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JEFF L. THIGPEN

REGISTER OF DEEDS

BY ANDREW S. ADKINS

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Pick Up/Isaacson Isaacson & Sheridan

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DECLARATION  
 OF  
 COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR  
 FOREST OAKS COMMONS TOWNHOMES  
 (A/K/A STONE GABLES AT FOREST OAKS)

THIS DECLARATION is made on the date hereinafter set forth by MID-ATLANTIC TOWN HOMES, LLC (F/K/A MAD CONSTRUCTION, LLC), a North Carolina limited liability company, having an office in Guilford County, North Carolina, hereinafter referred to as "Declarant."

WHEREAS, Declarant is the owner of certain property in the County of Guilford, State of North Carolina, which is more particularly described as follows:

ALL of the land shown on the plat entitled "Final Plat for Forest Oaks Commons Townhomes, Phase 1, Section 1" recorded in Plat Book 171 Page 60, in the Office of the Register of Deeds of Guilford County, North Carolina. For marketing and related purposes, the community of townhomes described herein may also be referred to sometimes as "Stone Gables At Forest Oaks."

WHEREAS, it is the intent of the Declarant hereby to cause the above-described property to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

SECTION 1. ASSOCIATION. "Association" shall mean and refer to Forest Oaks Commons Homeowners Association, Inc., a North Carolina non-profit corporation, and its successors and assigns, formed without limitation for the purpose of maintaining, preserving and administering the "Common Area," as hereinafter defined.

SECTION 2. "COMMON AREA" OR "COMMON ELEMENTS". "Common Area" or "Common Elements" shall mean all real property owned by the Association (whether owned in fee or by way of license or easement) or leased by the Association, other than a Lot. The Common Area to be owned by the Association at the time of the conveyance of the first Lot and is described as follows:

ALL of that land designated "Common Area" as shown on the plat entitled "Final Plat for Forest Oaks Commons Townhomes, Phase 1, Section 1" recorded in Plat Book 71 Page 90 in the Office of the Register of Deeds of Guilford County, North Carolina; provided, however, that any land designated as "Open Space" which is dedicated to public use on such plat and which is accepted for maintenance purposes by a public authority shall not be part of the Common Area.

Declarant reserves the right, in its sole discretion, to convey or cause to be conveyed to the Association from time to time and without the consent of the Association or its Members, additional property to the Association, which property may include any portion of the Properties, including any Additional Property annexed by Declarant pursuant to Article X, Section 4 hereof. In addition, the Association, with the consent of Declarant, for so long as Declarant or any affiliated entity shall own any portion of the Properties or shall have the right to annex additional properties pursuant to Article X, Section 4 hereof, and thereafter with the consent of the Association, in the discretion of its Executive Board, may convey additional property to the Association. The Association shall accept any such conveyance of property and thereafter such property shall be held and maintained by the Association as Common Area. Improvements, which may include, but shall not be limited to, recreational amenities, roadways, retention or detention ponds or erosion control devices, may be located on such additional Common Area. Except as otherwise provided in Section 47E-3-113 of the Planned Community Act, the Association shall be required to promptly repair and replace any portion of the Common Area for which the Association is required to maintain casualty insurance pursuant to the Bylaws of the Association which is damaged or destroyed.

The Association also may acquire additional Common Area with the consent of the Members of the Association entitled to cast at least two-thirds (2/3) of the votes of the

Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action. For such a conveyance to be effective, the deed or instrument conveying to the Association additional Common Area must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite owner approval has been obtained and is evidenced by written acknowledgments signed by the owners approving the amendment and made a part of the minute book of the Association; and (3) be properly recorded in the Guilford County Registry.

The Association shall maintain any lake and any retention or detention ponds, rip rap and other drainage or erosion control devices located on the Common Area now or hereafter conveyed to the Association by Declarant that are required to be maintained by the governmental office(s) having jurisdiction for watershed protection as directed by such governmental office(s). In the event the Association is dissolved or otherwise defaults on its obligation to maintain any such drainage or erosion control device, Declarant, for each Lot owned within the Properties hereby covenants, and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the of the maintenance of such pond or erosion control device.

SECTION 3. DECLARANT. "Declarant" shall mean and refer to Mid-Atlantic Town Homes, LLC, as well as its successors and assigns, pursuant to an express assignment or conveyance of any special declarant rights hereunder to such successor or assign, all of which rights, including Declarant's voting, easement, architectural review and development rights, shall be assignable and may be apportioned on a lot-by-lot basis.

SECTION 4. DECLARATION. "Declaration" shall mean and refer to this certain Declaration of Covenants, Conditions and Restrictions for Forest Oaks Commons Townhomes recorded in the Office of the Register of Deeds, Guilford County, North Carolina, as it may be amended from time to time. All of the property which is now a part of the Properties, and all of the property which, pursuant to Article X, Section 4 hereof, is hereafter annexed to and made a part of the Properties, shall be subject to the Declaration.

