

CABARRUS COUNTY
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LINDA F. MCABEE
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STATE OF NORTH CAROLINA
CABARRUS COUNTY

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
KENTON GLENN

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KENTON GLENN (as hereafter amended and supplemented, the "Declaration") is made and entered into as of the 12th day of January, 2004, by THE JEWELL CORPORATION, a North Carolina corporation ("Declarant").

RECITALS

1. Declarant is the fee-simple record owner of certain real property and desires to create on the real property a residential community ("Community") of townhomes ("Townhomes") together with any private streets, roads, bike paths, footways, Common Areas, open spaces, landscaping, entrances, drainage facilities, access easements, site lighting and signage, and any other common facilities shown on any Recorded Plat (as hereinafter defined) for the benefit of the Townhomes. The real property ("Property") is described on Exhibit A attached hereto and shown on Exhibit B attached hereto. The Community shall be known as "Kenton Glenn".

1. Declarant desires to provide for the preservation of the value of the Property and the Townhomes and the amenities in the Property and for the maintenance of the Common Areas in a high-quality manner and, to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is, and are, for the benefit of the Property and each owner of a portion thereof, and are intended to run with the land in perpetuity.

1. Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Townhomes, to create an entity to which should be delegated and assigned the powers of maintaining, administering, operating and replacing the Townhomes, administering and enforcing the covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created. Declarant has caused or will cause to be incorporated under the laws of the State of North Carolina a nonprofit corporation to be known as the Kenton Glenn Owners Association, Inc. ("Association"), for the purpose of exercising the functions aforesaid.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KENTON GLENN

This Declaration of Covenants, Conditions and Restrictions is made and entered into as of the

12th day of January, 2004, by THE JEWELL CORPORATION, a North Carolina corporation ("Declarant").

1/13/04 11:12 AM

RECITALS

Drawn by and mail to:
Zachary M. Moretz, Esq.
Moretz Law Firm, P.A.
19 N. Union St.
Concord, North Carolina 28025

1. Declarant is the fee-simple record owner of certain real property and desires to create on the real property a residential community ("Community") of townhomes ("Townhomes") together with any private streets, roads, bike paths, footways, Common Areas, open spaces, landscaping, entrances, drainage facilities, access easements, site lighting and signage, and any other common facilities shown on any Recorded Plat (as hereinafter defined) for the benefit of the Townhomes. The real property ("Property") is described on Exhibit A attached hereto and shown on Exhibit B attached hereto. The Community shall be known as "Kenton Glenn".

1. Declarant desires to provide for the preservation of the value of the Property and the Townhomes and the amenities in the Property and for the maintenance of the Common Areas in a high-quality manner and, to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is, and are, for the benefit of the Property and each owner of a portion thereof, and are intended to run with the land in perpetuity.

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DECLARATION

NOW THEREFORE, the Declarant declares that the Property and any additions thereto, is and shall be held, used, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, charges and liens (sometimes referred to herein as "covenants and restrictions") as hereinafter set forth.

**ARTICLE ONE
PROPERTY SUBJECT TO THIS DECLARATION**

1.1 **Property.** The real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in the City of Concord, Cabarrus County, North Carolina, and is or will be commonly known as Kenton Glenn, and consists of the real property described on Exhibit A. A site plan of the Property is attached hereto as Exhibit B.

1.2 **Additions to Property.** The Declarant, its successors and assigns, during Class II membership, shall have the right but not the obligation, without further consent of the Association or its Members, to bring within the scheme and operation of this Declaration all or any portions of any real property that adjoins the Property, or to redesignate Common Area into building Lots. The additions authorized under this and the succeeding subsection shall be made by filing of record in the Office of the Register of Deeds of Cabarrus County one or more Supplementary Declarations of Covenants, Conditions and Restrictions ("Supplemental Declaration") with respect to such additional property or properties, executed by the Declarant and, if different, the owner(s) of the additional property, which shall extend the operation and effect of the Declaration to such additional property or properties. Any Supplemental Declaration(s) may specify such additional specific use restrictions and other covenants, conditions and restrictions to be applicable to the added property and may contain such complementary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of the Declarant and, if different, the owner(s) of the additional property, to reflect and adapt to any difference in character of the added properties. In no event, however, shall any such Supplementary Declaration modify or add to the covenants and restrictions established by this Declaration so as to negatively affect the Property; however, this proviso shall not be interpreted to prohibit or prevent any properly instituted change in the amount of the "Assessments" (as hereinafter defined) payable by a Member of the Association by reason of any such additions; nor shall any such Supplementary Declaration adversely affect the common development scheme of the Property for use as a residential subdivision.

1.3 **Access Easement Reserved.** The Declarant reserves unto itself for the benefit of Declarant, its successors and/or assigns, a non-exclusive and alienable easement and right of ingress, egress and regress over and across all streets and roads and Common Areas within the Property for access to and from other real property of Declarant or its successors and/or assigns. Such easement shall continue until that time when all new construction has ceased on the Property, and any damage caused by Declarant, its agents, successors and/or assigns to the private streets and roads within the Property when exercising its rights created by this Section 1.3 shall be repaired at the expense of Declarant, its successors, or assigns. In addition, an easement and right of ingress, egress and regress over and across all private streets and roads within the Property is hereby granted to any applicable government agency, for the purpose of fulfilling their duties, including, without limitation, law enforcement, fire protection, garbage collection, delivery of the mail, and any other service related to keeping the peace and preserving the general welfare.

1.4 Relation to North Carolina Planned Community Act. Declarant hereby elects that the North Carolina Planned Community Act, N.C.G.S. 47F-101 et seq., as the same may be amended from time to time ("Act"), shall apply to the Property, and the Association shall have, but not be limited to, all the powers, rights and privileges which may be exercised by a Planned Community (as defined in the Act) pursuant to the Act, even if such powers, rights or privileges are not specifically set forth herein or in the Association's Articles of Incorporation or Bylaws.

ARTICLE TWO ADDITIONAL DECLARATIONS

2.1 Approximately .22 acres of the Property along N.C. Highway 73 is subject to that Declaration of Restrictive Covenants Regarding Preservation of Open Space which is recorded in the Cabarrus County Registry in Deed Book 3952, Page 281, which calls for such open space to be maintained by the Declarant until conveyed to the Association, and by the Association in perpetuity thereafter.

ARTICLE THREE DEFINITIONS

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

- 3.1. **"Act"** shall have the meaning set forth in Section 1.4 hereof.
- 3.2. **"Assessment(s)"** shall mean and refer to the assessment(s) and charges levied by the Association against Members who are the Owners of Lots or Dwelling Units in the Property and shall include annual, special and Special Individual Assessments as described in Article Ten of this Declaration.
- 3.3. **"Association"** or **"Townhome Association"** shall mean and refer to the Kenton Glenn Townhome Association, Inc., a North Carolina non-profit corporation.
- 3.4. **"Board"** shall mean and refer to the Board of Directors of the Association.
- 3.5. **"Bylaws"** shall mean and refer to the bylaws of the Association and all amendments thereto.
- 3.6. **"Common Expenses"** shall mean and refer to:
- Expenses of administration, operation, utilities, maintenance, repair or replacement of the Common Areas, including payment of taxes and public assessments levied against the Common Areas.
 - Expenses declared Common Expenses by the provisions of this Declaration or the Bylaws.
 - Expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners in the Property, in accordance with the Bylaws or this Declaration.
 - Any valid charge against the Association or against the Common Areas as a whole.

shall have the meaning set forth in Section 1.4 hereof.

shall mean and refer to the assessment(s) and charges levied by the Association against Members who are the Owners of Lots or Dwelling Units in the Property and shall include annual, special and Special Individual Assessments as described in Article Ten of this Declaration.

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shall mean and refer to the Board of Directors of the Association.

"Bylaws" shall mean and refer to the bylaws of the Association and all amendments thereto.

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Expenses of administration, operation, utilities, maintenance, repair or replacement of the Common Areas, including payment of taxes and public assessments levied against the Common Areas.

Expenses declared Common Expenses by the provisions of this Declaration or the Bylaws.

Expenses agreed upon from time to time as Common Expenses by the Association and lawfully assessed against Members who are Owners in the Property, in accordance with the Bylaws or this Declaration.

c. Any expenses incurred by the Association in connection with the discharge of its duties hereunder and under the Bylaws and its Articles of Incorporation.

3.7. "Common Property(ies)", "Common Element(s)" or "Common Area(s)" shall mean and refer to those areas of land shown as "Common Area" or words of like import on any Recorded Plat of all or any part of the Property. The Common Properties do not include the Limited Common Properties. It is intended that the Common Properties shall be conveyed to the Association for the benefit of each of the Owners.

3.8. "Declarant" shall mean and refer to The Jewell Corporation, a North Carolina corporation, its successors and assigns, and any person or entity who is specifically assigned the rights and interests of Declarant hereunder or under a separate instrument executed by the Declarant and recorded in the Cabarrus County Registry. Declarant is the entity that has been granted the right, power, authority, duty or obligation to exercise the powers of the Declarant to ensure the development and maintenance of the Property as herein set forth.

3.9. "Dwelling Unit" shall mean and refer to any improvement or portion thereof situated on an Improved Lot intended for use and occupancy as one (1) single family dwelling, irrespective of the number of Owners thereof (or the form of ownership) located within the Property. Where appropriate by context, the term shall include both the improvements and the real property on which the improvements are situated.

3.10. "FHA" shall mean and refer to the Federal Housing Authority of the United States Department of Housing and Urban Development.

3.11. "Improved Lot" shall mean and refer to any Lot on which the improvements constructed thereon are sufficiently complete to be occupied as a Dwelling Unit.

3.12. "Limited Common Expense" shall mean and refer to the expense of administration, operation, maintenance, repair or replacement of Limited Common Areas or any valid charge against the Limited Common Areas as a whole. Such expenses shall be assessed against those Lots or Dwelling Units having the exclusive or special rights in the use or enjoyment of the Limited Common Areas.

3.13. "Limited Common Property(ies)", "Limited Common Element(s)" or "Limited Common Area(s)" shall mean and refer to those areas of land (including without limitation any joint driveways) and improvements described or referred to in any declaration applicable to the Property or Recorded Plat of the Property as intended for the use only of the Owners of particular Lots or Dwelling Units to the exclusion of other Owners and other Members. Any property so designated shall be for the exclusive use of the Owners of the Dwelling Units or Lots so designated or shown in such declaration or Recorded Plat.

3.14. "Lot" shall mean and refer to any numbered parcel of land within the Property which is intended for use as a site for a Dwelling Unit, as shown upon any Recorded Plat of any part of the Property and labeled thereon as a Lot or with a Lot number, and shall not include Common Areas, Limited Common Areas or any property in the Property not yet subdivided for sale as an individual lot. No property in the Property shall be developed as a Dwelling Unit until designated as a Lot on a Recorded Plat. Property designated as a Lot may later be designated for some other use on a Recorded Plat.

3.15. "Member" shall mean a member of the Association.

3.16. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Dwelling Unit situated upon the Property. Notwithstanding any applicable theory of any lien or mortgage law, "Owner" shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee of trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

3.17. "Property" shall mean and refer to all the real property defined in Section 1.1 hereof and more particularly described in Exhibit A, as well as any additions thereto as are made subject to this Declaration by any Supplemental Declaration(s) under the provisions of Article One of this Declaration.

3.18. "Recorded Instrument" shall mean and refer to any document relating to the Property, or any portion thereof, recorded in the Cabarrus County Registry and executed by the Declarant (during Class II membership, and by the Association otherwise) to show its consent thereto (and by any other Owner(s) of property described therein and affected thereby if different). In any case in which the designation or description of the same property described in two different Recorded Instruments is different (for example, property is designated as a Lot in one instrument and a street in another, or legal boundaries of areas are described differently in different Recorded Instruments), the designation and description on the later-recorded of the Recorded Instruments shall control.

3.19. "Recorded Plat" shall mean and refer to any map of the Property, or any portion thereof, recorded in the Cabarrus County Registry and executed by the Declarant (during Class II membership, and by the Association otherwise) to show its consent thereto (and by any Owner(s) of such property whose survey is shown thereon if different). In any case in which the designation and/or boundary lines of the same property shown on two different Recorded Plats are different (for example, property is designated as a street on one plat and as a Lot on the other, or boundary lines are shown differently on two different Recorded Plats), the designation and boundary lines on the later-recorded of the Recorded Plats shall control. At the time of the recording of this Declaration, there are no Recorded Plats, but a plat entitled "Minor Subdivision Plat, Kenton Glenn Town Homes Phase 1" is under City of Concord review and is planned to be recorded shortly after this Declaration, and this Declaration shall expressly be subject to such plat once recorded. It envisioned that there shall ultimately be two (2) total Recorded Plats describing all of the Property (not including revised or superceded plats.)

