty (30) days of an Owner being billed by the Association.

4.9 Effect of Non-Payment of Assessment. If any Assessment is not paid by an Owner on the date when due and after further written notice (the "*Delinquency Notice*") from the Association and expiration of a ten (10) day cure period, then such Assessment shall be delinquent and shall accrue interest at the Default Interest Rate. If such Assessment, including accrued interest, is not paid in full within sixty (60) days after the Delinquency Notice is given to the relevant Owner, the Association may file a lien against the relevant Parcel for the delinquent Assessment, including accrued interest, and may bring an action to foreclose the lien against the Parcel (in the same manner that deed of trust liens may be foreclosed under North Carolina law against encumbered real estate), and there shall be added to the amount of such Assessment attorneys' fees and costs incurred by the Association in such action; and in the event a judgment is obtained, such judgment shall include interest on the Assessment as indicated above in this Section 4.9. Furthermore, if an Owner has a good faith, reasonable belief that another Owner has failed to timely pay any Assessment due by such other Owner in accordance with the terms of this Declaration, such non-delinquent Owner may direct the Association (a) to deliver a Delinquency Notice to the delinquent Owner, and (b) if the delinquent Owner does not pay the Assessment within sixty (60) days after delivery of the Delinquency Notice, to file a lien on behalf of the Association against the delinquent Owner's Parcel in accordance with this Section 4.9.

## ARTICLE V

### Architecture, Design, and Maintenance Standards

5.1 Permitted Uses. The use of the Parcels shall at all times comply with applicable laws of the Governmental Authorities (including, without limitation, the Approved Rezoning Petition) and with all covenants and restrictions of record to the extent applicable to such Parcels

from time to time. As long as the Approved Rezoning Petition remains in full force and effect, the following restrictions on the Parcels shall apply: (a) the Multi-Family Parcel shall be used for multi-family residential purposes in accordance with the Approved Rezoning Petition; (b) the Townhome Parcel shall only be used for single-family attached townhome dwelling units, no more than sixty (60) townhome units may be developed thereon, and the initial term of any lease of a unit on the Townhome Parcel must be for at least twelve (12) months; and (c) the Affordable Senior Housing Parcel shall be used for a residential housing development consisting of no fewer than seventy (70) but no more than eighty-two (82) total units exclusively used for senior adults aged fifty-five (55) years and over, the units within the Affordable Senior Housing Parcel shall be dedicated to persons earning thirty percent (30%) to one hundred percent (100%) of AMI, and the average median income of the Occupants of the Affordable Senior Housing Parcel shall not exceed eighty percent (80%) of AMI.

5.2 Temporary Structures. No Building or other Structure of a temporary nature shall be allowed on any Parcel at any time except that of an Owner's contractors and subcontractors during the period of construction of or repairs to Buildings and other Structures on such Parcel.

5.3 Repair and Maintenance. Except for the Common Area (which shall be repaired and maintained by the Association as provided in Section 2.5) and any public utilities and public roads within the Property (which shall be maintained by the applicable Governmental Authority), the Owner of each Parcel shall continually repair, keep, and maintain such Owner's Parcel and all Buildings, Structures and other improvements on such Owner's Parcel, including all parking lots, drives, driveways, sidewalks, pedestrian paths, and Utility Lines and Facilities within the boundaries of such Parcel in a safe, clean, neat, and sanitary condition and a good and serviceable state of repair and condition and shall comply in all respects with all governmental zoning, health, environmental, fire, and police requirements applicable to such Parcel and all improvements thereon. Each Owner shall remove at its expense any rubbish of any character which may accumulate on such Owner's Parcel. Without limiting the generality of the foregoing, during construction of any Buildings, Structures and other improvements on a Parcel, (a) the Owner thereof shall keep the construction site free of unsightly accumulation of trash, debris, rubbish and scrap materials, and (b) construction materials, trailers, shacks, and the like employed in connection with such construction shall be kept in a neat and orderly manner and condition at all times.

5.4 General Requirements and Restrictions Regarding Construction.

(a) All construction activities within the Property shall be performed in a good and workmanlike manner, using first-class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Property.

(b) All construction activities within the Property shall be performed so as not to unreasonably interfere with (i) any construction work being performed on the remainder of the Property (or any part thereof) and (ii) the use, occupancy, or enjoyment of any other portion of the Property (or any part thereof) or the business conducted on any other portion of the Property or by any other Owner or Occupant; provided, however, construction staging located wholly within an Owner's Parcel and customary and typical noise, dust, traffic, and debris arising out of or related to construction of improvements on a Parcel shall not be considered unreasonable interference.

(c) Each Owner shall diligently complete all construction activities within its Parcel as quickly as commercially reasonable, shall regularly (as needed) clean the roadways and driveways used by its construction vehicles of mud, dirt, and construction debris and, upon completion of all construction activities, shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work. If an Owner does not fulfill the terms of this Section 5.4(c) relating to regular cleaning of roadways and driveways or restoration of same, the Association shall have the right to perform, or cause to be performed, such obligations of the relevant Owner, and the Association shall be deemed to have contracted with the relevant Owner for such work and materials and shall be entitled to (i) levy a Specific Assessment against such Owner's Parcel for such costs incurred by the Association and, (ii) if such Specific Assessment is not paid by such Owner in a timely manner under this Declaration, file a mechanic's lien against the relevant Owner's Parcel for the cost of such work and materials attributable to activities on such Owner's Parcel, with all rights incident thereto, all in accordance with applicable laws and regulations and with this Declaration. The

Association shall reasonably account to any such Owner for all expenses incurred in performing such obligations under this Section 5.4(c).

5.5 Architectural and Development Standards.

(a) Approval of Development.

(i) The Association shall have full architectural review and approval rights relating to the development of the Property. The development of the Property must at all times comply with the provisions of the Approved Rezoning Petition (including, without limitation, Article IV (Architectural Standards), Article V (Parking), Article VI (Environmental Features), and Article VII (Lighting) of the Approved Rezoning Petition).

(ii) The Affordable Senior Housing Development on the Affordable Senior Housing Parcel shall be a single structure located wholly within the relevant building footprint shown on the Approved Rezoning Petition comprised of a combination of portions of brick, natural stone (or its synthetic equivalent), stucco, cementitious siding, fiber cement, and glass, having no more than four (4) stories in height and shall not exceed ninety thousand (90,000) gross square feet in size.

(iii) Before commencing the construction, reconstruction, relocation or alteration of any Buildings, additions, enclosures, fences, loading docks, entranceways, exit ways, curb cuts, parking facilities, storage yards, landscaping or any other Structures or permanent improvements on any Parcel, the Owner of such Parcel first shall submit its building plans, site and landscape plans, irrigation plans, and an elevation sketch (collectively, the "*Plans*") of all improvements to be placed thereon to the Association for its written approval. Plans shall be in such detail and form and shall contain such information as may be reasonably required by the Association, but in any event shall include, at a minimum, (1) a site development plan of the intended improvements to be developed on such Parcel showing the nature, grading scheme, kind, shape, materials and location of same, including all setback lines, of all Buildings, Structures and other improvements, the location thereof, and the number and location of all parking spaces and driveways on the applicable Parcel, (2) a landscaping plan, (3) a signage and lighting plan, and (4) a building elevation plan showing dimensions, materials and the exterior color scheme of all proposed Buildings and Structures. The Plans are not required to include interior layouts and improvements of Buildings and Structures to be constructed on the Parcel. The Association shall have the right to disapprove any Plans submitted hereunder because of any of the following:

- (1) Failure to comply with this Declaration, the Approved Rezoning Petition, or applicable laws, codes, rules and regulations of Governmental Authorities;
- (2) Failure to include information in the Plans as may be specified in this Declaration or as may have been reasonably requested by the Association;
- (3) Objection to the exterior design, appearance, or materials of any proposed Building, Structure or other improvement;
- (4) Objection on the ground of incompatibility of any proposed Building, Structure or use with the existing Structures or uses upon other portions of the Property;
- (5) Objection to the location of any proposed Building, Structure or other improvement;
- (6) Objection to the grading plan;
- (7) Objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Buildings, Structures or other improvements;
- (8) Objection to the number or size of parking spaces or the design or location of parking areas proposed for any Parcel; or

(9) Any other matter which, in the reasoned judgment of the Association, would render the proposed Buildings, Structures and other improvements or use inharmonious with the general plan of development and improvement of the remainder of the Property or with Buildings, Structures and other improvements located on the remainder of the Property. In any case in which the Association shall disapprove any Plans or shall approve same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action is based. In any such event, the Association, if requested, shall make reasonable efforts to assist and advise the applicant so that an acceptable revision of the Plans can be prepared and resubmitted for the Association's approval. If the Association fails to approve, disapprove, or grant a qualified approval of any Plans submitted by an Owner within thirty (30) days after submission, then such Owner may send written notice to the Association, which notice shall state that the Association failed to respond to the initial submission (or resubmission) within the prescribed period of time under this Declaration, set forth the date of the initial submission or the most recent resubmission of the Plans and attach the Plans for the Association's review. If the Association fails to approve, disapprove, or grant a qualified approval of the Plans within ten (10) business days after receipt of such subsequent written notice from the applicable submitting Owner, then said Plans shall be deemed approved. However, no approval, whether expressly granted hereunder or deemed granted pursuant to the immediately preceding sentence, shall (a) waive or modify the terms of this Declaration, or (b) permit any use, design, construction, Building, Structure, plan, or specification that is expressly prohibited by this Declaration or Governmental Authorities.