SECTION 5. FHA. "FHA" shall mean and refer to the Federal Housing Administration of the Department of Housing and Urban Development.

SECTION 6. LOT. "Lot" shall mean and refer to any separately numbered plot of land shown upon any now or subsequently recorded subdivision plat of the Properties intended for single-family residential purposes and shall include any improvements constructed thereon and "Lots" shall refer to all such lots collectively. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant, and to thereby create additional Lots, eliminate existing Lots or create additional Common Areas; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by, nor shall any Lot within the Properties contain fewer square feet than the minimum number of square feet from time to time required by Guilford County or other appropriate governmental authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat, or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined

in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

SECTION 7. MEMBER. "Member" shall mean and refer to every person or entity who holds Membership with voting rights in the Association.

SECTION 8. OWNER. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 9. PERIOD OF DECLARANT CONTROL. "Period of Declarant Control" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Guilford County, North Carolina, and continuing until the earlier of: (i) ten years from the date this Declaration is recorded in the Office of the Register of Deeds, Guilford County, North Carolina; or (ii) such time as Declarant, together with all affiliated entities, shall cease to own any of the lots shown on the Plat which are intended for single-family residential purposes; provided, however, if after the expiration of such period of time, the Plat is amended to add additional lots and Declarant, together with all affiliated entities, shall own any of the lots shown on the Plat as amended which are intended for single-family residential purposes, such period of time shall be reinstated and shall continue until the earlier of: (i) ten years from the date this Declaration is recorded in the Office of the Register of Deeds, Guilford County, North Carolina; or (ii) such time Declarant, together with all affiliated entities, shall cease to own any of the lots shown on the Plat which are intended for single-family (including townhome) residential purposes.

SECTION 10. PLAT. "Plat" shall mean and refer to the Plat of the Property as recorded in Plat Book 171 at Page 20 in the Guilford County, North Carolina, Public Registry, and the Plats of any additions to the Property which may be recorded by Declarant in the Guilford County, North Carolina, Public Registry hereafter.

SECTION 11. PROPERTIES. "Properties" or "Property" shall mean and refer to that certain real property shown on the Plat, and additional real estate dedicated in additional phases, if any, and such other property as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

SECTION 12. VA. "VA" shall mean and refer to the Department of Veterans Affairs.

## ARTICLE II

### PROPERTY RIGHTS

SECTION 1. OWNERS EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the easements herein reserved by Declarant or created in favor of the Association,

including, without limitation the easements set forth in Article VIII hereof;

(b) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(c) the right of the Association to suspend the voting rights by the Owner(s) of any Lot for any period during which any assessment against such Lot remains unpaid or for any period during which such Lot or any Owner or occupant thereof is in violation of the terms of this Declaration or the published rules and regulations of the Association and for a period not to exceed sixty (60) days after any such violation;

(d) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Association's Executive Board; provided, however, no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded;

(e) the right of the Association, pursuant to Section 47E-3-112 of the Planned Community Act and with the consent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association, to dedicate or transfer fee title to all or any part of the Common Area for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, for so long as Declarant or any affiliated entity, shall own any portion of the Properties, Declarant shall have the right to annex additional properties pursuant to Article VIII, Section 4 hereof. Declarant must also consent to such action; provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances;

(f) the right of the Association to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area, and specifically including the right to establish rules and regulations concerning parking and vehicular traffic flow on and along the streets and roadways, whether public or private, within or abutting, which rules and regulations may restrict or prohibit on-street parking and may be enforced by towing at the expense of the vehicle's owner, by reasonable fine levied against the vehicle's owner and/ or any Owner of a Lot to which such violation reasonably may be attributed, or by any other reasonable method of enforcement established by the Association's Executive Board;

(g) the right of the Association to borrow money for the purpose of improving the Common Area and facilities thereon and, with the assent of the Members entitled to cast at least eighty percent (80%) of the votes of the Association, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred (any such mortgage shall be effective if it is executed on behalf of the Association by its duly authorized officers and recites that the requisite consent of Members has been obtained and documented in the Minute Book of the Association); provided, however, for so long as Declarant or any affiliated entity, including, without limitation, Forest Oaks Commons Homeowners Association, Inc., shall own any portion of the Properties or shall have the right to annex additional properties pursuant to Article VIII, Section 4 hereof, Declarant must also consent to such action, and further provided that no such mortgage, encumbrance or hypothecation or

foreclosure of the lien thereby created shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances; and

(h) subject to the prior written consent of FHA or VA, in the event FHA or VA insured loans have been obtained secured by Lots, the right of the Association to convey to Declarant, the Association or any Secondary Association portions of the Common Area for the purpose of correcting unintentional conveyances of Common Areas or eliminating encroachments of dwellings or other improvements onto portions of the Common Areas or for the purpose of enhancing the utility of the Common Areas to be retained by the Association; provided; however, no such conveyance shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Common Area or cause any Lot or any remaining Common Area to fail to comply with applicable laws, regulations or ordinances.