3.20. "Special Individual Assessments" shall have the meaning assigned to it in Article Ten of this Declaration.

3.21. "Supplemental Declaration" shall have the meaning assigned to it in Article One of this Declaration.

3.22. "Townhome(s)" shall mean Dwelling Units on Improved Lots now or hereafter constructed on the Property.

3.23. "VA" shall mean and refer to the United States Department of Veterans Affairs.

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"VA" shall mean and refer to the United States Department of Veterans Affairs.

**ARTICLE FOUR
DURATION; NOTICES; ENFORCEMENT; SEVERABILITY**

4.1 Duration. The covenants and restrictions of this Declaration shall run with the land in perpetuity, and shall inure to the benefit of and be enforceable by Declarant, the Association or any Owner, its and their respective legal representatives, heirs, successors, and assigns. This Declaration may be amended in accordance with the provisions of Article 13 hereof. Amendments made in conformity with that Article may alter any portion of the Declaration hereof, including but not limited to the duration and amendment provisions hereof.

4.2 Termination. The termination of this Declaration shall require both the assent of Declarant, during Class II membership, and the assent of at least eighty percent (80%) of the votes in the Association, taken at a meeting duly called and held for this purpose, and shall be evidenced by a termination agreement recorded in the Cabarrus County Registry and otherwise complying with the terms of Section 47F-2-118 of the Act. Should the Act be amended to provide for a lower percentage of votes to terminate this Declaration, then such lower percentage shall automatically apply unless this Declaration is amended to provide otherwise.

4.3 Notices. Any notice required to be sent to any Member or Owner, under the provisions of this Declaration, shall be deemed to have been properly sent when delivered by hand delivery with the delivery person providing an affidavit of delivery, or when mailed, postage prepaid, registered or certified mail, return receipt requested, or deposited with an overnight courier (such as, but not limited to Federal Express) and addressed to the person at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. In the event that a Member or Owner's address is absent from the Association's records, the notice may be sent to the address listed on the Cabarrus County tax records at the time of the mailing. The sender shall not be required to cause title to any Lot or Dwelling Unit to be examined. Notice to any one of the Owners, if title to a Lot or Dwelling Unit is held by more than one, shall constitute notice to all Owners of that Lot or Dwelling Unit.

4.4 Enforcement.

a. The Association, Declarant and/or any Owner may enforce these covenants and restrictions. Enforcement of these covenants and restrictions shall be by an appropriate civil proceeding against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by these covenants and restrictions; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

b. The Association or the Declarant may impose fines or suspend privileges or services in the event of an Owner's failure to comply with the requirements of this Declaration or any architectural guidelines or rules promulgated by the Declarant or the Association. In such circumstances, the Owner shall have been sent a letter notifying him of the violation and providing a period of no less than thirty (30) days for the violation to be corrected. If the Owner fails to address the violation during such period, the Board may vote to impose a fine or suspend privileges or both, and shall inform the Owner of the same if such a decision is made. The Owner shall have the right to appeal the decision and shall have an opportunity to be heard by the Board on such appeal, but the fine shall accrue during such period unless waived or suspended by the Board pending the outcome of the appeal. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation

at the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. In the event that a Member or Owner's address is absent from the Association's records, the notice may be sent to the address listed on the Cabarrus County tax records at the time of the mailing. The sender shall not be required to cause title to any Lot or Dwelling Unit to be examined. Notice to any one of the Owners, if title to a Lot or Dwelling Unit is held by more than one, shall constitute notice to all Owners of that Lot or Dwelling Unit.

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c. The Association or the Declarant may impose fines or suspend privileges or services in the event of an Owner's failure to comply with the requirements of this Declaration or any architectural guidelines or rules promulgated by the Declarant or the Association. In such circumstances, the Owner shall have been sent a letter notifying him of the violation and providing a period of no less than thirty (30) days for the violation to be corrected. If the Owner fails to address the violation during such period, the Board may vote to impose a fine or suspend privileges or both, and shall inform the Owner of the same if such a decision is made. The Owner shall have the right to appeal the decision and shall have an opportunity to be heard by the Board on such appeal, but the fine shall accrue during such period unless waived or suspended by the Board pending the outcome of the appeal. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation

occurs. Such fines shall be Assessments secured by liens as more particularly described in Article Ten hereof. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

ARTICLE FIVE DESIGN REVIEW

5.1 **Purposes.** The Declarant desires to provide for the preservation of the property values in the Property with respect to any improvements to be constructed or altered on any Lot constituting a portion of the Property, and to that end, establishes these architectural covenants and restrictions and may establish an architectural control committee ("ACC" or "Committee"), in accordance with Section 5.3 hereof, in order to provide, enforce and maintain certain standards as to harmony of exterior design and location of the improvements on the Lots in relation to surrounding structures, natural features and topography.

5.2 **Design Review.** Unless expressly authorized in writing by the Committee, no Dwelling Unit, fence, wall, driveway, patio, swimming pool, pond, fence, building, mailbox, animal enclosure or dog house, or any other structure or improvement whatsoever of any kind or nature shall be constructed or maintained, nor shall any exterior addition or alteration to any Dwelling Unit, fence, wall, driveway, patio or other building, mailbox, animal enclosure or dog house, or any other structure or improvement be started, until plans and specifications therefor showing the shape, dimensions, materials, basic exterior finishes and colors, location on site, (all of which are hereinafter referred to collectively as the "Plans"), and any reasonable application fee set by the Association, shall have been submitted to, and approved in writing by, the Committee. Except as set forth herein, the Committee shall have the absolute and exclusive right to refuse to approve any such Plans which are not suitable or desirable in the opinion of the Committee for any reason, including purely aesthetic reasons, which in the sole discretion of the Committee shall be deemed sufficient. The Board may promulgate design standards from time to time to be adhered to by the Plans for the Lots or Dwelling Units in the Property. The standards promulgated by the Board shall be in general accordance with the design of the Community as originally provided by Declarant, and shall not disrupt the general development scheme instituted by Declarant.

5.3 **Architectural Control Committee.**

a. Prior to or in lieu of the appointment of the Committee by the Board, the Board shall act as the Committee. Should the Board choose to appoint the Committee, it shall be composed of any number of persons designated by the Board, and such persons need not be Members of the Association. A majority of the Committee may designate a representative to act for it. In the event of death, resignation, or removal by the Board of any member of the Committee, the Board shall have full authority to designate a successor. Unless otherwise approved by the Association, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the Committee and a list of the names and addresses of any designated representatives of the Committee, and such a list shall be available to any Owner upon request.

b. Notwithstanding the foregoing, as to the initial construction of improvements on any Lot (the "Initial Construction of Improvements"), the Declarant shall serve as the Committee responsible for the review, approval, and monitoring of construction of improvements. This right of the Declarant pursuant to this section shall cease during times when the Declarant does not own any of the real property comprising any portion of the

Architectural Control Committee.

a. Prior to or in lieu of the appointment of the Committee by the Board, the Board shall act as the Committee. Should the Board choose to appoint the Committee, it shall be composed of any number of persons designated by the Board, and such persons need not be Members of the Association. A majority of the Committee may designate a representative to act for it. In the event of death, resignation, or removal by the Board of any member of the Committee, the Board shall have full authority to designate a successor. Unless otherwise approved by the Association, neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the Committee and a list of the names and addresses of any designated representatives of the Committee, and such a list shall be available to any Owner upon request.

Property. Following the determination that a Lot qualifies as an Improved Lot, any requests for modifications or alterations of improvements in fact constructed on an Improved Lot or for the construction of additional improvements on an Improved Lot shall be the responsibility of the Committee, which need not be the Declarant if Declarant so directs. The Declarant may at any time relinquish, either temporarily or permanently, its rights to review, approve and monitor the initial construction of improvements to the Committee, as hereinabove described. All structures in place at the time of the recording of this Declaration are hereby approved by Declarant on behalf of the Board and the Committee.

5.4. Design Review Procedure.

a. At least sixty (60) days prior to the commencement of any construction, Plans shall be submitted to the Committee. Approval shall be subject to such regulations and architectural standards as may from time to time be promulgated by the Committee. Within thirty (30) days after receipt of the Plans and all other required information, the Committee shall notify the Owner of the Lot or Dwelling Unit in writing as to whether the Plans have been approved. Unless a response is given by the Committee within thirty (30) days, the Plans shall be deemed approved. The response of the Association may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a denial pending receipt of such additional information as the Committee may request, and the Committee shall have an additional thirty (30) days to review the additional information. Such thirty (30) day period shall only commence upon receipt of the requested additional information. If approval with conditions is granted, and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot or Dwelling Unit, and the conditions imposed shall become fully a part of the approved Plans. No improvements shall be made except in strict conformity with the approved Plans. The Committee shall have the right to monitor construction of improvements and investigate compliance with the approved Plans, and hereby reserves the right to enter upon any Lot or Dwelling Unit in order to do so. The Committee, the Board and the Association shall have the right to enjoin any construction or maintenance made in violation of this Article, and the costs and expenses, including attorneys' fees, of any such lawsuit shall be deemed Special Individual Assessments enforceable against the responsible Owner as set forth below.

b. Owners are responsible for the contractors they hire to perform work on their property. Any contractor damaging improvements or infrastructure of the Property, and the Owner(s) who engaged the services of such contractor, shall be jointly and severally liable for such damage.

c. Any Owner submitting Plans to the Committee and disagreeing with the finding of the Committee may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial. The Board shall then review the Plans, giving the Chairman or any other representative of the Committee the opportunity to present to the Board specific reasons why the Plans were denied, in the presence of the Owner or his agent, and the Owner or his agent may present information challenging the findings of the Committee. The decision of the Committee may be overridden by simple majority vote of the Board. The foregoing provision shall not be applicable to decisions by the Declarant as to the Initial Construction of Improvements pursuant to Section 5.3(b) hereof.

d. The Committee may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and other documents are submitted to the Committee. The payment of such fees, as well as other expenses of the Committee required to be paid, shall be deemed to be a Special Individual Assessment, enforceable against the Owner of the Lot or Dwelling Unit as

and shall be enforceable against the Owner of the Lot or Dwelling Unit, and the Committee shall have the right to monitor construction of improvements and investigate compliance with the approved Plans, and hereby reserves the right to enter upon any Lot or Dwelling Unit in order to do so. The Committee, the Board and the Association shall have the right to enjoin any construction or maintenance made in violation of this Article, and the costs and expenses, including attorneys' fees, of any such lawsuit shall be deemed Special Individual Assessments enforceable against the responsible Owner as set forth below.

Owners are responsible for the contractors they hire to perform work on their property. Any contractor damaging improvements or infrastructure of the Property, and the Owner(s) who engaged the services of such contractor, shall be jointly and severally liable for such damage.

Any Owner submitting Plans to the Committee and disagreeing with the finding of the Committee may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following receipt of notice of denial. The Board shall then review the Plans, giving the Chairman or any other representative of the Committee the opportunity to present to the Board specific reasons why the Plans were denied, in the presence of the Owner or his agent, and the Owner or his agent may present information challenging the findings of the Committee. The decision of the Committee may be overridden by simple majority vote of the Board. The foregoing provision shall not be applicable to decisions by the Declarant as to the Initial Construction of Improvements pursuant to Section 5.3(b) hereof.

provided herein. The Committee expressly reserves the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the Committee in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot or Dwelling Unit and shall be in addition to any fees due for processing any requests for approval.

e. All notices required to be given under this Section shall be given in writing, hand-delivered or mailed postage prepaid, certified or registered mail, return receipt requested or deposited with an overnight carrier (such as, but not limited to, Federal Express), and the Committee shall be obligated to specify the particular grounds upon which denial of any application is founded. If the Committee approves the Plans, the set of Plans, denoted as approved (or approved with specified conditions), shall be retained by the Committee.

5.5. Application of the Article. This Article shall apply to any additions to the Property subsequently made subject to this Declaration and the terms and provisions of any Supplemental Declaration.

ARTICLE SIX RESTRICTIONS ON USE AND RIGHTS OF THE ASSOCIATION, DECLARANT AND OWNERS

6.1 Permissible Uses. No Lot shall be used except for residential purposes, with the exception of a) any sales center, office, building, construction trailer or model home constructed or used by the Declarant, his agent or any builder who has received the prior written permission of Declarant, and b) any pump station, ground water well or similar lot used for providing utilities, storm water retention or drainage or similar services to any Lot. No building of any type shall be erected, altered, placed, or permitted to remain on any Lot other than a Dwelling Unit and its accessory structures, which shall comply with any applicable zoning regulations and the requirements of Articles Five and Six of this Declaration. The Lots (other than the Common Area and Limited Common Area) within the Property shall be limited to one single-family attached Dwelling Unit and accessory structures with appropriate setbacks approved in accordance with the terms of this Declaration.