(iv) Notwithstanding any provision in this Declaration to the contrary, in the event preliminary plans are submitted for the purpose of schematic or other preliminary approval, approval by the Association of any such preliminary plans shall not relieve the Owner from its obligation to obtain the approval of the Association for Plans required pursuant hereto. Provided, however, if and to the extent any preliminary plans are submitted by an Owner to the Association hereunder and are approved in writing by the Association, the Association shall not be entitled to disapprove any subsequent submittal of Plans hereunder relative to specific items and details that were set forth and addressed in the preliminary plans previously approved.

(v) If the Association approves Plans, the actual construction in accordance with the Plans shall be the responsibility of the Owner that requested the approval of such Plans. Upon the completion of the Buildings, Structures and other improvements on the Parcel and prior to occupancy of same, the relevant Owner shall notify the Association in writing (by certified or registered mail, return receipt requested or by nationally recognized overnight delivery service) of such completion, and the Association shall have ten (10) business days thereafter to inspect such Buildings, Structures and other improvements to ensure they have been completed in accordance with the Plans previously approved by the Association; provided, however, non-material and non-substantive changes shall not be deemed non-compliance. In the event that material or substantive changes have been made from the original Plans approved or deemed approved by the Association and such changes were not previously approved in writing by the Association, the occupancy of the Buildings, Structures and other improvements on the Parcel shall be delayed until necessary corrections to the Buildings, Structures and other improvements have been made by the relevant Owner (if so required by the Association).

(b) Exculpation. The approval by the Association of any preliminary plans or Plans or any other approvals or consents given by the Association pursuant hereto or otherwise shall not be deemed a warranty, representation or covenant that any such Buildings, Structures or other improvements constructed pursuant to such preliminary plans or Plans or other action taken pursuant hereto or in reliance thereon complies with any or all applicable laws, rules, requirements or regulations, the sole responsibility for such compliance being upon the relevant Owner; and the Association is expressly released and relieved of any and all liability and responsibility in connection therewith.

5.6 Rights of Inspection. Any agent of the Association may, at any reasonable time or times, upon reasonable advance notice, enter upon and inspect any Parcel and Buildings, Structures

and other improvements thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction or alteration of Buildings, Structures and other improvements thereon and the use or uses conducted thereon are in compliance with the provisions hereof. In connection with any such inspection under this Section 5.6, the Association and its agents shall employ commercially-reasonable efforts to minimize disruption to the operation and occupancy of the Parcel or any Buildings, Structures or other improvements being inspected. Additionally, subject to the foregoing requirements and limitations, neither the Association nor any agent of the Association shall be deemed to have committed a trespass or other wrongful act by reason of any such entry or inspection. Notwithstanding the foregoing, neither the Association nor any agent of the Association may, without the consent of the Owner of the applicable Parcel, in such Owner's sole discretion, enter into any Buildings or Structures during the exercise of the inspection right under this Section 5.6.

## **ARTICLE VI** **Use Restrictions**

### 6.1 Use Restrictions.

(a) Basic Use Restrictions. No portion of the Property shall be used for or in support of the following: (i) gaming activities (including, but not limited to, gambling, electronic gaming machines, slot machines and other devices similar to the aforementioned), billiard parlor, any place of recreation/amusement, or any business whose principal revenues are from the sale of alcoholic beverages for on or off premises consumption; (ii) a theater; (iii) a temporary festival; (iv) community education; (v) a bus transfer station; (vi) a beer and cigarette market; (vii) a furniture store; (viii) a flea market; (ix) alternative financial services; (x) mobile home dwelling; (xi) boarding house; (xii) domestic hens; (xiii) security residence; (xiv) short term rental property; (xv) correctional facility; (xvi) dormitory; (xvii) animal boarding facility; (xviii) auction house; (xix) automobile convenience/parking/repair/sales and service; (xx) boat storage; (xxi) donation center/drop off; (xxii) major appliance repair; (xxiii) mobile storage unit; (xxiv) mobile vendor; or (xxv) self-service storage (collectively, the "***Basic Use Restrictions***").

(b) Noxious Use Restrictions. No portion of the Property shall be used for or in support of the following: (i) involuntary human detention or incarceration; (ii) adult book store, adult video store (an adult video store is a video store that sells or rents videos that are rated NC-17, X, XX, XXX, or a rating assigned to works containing material more sexually explicit than XXX, by the film rating board of the Classification and Rating Administration), "adult" business activities, including, without limitation, any massage parlor, escort service, facility with nude (or partially nude, bathing suit-clad or lingerie-clad) models or dancers or any establishment selling or exhibiting sexually explicit materials; (iii) bar or night club; or (iv) any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana or any synthetic substance containing tetrahydrocannabinol, any psychoactive metabolite thereof, or any substance chemically similar to any of the foregoing, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant, provided such prohibition in this clause (iv) shall not be deemed or construed to prevent the delivery of any such substances to, or the receipt, possession and use of any such substances by, tenants and Occupants of the Property, including tenants and Occupants, if and to the extent such activity is legal at such time under all applicable state and federal laws (collectively, the "***Noxious Use Restrictions***").

6.2 Enforcement. The Basic Use Restrictions and the Noxious Use Restrictions shall run with and bind title to the Property and shall bind and inure to the benefit of all Parcels and Owners by any appropriate proceedings at law or in equity to prevent violations of such covenants, conditions, and restrictions and/or to recover damages for such violations, including, without limitation, damages incurred. Occupants of the Property shall not each individually have a right to enforce the Basic Use Restrictions and the Noxious Use Restrictions, and such right to enforce the Basic Use Restrictions and the Noxious Use Restrictions is a right vested solely in the Owners.

6.3 Occupants Bound. All provisions of this Declaration, including the Basic Use Restrictions and the Noxious Use Restrictions, which govern the conduct of Owners also apply to Occupants even though Occupants may not be specifically mentioned herein.

**ARTICLE VII**  
**Insurance Provisions**

7.1 Association Insurance.

7.1.1 Fire and Casualty Insurance. The Association, acting through a duly-authorized agent, shall obtain blanket "all risk" insurance, if reasonably available at a commercially-reasonable cost, for all insurable improvements on or comprising the Common Area. If such blanket "all risk" coverage is not generally available at a commercially-reasonable cost, fire and extended coverage insurance, including coverage for vandalism and malicious mischief, shall be obtained for any such Common Area improvements. The face amount of any such policy under this Section 7.1.1 shall be sufficient to cover the full replacement cost of the insured property (exclusive of the cost of excavation, foundations, and footings).

7.1.2 Commercial General Liability Insurance. The Association shall also obtain a commercial general liability insurance policy covering the Association and the Common Area, insuring the Association and its representatives for all damage or injury caused by the negligence of the Association or representatives, employees, agents or contractors acting on its behalf. If generally available at a commercially-reasonable cost, the commercial general liability insurance policy shall provide coverage of at least Five Million and No/100 Dollars (\$5,000,000) combined single-limit per occurrence and in the aggregate. The Association shall also obtain, if available at a commercially-reasonable cost, an umbrella insurance policy providing coverage of at least Five Million and No/100 Dollars (\$5,000,000) in additional coverage, bringing such total commercial general liability insurance coverage to at least Ten Million and No/100 Dollars (\$10,000,000). The Association may satisfy its liability insurance coverage requirements under this Section 7.1.2 by means of a primary policy and one or more "umbrella" or excess liability policies (which must be on a "following form" basis) sufficient to provide the total coverage (from the primary and umbrella policies combined).

7.1.3 Fidelity Insurance/Bond. The Association shall also obtain a fidelity bond or bonds, if generally available at a commercially-reasonable cost, covering all persons responsible for handling Association funds. The amount of such insurance coverage shall be determined by the Association in its reasonable judgement, but, if available at a commercially-reasonable cost, such coverage amount shall be at least twenty-five percent (25%) of the Annual Assessments levied on all Parcels. Such fidelity bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, non-renewal or substantial modification.

7.1.4 Officer's and Director's Insurance. The Association shall also obtain officer's and director's liability insurance in such amounts as the Board of Directors shall reasonably determine.

7.1.5 Premiums/Deductibles. Premiums for all insurance coverage maintained by the Association shall be included in the Annual Assessments. Such insurance policies may contain reasonable deductibles which shall be disregarded in determining whether the insurance meets the coverage requirements stated in this Declaration. In the event of an insured loss, the deductible amount shall be treated in the same manner as the premiums for the applicable insurance coverage under this Declaration and may be included in Annual Assessments hereunder. However, if the Association reasonably determines, after notice and an opportunity to be heard, that any insured loss resulted from negligence or willful misconduct of one or more Owners, then the Association may assess the full amount of such deductible against such Owner(s) and their Parcels as a Specific Assessment under Section 4.7.

7.2 Insurance of Owners.

7.2.1 Commercial General Liability Insurance. Each Owner shall maintain or cause to be maintained in full force and effect a comprehensive policy of commercial general liability insurance for any and all claims for damage to property and/or for any personal injury or loss of life in, upon, or about the Property (including the Common Area) in a combined single-limit amount of not less than Two Million Dollars (\$2,000,000) per occurrence. Such insurance shall extend to the contractual obligations of the insured party arising out of any indemnification obligations set forth in this Declaration. The Owners may satisfy their liability insurance coverage requirements under this Section 7.2.1 by means of a primary policy and one or more "umbrella"

or excess liability policies sufficient to provide the total coverage (from the primary and umbrella policies combined).

7.2.2 Fire and Casualty Insurance. Effective upon the commencement of construction of Buildings, Structures and other improvements on a Parcel, the Owner of such Parcel shall carry, or cause to be carried, fire and casualty insurance (with an extended coverage endorsement) in an amount at least equal to one hundred percent (100%) of the replacement cost (exclusive of the cost of excavation, foundations, and footings) of all Buildings and Structures constructed on its Parcel, insuring against causes or events which from time to time are included as covered risks under standard insurance industry practices within the classification of fire and casualty insurance with an extended coverage or "all risk" endorsement, and specifically against at least the following perils: loss or damage by fire, windstorm, tornado, hail, explosion, malicious mischief, vandalism, aircraft, vehicle, and smoke damage.