SECTION 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

SECTION 3. LEASES OF LOTS. Any Lease Agreement between an Owner and a lessee for the lease of such Owner's Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and By-Laws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. All leases of Lots shall be in writing and shall have a term of not less than one (1) month. Other than the foregoing there is no restriction on the right of any Owner to lease his Lot.

SECTION 4. RULES AND REGULATIONS. The Executive Board of the Association may establish reasonable rules and regulations concerning the use of the Common Area and improvements located thereon. Such rules and regulations may prohibit or restrict the use of any lake or pond which is a part of or adjacent to the Common Area for boating, fishing and swimming and/or may provide for access to any such lake or pond only through designated portions of the Common Area. The Association may impose reasonable monetary fines and other sanctions for the violation of established rules and regulations and for the violation of any of the covenants and conditions contained in this Declaration, which monetary fines and sanctions shall be assessed and collected pursuant to the provisions of Article X hereof. Copies of such rules and regulations and the amendments thereto shall be furnished by the Association to all owners prior to the effective date thereof. All such rules and regulations shall be binding upon the owners, their families, tenants, guests, invitees and agents until and unless such regulation, rule or requirement shall be specifically overruled, canceled, or modified by the Executive Board of the Association or by the Members of the Association entitled to cast at least two-thirds (2/3) of the votes of the Association, who are voting, in person or by proxy, at a meeting duly called or such purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

SECTION 5. PROPERTY RIGHTS PURSUANT TO DECLARATION. As more particularly set forth in the Declaration and the governing documents of the Association, each Lot Owner, as a member of the Association, and subject to the terms and conditions thereof, shall have the right to use and enjoy the Common Area and any improvements now or hereafter located thereon.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

SECTION 1. MEMBERSHIP. Every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including Declarant and any affiliated entity shall be a voting Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. On all matters which the Membership shall be entitled to vote, the Member(s) owning each Lot shall be entitled to one (1) vote. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

SECTION 2. DECLARANT RIGHT TO REPRESENTATION ON THE EXECUTIVE BOARD OF THE ASSOCIATION. During any Period of Declarant Control, Declarant shall have the right to designate and select all of the members of each Executive Board of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Executive Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Executive Board and to replace such person or persons with another person or other persons to act and serve in the place of any member or members of the Executive Board so removed for the remainder of the unexpired term of any member or members of the Executive Board so removed. Any Executive Board member designated and selected by Declarant need not be a resident of the properties. Except as otherwise provided in the Bylaws with respect to the filing of vacancies, any members of the Executive Board which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE AND ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay: (a) to the Association: (i) annual and other assessments and charges provided for herein, together with interest and late fees, costs

and reasonable attorney's fees; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Area; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six (6) months. All assessments and charges provided for herein, together with interest, any late fees, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made when a claim of lien is filed of record in the Office of the Clerk of Superior Court, Guilford County, North Carolina. Each such assessment and charge, together with interest, any late fees, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

## SECTION 2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area or the Lots, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of any taxes assessed against the Common Area; the maintenance of open spaces and streets which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way with the Properties), drives and parking areas within the Common Area; the procurement and maintenance of liability insurance in accordance with the By-Laws; the maintenance of the completed permanent wet detention pond as directed by the governmental office having jurisdiction for watershed protection; the maintenance of dams and ponds, including retention or detention ponds, or other bodies of water, if any, located within the Common Area; the maintenance of entranceways, landscaping and lighting of Common Area, road medians and islands and entranceways; the cost of operating, maintaining and repairing any street lights erected by the Association or the Declarant in the rights-of-way of streets (whether public or private) or in any other easement provided within the Properties; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the exterior maintenance of the Lots as herein provided; the payment of assessments for public or private improvements made to or for the benefit of the Common Elements; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; the provision of cable television and/or similar services to the Lots and such other needs as may arise.

(b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

(c) All monies collected by the Association shall be treated as the separate property of



the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his Membership interest therein, except as an appurtenance to his Lot. When any Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

SECTION 3. ADOPTION OF BUDGET AND FIXING OF ANNUAL ASSESSMENTS: MAXIMUM ANNUAL ASSESSMENT.

(a) At least thirty (30) days in advance of each annual assessment period, the Executive Board shall establish an annual budget and fix the amount of the annual assessments in advance for the following year. Within thirty (30) days of the adoption of any proposed budget, the Executive Board shall provide to all of the 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 Executive Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting the Owners of a majority of the Lots reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

(b) Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Thousand Two Hundred Eighty and No/100 Dollars (\$2280.00) per Lot, and may be collected in monthly installments of One Hundred Ninety and 00/100 Dollars (\$190.00) per Lot. The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be established by the Executive Board and maybe increased by the Executive Board without approval by the Membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of the Members entitled to cast at least two-thirds (2/3) of the votes of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