6.2 Division of Lots; No Time Sharing; Leasing.

a. No Lot shall be further subdivided into multiple Dwelling Units.

b. No Lot or ownership interest may be subdivided to permit time sharing or other devices to effect interval ownership. For purposes of this section "time sharing" or "other devices to effect interval ownership" shall include, but not be limited to, ownership arrangements, including uses of corporation, trusts, partnerships, leases or tenancies in common, in which four or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling Unit and such owners have a formal or informal right-to-use or similar agreement.

c. Leasing of a Dwelling Unit shall be permitted subject to reasonable rules regarding the permitted duration and permitted maximum percentage of all Dwelling Units in the Property which may be leased at any given time which may be adopted from time to time by resolution of the Board (without the necessity of amendment of this Declaration). Prior to or in lieu of the Board's adoption of such rules, the minimum term of permitted leases shall be six (6) months and the maximum percentage of all Dwelling Units in the Property

and No Time Sharing; Leasing.

a. No Lot shall be subdivided into multiple Dwelling Units.

b. No Lot or ownership interest may be subdivided to permit time sharing or other devices to effect interval ownership. For purposes of this section "time sharing" or "other devices to effect interval ownership" shall include, but not be limited to, ownership arrangements, including uses of corporation, trusts, partnerships, leases or tenancies in common, in which four or more persons or entities, not members of a single household, have acquired, by means other than will, descent, inheritance or operation of law, an ownership interest (directly or indirectly, equitable or legal) in the same Dwelling Unit and such owners have a formal or informal right-to-use or similar agreement.

c. Leasing of a Dwelling Unit shall be permitted subject to reasonable rules regarding the permitted duration and permitted maximum percentage of all Dwelling Units in the Property which may be leased at any given time which may be adopted from time to time by resolution of the Board (without the necessity of amendment of this Declaration).

which may be leased at any given time shall be twenty percent (20%). In no event, however may the number of leased Dwelling Units in any Multi-Family Dwelling or in the Property exceed any limitation established by the FHA or VA. The tenant(s) under any such lease shall be bound by all of the provisions of this Declaration. Any such leases shall not relieve the Owner of its responsibilities and obligations under this Declaration. Prior to entering into any lease, the Owner of the unit proposed to be leased shall present the lease to the Board for approval in order for the Board to ensure i) that the lease complies with the provisions of this Declaration, and ii) that the lease will not result in more than twenty percent (20%) of the Dwelling Units in the Property being leased at any given time.

6.3 Utilities and Other Easements. All utility lines of every type, including but not limited to water, electricity, gas telephone, sewage and television cables, running from the main trunk line or service location to any Dwelling Unit must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to the Property on, in, under and over the streets or roads and over any Lot shown on any Recorded Plat of the Property, within ten (10) feet of each front property line, within ten (10) feet along the rear property line of each Lot and over such other areas as are so identified on any recorded plats of the Property, provided that existing Dwelling Units shall not be disturbed. In addition, the Declarant or the Association may cut, in the above described easements, as well as any where else that such may be required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along street fronting property lines, in the ten (10) foot easement hereby reserved, Declarant also reserves the right to install, maintain and repair bike and pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association at any time(s) when there is no Class II membership. Any easements first identified on recorded instruments or Recorded Plats of property no longer owned by the Declarant must be consented to on the Recorded Plat or other recorded instrument by the Owner of such property. The Declarant may, but is not required to, release any of the easements reserved herein as to any Lot for which it deems such easement is unnecessary for the efficient development and operation of the Property, but it may do so only until two years after Class II membership has last terminated.

6.4 Construction, Settling and Overhangs. Each Lot and the Common Area shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed, so long as such encroachments exist. Every portion of a Lot and each Dwelling Unit constructed thereon and contributing to the support of an abutting Dwelling Unit shall be burdened with an easement of support for the benefit of such abutting Dwelling Unit. If adjoining Dwelling Units are partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments from the adjacent Lots or Common Area resulting from construction shall be permitted and that a valid easement for such encroachments shall exist.

6.5 Rear Yard Access Easements. Declarant hereby reserves and declares a perpetual appurtenant five (5) foot wide access easement across the rear of each Lot and adjoining and parallel with the rear property line of such Lot for the benefit of the adjoining Lots for the purpose of accessing the rear yards of each Lot, to the extent the same is required by any Lot Owner to reach the rear yard of his own Lot. This easement shall create no right of access in or to the general public or to any person who is not the Owner or agent of the Owner of a Lot in the Property, and this easement shall only be exercised by an Owner for accessing his own Lot by foot.

Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to the Property on, in, under and over the streets or roads and over any Lot shown on any Recorded Plat of the Property, within ten (10) feet of each front property line, within ten (10) feet along the rear property line of each Lot and over such other areas as are so identified on any recorded plats of the Property, provided that existing Dwelling Units shall not be disturbed. In addition, the Declarant or the Association may cut, in the above described easements, as well as any where else that such may be required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along street fronting property lines, in the ten (10) foot easement hereby reserved, Declarant also reserves the right to install, maintain and repair bike and pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association at any time(s) when there is no Class II membership. Any easements first identified on recorded instruments or Recorded Plats of property no longer owned by the Declarant must be consented to on the Recorded Plat or other recorded instrument by the Owner of such property. The Declarant may, but is not required to, release any of the easements reserved herein as to any Lot for which it deems such easement is unnecessary for the efficient development and operation of the Property, but it may do so only until two years after Class II membership has last terminated.

6.6 Construction, Settling and Overhangs. Each Lot and the Common Area shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed, so long as such encroachments exist. Every portion of a Lot and each Dwelling Unit constructed thereon and contributing to the support of an abutting Dwelling Unit shall be burdened with an easement of support for the benefit of such abutting Dwelling Unit. If adjoining Dwelling Units are partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments from the adjacent Lots or Common Area resulting from construction shall be permitted and that a valid easement for such encroachments shall exist.

6.7 Rear Yard Access Easements. Declarant hereby reserves and declares a perpetual appurtenant five (5) foot wide access easement across the rear of each Lot and adjoining and parallel with the rear property line of such Lot for the benefit of the adjoining Lots for the purpose of accessing the rear yards of each Lot, to the extent the same is required by any Lot Owner to reach the rear yard of his own Lot. This easement shall create no right of access in or to the general public or to any person who is not the Owner or agent of the Owner of a Lot in the Property, and this easement shall only be exercised by an Owner for accessing his own Lot by foot.

No Owner of any Lot shall erect any barrier which would impair or prevent the use of this easement.

6.6 Committee Approval of Plans and Other Prohibitions.

a. The construction of improvements on Lots shall be governed by Article Five hereof. Construction must be completed in strict accordance with the Plans approved by the Committee.

b. No detached garage, storage shed, or carport shall be permitted on any Lot.

c. No vent or other pipes or appendages may extend from the front of any Dwelling Unit unless screened from public view by a screening material or shrubbery approved by the Committee.

d. Any exterior air-conditioning or heating equipment must be screened from public view by a screening material or shrubbery approved by the Committee.

e. Downspouts and gutters must be constructed so as not to promote the erosion of the soil of any Lot or Dwelling Unit.

f. Exterior lighting shall be restrained and subtle and must be directed so as not to shine directly on another Lot or interfere with the quality of the night environment. Declarant or the Board may specify style, model and manufacturer of the standard streetlights to be used throughout the Property, and all future streetlights shall comply with such standards. The costs to maintain and operate the street lighting shall be Common Expenses of the Association until such time as the streets and street lighting are dedicated to and accepted by the applicable municipality. 84

6.7. Garbage and Storage Receptacles. No trash can or garbage receptacle, or any other trash or refuse, shall be placed or stored on any Lot within public view. Owners shall use the dumpster(s) or trash compactor(s) which shall be provided by the Association for all trash, garbage and refuse.

6.8. Debris. No leaves, trash, garbage or other similar debris shall be burned on the Property. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of the Property, except as is temporary and incidental to the bona fide improvement of any portion of the Property. Job site debris shall be removed from the job site at least weekly.

6.9. Antennas. Any television antenna, satellite dish, radio receiver or sender antenna or other similar device attached to or installed on the exterior portion of any Dwelling Unit or placed on any Lot shall be appropriately screened from view in accordance with Federal Communication Commission guidelines and Association rules and regulations (as determined by the Committee), and must be approved by the Committee in accordance with Article Five. Notwithstanding the foregoing, pursuant to FCC regulations published at 47 C.F.R. §1.4000, the following provisions shall apply to any television signal reception antennas on any Lot or Dwelling Unit:

a. No television antenna, except for traditional broadcast aerials (also known as "TVBS" antennas), shall be permitted which is larger than one (1) meter in diameter.

b. The Association may regulate the location or appearance of television antennas with regard to location and appearance, including required screening and color, provided that such regulations do not unreasonably interfere with the use of the antennas.

Garbage and Storage Receptacles. No trash can or garbage receptacle, or any other trash or refuse, shall be placed or stored on any Lot within public view. Owners shall use the dumpster(s) or trash compactor(s) which shall be provided by the Association for all trash, garbage and refuse.

Debris. No leaves, trash, garbage or other similar debris shall be burned on the Property. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of the Property, except as is temporary and incidental to the bona fide improvement of any portion of the Property.

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a. No television antenna, except for traditional broadcast aerials (also known as "TVBS" antennas), shall be permitted which is larger than one (1) meter in diameter.

sonably impair the installation, maintenance or use of such antennas, as defined by said FCC regulations and binding interpretations thereof. Location shall be limited to backyards of Dwelling Units or rear roof surfaces of Dwelling Units provided such location does not unreasonably impair the installation, maintenance or use of such antennas.

c. No antenna or any structure or mast supporting any antenna may exceed twelve (12) feet in height above the roof line of the Dwelling Unit to which it is appurtenant, unless the Owner thereof can supply affirmative proof satisfactory to the Committee that such antenna, mast or structure does not constitute a safety hazard to people or property.

d. The Association may specify permissible colors of television antennas, but may not require an Owner to paint his antenna if doing so would unreasonably impair the reception of the antenna or void its warranty.

e. The Association shall have an easement over the Lot of any Owner who proposes to erect any television antenna, or who does erect the same, in order to identify the best location on the Lot that allows for reasonable reception and which complies with the aesthetic standards of the Association. The Association shall not be bound by the location proposed by the homeowner if another location on the Owner's Lot would allow reasonable reception and better match the standards of the Association.

f. Should the Committee determine that an Owner's television antenna should be screened from view but also determine that the cost of the required screening would impose an unreasonable restriction on installation, maintenance or use of such antenna, then the Association may expend Association funds for such screening, and such expenditure shall be a Common Expense.

g. The foregoing restrictions on the Association's ability to regulate television antennas shall not apply to any antenna proposed to be placed upon any Common Property of the Association or any Neighborhood Association, including common elements of any condominium, nor to any antenna which is not a television signal reception device, as to which the Association or the applicable Neighborhood Association shall have full authority to regulate in its sole discretion.

6.10 Temporary Structures. No structure of a temporary character shall be placed upon any portion of the Property at any time; provided, however, that this prohibition shall not apply to sales offices, shelters or sheds used by contractors during the construction of a Dwelling Unit or Multi-Family Dwelling, or improvements or additions thereto, on any Lot during the construction or improvement thereof. Temporary shelters, tents, recreational vehicles, trailers (whether attached or unattached to the real property) may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of the Property, except for short-term use on the Common Areas for events permitted by the Board.

6.11. Unsightly Conditions.

a. It is the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions which would tend to decrease the beauty of the Property from existing on his Lot.

b. In the event any Owner shall fail to maintain its Lot or Dwelling Unit as specified herein, or allow damage to occur and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from the Association, the Association shall have the right, exercisable in its sole

discretion, to expend Association funds for repairs or removal of such damage.

The foregoing restrictions on the Association's ability to regulate television antennas shall not apply to any antenna proposed to be placed upon any Common Property of the Association or any Neighborhood Association, including common elements of any condominium, nor to any antenna which is not a television signal reception device, as to which the Association or the applicable Neighborhood Association shall have full authority to regulate in its sole discretion.

6.12 Temporary Structures. No structure of a temporary character shall be placed upon any portion of the Property at any time; provided, however, that this prohibition shall not apply to sales offices, shelters or sheds used by contractors during the construction of a Dwelling Unit or Multi-Family Dwelling, or improvements or additions thereto, on any Lot during the construction or improvement thereof. Temporary shelters, tents, recreational vehicles, trailers (whether attached or unattached to the real property) may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of the Property, except for short-term use on the Common Areas for events permitted by the Board.