7.2.3 Insurance Relating to Construction Activities. Prior to commencing any construction activities within the Property, the Owner performing or causing to be performed such construction activities shall obtain and maintain, or cause to be obtained and maintained, so long as such construction activity is occurring, at least the following minimum insurance coverages:

Workers' Compensation - statutory limits

Employer's Liability - \$500,000

Comprehensive General Liability on an occurrence basis with personal injury coverage and broad form property damage as follows:

Bodily Injury - \$2,000,000 per person, \$2,000,000 per occurrence

Property Damage - \$2,000,000 per occurrence, \$5,000,000 aggregate

Comprehensive Automobile Liability, including Non-Ownership and Hired Car Coverage as well as owned vehicles with at least the following limits:

Bodily Injury - \$500,000 per person, \$1,000,000 per occurrence

Property Damage - \$250,000 per occurrence

7.3 Insurance Company Requirements. All insurance coverage required to be maintained by the Association or by Owners under this Declaration shall be issued by an insurer that is licensed to do business in the State of North Carolina and that has a policy holder rating of at least A- and financial size category of at least Class X, as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies.

7.4 Construction Activity. If construction activity of an Owner involves the use of a Parcel owned by a different Owner (as specifically contemplated and permitted herein) or use of Common Area owned by another Owner or in fee simple by the Association (if applicable), then the constructing Owner shall deliver to the Owner of any such other Parcel or Common Area (or to the Association if it owns a fee simple interest in any such Common Area) on which construction activity will occur a certificate of insurance (and applicable policy endorsements) evidencing the policy amounts required under this ARTICLE VII, naming the burdened Owner and the Association (as applicable) as an additional insured, and stipulating that such insurance policies shall not be canceled without at least thirty (30) days prior written notice to all of the named insureds (including the other Owner on whose Parcel the construction activity is occurring or the Association, in the case of uses of any Common Area owned in fee simple by the Association). Master Developer's insurance obligations relating to the completion of the Infrastructure Work are addressed in, and shall be controlled by, the terms and provisions of the Master Infrastructure Agreement.

7.5 Waiver of Subrogation. Any policy of insurance maintained by an Owner under this ARTICLE VII shall include a waiver of subrogation by the insurer against the other Owners and the Association. Each Owner hereby waives any rights of recovery against the Association and any other Owner and its or their directors, officers, members, employees, agents, and tenants for any damage or consequential loss which is covered by or would be covered by the policies required to be carried by such Owner under this ARTICLE VII.

**ARTICLE VIII**  
**Miscellaneous Provisions**

8.1 Duration; Modification.

(a) Duration. The terms and provisions of this Declaration shall be appurtenant to, and shall run with and bind title to, the Property and all of the Parcels therein and shall be binding upon and inure to the benefit of all Owners of the Property and of Parcels therein, and their respective heirs, executors, legal representatives, successors and assigns, all other parties hereafter having an interest in any portion of the Property or Parcels therein (including Occupants), Master Developer (if and as expressly set forth herein) and all parties claiming by, through or under them and shall be and remain in full force and effect to the fullest extent permitted by law for a period of fifty (50) years from the date of filing this Declaration in the Registry. Thereafter, as then in force, this Declaration shall be renewed and extended automatically for successive ten (10) year periods without further notice and without limitation, unless terminated as provided in Section 8.1(b). Every purchaser, grantee or assignee of any interest in the Property or Parcels therein, by acceptance of a deed or other instrument of conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property and Parcels therein as provided hereby. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS DECLARATION, ANY EASEMENTS GRANTED OR RESERVED HEREUNDER ARE AND SHALL BE PERPETUAL AND NON-EXCLUSIVE IN NATURE AND SHALL RUN WITH THE PROPERTY AND PARCELS THEREIN EXCEPT TO THE EXTENT, IF ANY, OTHERWISE PROVIDED IN THIS DECLARATION.

(b) Modification, Amendment or Termination. This Declaration may be terminated or amended only with the consent of all of the Owners, by recording in the Registry such amendment, signed by all of the Owners, changing or terminating said covenants and restrictions, in whole or in part. For the avoidance of doubt, this Declaration may be terminated or amended without the consent of Master Developer, unless Master Developer also is an Owner at such time.

8.2 Enforcement Powers. Any violation of this Declaration, whether in whole or in part, is hereby declared to be a nuisance and, without limitation, the Association or any Owner shall be entitled to avail itself of all remedies available under applicable law or in equity for the abatement of a nuisance in addition to all other rights and remedies set forth hereunder or otherwise available at law or in equity; provided, however, in no event shall Master Developer, any Owner, or the Association be liable for any consequential, speculative, or punitive damages under this Declaration, except to the extent (a) such consequential, speculative, or punitive damages are incurred by an unrelated third party as a result of acts of the indemnifying party which acts are covered by an indemnification obligation of the indemnifying party under this Declaration and which the Indemnified Party is held liable for, and is required to pay, and (b) the Indemnified Party did not take any action to assume or contractually agree to be liable to such unrelated third party for such consequential, speculative, or punitive damages. This Declaration also may be enforced by the Association by proceedings at law or in equity against the person, firm or other entity violating or attempting to violate any covenant or covenants herein, either to restrain the violation thereof or to recover damages together with attorneys' fees and court costs. Master Developer shall be entitled to enforce only provisions in this Declaration that are, by their terms, expressly intended to benefit Master Developer (e.g., construction easement rights under Section 3.5.1). No Occupant of the Property shall individually have a right to enforce this Declaration, unless such Occupant also is an Owner.

8.3 Partial Invalidity/Unenforceability. Any invalidation or unenforceability of any one or more of the restrictions or provisions set forth in this Declaration by judgment, court order, or statute or failure on the part of the Association or any Owner or Master Developer (to the extent applicable to Master Developer) to enforce any of said restrictions or provisions shall in no way affect any of the other restrictions or provisions hereof.

8.4 Binding Effect: Waiver. Except as otherwise specifically provided herein, this Declaration shall bind and inure to the benefit of and be enforceable by the Association and the Owners of the Parcels and their respective heirs, successors, and assigns and by Master Developer and its successors and assigns (if and as expressly set forth herein). The failure of any person or entity entitled to enforce this Declaration or any provision hereof to enforce the same shall not be deemed a waiver of the right of any such person or entity to enforce this Declaration or any portion thereof thereafter. Waiver or any attempted waiver of this Declaration with respect to any Parcel



shall not be deemed a waiver thereof as to any other Parcel nor, with respect to the Parcel in question, as to any subsequent violation, nor shall the violation of this Declaration with respect to any one Parcel affect the applicability or enforceability of this Declaration with respect to any other Parcel(s).

8.5 Compliance with Applicable Law. The Owners and Occupants of the Parcels shall at all times comply with applicable laws of Governmental Authorities (including the Approved Rezoning Petition). This Declaration shall not be interpreted as permitting any action or thing prohibited by applicable zoning laws (including the Approved Rezoning Petition), or any laws (including environmental laws), ordinances, or regulations of Governmental Authorities or by specific restrictions imposed by any deed or other instrument of conveyance. In the event of any conflicts, the most restrictive provision shall govern and control.

8.6 Applicable Only to Property. Nothing contained in this Declaration shall be held or construed to impose any restrictions, covenants, or easements on any other land except for the land contained within the description of the Property.

8.7 Subdivision/Rezoning. No Owner may subdivide a Parcel or seek or apply for rezoning, changes or proffers, special use permits or special exceptions for any Parcel or any part thereof without the prior written consent of the Association, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, in connection with the initial development of the Property, (a) Townhome Developer intends to further subdivide the Townhome Parcel into townhome lots and residual land area(s) (including Common Area, e.g., the portions of the Townhome Parcel where the entrance monument and associated signage, Common Roads and the Permanent Stormwater Facility will be located) and (b) Multi-Family Developer intends to further subdivide the Multi-Family Parcel into parcels to be developed as a multi-family project, the Affordable Senior Housing Development, and residual land area(s) (including Common Area, e.g., the portions of the Multi-Family Parcel where Common Roads will be located); and such further subdivision of the Townhome Parcel and the Multi-Family Parcel described in this sentence shall not require any consent or approval of the Association so long as such subdivision is completed in accordance with the Approved Rezoning Petition.

8.8 Estoppel Certificates. The Association shall, within thirty (30) days after the written request of any Owner, certify by a written instrument, duly executed and acknowledged, to any purchaser or proposed purchaser, or Mortgagee or proposed Mortgagee, or any other party specified in the request: (a) whether this Declaration has been supplemented or amended, and if so, the nature of the supplement or amendment; (b) whether there exists any default under this Declaration relating to the Owner and Parcel in question, and if so, a description of that default; (c) whether there exists any offset, defense or counterclaim on the part of the Association as to the performance of its obligations under this Declaration, and if so, a description of the nature and amount of any such offset, defense or counterclaim; and (d) such other matters as may reasonably be requested.

8.9 Mortgagees' Protection; Subordination of Liens. Violation of this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value upon any portion of the Property. Any lien created hereunder shall be junior and subordinate to any such Mortgage unless a suit to enforce such lien under this Declaration shall have been filed in a court of competent jurisdiction prior to the recordation of such Mortgage; provided, however, any Mortgagee in actual possession and any purchaser at any foreclosure sale shall be bound by and be subject to this Declaration as fully as any other Owner of a Parcel, effective upon taking possession of such Parcel or portion of the Property (in the case of a Mortgagee in actual possession) or upon the date of acquisition of title to such Parcel or portion of the Property (in the case of a purchaser at any foreclosure sale or deed-in-lieu of foreclosure).