(c) The Executive Board may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

(d) The Association shall, at all times, employ a professional management company to carry on the day to day operation and management of the Association. A decision to terminate, fail to renew, or to not have in force or effect a contract or agreement with a professional management company may only be made by a vote of the Members entitled to cast at least two-thirds (2/3) of the votes of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Members entitled to cast at least two-thirds (2/3) of the votes, of the Association who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis. This section shall apply, by way of example and not exclusion, to any sums required for maintenance of the Pond.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast twenty percent (20%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly or annual basis; provided, however, that so long as the dwelling on any Lot owned by Declarant or any affiliated entity is unoccupied as a residence, the amount of the assessment for each such Lot shall be an amount equal to ten percent (10%) of the regular assessments fixed for each Lot.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the date such Lot is made subject to this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Executive Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 8. WORKING CAPITAL ASSESSMENTS. In addition to the annual assessments authorized above, at the time of the closing of the first sale of each Lot, the purchaser(s) thereof shall pay to the Association an amount equal to two-twelfths (2/12ths) of the then current annual assessment established by the Association. Such funds shall be used by the

Association to establish a Working Capital Fund, the purpose of which is to insure that the Association will have sufficient monies available to meet its initial operational needs. No such payments made into the Working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of the Declaration and the Bylaws.

SECTION 9. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate from time-to-time established by the Association not to exceed eighteen percent (18%) per annum. In addition, the Association may charge a reasonable late fee, the amount of which shall be established from time to time by the Executive Board of the Association, for assessments not paid within thirty (30) days after the due date and after notice and an opportunity to be heard, the Association may suspend privileges or services provided by the Association (except rights of access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer, which suspension may continue without further hearing until the delinquency is cured. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of a mortgage or deed of trust on real estate under power of sale, and interest, late fees, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

SECTION 10. EFFECT OF DEFAULT IN PAYMENT FOR AD VALOREM TAXES OR ASSESMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 11. SUBORDINATION OF THE LIEN FOR ASSESSMENTS TO THE LIEN OF FIRST MORTGAGES. When the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust or deed in lieu of foreclosure, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which become due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Owners including such purchaser, its heirs, successors, and assigns. Such sale or transfer of any Lot which is subject to any such first mortgage or 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 become due prior to such sale or transfer; provided, however, no such sale or transfer shall relieve such Lot or the Owner thereof from liability for any assessments thereafter becoming due or from the lien thereof

SECTION 12. EXEMPT PROPERTY. All property dedicated to, and accepted by, a public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V

### ARCHITECTURAL CONTROL

SECTION 1. IMPROVEMENTS. No improvements, alteration or repair, change in paint color, excavation, change in grade, planting, landscaping, exterior decoration (including, without limitation, yard ornaments, figurines, statues, bird baths, houses and feeders, flags and similar items) or other work which in any way alters the exterior of any Lot or the improvements located thereon from their natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner other than Declarant shall be commenced, erected or maintained upon any Lot and no building, fence wall, residence or other structure shall be commenced, erected, maintained, improved, altered or removed, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Executive Board of the Association or by an architectural committee composed of three (3) or more representatives appointed by the Executive Board (the Architectural Control Committee). Temporary seasonal exterior decorations shall not require the prior approval of the Executive Board or the Architectural Control Committee, but if any such decorations are determined, in the sole discretion of the Executive Board or the Architectural Control Committee, to be distasteful or otherwise disruptive of the aesthetics or visual harmony of the community, the Executive Board or the Architectural Control Committee may require that such decorations promptly and permanently be removed. In the event that an Owner neglects or fails to remove any such decorations at the request of the Executive Board or the Architectural Control Committee, the Association may provide such removal. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times for such purpose and the cost of such removal shall be added to and become a part of the assessment to which such Lot is subject. Notwithstanding the foregoing, nothing herein contained shall prevent or interfere with the right of Declarant to improve and develop the Properties, including the Lots, as Declarant chooses, so long as said development follows the general plan of development of the Properties previously approved by the Guilford County Planning Department. Accordingly, Declarant need not seek or obtain the approval of the Architectural Control Committee for improvements erected on the Properties by or at the

direction of Declarant. In addition, for so long as Declarant or any affiliated entity owns any Lot or has the right to annex any Additional Property pursuant to Section 4 of Article X hereof, Declarant or its affiliate may approve any plans and specifications rejected by the Executive Board or the Architectural Control Committee for the construction or alteration of improvements on any Lot, provided the construction or alteration approved by Declarant or its affiliate comports with the general scheme of development approved by Guilford County. Such approval by Declarant or its affiliate shall operate and have the same effect as approval by the Executive Board or the Architectural Control Committee.

## SECTION 2. PROCEDURES.

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefore, showing the nature, kind, shape, height, materials and location of the same, to the Executive Board of the Association or the Architectural Control Committee which shall evaluate such plans and specification in light of the purposes of this Article.