It is the responsibility of each Owner to prevent any unclean, unsightly or unkempt conditions which would tend to decrease the beauty of the Property from existing on his Lot.

discretion, to summarily abate any unsightliness, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot or Dwelling Unit. In the event the Association, after such notice, causes the subject work to be done, the costs of such work, plus an administrative fee of 25% of the costs incurred, shall be paid by the Owner to the Association and shall become a continuing lien on the Lot until paid.

6.12. No Offensive Activity or Fires. No noxious or offensive activity or excessive noise shall be carried on upon any portion of the Property, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner, tenant or guest thereof, in any portion of the Property. Fires on any Lot or on any portion of the Common Properties or the Limited Common Properties are prohibited.

6.13. Certain Plants, Animals and Pets. Except as otherwise permitted herein, or in any amended Declaration, no plants, animals, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may tend to diminish or destroy the enjoyment of other Owners, or tenants and guests thereof, may be maintained on a Lot. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that a reasonable number, but no more than three (3) unless otherwise approved by the Board, dogs, cats or other common household pets may be kept in each Dwelling Unit and such pets may not be kept, bred or maintained for any commercial purpose. At no time shall any household pets be allowed to run free, and at all times when outside of the Owner's Dwelling Unit, such household pets, including cats, shall be on a leash. The Board may adopt reasonable rules and regulations not inconsistent herewith regulating the size and type of pets which will be allowed to be kept in the Dwelling Units. Owners shall exercise their pets only in areas designated by the Board and shall immediately clean up all droppings generated by their pets.

6.14. Discharge of Firearms. Hunting and trapping of wild animals, fowl and game and the discharge of firearms, pellet or BB guns, and bows and arrows within the Property is prohibited.

6.15. Motorized Vehicles. All motorized vehicles operating within the Property must be properly muffled so as to eliminate noise which might be offensive to others. All motorized vehicles and motorized bicycles are prohibited from being used or operated anywhere other than on the streets, roads, parking lots and driveways within the Property.

6.16. Prohibited Parking. No boat, boat trailer, other trailer, camper, recreational vehicle, unlicensed vehicle, inoperable vehicle or commercial truck shall be allowed to remain on any Lot or on any portion of the Common Properties or Limited Common Properties overnight. The Board may adopt reasonable rules and regulations not inconsistent herewith specifying in more detail the types of vehicles prohibited by this Section.

6.17. Signage. No signs, except standard, typical "For Sale" or "For Rent" signs, of a size typically used in to indicate the availability of a single Dwelling Unit for sale or lease, shall be displayed in public view on any Lot, appurtenance, vehicle, accessory building or structure unless approved by the Committee, which may also from time to time specify required design criteria and color schemes for approved signage. Notwithstanding the foregoing, Declarant shall have the right to erect sales signs pursuant to the Special Declarant Rights defined in Article Seven hereof. Political signs opposing or supporting any candidate, party or issue in an upcoming election may be posted no earlier than thirty (30) days prior to such election, provided the same are removed within seven (7) days of said election and provided no more than two (2) such signs per Dwelling Unit may be posted simultaneously. Notwithstanding anything else herein to the contrary, in order to maintain high aesthetic standards in the Community, the Association shall have the right at all times without notice to remove

any sign which in its sole discretion it deems to be offensive or illegal or which poses an immediate threat of injury to any person. The Association or its designee shall have the right to enter any Lot in the Property for such purpose.

6.18. Mail and Delivery Boxes. Declarant or the Committee may determine the standards and issue guidelines for the location, material, color and design for mail and newspaper boxes, if any, and the manner in which they shall be identified.

6.19. Driveway Culverts. No Owner or their licensees, invitees, subcontractors or agents shall disturb or impede any driveway culvert, drainage swale or other stormwater drainage structure or device in the Property. No fences shall be allowed in front or side yard swales except as otherwise permitted herein.

6.20. Fences. Fences are subject to the complete jurisdiction of the Committee as to location, style, materials, color and height. As used herein, fences shall include walls, barricades, shrubbery or other impediments to reasonable mobility and visibility. No fences shall be allowed in front of any Dwelling Unit or within the access easements provided for in Section 6.5 hereof or on any Recorded Plat. The Committee shall only approve the construction of a fence upon a determination that the fence is aesthetically pleasing, does not detract from the reasonable value of any Lot or any Owner's access to his Lot, and does not unreasonably impede the view of attractive features of the Property from any other Lot or Dwelling Unit. Notwithstanding anything herein to the contrary, temporary fences used in connection with construction, model homes and soil erosion silt fences may be permitted by the Association or the Declarant.

6.21. Landscaping. The Association shall maintain all lawns and landscaping as otherwise provided herein, except for such landscaping as is planted by any Owner after the initial construction of his or her Dwelling Unit, which shall be such Owner's responsibility. Front yard landscaping by the Owner of any Lot shall be limited to small seasonal plantings unless otherwise approved by the Board. No statuary, birdbaths, trees or other decorative structures, objects or materials other than the aforesaid small seasonal plantings or a reasonable amount of holiday decorations, provided the same are removed immediately after the applicable holiday, shall be allowed in the front yard of any Dwelling Unit unless approved by the Board.

6.22. Storm Doors and Windows. No storm or screen door or window shall be added to any Dwelling Unit by any Owner unless approved by the Board.

ARTICLE SEVEN

ADDITIONAL RIGHTS RESERVED TO DECLARANT

7.1. Withdrawal of Property. The Declarant reserves the right to amend this Declaration, during Class II membership, for the purpose of removing any portion of the Property which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots then subject to the Declaration by more than twenty percent (20%). Such amendment shall not require the consent of any person other than the Owner(s) of the property to be withdrawn, if not the Declarant, and, if required, the FHA or the VA. If the property is or includes Common Area, the Association must first consent to such withdrawal.

7.2. Right to Develop. The Declarant and its employees, agents, contractors and designees shall have a right of access and use and an easement over and upon all of the Common Areas for the purpose of making, maintaining and improving the Property.

The Association shall maintain all lawns and landscaping as otherwise provided herein, except for such landscaping as is planted by any Owner after the initial construction of his or her Dwelling Unit, which shall be such Owner's responsibility. Front yard landscaping by the Owner of any Lot shall be limited to small seasonal plantings unless otherwise approved by the Board. No statuary, birdbaths, trees or other decorative structures, objects or materials other than the aforesaid small seasonal plantings or a reasonable amount of holiday decorations, provided the same are removed immediately after the applicable holiday, shall be allowed in the front yard of any Dwelling Unit unless approved by the Board.

No storm or screen door or window shall be added to any Dwelling Unit by any Owner unless approved by the Board.

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constructing and installing such improvements to the Common Areas as it deems appropriate in its sole discretion. Damage done to the Common Areas shall be repaired, with the Common Area being restored to its original condition, to the extent such repair and restoration is reasonably practicable. Declarant shall have the right, without the consent or approval of the Owners, to add Common Area (unless such addition would increase the total acreage of the Common Area in the Property by more than fifteen (15) percent), change Dwelling Unit types for new property added to the Property, redesignate Common Area as Lots or vice versa, and, subject to Section 7.1 above, withdraw real property from the Property.

7.3 Right to Transfer or Assign Declarant Rights. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Cabarrus County Registry. The foregoing sentence shall not preclude Declarant from permitting other persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

7.4. Declarant's Right to Unilaterally Amend: Control of Board.

a. **Reservation of Development Rights.** Pursuant to Section 47F-1-103(28) of the Act, Declarant hereby reserves unto itself for so long as it owns any interest in any Lot in the Property the right, without further notice and without the joinder or consent of any Owner, (i) to add real estate to the Property, (ii) to create Lots, Units, Common Elements or limited Common Elements, (iii) to subdivide Lots or Units, (iv) to realign or change the boundaries of any Common Elements, (v) to withdraw real estate from the Property or from the Common Elements, and (vi) to amend this Declaration in order to ensure development of the Property in accordance with Declarant's development plan for the Property, or for the exercise of any development right or Special Declarant Right (collectively, "Development Rights").

b. **Reservation of Special Declarant Rights.** Pursuant to Section 47F-1-103(28) of the Act, Declarant hereby reserves unto itself for so long as it owns any interest in any Lot in the Property the right, without further notice and without the joinder or consent of any Owner, (i) to exercise Special Declarant Rights as reserved elsewhere in this Declaration, (ii) to complete improvements indicated on plats and plans recorded before, with or pursuant to this Declaration, (iii) to exercise any Development Right, (iv) to maintain sales offices, management offices, signs advertising the Property, and models, (v) to use easements through the Common Elements for making improvements within the Property or within real estate which may be added to the Property, (vi) to appoint or remove any Director or officer of the Association during any period when Class II membership exists (collectively, "Special Declarant Rights").

ARTICLE EIGHT
MEMBERSHIP; VOTING RIGHTS IN THE ASSOCIATION;
RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

8.1 Membership. Every person or entity who is a record Owner of a fee simple interest in any Lot or Dwelling Unit in the Property is subject by this and any other declarations made in connection herewith to all rights, responsibilities and assessments of the Association and shall be a Member of the Association, provided,

(i) the person or entity owns any interest in any Lot in the Property the right, without further notice and without the joinder or consent of any Owner, (i) to add real estate to the Property, (ii) to create Lots, Units, Common Elements or limited Common Elements, (iii) to subdivide Lots or Units, (iv) to realign or change the boundaries of any Common Elements, (v) to withdraw real estate from the Property or from the Common Elements, and (vi) to amend this Declaration in order to ensure development of the Property in accordance with Declarant's development plan for the Property, or for the exercise of any development right or Special Declarant Right (collectively, "Development Rights").

(ii) the person or entity owns any interest in any Lot in the Property the right, without further notice and without the joinder or consent of any Owner, (i) to exercise Special Declarant Rights as reserved elsewhere in this Declaration, (ii) to complete improvements indicated on plats and plans recorded before, with or pursuant to this Declaration, (iii) to exercise any Development Right, (iv) to maintain sales offices, management offices, signs advertising the Property, and models, (v) to use easements through the Common Elements for making improvements within the Property or within real estate which may be added to the Property, (vi) to appoint or remove any Director or officer of the Association during any period when Class II membership exists (collectively, "Special Declarant Rights").

ARTICLE EIGHT
MEMBERSHIP; VOTING RIGHTS IN THE ASSOCIATION;
RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member.

8.2 Voting Classes. The Association shall have two (2) classes of voting memberships:

a. **Class I.** The Class I Members shall be all Owners of Lots or Dwelling Units within the Property, other than the Declarant as long as Class II membership exists. Any Class I Member in the Property shall be entitled to one (1) vote for each Lot or Dwelling Unit which it owns. In the case of multiple ownership of any Lot or Dwelling Unit, however, those multiple Owners shall be treated collectively as one Owner.

b. **Class II.** The Class II Member shall be the Declarant, who shall be entitled to four (4) votes for each Lot or Dwelling Unit owned by it within the Property. The Class II membership shall cease and be converted to Class I membership on the happening of the first to occur of the following events:

- i. Declarant owns no more Lots within the Property, or
- ii. December 31, 2006.

8.3 Voting: Proxies.

a. In the event only one of the multiple Owners of a Lot or Dwelling Unit is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot or Dwelling Unit. If more than one of the multiple Owners are present, the votes allocated to that Lot or Dwelling Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the votes allocated to that Lot or Dwelling Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot or Dwelling Unit.

b. Votes allocated to a Lot or Dwelling Unit may be cast pursuant to a proxy duly executed by an Owner. If a Lot or Dwelling Unit is owned by more than one person, each Owner of the Lot or Dwelling Unit may vote or register protest to the casting of votes by the other Owners of the Lot or Dwelling Unit through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.

c. No votes allocated to a Lot or Dwelling Unit owned by the Association may be cast.

8.4 Rights and Responsibilities of the Association. Subject to the rights of Owners and Declarant as set forth in this Declaration, the Association has exclusive management and control of the Common Areas and all improvements thereon and all furnishings, equipment and other personal property relating thereto as well as certain Limited Common Areas as provided in this Declaration. The Association's duties with respect to such Common Areas, and its limited responsibility for maintenance of Lots and the exteriors of Dwelling Units, include, but are not limited to, the following:

a. maintenance of the Common Areas, including any irrigation wells, lines and heads located thereon;

b. In the event only one of the multiple Owners of a Lot or Dwelling Unit is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot or Dwelling Unit. If more than one of the multiple Owners are present, the votes allocated to that Lot or Dwelling Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Majority agreement is conclusively presumed if any one of the multiple Owners casts the votes allocated to that Lot or Dwelling Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot or Dwelling Unit.

c. Votes allocated to a Lot or Dwelling Unit may be cast pursuant to a proxy duly executed by an Owner. If a Lot or Dwelling Unit is owned by more than one person, each Owner of the Lot or Dwelling Unit may vote or register protest to the casting of votes by the other Owners of the Lot or Dwelling Unit through a duly executed proxy. An Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.

d. No votes allocated to a Lot or Dwelling Unit owned by the Association may be cast.