8.10 Indemnification. The Association and each Owner shall each indemnify, defend, release and save harmless the other and the other's affiliates, members, partners, officers, employees, directors, managers and agents (each, an "*Indemnified Party*," and collectively, the "*Indemnified Parties*") from and against any and all claims, demands, losses, damages, expenses (including reasonable attorneys' fees), liens, charges and liabilities of every kind and description, including personal injury, loss of life, and property damage (collectively, "*Claims*"), arising from the exercise of the rights granted under this Declaration, or the use or occupancy of, or any activities on or about, the Common Area by any of them or their respective Indemnified Parties, except to the extent arising out of the negligent acts or omissions or willful misconduct of such

Indemnified Party. The indemnifications obligations in this Section 8.10 shall (a) be subject to the terms and provisions in Section 8.2 relating to consequential, speculative, or punitive damages (as properly applied in the context of this Section 8.10) and (b) survive the expiration or any termination of this Declaration.

8.11 Master Developer. Master Developer joins this Declaration for the sole purpose of consenting to and accepting Master Developer's rights and obligations under this Declaration related to Master Developer's completion of the Infrastructure Work in accordance with the terms of this Declaration and the Master Infrastructure Agreement. Master Developer's rights and obligations under this Declaration are personal in nature and shall terminate upon the earlier to occur of: (a) the completion of the Infrastructure Work in accordance with the Master Infrastructure Agreement and the public dedication of (i) the Utility Lines and Facilities intended to be publicly dedicated by the Master Developer in accordance with the terms of the Master Infrastructure Agreement and the Construction Schedule (as such term is defined in the Master Infrastructure Agreement) attached as an exhibit thereto, (ii) Public Street A, and (iii) Public Street B; and (b) December 31, 2024.


[Signature pages follow]

**MULTI-FAMILY DEVELOPER:**

**CC Ballantyne, LLC,**  
a Delaware limited liability company

By: CC Ballantyne Member, LLC,  
a Delaware limited liability company  
Its: Managing Member

By: Crescent Communities, LLC,  
a Delaware limited liability company  
Its: Manager

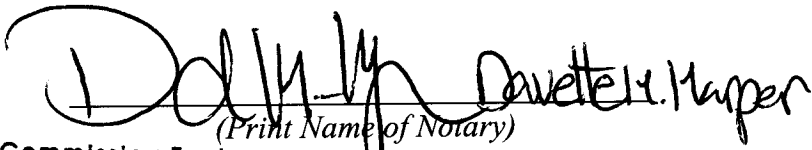
By:   
Name: Jason LaBonte  
Title: Authorized Signatory

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

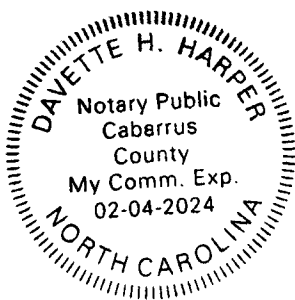
I certify that the following person personally appeared before me this day and is personally known to me or identified by me through satisfactory evidence, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jason LaBonte.

Date: December 2, 2021

  
(Print Name of Notary)

Notary Public  
My commission expires: \_\_\_\_\_  
**My Commission Expires  
02-04-2024**

[AFFIX OFFICIAL SEAL]



**TOWNHOME DEVELOPER:**

**CCP Harmon Ballantyne PropCo, LLC,**  
a Delaware limited liability company

By: CCP Harmon Ballantyne SubREIT, LLC,  
a Delaware limited liability company,  
its sole member

By: CC BTR PI, LLC,  
a Delaware limited liability company,  
its manager

By: Crescent Communities, LLC,  
a Delaware limited liability company,  
its sole member

By: [Signature]  
Name: Jason LaBonte  
Title: Authorized Signatory

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I certify that the following person personally appeared before me this day and is personally known to me or identified by me through satisfactory evidence, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jason LaBonte.

Date: December 2, 2021

[Signature]  
*(Print Name of Notary)*  
Davette H. Harper

Notary Public  
My commission expires: \_\_\_\_\_  
My Commission Expires  
02-04-2024

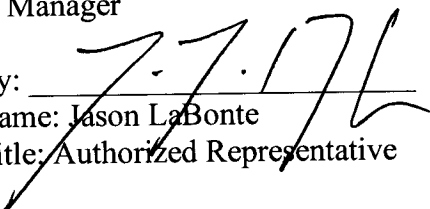
[AFFIX OFFICIAL SEAL]



**MASTER DEVELOPER:**

**CC BALLANTYNE MDE, LLC,**  
a Delaware limited liability company

By: Crescent Communities, LLC,  
a Delaware limited liability company,  
its Manager

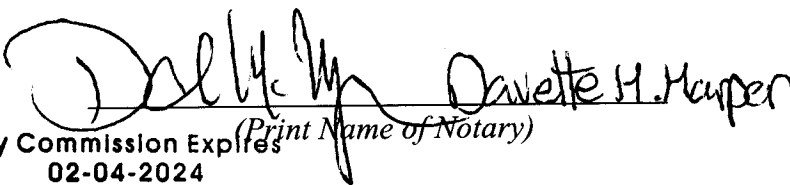
By:   
Name: Jason LaBonte  
Title: Authorized Representative

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I certify that the following person personally appeared before me this day and is personally known to me or identified by me through satisfactory evidence, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jason LaBonte.

Date: December 2, 2021

  
My Commission Expires *(Print Name of Notary)*  
**02-04-2024**

Notary Public

My commission expires: \_\_\_\_\_

[AFFIX OFFICIAL SEAL]

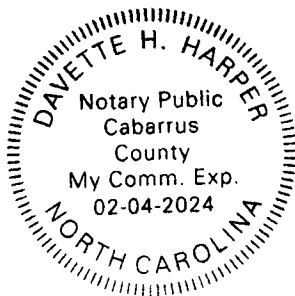
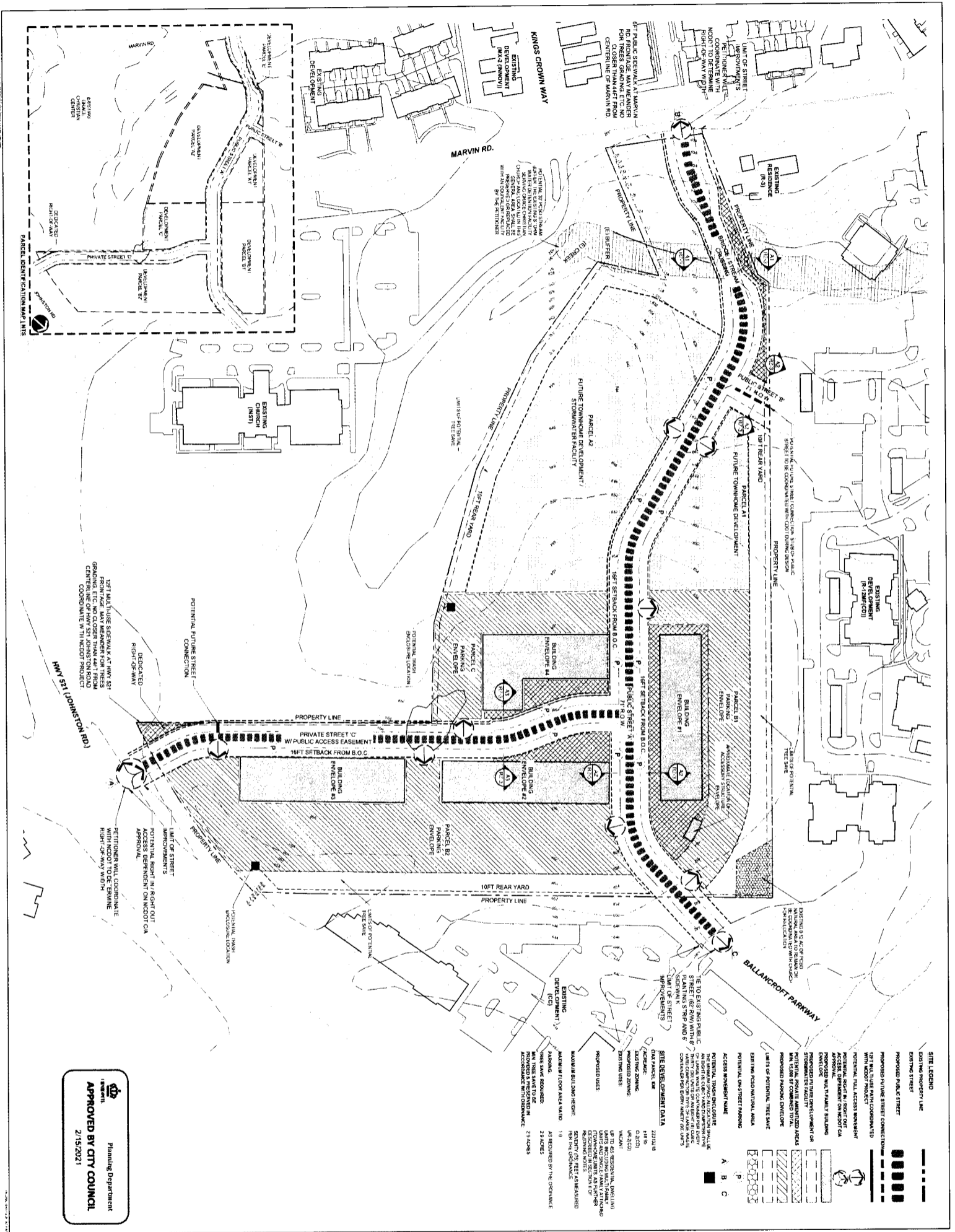