(b) Upon approval by the Architectural Control Committee or Executive Board of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specification, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specification bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specification shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of any such plans and specification relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specification, as approved, and any conditions attached to any such approval. As a condition to the granting of approval of any request made under this Article, the Association may require that the Owner(s) requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner(s) shall evidence consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Owner(s), and any subsequent Owner(s) of the Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, are deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth herein, and subject to the lien rights described herein.

(c) Neither Declarant, nor any other member of the Association's Executive Board or Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specification approved by them, nor for any structural defects any work done according to such plans and specifications. Further, neither Declarant, nor any member of the Association's Executive Board or Architectural Control Committee, shall be liable in damages to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specification or the exercise of any other power or right provided for in this Declaration. Every Person who submits plans or specifications for approval agrees, by submission of such

plans and specifications, and every owner of any Lot agrees that he or she will not bring any action or suit against Declarant, or any member of the Association's Executive Board or Architectural Control Committee, to recover any such damage.

## ARTICLE VI

### EXTERIOR MAINTENANCE

SECTION 1. LANDSCAPE MAINTENANCE TO BE PERFORMED BY THE ASSOCIATION. The Association shall maintain the Common Area and shall maintain the grounds of each Lot which is subject to assessments hereunder (except for any enclosed privacy area, which area shall be maintained by the Owner(s) of the Lot on which the residence is located as set forth in Section 2 below), as follows: mow, seed and fertilize all grassed areas, mulch, replace dead or diseased trees or shrubs originally planted by the Declarant and prune all trees or shrubs originally planted by the Declarant. In the event that the need for any landscaping required hereunder to be performed by the Association is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending strike, civil commotion, aircraft, vehicles or smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject. In addition, whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense is occasioned by any willful or negligent act of an Owner, or a family member, guest or invitee of an Owner, and the Owner who is responsible for the act causing the damage (whether done by such Owner or by the family, guests or invitees of such Owner) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall exceed the amount of the insurance proceeds, if any, applicable to such maintenance, repair or replacement.

SECTION 2. EXTERIOR MAINTENANCE. The Association shall be responsible for the exterior maintenance of each dwelling unit, including, without limitation, the following: painting, replacement and care of roofs, gutters, downspouts, exterior building surfaces, landscaping, driveways, steps, walks and other exterior improvements. The Association will also maintain, repair and replace, as the case may be, all utility lines, fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to such Owner's Lot which are not publicly maintained. The Owner shall be responsible for the maintenance, repair and replacement of all interior building surfaces and utility services.

In the event that an Owner adds landscaping or exterior features not covered by this Article, and such Owner neglects or fails to maintain his or her improved Lot and/or the exterior of his or her dwelling in a manner consistent with other improved Lots and dwellings within the Properties or fails to maintain his or her improved Lot in a safe condition and free of debris, the Association may provide such exterior maintenance. Provided, however, that the Association shall first give written notice to the Owner of the specific items of exterior maintenance or repair the Association intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an Owner has neglected or failed to maintain his or her Lot

and/or dwelling in a manner consistent with other Lots and dwellings within the Properties shall be made by the Executive Board of the Association, in its sole discretion. In the event the Association performs such exterior maintenance, repair or replacement, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

SECTION 3. EASEMENT TO PERFORM EXTERIOR MAINTENANCE. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

SECTION 4. PARTY WALLS . Each wall which is built as a part of the original construction of the residential units upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. 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 the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Article, an Owner who by his or her 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. 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.

SECTION 5. OWNER'S OBLIGATION TO INSURE AND RESTORE THE PREMISES. An Owner of a Lot agrees that it will at all times, at its own expense, maintain and keep in force public liability insurance against claims for bodily injury, death or property damage occurring in or on or about such Lot, together with such fire and extended coverage and vandalism and malicious mischief insurance covering the contents of such Lot as the Owner deems advisable. Each dwelling shall be insured to the extent of the full replacement cost thereof against loss or damage by fire, with the Association listed as an additional insured. A copy of the certificate of insurance shall be provided to the Association. If any dwelling be damaged or destroyed in whole or in part, an Owner, his heirs and assigns, hereby covenants and agrees to restore the premises to the condition existing before the damage or destruction. Then and in that event, the Owner shall be entitled to a reasonable adjustment in assessments and dues to the Association during the period the repair and/or restoration takes place.

SECTION 6. ROAD MAINTENANCE AND SOLID WASTE REMOVAL TO BE PERFORMED BY THE ASSOCIATION. The Association shall maintain the private roads providing access to and from the dwelling units and Common Areas owned by the Association and shall contract for and provide for the regular removal of trash and solid wastes generated by the dwelling units. The costs of all said maintenance and contractual obligations shall be considered an assessment against the property subject to these covenants. The Association's

duty to maintain said private roads shall continue up until such time as said roads may be accepted into the general maintenance program of the City of Greensboro, at which time the Association's duty to maintain the same shall cease.