8.5 Rights and Responsibilities of the Association. Subject to the rights of Owners and Declarant as set forth in this Declaration, the Association has exclusive management and control of the Common Areas and all improvements thereon and all furnishings, equipment and other personal property relating thereto as well as certain Limited Common Areas as provided in this Declaration. The Association's duties with respect to such Common Areas, and its limited responsibility for maintenance of Lots and the exteriors of Dwelling Units, include, but are not limited to, the following:

- b. management, operation, maintenance, repair, servicing, replacement and renewal of all landscaping, improvements, equipment and personal property constituting part of the Common Areas or located upon the Common Areas so as to keep all of the foregoing in good, clean, attractive, sanitary, safe and serviceable condition, order and repair;
- c. all landscaping of the Common Areas;
- d. maintenance of adequate public liability insurance insuring the Association and its officers and directors, and adequate property casualty or hazard insurance with a minimum replacement value of eighty percent (80%) after application of any deductibles, for the benefit of the Association with respect to the Common Areas, all of the foregoing insurance policies being maintained and insurance proceeds being used in compliance with the provisions of Section 47F-3-113 of the Act;
- e. payment of all taxes and assessments validly levied, assessed or imposed with respect to the Common Areas;
- f. maintenance of private streets and recreational and other facilities located on the Common Areas;
- g. payment of assessments for public and private capital improvements made to or for the benefit of the Common Areas;
- h. maintenance and repair of the yards and exteriors of the Townhomes, including irrigation lines and heads, and insurance upon the same as more specifically set forth herein.
- i. The Association may in its discretion also provide other services as and to the extent the Association deems appropriate.

8.5 Construction of Streets and Roads. The Declarant is responsible for construction of and maintenance of streets and roads within the Property until such roads are accepted for maintenance by the applicable governmental authority or are conveyed to the Association. If conveyed to the Association, the Association shall undertake the management, operation, maintenance, repair, servicing, replacement and renewal of all streets and roads within the Property and all improvements thereon; provided, however, following any irrevocable acceptance of the streets and roads for maintenance as public rights of way by applicable governmental entities, the maintenance obligations of the Association for the streets and roads shall only be to the extent such activities are not performed by the applicable governmental entities, the Association with respect to the Common Areas, all of the foregoing insurance policies being maintained and insurance proceeds being used in compliance with the provisions of Section 47F-3-113 of the Act.

8.6 Third-Party Services. The Association may obtain and pay for the services of any person or firm to manage its affairs to the extent the Board deems advisable, as well as such other person or firm as the Board determines is necessary or desirable, whether such person or firm is furnished or employed directly by the Association or by any person or firm with whom it contracts. Without limitation, the Board may obtain and pay for legal, accounting, engineering or other professional services necessary or desirable in connection with the Common Areas or the enforcement of this Declaration, the Association's Articles of Incorporation, Bylaws, rules or regulations. The Association may, acting through its Board, contract with any other residential associations or commercial entities, neighborhoods or clubs to provide services or perform services on behalf of the Association and its Members.

8.7 Ownership By The Association. The Association may acquire, hold, exchange and dispose of real property and tangible and intangible personal property, subject to such restrictions as from time to time may be contained in this Declaration, the Association's Articles of Incorporation or the Bylaws.

8.8 Rules and Regulations. The Association, from time to time, may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The validity of the Association's rules and regulations, and their enforcement, shall be determined by a standard of reasonableness for the purpose of protecting the value and desirability of the Property and the Dwelling Units.

8.9 Non-Performance By Owner. The Association may perform any duty required of an Owner hereunder or under the Bylaws and assess the costs thereof against the Owner's Lot(s) or Dwelling Unit(s), as a Special Individual Assessment in accordance with the provisions of Article Ten hereof. The Association shall first provide thirty (30) days' written notice to the Owner of its intention to perform such duties and charge the Owner for the cost thereof, plus an administrative fee of 25% of the cost to the Association of performing such duties, and it shall so perform the duties and charge the Owner for the cost thereof and administrative fee only if the duties are not fully performed at the end of the thirty (30) day period.

8.10 Landscaping. The Association shall provide for or perform itself the services of landscaping and maintenance of right-of-way dedication areas on or adjacent to the Property so as to ensure an aesthetically pleasing and uniform look along roads, streets, rights-of-way, and Common Areas that are within or adjacent to the Property. Expenses of the Association in performing these tasks shall be a Common Expense.

8.11 Limitation on Litigation of the Association. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of a majority of the Members. This Section shall not apply, however, to (a) actions brought by the Association to obtain injunctive relief to enforce the provisions of this Declaration, (b) the imposition and collection of assessments as provided in Article Ten hereof, and (c) proceedings involving challenges to ad valorem taxes. This Section shall not be amended unless such amendment so made by the Declarant or is approved by a vote of a majority of the Members.

8.12 Powers Not Limited. The Association shall have, but not be limited to, all the powers, rights and privileges which may be exercised by a Planned Community (as defined in the Act) pursuant to the Act, even if such powers, rights or privileges are not specifically set forth herein or in the Association's Articles of Incorporation or Bylaws.

ARTICLE NINE PROPERTY RIGHTS IN THE COMMON AREAS

9.1 Members' Easements of Enjoyment. Subject to the provisions of Section 9.3 and to the rights of Declarant, every Member shall have a right and easement of enjoyment in and to all of the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit in the Property.

9.2 Delegation of Use. Any Owner may delegate its rights of enjoyment of the Common Areas to the members of its family, its tenants, contract purchasers who reside on the property, or its guests.

The Association shall provide for or perform itself the services of landscaping and maintenance of right-of-way dedication areas on or adjacent to the Property so as to ensure an aesthetically pleasing and uniform look along roads, streets, rights-of-way, and Common Areas that are within or adjacent to the Property. Expenses of the Association in performing these tasks shall be a Common Expense.

18
No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of a majority of the Members. This Section shall not apply, however, to (a) actions brought by the Association to obtain injunctive relief to enforce the provisions of this Declaration, (b) the imposition and collection of assessments as provided in Article Ten hereof, and (c) proceedings involving challenges to ad valorem taxes. This Section shall not be amended unless such amendment so made by the Declarant or is approved by a vote of a majority of the Members.

The Association shall have, but not be limited to, all the powers, rights and privileges which may be exercised by a Planned Community (as defined in the Act) pursuant to the Act, even if such powers, rights or privileges are not specifically set forth herein or in the Association's Articles of Incorporation or Bylaws.

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Subject to the provisions of Section 9.3 and to the rights of Declarant, every Member shall have a right and easement of enjoyment in and to all of the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot or Dwelling Unit in the Property.

Any Owner may delegate its rights of enjoyment of the Common Areas to the members of its family, its tenants, contract purchasers who reside on the property, or its guests.

9.3 Title to Common Areas. The Declarant may retain the legal title to any Common Areas shown on any Recorded Plat of the Property, until such times as it has completed improvements, if any, thereon and until such times as Declarant so wishes and/or, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision to the contrary herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey, and upon such conveyance the Association shall accept, any such Common Areas to the Association not later than December 31, 2006. The Common Areas cannot be mortgaged or conveyed to any entity besides the Association without a vote in favor of at least eighty percent (80%) of the votes in the Association. Notwithstanding the foregoing, in the event that any Owner finances his purchase of a Lot or Dwelling Unit through a loan guaranteed by the VA or insured by FHA and so informs the Declarant of its intention to do so twenty (20) days before the conveyance of the Lot or Dwelling Unit, Declarant shall convey to the Association the Common Areas designated on any Recorded Plat depicting such Lot or Dwelling Unit, prior to the conveyance of the Lot or Dwelling Unit to any such Owner if not already done. Such conveyance of Common Areas to the Association shall be made subject to the right of the Declarant to construct improvements or complete construction thereof, as applicable, on the Common Areas.

9.4 Extent of Members' Easements. The rights of Members of the Association shall in no way be altered or restricted because of the location of Common Areas in any additions to the Property in which such Member is not a resident. The use of Common Areas belonging to the Association shall be a membership entitlement. The rights and easements of enjoyment created herein shall be subject, however, to the following:

a. the right of the Declarant, in its sole discretion, to grade, pave or otherwise improve any road or street shown on any Recorded Plat;

b. the right of the Association to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Areas, including the right to limit the number of guests, to regulate hours of operations and behavior, and to curtail any use or uses it deems necessary for either the protection of the Common Areas or the peace and tranquility of adjoining residents;

c. the right of the Association, as provided in its Articles of Incorporation or Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment of that Member remains unpaid, and for any infraction of any published rules and regulations adopted by the Board;

d. the right of the Association to lease and use any of the Common Areas for functions, lessons, or special events and to allow the lessee to charge admission or other fees for functions, lessons, or special events;

e. intentionally omitted; and

f. the right of the Association to dedicate or transfer all or any part of the Common Areas (which includes streets and roads) or private water/sewer lines to any public agency, authority or utility (public or private) for such purposes and subject to such conditions as may be agreed to by the Members. Except as provided below, no such dedication or transfer shall be effective unless at least eighty percent (80%) of the votes in the Association are cast in favor of such dedication or transfer and the Owners of such votes signify their agreement in writing; provided that, notwithstanding the foregoing, the Association and the Declarant shall each have the right, power and authority to grant easements and rights-of-way for the installation and maintenance of drainage facilities and of utilities, whether private, public or quasi-public, including cable television, water, gas and sewer upon, over, under and across any Common Area, without the assent of the Members when, in the sole

19

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opinion of the Declarant or the Board, as applicable, such easements are required or reasonably necessary for the development and/or the convenient use and enjoyment of the Property and, in the sole opinion of the Declarant or said Board, as applicable, will not unreasonably interfere with the overall use and enjoyment of the Common Areas; and provided further this subsection shall not preclude the Board from conveying at such purchase price as the Board deems appropriate strips or portions of the Common Areas to any Owner in order to resolve any gap, gore, overlap or other boundary line conflict or to make the Lot more usable as a home site provided such conveyance does not in the good faith judgment of the Board adversely affect the overall use and enjoyment of the Common Areas.

9.5 Conveyance or Encumbrance of Common Areas. Portions of the Common Area may be conveyed or subjected to a security interest by the Association provided at least eighty percent (80%) of the votes in the Association are cast in favor of such conveyance or encumbrance and the Owners of such votes signify their agreement in writing. Proceeds of the sale or financing of a Common Area shall be an asset of the Association. The Association, on behalf of the Owners, may contract to convey Common Area or subject it to a security interest, but the contract is not enforceable against the Association until approved by the Members of the Association as described herein. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any Owner or the Association in or to the Common Area conveyed or encumbered, including the power to execute deeds or other instruments. Any purported conveyance, encumbrance, or other voluntary transfer of Common Area, unless made pursuant to this Section, is void. No conveyance or encumbrance of Common Area pursuant to this Section may deprive any Lot or Dwelling Unit of its rights of access and support.

9.5 Intentionally omitted.

BOOK 5092 PAGE 93

9.6 Limited Common Property.

a. Certain portions of the Property, including Common Areas, may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of particular Owners. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Common Expense allocated among the Owners to which the Limited Common Area is assigned.

b. The Declarant may initially designate Limited Common Areas and assign the exclusive use thereof in the deed conveying such property to the Association, or on a Recorded Plat. The Declarant or the Association may re-designate property from Common Area to Limited Common Area, in the manner described in the definitions of such terms hereunder, in the deed conveying such property to the Association or on a Recorded Plat. The Declarant or the Association may re-designate property from Limited Common Area to Common Area, in the manner described in the definitions of such terms hereunder, in the deed conveying such property to the Association or on a Recorded Plat.

9.7 Private Roads. In the development of the Property, the Declarant may construct certain private streets or roads within the Property connecting portions of the Property to public rights of way. The Owners of those Lots bordering such private roads shall have an easement but no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private streets and roads, and there shall be no public rights of any kind therein, unless approved by the Members in accordance with the provisions of Section 9.3. Declarant reserves the right to name and revise from time to time the names or other designations given to such private streets or roads.