Exhibit A

Approved Rezoning Petition

*(See Attached)*



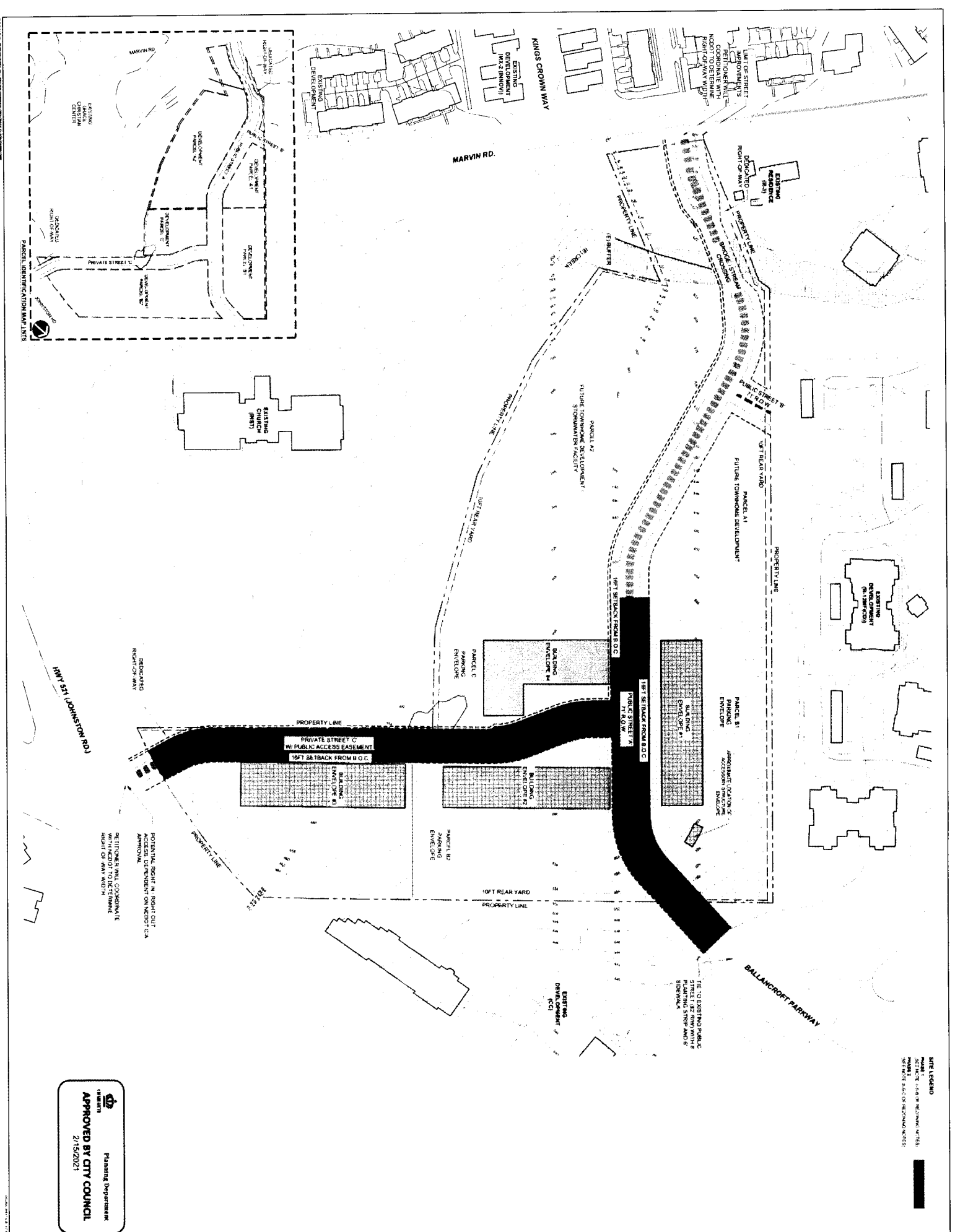
**PRELIMINARY**  
FOR REVIEW ONLY.  
THIS PLAN IS NOT TO BE USED FOR RECORDING OR CONSTRUCTION WITHOUT THE APPROVAL OF THE LOCAL GOVERNMENT.

**NOT FOR CONSTRUCTION**

**REZONING PETITION NO. 2020-145**

**CRESCENT COMMUNITIES**  
DANFORTH RD.  
CHARLOTTE, NC

" This may not be a certified survey and has not been reviewed by local govt. agency for compliance with any applicable land development regulations and has not been reviewed for compliance with recording requirements for plats.



**SITE LEGEND**  
 PARCEL 1: 1/4" = 10' SCALE  
 PARCEL 2: 1/8" = 10' SCALE  
 SEE NOTE 3 AND 4 ON REVISION NUMBER 1

**APPROVED BY CITY COUNCIL**  
 Planning Department  
 2/15/2021

**NOT FOR CONSTRUCTION**

**REZONING PETITION NO. 2020-145**

**CRESCENT CONSULTING**  
 5050 E. 11th Ave.  
 Suite 100  
 Denver, CO 80231  
 303.755.1111

**LandDesign**  
 3175 West 10th Avenue  
 Suite 100  
 Denver, CO 80202  
 303.733.1111

**REVISIONS**

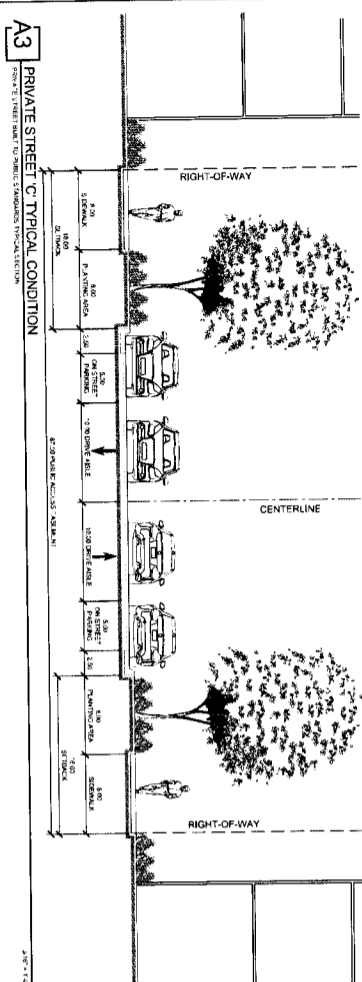
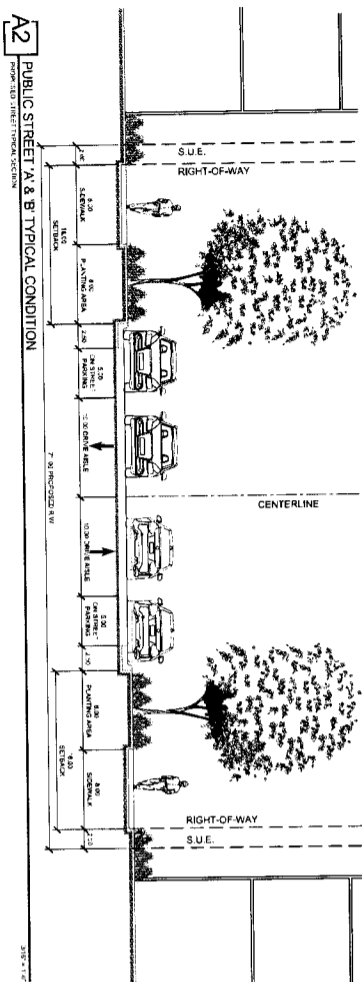
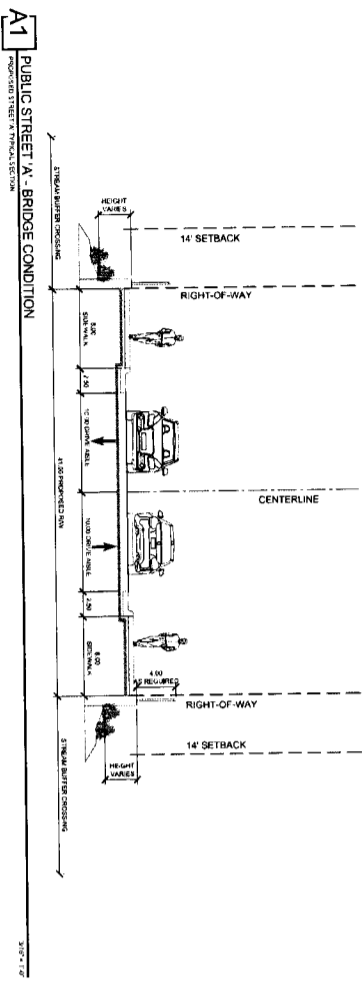
NO.	DATE	DESCRIPTION
1	02/15/2021	ISSUANCE
2	02/15/2021	REVISION
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**RZ-1B**