## ARTICLE VII RESTRICTIONS

SECTION 1. LAND USE AND BUILDING TYPE No Lot shall be used except for single-family residential purposes (including townhomes); provided, however Declarant or any affiliated entity, may use any Lot owned or leased by Declarant or any affiliated entity, as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of any portion of the Properties or the Additional Property. No building shall be erected, placed or permitted to remain on any Lot other than single-family dwellings not to exceed 2 ½ stories in height with an attached private garage for not more than two (2) cars. Each Lot shall be developed and used in accordance with applicable zoning conditions on the Property.

SECTION 2. DWELLING SPECIFICATIONS. No dwelling shall be erected or allowed to remain on a Lot if the main structure, exclusive of open porches, decks and garages, contains less than one thousand six hundred (1,600) square feet of heated floor area.

SECTION 3. NUISANCE. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Lot or other area within the Properties shall be used as a dumping ground for rubbish or as a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment and discarded appliances and furniture. If a clothesline is placed on any Lot, it shall be an umbrella type clothesline and it shall be so screened that is not visible from any adjacent Lot or street.

SECTION 4. MOTOR VEHICLES. No boat, marine craft, hovercraft, aircraft, trailer, camper, truck greater than one ton in size or motorized van used for commercial purposes (as distinguished from a van used as a passenger car) shall be parked within the right of way of any public or private street adjacent to any Lot or on any Lot, except that any of the above may be parked completely inside a garage. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity of the parking area. No vehicles or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, and pick-up trucks that are in operable condition and have current license plates and inspection stickers. No inoperative motor vehicle may be parked or stored on any Lot or any public or private street or other area within the Properties for a period in excess of 48 hours.

SECTION 5. ANIMALS. No animals, livestock or poultry of any kind shall be kept or maintained on the Common Area or on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for



commercial purposes and further provided that they are kept and maintained in compliance with (i) all applicable laws and ordinances; and (ii) such rules and regulations pertaining thereto as the Executive Board may adopt from time to time, which rules and regulations may, among other things, restrict the number, type and size of domestic pets.

SECTION 6. OUTSIDE ANTENNAS. Except as permitted under applicable regulations promulgated by the Federal Communications Commission or other applicable state, federal or local laws or regulations, (i) no outside antennas or satellite dishes and no free standing transmission or receiving towers shall be erected on any Lot within the Properties without the prior written permission of the Architectural Review Committee and (ii) any antenna or satellite dish erected on any Lot within the Properties shall be affixed to the dwelling, shall be a color which blends with its surrounds, shall have a mask only as high as reasonably necessary to receive the intended signal and shall not be visible from any street.

SECTION 7. SUBDIVISION OF LOTS. Except as permitted under Article I, Section 6, no Lot shall be subdivided and no street shall be laid out or open across or through any Lot, without the prior written consent of Declarant, for so long as Declarant or any affiliated entity shall own any Lot within the Properties or shall have the right to annex any Additional Property pursuant to the provisions of Article X, Section 4 hereof, and thereafter except with the prior written consent of the Association. The Owners of adjoining Lots, however, may vary the boundary lines between their Lots, provided such subdivision is accomplished in compliance with all applicable subdivision and other ordinances and the size of each Lot is not reduced to less than 4,000 square feet.

SECTION 8. SIGNS. No sign shall be placed or allowed to remain on any Lot except for ONE (1) standard "For Sale" sign, or one other temporary sign to advertise a yard sale or other temporary activity on the Lot and such other temporary sign shall not be permitted to remain on any Lot for more than SEVENTY TWO (72) consecutive hours. No sign or other materials deemed by the Association, the Architectural Control Committee or Declarant (in their sole discretion) to be a nuisance or a detriment to the Properties or any Additional Property shall be permitted to be erected or to remain on any Lot. Notwithstanding the foregoing, for so long as Declarant or any affiliated entity owns any single-family lot shown on the plan for "Forest Oaks Commons Townhomes" approved by the appropriate local governmental authority, as that Plan is from time to time amended and approved, Declarant and its affiliates shall have the right to erect and maintain signs within the Common Area or on any Lot owned by Declarant or its affiliates for the purpose of advertising and promoting the sale of such lots.

SECTION 9. MOBILE HOMES MANUFACTURED HOMES, ETC. No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or installed on any Lot. As used in this Section, mobile home, manufactured home or modular home shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation where connected to the required utilities. Notwithstanding the foregoing, Declarant and builders or contractors approved by Declarant may maintain temporary improvements (such as a sales office and/or construction trailer) on any Lot during the construction and development period.

SECTION 10. FENCES OR WALLS. No fence, wall or other enclosure shall be constructed on any Lot without first obtaining the approval of the Architectural Control

Committee as provided in Article V of this Declaration. No portion of any fence erected on any Lot may exceed six (6) feet in height and chain link fences are not permitted. Notwithstanding the foregoing, Declarant, its successors and assigns, and the Association shall have the right to erect chain link fences and any other type of fences and enclosures within the Common Area to enclose retention ponds and for other purposes without the approval of the Architectural Control Committee, such fences and other enclosures to become a part of the Common Area to be maintained by the Association.