9.8. **Stormwater Management Improvements.** The Declarant, until the applicable municipality accepts for public maintenance the stormwater infrastructure within the Property, will be responsible for maintenance of any stormwater management swales, channels, check dams, detention ponds or retention ponds, or the like, within the Common Areas. Such maintenance shall include periodic removal of sediments, restabilization of swales and channels as needed, checking dam repairs, flushing of driveway culverts, and maintenance of fencing and vegetation cover as necessary. Owners, however, shall be responsible for maintaining and clearing any of such stormwater infrastructure and management systems located on their Lots. The use of fences in the swales shall be governed by the provisions of Section 6.20 hereof. If the Association elects to assume overall responsibility for stormwater management facilities or any component thereof, any costs thereof shall be treated as either an expense of the Association, paid through annual and/or special capital assessments, or shall be treated as an expense of only certain Lots or Dwelling Units on whose behalf such expenses were incurred, paid through Special Individual Assessments.

9.9. **Owners' Personal Property.** The Association or the Declarant shall not be liable in any manner for the safekeeping, condition or loss of any vehicle or other personal property belonging to or used by an Owner or his family, guests or invitees, located on or used in the Common Areas or the Limited Common Areas.

ARTICLE TEN COVENANT FOR PAYMENT OF ASSESSMENTS

10.1 **Creation of the Lien and Personal Obligation for Assessments.** Except for Declarant whose obligation to pay Assessments are set forth below, each Member who is the owner of any Lot or Dwelling Unit, by acceptance of a deed therefor, and all other Members, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay as limited below, to the Association:

- a. annual assessments or charges as herein or in the Bylaws provided;
- b. special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein or in the Bylaws provided); and
- c. Special Individual Assessments, as defined and described in Section 10.5.
- d. The annual and special Assessments and any Special Individual Assessments of an Owner and any fines, liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling Units against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who is (are) the Owner(s) of such properties at the time when the Assessment fell due.

10.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, access, maintenance of property values, security, safety and welfare of the residents of the Property and other Members, and in particular for:

COVENANT FOR PAYMENT OF ASSESSMENTS

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- b. special assessments for capital improvements (such annual and special assessments to be fixed, established, and collected from time to time as herein or in the Bylaws provided); and
- c. Special Individual Assessments, as defined and described in Section 10.5.
- d. The annual and special Assessments and any Special Individual Assessments of an Owner and any fines, liquidated damages or summary charges as herein or in the Bylaws provided, together with such interest thereon and costs of collection thereof as herein provided, shall be a charge on the land and shall be a continuing lien upon the Lot or Dwelling Units against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person or persons jointly and severally, who is (are) the Owner(s) of such properties at the time when the Assessment fell due.

10.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, access, maintenance of property values, security, safety and welfare of the residents of the Property and other Members, and in particular for:

- a. improvement, maintenance, and replacement of any of the Association's Common Areas;
- b. payment of the Common Expenses;
- c. maintenance of the exteriors of the Dwelling Units and related improvements on Improved Lots in the Property, including siding, thresholds, the exterior of window and doors frames, paint, gutters, roofs, foundations, walkways, lawns, irrigation systems and landscaping, but not including repair or replacement of any window glass or maintenance of any improvement added to a Dwelling Unit after completion of initial construction thereof by the Owner or occupant of such Dwelling Unit;
- d. establishment of capital replacement reserves; and
- e. acquisition of services and facilities devoted to the foregoing purposes or for the use and enjoyment of the Association's Common Areas, including but not limited to, the cost of repairs, replacements, additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against those Common Areas, the procurement and maintenance of insurance related to those Common Areas, its recreational facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association if necessary, and such other requirements as are necessary to perform all of the aforesaid functions and purposes.

10.3 Assessment of Uniform Rates. Both annual and special assessments shall be fixed at uniform rates for every similar Lot or Dwelling Unit receiving similar services within the Property.

10.4 Special Assessments for Capital Improvements.

BOOK 5092 PAGE

a. In addition to the regular annual Assessments, the Association may levy in any assessment year, a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of professional or consulting fees, any construction or reconstruction, unexpected repairs or replacement of any capital improvement located upon any Dwelling Unit, Common Area, or Limited Common Area (in the discretion of the Association), including the necessary fixtures and personal property related thereto, provided that any such Assessment shall have the consent of a majority of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall have been sent to all Members in accordance with the provisions of the Bylaws for such special meetings.

b. In addition to the foregoing special Assessment approved by the Members, as described in the preceding paragraph, the Association may levy a special Assessment, in the event of emergencies in which the Association perceives an immediate threat to persons or to property, without the consent of the Members. The amount of such Assessment, however, may not exceed \$300.00 per Lot or Dwelling Unit per year.

10.5 Special Individual Assessments. In addition to the regular annual Assessments and the special Assessments for capital improvements described above, the Association may levy, from time to time, on a particular Lot or Dwelling Unit rather than on all Lots, Dwelling Units or types of Lots or Dwelling Units in the Property, Special Individual Assessments, immediately due and payable, consisting of any fines assessed by the Association under authority contained herein or in the Bylaws for an Owner's violations of the terms and conditions of this Declaration, any liquidated damages or summary charges imposed under authority contained in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association.

Lot or Dwelling Unit receiving similar services within the Property.

22

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b. In addition to the foregoing special Assessment approved by the Members, as described in the preceding paragraph, the Association may levy a special Assessment, in the event of emergencies in which the Association perceives an immediate threat to persons or to property, without the consent of the Members. The amount of such Assessment, however, may not exceed \$300.00 per Lot or Dwelling Unit per year.

Special Individual Assessments. In addition to the regular annual Assessments and the special Assessments for capital improvements described above, the Association may levy, from time to time, on a particular Lot or Dwelling Unit rather than on all Lots, Dwelling Units or types of Lots or Dwelling Units in the Property, Special Individual Assessments, immediately due and payable, consisting of any fines assessed by the Association under authority contained herein or in the Bylaws for an Owner's violations of the terms and conditions of this Declaration, any liquidated damages or summary charges imposed under authority contained in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association.

ciation incidental to the enforcement of any rules and regulations, the collection of Assessments (both annual and special) or the collection of damages or charges arising under the Bylaws.

10.6 Application of Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses (including expenses for special Assessments described in Section 10.4 hereof), the funding of a reasonable operating expense surplus, and any prepayment of reserves, may be allocated toward other expenses or capital improvements of the Property or the Association, or refunded or credited to Members, as the Board in its discretion may determine.

10.7 Date of Commencement of Annual Assessment; Due Dates. The regular annual Assessments provided for herein shall be paid (as determined by the Board) in monthly, quarterly, semiannual, or annual installments. The payment of the regular annual Assessment by Owners shall commence as to each Lot or Dwelling Unit, on the first day of the month following the conveyance of that property by the Declarant. The first regular annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual Assessment at least fifteen (15) days in advance of each regular annual Assessment period. Written notice of the regular annual Assessment shall be sent to every Member subject thereto. The due dates shall be established by the Board. The Association, upon any qualified demand (as determined by the Board) at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether any specific Assessment has been paid. The Association may charge a reasonable fee for the issuance of such certificate. Such properly executed certificate of the Association as to the status of the Assessment is binding upon the Association as of the date of its issuance. The due date of any special Assessment under Section 10.4 or any other Assessments permitted by the Declaration shall be fixed in the resolution or resolutions authorizing such Assessment.

10.8 Duties of the Board of Directors.

a. The Board shall fix the amount of the Assessment or Assessments against each Member, for each Assessment period, at least fifteen (15) days in advance of such date or period and shall, at that time, prepare a roster of the Members and Assessments applicable thereto which shall be kept in the office of the Association, or at any other place designated by the Board upon notice to the Members, and which shall be open to inspection by any Member. Unless otherwise provided by the Board, the annual Assessment Period shall be deemed the calendar year commencing January 1st and ending December 31st of any year. The Board shall have the right to change the Annual Assessment Period to a fiscal year other than a calendar year by vote of the Board.

b. Within thirty (30) days after adoption of any proposed budget of the Association, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget shall be deemed ratified at the meeting unless at that meeting a majority of the Owners in the Association reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners (or the initial budget if no other budget has been ratified by the Owners) shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

10.9 Judgments Against Association. Assessments to pay a judgment against the Association may be made only against the Lots or Dwelling Units at the time the judgment was entered, in proportion to their

Common Expense liabilities. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

10.10 Effect of Non-Payment of an Owner's Assessment.

a. If the Assessments of an Owner are not paid within thirty (30) days following the date due, then such Assessments shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot(s) or Dwelling Unit(s), as appropriate, from and after the time of the filing of a claim of lien with the Clerk of Superior Court of Cabarrus County, which lien shall bind such Lot(s) or Dwelling Unit(s), as appropriate, in the hands of the then-Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such Assessment shall remain his personal obligation for the statutory period; and, in addition, shall pass to his successors in title if a lien has been filed, unless expressly waived by the Board.

b. If the Assessment(s) is not paid within thirty (30) days after the due date, the Assessment(s) shall bear interest from the date of delinquency at the rate of one and one-half percent (1.5%) per month (or the highest rate allowed by law, whichever is less), and the Board, acting on behalf of the Association, may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to file a claim of lien and foreclose such lien against any such Lot(s) or Dwelling Unit(s), as appropriate, in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, and there shall be added to the amount of such Assessment, the costs of such action and reasonable attorneys' fees or other cost incurred by the officers of the Association pursuant to authority of the Board. The Board may appoint a trustee to conduct the foreclosure sale, petition the Clerk of Court to appoint a commissioner to conduct the same, or otherwise conduct the foreclosure sale in any manner provided by law. A claim of lien shall specify the name and address of the Association, the name of the record owner of the Lot or Dwelling Unit at the time the claim of lien is filed, a description of the Lot or Dwelling Unit, and the amount of the lien claimed. In the event a judgment is obtained against any Owner for such Assessments, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. In addition, the Board may set a schedule of late fees also due and payable if an Assessment is not paid within thirty (30) days after the due date, which late fees shall be in addition to the other charges described herein.

10.11 Subordination of the Lien on an Owner's Property to Mortgages or Deeds of the Trust. The lien on an Owner's property of the Assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot(s) or Dwelling Unit(s), subject to Assessment. The subordination shall not relieve any Lot(s) or Dwelling Unit(s) from liability for any Assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded. The sale or transfer of a Lot, Improved Lot or Dwelling Unit shall not affect any lien for Assessments. However, the sale or transfer of a Lot or Dwelling Unit that is subject to a first mortgage or first deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. The extinguished Assessments shall be collectable as a Common Expense from all Owners. No such sale or transfer shall relieve a Lot or Dwelling Unit from liability for any assessments thereafter becoming due,

and shall become a continuing lien on the Lot(s) or Dwelling Unit(s), as appropriate, from and after the time of the filing of a claim of lien with the Clerk of Superior Court of Cabarrus County, which lien shall bind such Lot(s) or Dwelling Unit(s), as appropriate, in the hands of the then-Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such Assessment shall remain his personal obligation for the statutory period; and, in addition, shall pass to his successors in title if a lien has been filed, unless expressly waived by the Board. If the Assessment(s) is not paid within thirty (30) days after the due date, the Assessment(s) shall bear interest from the date of delinquency at the rate of one and one-half percent (1.5%) per month (or the highest rate allowed by law, whichever is less), and the Board, acting on behalf of the Association, may authorize its officers to bring appropriate civil action against the Owner personally obligated to pay the same or to file a claim of lien and foreclose such lien against any such Lot(s) or Dwelling Unit(s), as appropriate, in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, and there shall be added to the amount of such Assessment, the costs of such action and reasonable attorneys' fees or other cost incurred by the officers of the Association pursuant to authority of the Board. The Board may appoint a trustee to conduct the foreclosure sale, petition the Clerk of Court to appoint a commissioner to conduct the same, or otherwise conduct the foreclosure sale in any manner provided by law. A claim of lien shall specify the name and address of the Association, the name of the record owner of the Lot or Dwelling Unit at the time the claim of lien is filed, a description of the Lot or Dwelling Unit, and the amount of the lien claimed. In the event a judgment is obtained against any Owner for such Assessments, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. In addition, the Board may set a schedule of late fees also due and payable if an Assessment is not paid within thirty (30) days after the due date, which late fees shall be in addition to the other charges described herein.