PROJECT PHASING PLAN







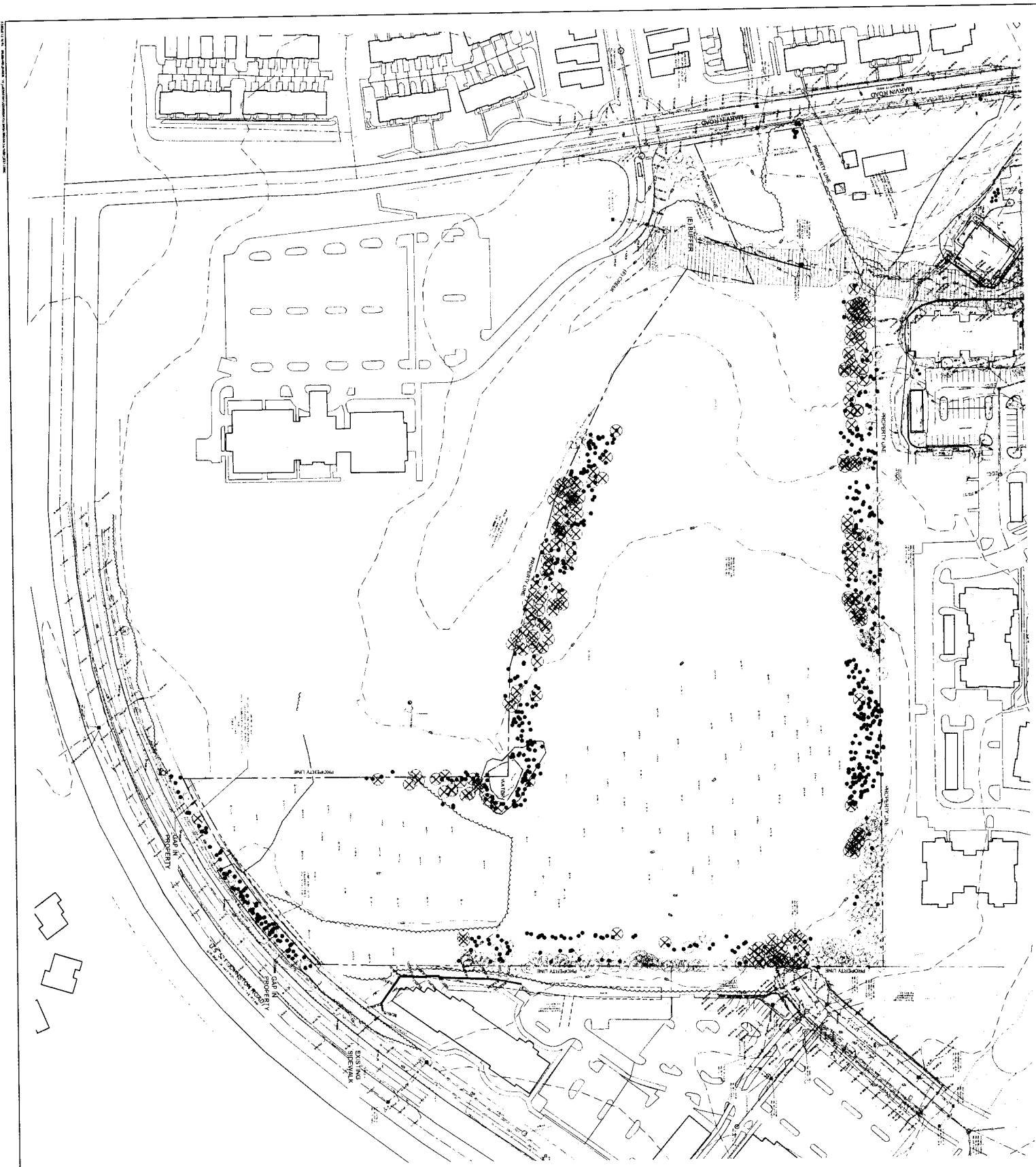
**PRELIMINARY**  
 THIS PLAN IS PRELIMINARY AND NOT FOR CONSTRUCTION. IT IS SUBJECT TO CHANGE WITHOUT NOTICE. THE CLIENT ASSUMES ALL RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREON.


**NOT FOR CONSTRUCTION**

**REZONING PETITION NO. 2020-145**  
 CRESCENT COMMUNITIES  
 4781 WILSON RD.  
 CHARLOTTE, NC

Planning Department  
**APPROVED BY CITY COUNCIL**  
 2/15/2021

NO.	DATE	DESCRIPTION
01	03/27/2020	ISSUANCE
02	07/24/2020	REVISION
03	08/24/2020	REVISION
04	09/24/2020	REVISION
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07	12/24/2020	REVISION
08	01/24/2021	REVISION
09	02/15/2021	REVISION




 Planning Department  
**APPROVED BY CITY COUNCIL**  
 2/15/2021

**LandDesign**  
 2710 EAST HAVEN DRIVE  
 CHARLOTTE, NC 28217  
 WWW.LANDDESIGN.COM  
**CRESCENT**  
 595 DESIGN



**PRELIMINARY**  
 THIS PLAN IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION OR AS A BASIS FOR ANY OTHER DECISIONS. THE CITY OF CHARLOTTE IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE USER OF THIS PLAN ASSUMES ALL LIABILITY FOR ANY SUCH ERRORS OR OMISSIONS.

**NOT FOR CONSTRUCTION**

**REZONING PETITION NO. 2020-145**  
 CRESCENT COMMUNITIES  
 JOHNSON, SE  
 CHARLOTTE, NC

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EXISTING CONDITIONS PLAN  
**RZ-4**

**Exhibit B**

Pro-rata Share

<b>Parcel</b>	<b>Acreage</b>	<b>Pro-rata Share</b>
Multi-Family Parcel	7.39	51%
Affordable Senior Housing Parcel	1.55	11%
Townhome Parcel	5.58	38%

**Exhibit C**

**Bylaws**

**BYLAWS OF  
BALLANTYNE RESIDENTIAL ASSOCIATION, INC.**

**ARTICLE I**

**General**

Section 1.1 Applicability. These bylaws (these “**Bylaws**”) provide for the self-government of Ballantyne Residential Association, Inc., a North Carolina nonprofit corporation, in accordance with North Carolina law, the Articles of Incorporation of the Association filed with the Secretary of State of North Carolina on November 5, 2021 (the “**Articles of Incorporation**”), and the Declaration of Easements, Covenants, Conditions and Restrictions, executed by CC Ballantyne, LLC, a Delaware limited liability company, CCP Harmon Ballantyne PropCo, LLC, a Delaware limited liability company, and CC Ballantyne MDE, LLC, a Delaware limited liability company, dated November 12, 2021, and recorded in the Office of the Register of Deeds of Mecklenburg County (the “**Declaration**”), as may be amended from time to time.

Section 1.2. Name. The name of the corporation is Ballantyne Residential Association, Inc., a North Carolina nonprofit corporation (the “**Association**”).

Section 1.3. Definitions. Capitalized terms used in these Bylaws and not otherwise defined in these Bylaws shall have the meanings ascribed to such terms in the Declaration. The Declaration is hereby incorporated into these Bylaws by reference.

**ARTICLE II**

**Administration of Ballantyne Residential Association, Inc.**

Section 2.1 Authority and Responsibility. The Association shall have the authority and responsibilities set forth under the Declaration.

Section 2.2 Official Action. Unless specifically required in the Declaration, all actions taken or to be taken by the Association shall be valid when such are approved by the Association as hereinafter set forth, or by the person or entity to whom such authority has been duly delegated by the Association as set forth in the Declaration or these Bylaws. The Association shall at all times act in conformity with Chapter 55A of the General Statutes of North Carolina (the “**North Carolina Nonprofit Corporation Act**”), the Declaration and these Bylaws.

**ARTICLE III**

**Offices - Seal - Fiscal Year**

Section 3.1 Principal Office and Registered Office. The initial principal office of the Association shall be 601 South Tryon Street, Suite 800, Charlotte, NC 28202. The initial registered office of the Association shall be 160 Mine Lake Ct., Suite 200, Raleigh, NC 27615, Attn: CT Corporation System.

Section 3.2 Other Offices. The Association may have other offices at such other places within the State of North Carolina as the Board of Directors (defined in Section 5.1) may from time to time determine or as the affairs of the Association may require.

Section 3.3 Seal. The Association may, but is not obligated to, have a seal in circular form having within its circumference the name of the Association, the state of its incorporation, the year of its incorporation and the word "Seal."

Section 3.4 Fiscal Year. The fiscal year of the Association shall be the calendar year.

## ARTICLE IV

### Membership

Section 4.1 Qualification. Membership in the Association shall be limited to the Owners of the Parcels, or their respective successors to the fee simple interest of such Parcel as a result of acquisition of such Parcel, whether transferred voluntarily or involuntarily, by foreclosure or other remedy pursuant to any Mortgage that encumbers such Parcel. Each Owner shall automatically be a member (a "**Member**") of the Association for so long as it is an Owner of a Parcel. Membership in the Association shall be appurtenant to and may not be separated from Parcel ownership. In the event any Parcel is submitted to a condominium regime in accordance with the North Carolina Condominium Act set forth in Chapter 47C of the General Statutes of North Carolina (as amended, supplemented or replaced from time to time), or is further subdivided (subject to the limitations on subdivision set forth in Section 8.7 of the Declaration) and is submitted to a sub-declaration instrument, the applicable owner's association for such condominium or sub-declaration shall be treated as the Owner of such Parcel for all purposes under the Declaration and these Bylaws.

Section 4.2 Authority. The authority of the Members of the Association is limited to: (a) the appointment of Representatives (defined in 0) to the Board of Directors in accordance with 0 of these Bylaws; (b) the termination of or amendment to the Declaration in accordance with Section 8.1(b) of the Declaration; (c) the amendment or modification to these Bylaws in accordance with ARTICLE VII of these Bylaws; and (d) the decision to impose Special Assessments in accordance with Section 4.6 of the Declaration. The remainder of the authority granted to the Association under the Declaration is vested in the Board of Directors.

Section 4.3 Voting. Each Member of the Association shall hold one (1) vote except as otherwise specified in these Bylaws or in the Declaration. Pursuant to Section 8.1(b) of the Declaration, the decision to terminate or amend the Declaration shall require the unanimous vote of all of the Members.

Section 4.4 Place of Meetings. Meetings of the Association shall be held at a place in Mecklenburg County, North Carolina, designated by the Association.