## ARTICLE VIII

### EASEMENTS

SECTION 1. UTILITIES. Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on recorded plats. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for the benefit of the appropriate governmental entity (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots.

SECTION 2. SIGNS. The Association shall maintain all subdivision signs and landscaping and lighting surrounding same now or hereafter erected within the Common Area. The costs of all such maintenance, repair and replacement of such signs, landscaping and lighting shall be part of the common expenses of the Association, payable by the Owners as set out Article IV hereof. Further, for so long as Declarant or any affiliated entity owns any single-family lot (including townhome lot) shown on the Plan for "Forest Oaks Commons Townhomes" approved by Guilford County or other appropriate governmental authority, as that Plan is from time to time amended and approved, Declarant and any affiliated entity shall have the right (i) to erect within the Common Area additional subdivision signs and landscaping and lighting surrounding the same to be maintained by the Association as herein provided and (ii) the right to erect within the Common Area signs advertising the sale and promotion of Lots or any portion of the Additional Property.

SECTION 3. EASEMENT RESERVED BY DECLARANT. Declarant hereby reserves such easements on, across and over the Common Area as shall be reasonably necessary for (i) the exercise by Declarant or any affiliated entity, of any right herein reserved, including,

without limitation, Declarant's right, should Declarant elect, to annex the Additional Property, as hereinafter defined and (ii) the development by Declarant, or any affiliated entity, their respective successors and assigns, of the Additional Property, should Declarant elect not to annex the Additional Property, including without limitation easements for ingress, egress and regress over private roads and streets now or hereafter erected on the Properties and easements for the use of all utility lines, fixtures and/or their connections located within the Common Area for the purpose of providing water, light, power, telephone, sewage and sanitary service to the Additional Properties.

SECTION 4. ENCROACHMENTS. In the event that any improvements on a Lot shall encroach upon any Common Area or upon any other Lot as a result of the initial improvements constructed by Declarant or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Area shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Area into any such Lot for so long as such encroachment shall naturally exist.

## ARTICLE IX.

### RIGHTS RESERVED TO INSTITUTIONAL LENDERS

SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Executive Board of the Association, such financial statement or report to be finished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the Membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association.

(c) To receive notice of any condemnation or casualty loss affecting the Common Areas or any portion thereof.

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association under Article II hereof.

(f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

SECTION 3. REQUIREMENTS OF INSTITUTIONAL LENDER. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

## ARTICLE X

### GENERAL PROVISIONS

SECTION 1. ENFORCEMENT. The Owner(s) of each Lot shall be governed by and shall comply with the provisions of this Declaration, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto, as any of the same are now constituted or as they may be amended from time to time. A default by any Owner shall entitle the Association or the Owner(s) of any of the other Lots to the following relief:

(a) The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws of the Association and all rules and regulations of the Association adopted pursuant thereto. Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Bylaws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority. In the event of a continuing breach of the terms and provisions of this Declaration after written notice to the Owner in accordance with this Declaration, Declarant or the Association shall have the right to enforce such remedy by removing any violation (e.g., sign) located within the Common Area.

(b) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to assess reasonable fines against an Owner for violations of this Declaration, the Bylaws of the Association, or the Association's published rules and regulations by such Owner, or such Owner's family, guests, invitees and lessees. Such fees shall be assessed in an

amount not to exceed \$150.00 for each violation, and without further hearing, for each day after the decision that the violation occurs. Such fines shall be deemed to be assessments as set forth in Article IV of this Declaration and if not paid within thirty (30) days after notice and demand therefore, the Association shall be entitled to the remedies set forth in the Declaration for the enforcement and collection of delinquent assessments.

(c) The Association, after notice to the Owner and a reasonable opportunity to be heard, shall have the right to suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of this Declaration or the Bylaws, Articles or rules and regulations of the Association. If it is decided that a suspension of privileges or services provided by the Association should be imposed, the suspension may be continued without further hearing until the violation is cured.

(d) If an Owner is legally responsible for damage inflicted on any Common Area, the Association may direct such Owner to repair such damage, or the Association, may itself cause the repairs to be made and recover damages from the responsible Owner. If damage is inflicted on any Lot by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner when any such claim for damages against an Owner or the Association is less than or equal to the jurisdictional amount established for small claims by North Carolina General Statute 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Executive Board of the Association to determine if an Owner is responsible for damages to any Common Area or the Association is responsible for damages to any Lot. If the Executive Board fails to appoint an adjudicatory panel to hear such matters, such hearings shall be held before the Executive Board. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability for each damage incident against each Owner charged or against the Association not in excess of the jurisdictional amount established for small claims by North Carolina General Statute 7A-210. When any such claim exceeds the jurisdictional amount established for small claims by North Carolina General Statute 7A-210, liability of any Owner charged or the Association shall be determined as otherwise provided by law. Liabilities of Owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under Section 47-3-116 of the Planned Community Act. Liabilities of Owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under Section 47-3-116 of the Planned Community Act. Liabilities of the Association determined by adjudicatory hearing or as otherwise provided by law may be offset by the Owner against sums owing to the Association and if so offset, shall reduce the amount of any lien of the Association against the Lot at issue.