Subordination of the Lien on an Owner's Property to Mortgages or Deeds of the Trust. The lien on an Owner's property of the Assessments provided for herein shall be absolutely subordinate to the lien of any first mortgage or deed of trust now or hereafter placed upon any Lot(s) or Dwelling Unit(s), subject to Assessment. The subordination shall not relieve any Lot(s) or Dwelling Unit(s) from liability for any Assessments now or hereafter due and payable, but the lien thereby created shall be secondary and subordinate to any first mortgage or deed of trust as if said lien were a second mortgage, irrespective of when such first mortgage or deed of trust was executed and recorded. The sale or transfer of a Lot, Improved Lot or Dwelling Unit shall not affect any lien for Assessments. However, the sale or transfer of a Lot or Dwelling Unit that is subject to a first mortgage or first deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. The extinguished Assessments shall be collectable as a Common Expense from all Owners. No such sale or transfer shall relieve a Lot or Dwelling Unit from liability for any assessments thereafter becoming due,

or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any such first mortgage or first deed of trust.

10.12 Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charges and liens created herein:

- a. all Common Areas;
- b. all Limited Common Areas;
- c. all properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemption (homestead exemptions shall not be considered an exemption); and
- d. all Lots or Dwelling Units owned by the Declarant to the extent the provisions of Section 10.13 apply thereto.

10.13 Declarant's Obligations for Assessments. As long as and whenever there is Class II membership, the Declarant's obligation for Assessments on unsold Lots subject to this Declaration will be limited to the difference between the actual operating costs of the Association and the Assessments levied on the existing Members other than the Declarant. Whenever there is not Class II membership, Declarant shall pay Assessments at the same rate as other Members, and the Declarant shall not have any obligation to make a deficiency contribution.

BOOK 5092 PAGE 98

10.14 Intentionally omitted.

10.15 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit from the Declarant, the maximum annual Assessment shall be \$99.00 per month per Lot. From and after January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit from the Declarant, the annual Assessment each year may be increased by no more than ten percent (10%) of the previous years' Assessment, unless a majority of each class of the Members present or voting by proxy at a duly called meeting vote to increase the annual Assessments for a given year by more than ten percent (10%) more than the annual Assessments for the prior year. The Board may fix the annual Assessments at any amount not greater than the maximum described here or determined by the duly called meeting as described above. The limitation in the increase in the annual Assessments herein shall not apply to any change in the maximum amount of the Assessments undertaken as an incident to a) a merger or consolidation in which the Association is authorized by law to participate, b) as an incident to any additions to the Property or submission of additional property pursuant to Section 1.2 of this Declaration, or c) a special emergency Assessment pursuant to Section 10.4(b) hereof.

10.16 Initial Capital Contribution. Each initial purchaser of a Lot or Dwelling Unit from the Declarant shall pay to the Association at closing a one-time Initial Capital Contribution of \$100.00 per Lot in order to fund the reserves of the Association. Such Initial Capital Contribution shall be enforceable in a like manner as a Special Individual Assessment as provided herein.

As long as and whenever there is Class II membership, the Declarant's obligation for Assessments on unsold Lots subject to this Declaration will be limited to the difference between the actual operating costs of the Association and the Assessments levied on the existing Members other than the Declarant. Whenever there is not Class II membership, Declarant shall pay Assessments at the same rate as other Members, and the Declarant shall not have any obligation to make a deficiency contribution.

25

10.17 Intentionally omitted.

10.18 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit from the Declarant, the maximum annual Assessment shall be \$99.00 per month per Lot. From and after January 1 of the year immediately following the conveyance of the first Lot or Dwelling Unit from the Declarant, the annual Assessment each year may be increased by no more than ten percent (10%) of the previous years' Assessment, unless a majority of each class of the Members present or voting by proxy at a duly called meeting vote to increase the annual Assessments for a given year by more than ten percent (10%) more than the annual Assessments for the prior year. The Board may fix the annual Assessments at any amount not greater than the maximum described here or determined by the duly called meeting as described above. The limitation in the increase in the annual Assessments herein shall not apply to any change in the maximum amount of the Assessments undertaken as an incident to a) a merger or consolidation in which the Association is authorized by law to participate, b) as an incident to any additions to the Property or submission of additional property pursuant to Section 1.2 of this Declaration, or c) a special emergency Assessment pursuant to Section 10.4(b) hereof.

10.19 Initial Capital Contribution. Each initial purchaser of a Lot or Dwelling Unit from the Declarant shall pay to the Association at closing a one-time Initial Capital Contribution of \$100.00 per Lot in order to fund the reserves of the Association. Such Initial Capital Contribution shall be enforceable in a like manner as a Special Individual Assessment as provided herein.

10.17. **Attorneys' Fees.** In any action brought by the Association to enforce any provisions of the Articles of Incorporation, this Declaration, the Bylaws, or the duly-adopted rules and regulations of the Association, the court may award reasonable attorneys' fees to the prevailing party.

ARTICLE ELEVEN EXTERIOR MAINTENANCE AND INSURANCE

11.1 **Exterior Maintenance.** The Association shall provide routine maintenance and repair services for the exterior of each Dwelling Unit in the Property as Common Expenses, but excluding those Dwelling Units in the inventory of the Declarant prior to sale to their initial Owners. Such services shall include maintenance and repair of all exterior surfaces including roofs, siding, trim, gutters and downspouts, porches, stoops, patios, railings, decks, light fixtures, driveways, walkways and the exterior surfaces of exterior doors, provided the same were originally provided by the original builder of the Dwelling Unit, as well as ordinary lawn and landscaping care. It shall be the duty of the Owner and not the Association to maintain the following: glass surfaces, light bulbs, window and door screens, weather-stripping, and any exterior improvement, including trees, plants, flowers or other landscaping, not originally provided by the original builder of the Dwelling Unit or by the Association. The Board shall provide the aforesaid maintenance as it determines in its sole discretion in order to uphold the aesthetic quality and property values of the Property, but in any event, upon a regular written schedule. A blanket easement over each Lot and the exterior of each Dwelling Unit in the Property is hereby reserved for the Association and its contractors to perform such maintenance at all reasonable times.

11.2 **Costs of Maintenance.** No maintenance performed by an Owner shall have the effect of reducing his liability for payment of Assessments to the Association. Should a need for maintenance be caused by the negligent or intentional acts of an Owner, his family members, guests, tenants, invitees, contractors, employees or agents, the costs of the same shall be a Special Individual Assessment payable by that Owner and enforceable as set forth in Article Ten hereof.

11.3 **Association's Duty to Rebuild Dwelling Units.** After the completion of a Dwelling Unit on a Lot by its initial builder and conveyance of the same to the initial Owner, if such unit suffers casualty damage by fire or other means, the Association shall, with the concurrence of the first mortgagee of the unit, if any, contract to rebuild or repair such damage in accordance with the unit's original plans and specifications upon receipt of the insurance proceeds covering the loss. In the event the insurance proceeds are insufficient to pay all the costs to repair or rebuild, the Board shall levy a Special Assessment upon all Members as required to cover any deficiency.

11.4 **Association to Maintain Insurance on Dwelling Units.** The Association shall maintain property insurance covering each Dwelling Unit and the building in which it is located once each such unit has been conveyed to the initial Owner and thereafter, and the expense of such insurance shall be a Common Expense. The insurance shall name the Board of the Association as trustee for the Lot Owners, for the benefit of the Lot Owners and their respective mortgagees, as their respective interests may appear. The insurance shall cover not less than 100% of the replacement cost of each Dwelling Unit and building, but not including the cost of the land, driveway, foundation, excavations and other such commonly excluded items. The insurance shall afford coverage against all risks of direct physical loss, including fire and other hazards covered by the standard extended coverage endorsement, as well as such other risks as may be advisable in the Board's discretion. The insurance shall include the following provisions:

(a) **Maintenance.** No maintenance performed by an Owner shall have the effect of reducing his liability for payment of Assessments to the Association. Should a need for maintenance be caused by the negligent or intentional acts of an Owner, his family members, guests, tenants, invitees, contractors, employees or agents, the costs of the same shall be a Special Individual Assessment payable by that Owner and enforceable as set forth in Article Ten hereof.

(b) **Association's Duty to Rebuild Dwelling Units.** After the completion of a Dwelling Unit on a Lot by its initial builder and conveyance of the same to the initial Owner, if such unit suffers casualty damage by fire or other means, the Association shall, with the concurrence of the first mortgagee of the unit, if any, contract to rebuild or repair such damage in accordance with the unit's original plans and specifications upon receipt of the insurance proceeds covering the loss. In the event the insurance proceeds are insufficient to pay all the costs to repair or rebuild, the Board shall levy a Special Assessment upon all Members as required to cover any deficiency.

(c) **Association to Maintain Insurance on Dwelling Units.** The Association shall maintain property insurance covering each Dwelling Unit and the building in which it is located once each such unit has been conveyed to the initial Owner and thereafter, and the expense of such insurance shall be a Common Expense. The insurance shall name the Board of the Association as trustee for the Lot Owners, for the benefit of the Lot Owners and their respective mortgagees, as their respective interests may appear. The insurance shall cover not less than 100% of the replacement cost of each Dwelling Unit and building, but not including the cost of the land, driveway, foundation, excavations and other such commonly excluded items. The insurance shall afford coverage against all risks of direct physical loss, including fire and other hazards covered by the standard extended coverage endorsement, as well as such other risks as may be advisable in the Board's discretion. The insurance shall include the following provisions:

- a. That each Lot Owner is an insured person under the policy to the extent of his insurable interest;
- b. That the insurer waives its right of subrogation against the Lot Owner or member of his household;
- c. That no act or omission by the Lot Owner, unless acting within the scope of his actual authority on behalf of the Association, will preclude recovery under the policy;
- d. That the policy may not be canceled or significantly modified without at least thirty (30) days prior written notice to all insureds, including any mortgagees; and
- e. That the policy shall be considered the primary policy should there be other insurance in the name of the Lot Owner covering the same loss.
- f. Any loss covered by the insurance shall be adjusted with the Association, but the proceeds for any loss are payable as directed by the Association and not to any mortgagee. Proceeds shall be held in trust for the benefit of Lot Owners and lienholders as their interests may appear. Proceeds shall be disbursed first for restoration and repair of the damaged property, and Lot Owners and lienholders shall not be entitled to any portion of the proceeds unless there is a surplus after complete restoration and repair.

11.5 Insurance to be Maintained by Lot Owner. Each Lot Owner shall, at the time of acquiring possession to his Lot, and during all times of his ownership or use, maintain the following insurance:

- a. Property insurance covering all of his personal property on the Lot. The insurer under such policy shall waive any right of subrogation against the Association and all other Lot Owners for negligence resulting in a loss to such personal property; and
- b. Liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of such Owner's Lot, including a waiver of subrogation provision as to any rights the insurer may have against the Association or other Lot Owners for any loss.

no act or omission by the Lot Owner, unless acting within the scope of his actual authority, will preclude recovery under the policy;

ARTICLE TWELVE PARTY WALLS

12.1 General Rules of Law Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage resulting from negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction upon each Lot and any replacement thereof. If any portion of any structure originally constructed by Declarant, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Lot, or into the Common Area, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall or fence. The foregoing provision also shall also apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions

shall also apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant.

27

insurance covering all of his personal property on the Lot. The insurer under such policy shall waive any right of subrogation against the Association and all other Lot Owners for negligence

Liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of such Owner's Lot, including a waiver of subrogation provision as to any rights the insurer may have against the Association or other Lot Owners for any loss.

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of this Section shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

12.2 Sharing of Repair and Maintenance. The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who own such party wall in equal shares, to the extent such maintenance is not the responsibility of the Association under Article VII.

12.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if any other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in his proportionate share, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

12.4 Weatherproofing. Notwithstanding any other provision of this article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

12.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

12.6 Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repairs, maintenance or reconstruction of a party wall. Such repairs, maintenance, or reconstruction shall be done expeditiously and in a professional manner, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

12.7 Certification With Respect to Contribution. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification within fifteen (15) days of such request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor, which shall be binding on the adjoining Owner claiming the right.

12.8 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all such arbitrators shall be binding upon the Owners, who expressly agree to submit to and be bound by such arbitration procedure and decision. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board shall select an arbitrator for the refusing party. All arbitrators chosen shall be either architects, engineers, general contractors or attorneys licensed as such in North Carolina.