Section 4.5 Meetings by Telephonic, Video, or Other Conferencing Process. If the Association determines that a meeting of the Members can be held effectively by telephonic, video, or other conferencing process, then the Association may allow for meetings to be held by telephonic, video, or other conferencing process as specified and in accordance with an authorizing resolution adopted by the Members, provided that: (x) the meeting notice states the conferencing process to be used and provides information explaining how Members may participate in the conference directly or by meeting at a central location or conference connection; and (y) the process provides all Members the opportunity to hear or perceive the discussion and offer comments regarding any matter affecting the Association to the same extent as at in-person Association meetings.

Section 4.6 Annual Meetings. The Members are not required to hold annual meetings of the Association ("**Annual Meetings**"; each, an "**Annual Meeting**").

Section 4.7 Special Meetings. Special, non-regularly scheduled meetings of the Association (“**Special Meetings**”) may be demanded and called for by any Member of the Association by written request to the other Members of the Association. Following the request, a meeting may be called by a majority of Members, whose consent to hold a Special Meeting shall not be unreasonably withheld. Each Member shall have one (1) vote regarding the decision to hold a Special Meeting. A notice for the Special Meeting will then be put out in accordance with the provisions set forth in Section 4.8. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of or request for such meeting.

Section 4.8 Notices of Meetings. Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to these Bylaws, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of any such membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to all Members of the Association. The notice of meeting shall specifically state the purpose or purposes for which the meeting is called. A Member’s attendance at a membership meeting waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

Section 4.9 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of all of the Members in the Association shall constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented.

Section 4.10 Proxies. Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by its duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in its place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. A Member may not revoke a proxy given pursuant to this Section 4.10 except by written notice of revocation delivered to the Members of the Association.

Section 4.11 Actions Without Meeting. Any action which may be taken at a meeting of the Association may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

Section 4.12 Compensation. No Member of the Association shall receive any compensation from the Association for acting in such capacity; provided, however, that each Member shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by such Member on behalf of and as authorized by the Association.

Section 4.13 Liability of Members. To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable time, each Member is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of such Member’s activities as a Member, unless such Member (or any of its directors, officers or employees) acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Declaration or these Bylaws. Such indemnity shall be subject to approval by the Members only when such approval is required by the North Carolina Nonprofit Corporation Act. The Association shall reimburse all fees and expenses incurred



by any Member in connection with the investigation, defense, settlement or appeal of any proceeding to which the Member is a party or is threatened to be made a party by reason of the fact that the Member is or was an agent of the Association or by reason of anything done or not done by him or her in any such capacity; provided, however, as a precondition to such reimbursement, such Member shall be required to: (i) give the Association adequate notice of the claim, assertion or imposition of liability to permit the Association and/or its insurer reasonable opportunity to defend against the same, (ii) cooperate with the Association in its defense against such liability, and (iii) provide adequate supporting documentation of any such fees and expenses. The Member shall repay such amounts reimbursed only if, and to the extent that, it shall ultimately be determined that the Member is not entitled to be indemnified by the Association as provided for herein. The reimbursements to be made hereunder shall be paid by the Association to the Member within twenty (20) days following delivery of a written request therefor by the Member to the Association along with reasonable supporting documentation of the fees and expenses. The expense of indemnifying or defending such Member as provided herein shall be a Special Assessment (provided, unless otherwise required by the North Carolina Nonprofit Corporation Act, the necessary affirmative vote required to levy and impose such Special Assessment under Section 4.6 of the Declaration shall conclusively be deemed to have been made, without taking a vote under said Section 4.6, if the requirements for reimbursing such Member under this Section 4.13 are satisfied) and shall be borne by all Members as provided in accordance with the Declaration, including the indemnified Member.

## ARTICLE V

### Board of Directors

Section 5.1 General Powers. The business and affairs of the Association shall be managed by a board of directors (the "**Board of Directors**"); provided, however, the Board of Directors may not act on behalf of the Association to amend the Declaration, to terminate the Declaration, to amend these Bylaws, to appoint Representatives, to impose Special Assessments, or to determine the qualifications, powers and duties, or terms of office of Representatives unless done in accordance with the terms of the Declaration.

Section 5.2 Number, Term and Qualification. The Board of Directors shall consist of five (5) appointed representatives (each, a "**Representative**"; if more than one, "**Representatives**"): The Owner of the Multi-Family Parcel shall have the right to appoint three (3) Representatives to the Board of Directors; the Owner of the Townhome Parcel shall have the right to appoint one (1) Representative to the Board of Directors; and the Owner of the Affordable Senior Housing Parcel shall have the right to appoint one (1) Representative to the Board of Directors. Each Representative shall serve for a term of one (1) year. Representatives may succeed themselves in office. Each Representative shall be automatically re-appointed for a successive term unless the Owner that appointed such Representative appoints a new Representative.

Section 5.3 Initial Representatives. The initial Representatives shall be as follows:

#### **Owner of Multi-Family Parcel Representatives**

Jason LaBonte  
c/o CC Ballantyne, LLC  
601 South Tryon Street, Suite 800  
Charlotte, NC 28202

Katie Maloomian  
c/o CC Ballantyne, LLC  
601 South Tryon Street, Suite 800  
Charlotte, NC 28202

Clarke Crenshaw  
c/o Transwestern Investment Group  
8235 Douglas Avenue, Suite 450  
Dallas, TX 75225

**Owner of Townhome Parcel Representative**

Matthew Johnston  
c/o Pretium Partners, LLC  
810 7th Avenue, 19th Floor  
New York, NY 10019

**Owner of Affordable Senior Housing Parcel Representative**

Michael Tubridy  
c/o CC Ballantyne, LLC  
601 South Tryon Street, Suite 800  
Charlotte, NC 28202

Section 5.4 Compensation. No Representative shall receive any compensation from the Association for acting in such capacity; provided, however, that each Representative shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him or her on behalf of and as authorized by the Association, and nothing herein shall prohibit the Board of Directors from compensating a Representative for unusual and extraordinary services rendered on the basis of *quantum meruit*; and provided, further, that each Representative, by assuming office, waives his or her right to institute suit against, or make claim upon, the Association for compensation based upon *quantum meruit*.

Section 5.5 Loans to Representatives. No loans shall be made by the Association to Representatives.

Section 5.6 Liability of Representatives. To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable time, each Representative is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his or her activities as a Representative, unless such Representative acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Declaration or these Bylaws. Such indemnity shall be subject to approval by the Owners only when such approval is required by the North Carolina Nonprofit Corporation Act. The Association shall reimburse all fees and expenses incurred by any Representative in connection with the investigation, defense, settlement or appeal of any proceeding to which the Representative is a party or is threatened to be made a party by reason of the fact that the Representative is or was an agent of the Association or by reason of anything done or not done by him or her in any such capacity; provided, however, as a precondition to such reimbursement, such Representative shall be required to: (i) give the Association adequate notice of the claim, assertion or imposition of liability to permit the Association and/or its insurer reasonable opportunity to defend against the same, (ii) cooperate with the Association in its defense against such liability, and (iii) provide adequate supporting documentation of any such fees and expenses. The Representative shall repay such amounts reimbursed only if, and to the extent that, it shall ultimately be determined that the Representative is not entitled to be

indemnified by the Association as provided for herein. The reimbursements to be made hereunder shall be paid by the Association to the Representative within twenty (20) days following delivery of a written request therefor by the Representative to the Association, along with reasonable supporting documentation of the fees and expenses. The expense of indemnifying or defending such Representative as provided herein shall be a Special Assessment (provided, unless otherwise required by the North Carolina Nonprofit Corporation Act, the necessary affirmative vote required to levy and impose such Special Assessment under Section 4.6 of the Declaration shall conclusively be deemed to have been made, without taking a vote under said Section 4.6, if the requirements for reimbursing such Representative under this Section 5.6 are satisfied) and shall be borne by all Members as provided in accordance with the Declaration, including the Member that appointed the Representative being indemnified.

Section 5.7 Meetings of the Board of Directors.

(a) Regular Meetings. Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board of Directors. Should any such meeting fall upon a weekend or a legal holiday, then that meeting shall be held at the same time on the next date which is not a weekend or legal holiday.

(b) Special Meetings. Special Meetings shall be held when called by any two (2) Representatives, after not less than three (3) or more than thirty (30) days written notice to each Representative.

(c) Notices of Special Meetings. The notice provided for herein may be waived by written instrument signed by those Representatives who do not receive said notice. Except to the extent otherwise required by law, the purpose of a special meeting of the Board of Directors need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mail with proper postage paid and addressed to the Representative at his or her last known address on file with the Association; or (2) actual delivery to the Representative. A Representative's attendance at a special meeting waives objection to lack of notice or defective notice of the special meeting, unless the Representative at the beginning of the special meeting objects to holding the special meeting or transacting business at the special meeting.

(d) Approved Meeting Place. All Board of Directors meetings shall be held in Mecklenburg County, North Carolina.

(e) Meetings by Telephonic, Video, or Other Conferencing Process. If the Board of Directors determines that a meeting of Representatives can be held effectively by telephonic, video, or other conferencing process, then the Board of Directors may allow for meetings to be held by telephonic, video, or other conferencing process as specified and in accordance with an authorizing resolution adopted by the Board of Directors, provided that: (x) the meeting notice states the conferencing process to be used and provides information explaining how Representatives may participate in the conference directly or by meeting at a central location or conference connection; and (y) the process provides all Representatives the opportunity to hear or perceive the discussion and offer comments regarding any matter affecting the Board of Directors and the Association to the same extent as at in-person Board of Directors meetings.

(f) Quorum. A majority of the Representatives then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Representatives present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board of Directors.

Section 5.8 Action Without Meeting. The Board of Directors shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Representatives. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors. Said written approval shall be filed with the minutes of the proceedings of the Board of Directors, whether done before or after the action so taken.