(e) In any proceeding arising because of an alleged default by an Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

(f) The failure of the Association or any Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above mentioned documents shall not constitute a waiver of the right of the Association or of the Owner to enforce such right, provision, covenant or condition in the future.

(g) All rights, remedies and privileges granted to the Association or the Owners,

pursuant to any terms, provisions, covenants or conditions of the Declaration or other above mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

(h) The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above mentioned document shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future

SECTION 2. SEVERABILITY. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

SECTION 3. AMENDMENT. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated as hereinafter provided. This Declaration may be amended with the consent of the Owners entitled to cast at least sixty-seven percent (67%) of the votes of the Association and may be terminated with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association; provided, however, so long as Declarant or any affiliated entity owns any Lot or may annex Additional Property pursuant to the provisions hereinafter set forth, this Declaration may not be amended or terminated without Declarant's consent; no amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant; no amendment to the provisions of this Declaration governing the maintenance of the Common Area or the Lots to be performed by the Association shall be effective unless executed by Declarant, for so long as Declarant or any affiliated entity owns any Lot or may annex Additional Property pursuant to the provisions hereinafter set forth, and thereafter; and an amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection. Any amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the amendment on behalf of the Association that the requisite Owner approval has obtained and is evidenced by written acknowledgment(s) signed by the Owners approving the amendment and made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds, Guilford County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 4 of this Article shall not constitute an "amendment." In the event this Declaration is terminated in accordance with the provisions hereinabove provided, Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of all permanent retention or detention ponds.

SECTION 4. ANNEXATION.

(a) Except as provided in Subsection (b) of this Section 4, Article X, additional residential property and Common Area may be annexed to the Properties only with the consent

of the Members entitled to cast two-thirds (2/3) of the votes of the Association, who are voting, in person or by proxy, at a meeting duly called for such purpose; provided, however, during any Period of Declarant Control, Declarant must also consent to such action.

(b) Additional land within the area described in the metes and bounds description attached hereto as Schedule "A" and incorporated herein by reference, together with any other property located adjacent to the Properties (collectively, the "Additional Property") may be annexed by the Declarant without the consent of Members within ten (10) years of the date of this instrument, provided that, in the event FHA or VA insured loans have been obtained to purchase Lots, FHA and VA determine that the annexation is in accord with the general plan from time to time approved by them. For the purpose of determining whether property is adjacent to the Properties, the rights of way of public roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise adjacent property. Declarant shall have no obligation of any kind to annex any part all of the Additional Property and, should Declarant elect to annex all or any portion of the Additional Property, Declarant shall have no obligation of any kind to annex the Additional Property in any particular sequential order. Should Declarant elect to annex all or any portion of the Additional Property and accordingly to subject such property to the terms and conditions of this Declaration, with regard to all or any part of the Additional Property annexed by Declarant, to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration (including, without limitation, those contained in Section 2 of Article VII hereof) as may be necessary or convenient, in the sole judgment of the Declarant, to and reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration. With regard to any portion of the Additional Property not annexed by Declarant, Declarant makes no representations with regard to the use of such property or the exterior appearance, design, size or intended purpose of any improvements now or here after erected on such property.

SECTION 5. FHA/VA APPROVAL. During any Period of Declarant Control, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans Affairs provided that FHA or VA loans have been obtained to purchase Lots: annexation of additional properties, dedication of Common Area and amendment of this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or the Bylaws for the Association.

SECTION 6. AMPLIFICATION. The Provisions of this declaration are amplified by the Articles of Incorporation and Bylaws of the Association; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles of Incorporation and Bylaws of the Association on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything contained in the Articles of Incorporation or Bylaws of the Association.

SECTION 7. MANAGEMENT. In addition, for so long as Declarant or any affiliated entity owns any Lot or has the right to annex any Additional Property pursuant to Section 4 of Article X hereof, Declarant or its affiliate may require that management of the Common Area be subject to an agreement with a professional management company, and during such time,

Declarant shall have the right to approve any management agreement.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its name and its corporate seal hereto affixed as of the 14<sup>th</sup> day of September, 2007.

MID-ATLANTIC TOWN HOMES, LLC,  
a North Carolina limited liability company.

By: *A. Todd Schwarz*

A. Todd Schwarz, Member-Manager

STATE OF NORTH CAROLINA  
GUILFORD COUNTY

I, Elizabeth A. Duffy, a Notary Public of said State and County, do hereby certify that A. Todd Schwarz, Member-Manager of Mid-Atlantic Town Homes, LLC, a Limited Liability Company, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 14<sup>th</sup> day of September, 2007.

Elizabeth A. Duffy (SEAL)  
Notary Public Elizabeth A. Duffy

My commission expires: June 21, 2009