ARTICLE THIRTEEN
AMENDMENT TO DECLARATION13.1 Owner/Member Initiated.

a. An amendment to this Declaration may be proposed upon a majority-vote of the Owners (except as provided below with regard to approval by Declarant), whether meeting as Owners or by instrument in writing signed by them. Any proposed amendment to this Declaration shall be transmitted in writing to all current Owners, and there shall be called a special meeting of the Owners for a date not sooner than ten (10) days nor later than sixty (60) days from date of notice. It shall be required that each Owner be given written notice of such special meeting, stating the time and place, and reciting the proposed amendment in reasonably detailed form. Such notices shall be made in compliance with the provisions of Section 4.3 hereof, and after made in compliance therewith, shall be deemed to be properly given. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such Owner. At the meeting, the amendment proposed must be approved by an affirmative vote of sixty-seven percent (67%) of the votes (with the votes being calculated as provided in Sections 8.2 and 8.3 hereof) of Owners (except as provided below with regard to approval by Declarant) entitled to vote in order for such amendment to become effective. At any meeting held to consider such amendment, the written vote of any Owner shall be recognized and counted even if such Owner is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to or at such meeting. If so approved, such amendment of this Declaration shall be properly transcribed and certified by two (2) officers of the Association as having been duly adopted and approved by the requisite percentages of Owners and lenders. The original or an executed copy of such amendment, properly executed with the same formalities as a deed, shall be recorded in the Office of the Register of Deeds of Cabarrus County, and no such amendment to this Declaration shall be effective until so recorded. If any amendment to the Declaration creates an inconsistency in the Bylaws, to the extent such inconsistency exists, the Declaration shall control.

b. Without the prior written consent of the Declarant (during Class II membership), there shall not be allowed any Owner/Member-initiated amendments to this Declaration for a period of three (3) years from the effective date hereof. The above limitation shall in no way limit or diminish Declarant's rights to make amendments to any part of the Declaration under the powers reserved in Section 13.2 below. No amendment may disturb any of the rights allocated to Declarant by this Declaration or any other declaration recorded for the Property, including but not limited to rights incident to the Declarant's control of the Board, rights included in the Special Declarant Rights, and the Development Rights of Declarant.

13.2. Declarant's Right to Unilaterally Amend; Control of Board. Declarant shall have the right to unilaterally amend this Declaration without the consent or joinder of the Owners as set forth in Section 7.4 hereof.

13.3. When Effective; Recording; Title Searching. An amendment to this Declaration that complies with the provisions of this Article shall be effective when recorded in the Cabarrus County Registry. The amendment shall be indexed under the name of the Declarant or its successor, the Association or its successor, or the Owners of the property in the Property. The failure of the amendment to be indexed under all of the foregoing shall not invalidate such amendment so long as the amendment has been indexed under at least one of the foregoing. Anyone searching title on Lots or Dwelling Units in the Property should search under the names of

Declarant's Right to Unilaterally Amend; Control of Board. Declarant shall have the right to unilaterally amend this Declaration without the consent or joinder of the Owners as set forth in Section 7.4 hereof.

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the foregoing to discover amendments to this Declaration that may have occurred after the Lot or Dwelling Unit has been conveyed to an Owner from the Declarant.

ARTICLE FOURTEEN VA AND FHA APPROVAL

In the event that any Owner hereafter finances its Dwelling Unit through a loan guaranteed or insured by the VA or the FHA or Dwelling Units within the Property are approved by the VA or the FHA as being eligible for such loans, then, until all Class II Membership ceases to exist and be converted to Class I Membership as provided in Article Eight hereof, and if required by the VA or the FHA, the approval of the VA or the FHA shall be obtained prior to: (i) the annexation of additional property to the Property subject to this Declaration, (ii) dedication of additional Common Areas other than the Common Areas or Common Properties designated on existing plats of the Property, and (iii) amendment of this Declaration.

ARTICLE FIFTEEN SEVERABILITY AND GOVERNING LAW

If any provision of this Declaration is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants as contained herein shall be deemed to be severable each from each other without qualification. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

BOOK 5092 PAGE 103

SIGNATURE IS ON THE FOLLOWING PAGE.

Over amendments to this Declaration that may have occurred after the Lot or Dwelling Unit has been conveyed to an Owner from the Declarant.

ARTICLE FOURTEEN VA AND FHA APPROVAL

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If any provision of this Declaration is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all covenants as contained herein shall be deemed to be severable each from each other without qualification. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be duly executed by authority duly granted as of the date first above written.

THE JEWELL CORPORATION, a North Carolina corporation

By: J. Kenneth Jewell
J. Kenneth Jewell, President

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

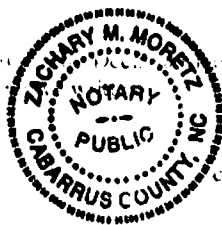
I, a Notary Public of Cabarrus County, North Carolina, certify that J. Kenneth Jewell personally came before me this day and acknowledged that he is President of The Jewell Corporation, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him as President.

WITNESS my hand and official stamp or seal, this 12th day of January, 2004.

My Commission Expires:

12/14/08

[NOTARIAL SEAL]



THE JEWELL CORPORATION, a North Carolina corporation

J. Kenneth Jewell
J. Kenneth Jewell, President

NORTH CAROLINA - CABARRUS COUNTY

The foregoing (or annexed) certificate(s) of

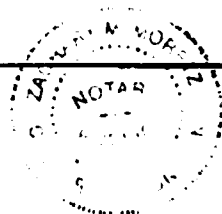
Zachary M. Moretz, a notary public,

is (are) certified to be correct. This the 13 day of January, 2004,
I, Linda E. McAbee, Register of Deeds for Cabarrus County, North Carolina,

do hereby certify that the foregoing instrument was duly given and as the act of the corporation, the foregoing instrument was signed in its name by him as President.

by: Linda E. McAbee Ass't/Deputy

WITNESS my hand and official stamp or seal, this 12th day of January, 2004.



CABARRUS COUNTY

Zachary M. Moretz
The time 13 day of January, 2004

EXHIBIT A

[Legal Description]

Lying and Being in the City of Concord, Number Four (4) Township of Cabarrus County, North Carolina in the Southeastern corner of the intersection of North Carolina Highway Number 73 and Rural Drive and Being all of Lot Numbers ONE (1) and TWO (2) in Block "A" of the Subdivision of the property known as SIDES REALTY CO., INC., as surveyed and platted, a copy of which plat is filed in the Office of the Register of Deeds for Cabarrus County in Map Book 10, Page 64; and additionally, a tract adjacent thereto, as shown in Deed Book 142, Page 253, and being more fully described as follows:

BEGINNING at an iron stake in the Southeastern corner of the intersection of North Carolina Highway Number 73 and Rural Drive, an old corner, and runs thence with the South side of Highway 73 South 77-06-41 East 230.00 feet to an iron stake on the South side of Highway 73, the old Northwestern corner of Ray M. Calloway (Deed Book 255, Page 239); thence with the line of Calloway South 13-38-38 West 325.44 feet to an iron stake, rear corner of Calloway, also a rear corner of Lot Number 2, a corner in the line of Lot Number 3 (Ray M. Calloway, Deed Book 319, Page 57); thence with the line of Calloway South 70-14-08 West 143.53 feet to an iron stake on the East side of Rural Drive, front corner of Lot Numbers 2 and 3, and also a front corner of Calloway; thence with the East side of Rural Drive North 20-04-17 West 266.89 feet to an iron stake, an old corner, and the old Northwestern corner of Lot Number 1, and the tract described in Deed Book 142, Page 253; thence continuing with the East side of Rural Drive North 25-35-30 East 183.41 feet to the point of BEGINNING, containing 1.913 acres, more or less, as surveyed and platted by James T. West, P.L.S. October 2, 2001.

BOOK 5092

EXHIBIT A

[Legal Description]

Lying and Being in the City of Concord, Number Four (4) Township of Cabarrus County, North Carolina in the Southeastern corner of the intersection of North Carolina Highway Number 73 and Rural Drive and Being all of Lot Numbers ONE (1) and TWO (2) in Block "A" of the Subdivision of the property known as SIDES REALTY CO., INC., as surveyed and platted, a copy of which plat is filed in the Office of the Register of Deeds for Cabarrus County in Map Book 10, Page 64; and additionally, a tract adjacent thereto, as shown in Deed Book 142, Page 253, and being more fully described as follows:

BEGINNING at an iron stake in the Southeastern corner of the intersection of North Carolina Highway Number 73 and Rural Drive, an old corner, and runs thence with the South side of Highway 73 South 77-06-41 East 230.00 feet to an iron stake on the South side of Highway 73, the old Northwestern corner of Ray M. Calloway (Deed Book 255, Page 239); thence with the line of Calloway South 13-38-38 West 325.44 feet to an iron stake, rear corner of Calloway, also a rear corner of Lot Number 2, a corner in the line of Lot Number 3 (Ray M. Calloway, Deed Book 319, Page 57); thence with the line of Calloway South 70-14-08 West 143.53 feet to an iron stake on the East side of Rural Drive, front corner of Lot Numbers 2 and 3, and also a front corner of Calloway; thence with the East side of Rural Drive North 20-04-17 West 266.89 feet to an iron stake, an old corner, and the old Northwestern corner of Lot Number 1, and the tract described in Deed Book 142, Page 253; thence continuing with the East side of Rural Drive North 25-35-30 East 183.41 feet to the point of BEGINNING, containing 1.913 acres, more or less, as surveyed and platted by James T. West, P.L.S. October 2, 2001.

MC 157 73 (R/W version)

THE LINE
N 0675.22° E
1510

EXHIBIT C
Consent and Subordination to Declaration

Rowan Savings Bank, SSB, Inc. a North Carolina banking corporation ("Lender"), owner and holder of a note secured by that certain Deed of Trust dated April 11, 2002, from The Jewell Corporation ("Grantor") to Bruce D Jones, Trustee for the benefit of Lender ("Trustee"), recorded in Book 3761, Page 3 in the Office of the Register of Deeds of Cabarrus County, North Carolina ("Deed of Trust") and Trustee hereby consent to the foregoing Declaration of Covenants, Conditions and Restrictions for Kenton Glenn ("Declaration") made by Grantor as Declarant, and consent to the execution, delivery and recording of the foregoing Declaration and agree that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof, except and provided that the lien of assessments provided for the Declaration shall be subordinate to the lien of the Deed of Trust as provided in this Declaration.

IN WITNESS WHEREOF, the undersigned have duly executed these presents under seal as of the 26th day of November, 2003.

LENDER:

Rowan Savings Bank, SSB, Inc.
a North Carolina banking corporation

By: Janet D. AlamyIts: R. Vair President**[CORPORATE SEAL]**

Consent and Subordination to Declaration

Janet D. Alamy
Trustee

Rowan Savings Bank, SSB, Inc. a North Carolina banking corporation ("Lender"), owner and holder of a note secured by that certain Deed of Trust dated April 11, 2002, from The Jewell Corporation ("Grantor") to Bruce D Jones, Trustee for the benefit of Lender ("Trustee"), recorded in Book 3761, Page 3 in the Office of the Register of Deeds of Cabarrus County, North Carolina ("Deed of Trust") and Trustee hereby consent to the foregoing Declaration of Covenants, Conditions and Restrictions for Kenton Glenn ("Declaration") made by Grantor as Declarant, and consent to the execution, delivery and recording of the foregoing Declaration and agree that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof, except and provided that the lien of assessments provided for the Declaration shall be subordinate to the lien of the Deed of Trust as provided in this Declaration.

IN WITNESS WHEREOF, the undersigned have duly executed these presents under seal as of the 26th day of November, 2003.

LENDER:

Rowan Savings Bank, SSB, Inc.
a North Carolina banking corporation

By: Janet D. AlamyIts: R. Vair PresidentJanet D. Alamy
Trustee

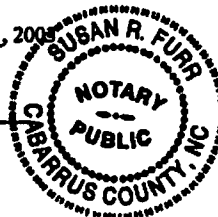
STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

I, Susan R. Furr, Notary Public of said county and state, certify that Janet D. Abernethy personally came before me this day and acknowledged that (s)he is the Sr. Vice President of Rowan Savings Bank, SSB, Inc corporation, and that (s)he, as Sr. Vice President being authorized to do so, executed the foregoing on behalf of the corporation. Witness my hand and official seal, this the 26th day of November, 2003.

WITNESS my hand and notarial stamp or seal this 26th day of November, 2003.

Susan R. Furr
NOTARY PUBLIC



My Commission Expires:

January 6, 2007

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

I, Susan R. Furr, a Notary Public, do hereby certify that Bruce D. Jones, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the 26th day of November, 2003.My Commission Expires: January 6, 2007January 6, 2007

[NOTARIAL SEAL]

Susan R. Furr
NOTARY PUBLIC

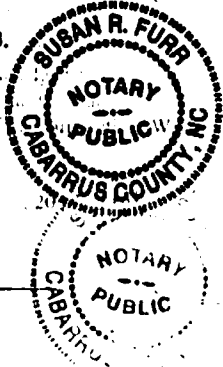


Exhibit C

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

I, Susan R. Furr, a Notary Public, do hereby certify that Bruce D. Jones, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the 26th day of November, 2003.

My Commission Expires:

January 6, 2007

Susan R. Furr
NOTARY PUBLIC