Section 5.9 Presumption of Assent. A Representative who is present at a meeting of the Board of Directors at which action on any matter is taken shall be presumed to have assented to the action taken *unless* his or her contrary vote is recorded or his or her dissent is otherwise entered in the minutes of the meeting; or unless he or she shall file his or her written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof; or unless he or she forwarded such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Representative who voted in favor of such action.

Section 5.10 Voting. Each Representative shall have one vote on matters that come before the Board. The decision to impose Special Assessments shall be governed by Section 4.6 of the Declaration.

Section 5.11 Powers and Duties. The Board of Directors shall conduct the general affairs of the Association. The powers and duties to be exercised by the Board of Directors on behalf of the Association shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep, repair, and maintenance of the Common Area and other maintenance responsibilities of the Association under the Declaration.
- (b) Determination of the funds required for the operation, administration, maintenance and other affairs of the Common Area, preparing the Annual Budget in which there shall be established the contribution of each Owner to the Common Area maintenance costs, expenses and reasonable reserves, and collection of the Assessments from the Owners, as provided in the Declaration.
- (c) Employment and dismissal of personnel necessary for the efficient operation, maintenance, repair, and replacement of the Common Area.
- (d) Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Area.
- (e) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.
- (f) Obtaining insurance as required or as permitted under the terms of the applicable provisions of the Declaration.
- (g) Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining audits of the financial records of the Association from the Association's public accountant (if required by applicable law or by the provisions of the Declaration, or, if not so required, if the Association deems such an audit to be desirable); furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days.

(h) Keeping a complete record of the minutes of all meetings of the Board of Directors and Owners in which minute book shall be inserted actions taken by the Board of Directors and/or Owners by consent without meeting.

(i) Enforcing the obligations and Assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of Assessments as provided in the Declaration, the institution of actions to foreclose liens for such assessments, and the imposition of interest charges in the amount of the Default Interest Rate for late payment of Assessments.

(j) Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation, these Bylaws, the Declaration, or the rules and regulations of the Association.

(k) Enforcing, on behalf of the Association, any other rights or remedies of the Association, including, but not limited to, the institution of civil actions.

(l) Hiring attorneys and other professionals.

(m) In accordance with the terms and provisions of the Declaration, and to the extent provided therein, entering any Parcel when necessary in connection with (i) any maintenance or construction for which the Association is responsible, and (ii) the exercise of the Association's right of inspection granted under Section 5.6 of the Declaration.

(n) Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Association.

(o) Furnishing estoppel certificates in accordance with Section 8.8 of the Declaration.

(p) Reviewing, and, as appropriate, approving or disapproving Plans submitted by Owners in accordance with Section 5.5 of the Declaration.

(q) Exercising any other powers and duties reserved to the Association by the Declaration, the Articles of Incorporation, or these Bylaws.

Section 5.12 Independent Property Manager. The Board of Directors may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interests of the Association concerning the routine management of the Association and the Common Area. The Board of Directors may delegate to such person, firm or entity (referred to in these Bylaws as the "**Independent Property Manager**") such duties and responsibilities in the management of the Association and the Common Area as the Board of Directors deems appropriate; provided, however, that the Board of Directors may not delegate to the Independent Property Manager the complete and total responsibilities and duties of the Association in violation of the North Carolina Nonprofit Corporation Act. The Independent Property Manager's contract shall be for a term not to exceed three (3) years, renewable by agreement between the Board of Directors and such Independent Property Manager for successive one-year terms; provided, however, that any such contract shall provide that it is terminable by the Association, with or without cause, upon not more than ninety (90) days' prior written notice and without payment of any penalty. The Board of Directors shall have the authority to fix the reasonable compensation for the Independent Property Manager, which shall be determined on an arm's-length, market-rate basis. The Independent Property Manager shall at all times be answerable to the Board of Directors and subject to its direction.

## ARTICLE VI

### Officers

Section 6.1 Enumeration of Officers. The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board of Directors may from time to time elect. Every officer must be a member of the Board of Directors.

Section 6.2 Election and Term. The officers of the Association shall be elected annually by the Board of Directors. Such elections shall be held at the first meeting of the Board of Directors next following the Annual Meeting or substitute Annual Meeting of the Members. Each officer shall hold office until his or her death, resignation or removal, or until his or her successor is elected and qualified.

Section 6.3 Removal. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 6.4 Vacancy. A vacancy in any office may be filled by the election by the Board of Directors of a successor to such office. Such election may be held at any meeting of the Board of Directors. The officer elected to such vacancy shall serve for the remaining term of the officer he or she replaces.

Section 6.5 Multiple Offices. The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person.

Section 6.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and all meetings of the Board of Directors. He or she shall see that the orders and resolutions of the Board of Directors are carried out; he or she shall sign on behalf of the Association all written instruments regarding the Common Area and all promissory notes of the Association, if any; and he or she shall have all of the general powers and duties which are incident to the office of President of a corporation organized under the North Carolina Nonprofit Corporation Act in the supervision and control of the management of the Association in accordance with these Bylaws.

Section 6.7 Vice Presidents. The Vice Presidents, in the order of their election unless otherwise determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Board of Directors shall prescribe.

Section 6.8 Secretary. The Secretary shall keep the minutes of all meetings of Members and of the Board of Directors; he or she shall have charge of such books and papers as the Board of Directors may direct; and he or she shall, in general, perform all duties incident to the Office of Secretary of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 6.9 Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He or she shall prepare a proposed annual budget (to be approved by the Board of Directors) and the other reports to be furnished to the Members as required in the Declaration. He or she shall perform all duties incident to the office of Treasurer of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 6.10 Assistant Secretaries and Treasurers. The Assistant Secretaries and Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors.

Section 6.11 Initial Officers. The initial officers of the Board of Directors shall be as follows:

President: Jason LaBonte  
c/o CC Ballantyne, LLC  
601 South Tryon Street, Suite 800  
Charlotte, NC 28202

Secretary: Michael Tubridy  
c/o CC Ballantyne, LLC  
601 South Tryon Street, Suite 800  
Charlotte, NC 28202

Treasurer: Katie Maloomian  
c/o CC Ballantyne, LLC  
601 South Tryon Street, Suite 800  
Charlotte, NC 28202

Section 6.12 Compensation. Officers shall not be compensated for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Board of Directors may, however, upon unanimous approval, compensate any officer or officers who render unusual and extraordinary services to the Association beyond that called for to be rendered by such person or persons on a regular basis. Each officer, by assuming office, waives his or her right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

Section 6.13 Liability of Officers. To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his or her activities as an officer, unless such officer acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Declaration or these Bylaws. Such indemnity shall be subject to approval by the Board of Directors only when such approval is required by the North Carolina Nonprofit Corporation Act. The Association shall reimburse all fees and expenses incurred by any officer in connection with the investigation, defense, settlement or appeal of any proceeding to which the officer is a party or is threatened to be made a party by reason of the fact that the officer is or was an agent of the Association or by reason of anything done or not done by him or her in any such capacity; provided, however, as a precondition to such reimbursement, such officer shall be required to: (i) give the Association adequate notice of the claim, assertion or imposition of liability to permit the Association and/or its insurer reasonable opportunity to defend against the same, (ii) cooperate with the Association in its defense against such liability, and (iii) provide adequate supporting documentation of any such fees and expenses. The officer shall repay such amounts reimbursed only if, and to the extent that, it shall ultimately be determined that the officer is not entitled to be indemnified by the Association as provided for herein. The reimbursements to be made hereunder shall be paid by the Association to the officer within twenty (20) days following delivery of a written request therefor by the officer to the Association, along with reasonable supporting documentation of the fees and expenses. The expense of indemnifying or defending such officer as provided herein shall be a Special Assessment (provided, unless otherwise required by the North Carolina Nonprofit Corporation Act, the necessary affirmative vote required to levy and impose such Special Assessment under Section 4.6

of the Declaration shall conclusively be deemed to have been made, without taking a vote under said Section 4.6, if the requirements for reimbursing such officer under this Section 6.13 are satisfied) and shall be borne by all Members as provided in accordance with the Declaration.

Section 6.14 Officer's and Director's Insurance. The Association shall obtain officer's and director's liability insurance in such amounts as the Board of Directors shall determine.

## ARTICLE VII

### Amendments

These Bylaws may be amended at any time by an instrument in writing signed and acknowledged by all Members of the Association. Amendments shall be effective on the date of passage by the Members, and no amendment need be recorded in the Office of the Register of Deeds of Mecklenburg County. All persons or entities who own or hereafter acquire any interest in the Property shall be bound to and abide by any amendment to these Bylaws which is duly passed, signed, acknowledged and recorded as provided herein.

## ARTICLE VIII

### Miscellaneous

Section 8.1 Severability. Invalidation of any covenant, condition, restriction or other provisions of the Declaration or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 8.2 Successors Bound. The rights, privileges, duties and responsibilities set forth in the Declaration, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any ownership interest in the Property.

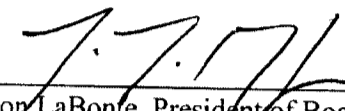
Section 8.3 Gender, Singular, Plural. Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

Section 8.4 Nonprofit Corporation. No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Articles of Incorporation and these Bylaws.

Section 8.5 Inconsistencies. In the event of any inconsistency between the provisions of these Bylaws and the Declaration or the Articles of Incorporation, the provisions of the Declaration and the Articles of Incorporation shall control.



Adopted by the Board of Directors  
of Ballantyne Residential Association, Inc.,  
a North Carolina nonprofit corporation,  
effective November 12, 2021

By:   
Jason LaBonte, President of Board of Directors

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